

It will be seen that I have not discussed the effect of the case of *The Secretary of State v. Budhu Nath* (1). I have not done so, because it seemed to me that I could dispose of the case in favour of the plaintiff on the assumption that the case of *Kuverji Tulsidas v. The G. I. P. Railway Company* (2) was good law, and as the view of the law contained therein has been adopted by the Legislature in the Railway Act of 1890, I thought a decision on those lines would be useful at the present time. If, however, it be held that the case of *The Secretary of State v. Budhu Nath* (1) has overruled that of *Kuverji Tulsidas v. The G. I. P. Railway Company* (2), then, on the payment by the consignor of the "increase discharge" as before explained, the railway company would have at once become insurers, and there would be no necessity to enquire what amount of care they had taken of the parcel. I must, therefore, pass a decree for the plaintiffs for Rs. 6,000, and by way of damages for the non-delivery of the parcel award them interest at 6 per cent. on such amount from the 6th January, 1890, till this day. Costs and interest on judgment at 6 per cent.

Attorneys for the plaintiffs:—Messrs. Crawford, Burder, Buckland and Bayley.

Attorneys for the defendants:—Messrs. Little, Smith, Nicholson and Bowen.

17 B. 731.

[731] CRIMINAL REFERENCE.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

MUNICIPALITY OF AHMEDABAD v. JUMNA PUNJA.\*  
[22nd January, 1891.]

*Bombay Act VI of 1873, s. 84—Proceedings taken under s. 84 for the recovery of municipal taxes—Such proceedings are judicial and not ministerial—Magistrate's duty under the section.*

A proceeding before a Magistrate for the recovery of municipal cesses and taxes instituted under s. 84 of Bombay Act VI of 1873, is a criminal prosecution, and must be conducted in the manner prescribed for summary trials under Chapter XXII of the Code of Criminal Procedure (Act X of 1882).

In such a proceeding a Magistrate is not bound to order payment of the full amount claimed by the municipality, but must satisfy himself as to the extent of the defaulter's legal liability before passing any order against him.

[F., 30 B. 241 (244)=7 Bom. L.R. 951; Rat. Unr. Cr. Cas. 559 (561); Appr. and D., 23 B. 446 (448); R., 11 Cr. L.J. 87=4 Ind. Cas. 951=2 P.R. 1910 (Cr.)=109 P.L.R. 1909=23 P.W.R. 1909; D., 22 A. 111 (112).]

THIS was a reference under s. 438 of the Code of Criminal Procedure (Act X of 1882).

The accused was charged by the Municipality of Ahmedabad a cess rate of one rupee per annum for the removal of sullage water. He refused to pay the rate, and thereupon the Municipality prosecuted him under s. 84 of Bombay Act VI of 1873.

The trying Magistrate held that the accused was liable to pay only one-half of the rate charged, and ordered him to pay that amount.

\* Criminal Reference, No. 138 of 1890.

(1) 19 C. 538.

(2) 3 B. 109.

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The District Magistrate thereupon made the following reference to the High Court:—

"The Honorary Magistrate has, instead of issuing the warrant applied for, for the levying of arrears of taxes, taken evidence on the point whether or not the persons concerned have been rightly assessed,—that is, whether they have been placed in the proper lists or grades, and he has found that they have been assessed too highly, and he has ordered the recovery of a lesser, amount.

"Looking to the meaning of s. 84 of the Municipal Act, it appears to me that the Honorary Magistrate has altogether exceeded his powers. Otherwise the Honorary Magistrate becomes the appellate authority in all cases of municipal taxation, [732] and every case can be taken before him by the simple expedient of not paying the tax.

"This result is not contemplated by the Municipal Act, which provides other means for hearing appeals against municipal taxation.

"A ruling on the point is urgently and speedily required, as the action of the Honorary Magistrate has brought the collection of the tax for the removal of sullage water in Ahmedabad to a dead-lock—some 19,000 cases of refusal to pay the tax having been brought into his Court."

The reference was argued before Birdwood and Parsons, JJ.

*Shantaram Narayan*, Government Pleader, for the Crown.

*Chimanlal H. Setalvad*, for the accused.

