

CRIMINAL APPELLATE.

Before Mr. Justice Batchelor and Mr. Justice Shah.

EMPEROR v. HARIDAS LAKHMIDAS.*

1913.

July 31.

Coasting-Vessels Act (XIX of 1838), sections 4, 7 and 13†—Registry of vessels—Certificate of registry—Certificate issued in the name of a person who trades in his own name jointly with his son—The son continuing the business in the same name after the person's death—Fresh certificate not obtained—Liability of the son for plying the craft without certificate.

A person owning a craft had taken out a certificate of registry in his own name under section 7 of the Coasting-Vessels Act (XIX of 1838). He traded

* Criminal Appeal No. 204 of 1913.

† The material portions of these sections run as follows :—

4. The name and number of every such vessel employed as aforesaid, fishing vessel and harbour-craft, and her burthen, and also the name or names of the owner or owners thereof, shall be registered in a book to be kept for that purpose by the person hereinafter directed to make such registry.

... and whenever any change shall take place ... in the name or names of the owner or owners thereof, such registry shall be made again.

7. The owner or owners of any such vessel employed as aforesaid, fishing-vessel and harbour-craft shall apply for and obtain a certificate of registry from the person authorized to make such registry as aforesaid, and such certificate shall be in the form specified in the schedule appended to this Act...

13. ... in case any such vessel employed as aforesaid, fishing-vessel or harbour-craft shall not be furnished with such certificate as hereinbefore specified, or in case the owner or owners or commander of any such vessel employed as aforesaid, fishing-vessel or harbour-craft shall not produce such certificate on demand thereof as hereinbefore directed,

the owner or owners of every such vessel employed as aforesaid shall be subject to a fine of ten times the amount of the fees payable in respect of the certificate of registry of such vessel, the same being a vessel for the certificate of the registration of which any fee is payable; and the owner or owners of any such fishing-vessel or harbour-craft shall be subject to a fine of ten rupees.

1913.

EMPEROR

v.

HARIDAS
LAKHMIDAS.

in his own name jointly with his sons. On his death, his son carried on the business as before under the same name and did not take out a fresh certificate for the craft. The son was prosecuted under section 13 of the Act for plying the craft without a certificate; but was acquitted by the Magistrate. The Government having appealed:—

Held, that the craft having been registered in the father's name, and the ownership of it having passed on his death to his son, the latter was bound to obtain a fresh certificate in his own name under section 4 of the Coasting-Vessels Act (XIX of 1838); and that his failure to do so was punishable under section 13 of the Act.

THIS was an appeal by the Government of Bombay from an order of acquittal passed by Manilal Ajitrai, First Class Magistrate of Thana.

The father of the accused, Lakhmidas, owned a craft which he plied for hire. The craft was registered as required by the Coasting-Vessels Act (XIX of 1838) and the certificate of registry was issued in the name of Lakhmidas. He traded jointly with his son and carried on the family business in his own name. On Lakhmidas' death, his son Haridas continued the business in the same name as before. He did not obtain a fresh certificate for the craft.

For this omission, the accused was prosecuted under section 13 of the Coasting-Vessels Act (XIX of 1838) for plying the craft without a certificate. The trying Magistrate acquitted him on the ground that no fresh certificate was necessary for the son continued the business in the name of his father, and there was consequently no change in the name of the owner of the craft.

The Government of Bombay appealed against the order of acquittal.

S. S. Patkar, Government Pleader, for the Crown.

K. H. Kelkar, for the accused.

BACHELOR, J.:—This is an appeal by the Government of Bombay against the acquittal of one Haridas Lakh-

midas who was accused of having committed an offence punishable under section 13 of the Coasting-Vessels Act (XIX of 1838) in that, being the owner of a harbour-craft he plied the craft for hire without getting the certificate of registry required by sections 4 and 7 of the Act.

It appears that Haridas Lakhmidas, the accused, and his brother and father were members of a joint Hindu family, and the craft was registered in the name of the father Lakhmidas Kurji, who died in June 1912. Under section 4 of the Act a second registration is required whenever any change takes place in the name of the owner of any harbour-craft. The learned Magistrate, however, who tried the accused, acquitted him on the ground that in this case the necessity for a second registration was avoided inasmuch as the business now conducted by the son, the accused, retained the name of the father Lakhmidas Kurji. Mr. Kelkar, who has endeavoured to support the learned Magistrate's judgment, has put it upon the ground that the real owners of this craft, when it was registered in the name of the father, were the father and the two brothers and that the father's death does not constitute a change in the ownership of the craft. It appears to us, however, that the words of the Act are too clear to admit of any such construction as this. Sections 4 and 7 of the Act and the Schedule appended to it seem to us to show that the Act requires the certification of a certain individual or individuals as being the owner or owners of the harbour-craft. In this case, admittedly, the craft was registered in the name of the father Lakhmidas. According to the Schedule, therefore, it was certified that Lakhmidas was the sole owner of this craft. When Lakhmidas died in June 1912, he was no longer the sole owner of the craft, and it follows that there was a change in the ownership of the craft which, previously owned by Lakhmidas was now owned by the present accused.

1913.

EMPEROR

v.

HABIDAS
LAKHMIDAS

1913.

EMPEROR
v.
HARIDAS
LAKHMIDAS.

That being so, it was, in our opinion, incumbent upon the accused under section 4 of the Act to take out another registration. Since he did not do so, he is liable to the penalty prescribed by section 13 as the punishment for an owner of a harbour-craft who is guilty of this omission. The result is that under that section the accused, who must be convicted of the offence imputed to him, is subject to a fine of Rs. 10, and following the decision in *Empress v. Mhasnya Rama*⁽¹⁾ we direct that he pay this fine of Rs. 10.

R. R.

(1) (1883) 7 Bom. 280.

CRIMINAL REFERENCE.

Before Mr. Justice Heaton and Mr. Justice Shah.

EMPEROR v. NANJI SAMAL.*

1913.

August 28.

Criminal Procedure Code (Act V of 1898), section 213—Committal of a case to the Court of Session—Reasons for committal to be given where the case can be tried by the Magistrate—Indian Registration Act (XVI of 1908), section 83, clause (2)—Irregularity—Illegality.

Where a Magistrate, who could have tried the case himself under clause (2) of section 83 of the Indian Registration Act (XVI of 1908), committed it to the Court of Session without giving any reasons for committal:—

Held, that the reasons for committal must include not merely reasons for not discharging the accused, but reasons for sending him to the Court of Session, as the trial could be had either by the Magistrate himself or by the Court of Session; and that the omission to give the reasons was an