#### JUDGMENT.

*Per Curiam*:—The accused in this case was charged by the Ahmedabad Municipality a cess rate of one rupee per annum for the removal of sullage water under class F of the cess rates sanctioned by Government Resolution No. 1886 of the 1st June, 1888 (see the rules of the Ahmedabad Municipality, p. 51). He refused to pay the rate for the year 1889-90, and the municipality applied to the Magistrate to recover it under s. 84 of Bombay Act VI of 1873. The Magistrate found that the accused was liable under class F, sub-s. 1, to only one-half of the rate charged. The District Magistrate has referred the case to the High Court, as he is of opinion that a Magistrate, dealing with an application under s. 84 of the Municipal Act, has no jurisdiction to question the propriety of any claim made by the municipality, but must issue his warrant for the full amount of rate charged upon the defaulter. It is argued that in such cases the Magistrate acts ministerially and not judicially. We cannot accept this interpretation of the law. The Magistrate is empowered under s. 84 to recover rates by a "summary proceeding" in the manner provided in the Code of Criminal Procedure (X of 1882). "This summary proceeding" must be the proceeding for which provision is made in chap. XXII of the Code of Criminal Procedure. There is no other provision in the Code which appears to be applicable to the case. The [733] Government Pleader contends that the proceeding referred to is that contained in s. 386, which provides that, when an offender is sentenced to pay a fine, the Court passing the sentence may, in its discretion, issue a warrant for the levy of its amount by distress and sale of any moveable property belonging to the offender, although the sentence directs that, in default of payment of the fine, the offender shall be imprisoned. But this view is not consistent with the ruling of this Court in *Imperatrix v. Karmashankar Bhaishankar* (1), which shows that proceedings before a Magistrate under s. 84 of the Municipal Act are

(1) Cr. Rul. 86 of 3rd December, 1888.

criminal prosecutions. Such prosecutions must be conducted according to the rules applicable to summary trials. The Magistrate is bound, therefore, before sentencing a defaulter to pay a rate, to satisfy himself as to the extent of his legal liability, and did not, in the present case, act without jurisdiction by enquiring into its merits. He has, however, reduced the rate without first finding on evidence, duly recorded, that the accused had no *khalkundi* and no tub on his premises. It was only on such a finding that he could legally hold that the case fell under class F, sub-s. 1, of the rules and not under the first part of class F. We reverse the Magistrate's order and direct him to re-hear the case.

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*Order reversed.*

17 B. 733.

APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.*

PARVATISHANKAR DURGASHANKAR (*Original Plaintiff*), *Appellant v.*  
BAI NAVAL (*Original Defendant*), *Respondent*.\* [4th October, 1892.]

*Civil Procedure Code (Act XIV of 1882), s. 562—Remand—Practice—Procedure.*

The defendant in a suit on a mortgage applied, on the day fixed for the hearing, for an adjournment on the ground of illness. Her application was refused, and the Court heard the case *ex parte* and passed a decree for the plaintiff. The defendant appealed to the District Judge, who reversed the decree and remanded the case, on the ground that the defendant's application for an adjournment ought to have been granted. On appeal to the High Court.

[734] *Held*, discharging the order of remand, that the suit having been tried on the merits, the District Judge could not remand the case under s. 562, but ought to have proceeded under ss. 568 and 569.

[Diss., 30 M. 54=16 M.L.J. 479 (486)=1 M.L.T. 263; R., 1 Ind. Cas. 329=12 O.C. 25 (28).]

THIS was an appeal from a remand order passed by J. B. Alcock, District Judge of Surat.

Suit to recover Rs. 1,199 due upon a mortgage.

The defendant, Bai Naval, widow of Bhavanising Gumansing, applied for an adjournment on the ground that she was ill and had not been able to file her written statement. The Court granted a month's adjournment. On the appointed day the defendant applied for a further adjournment, pleading continued illness and want of assistance as an excuse. The Court rejected the application and proceeded to hear the case. A decree was passed for the plaintiff.

The defendant appealed, and the District Judge reversing the decree remanded the case for trial, on the ground that the defendant's application for adjournment ought to have been granted.

The plaintiff appealed.

*Nagindas Tulsidas Marphatia*, for the appellant:—The Judge was wrong in remanding the case. A remand can only be made under s. 562 of the Civil Procedure Code (XIV of 1882). The lower Court did not decide the case on a preliminary point. The case was heard, the mortgage was proved by evidence, and the plaintiff's claim on the mortgage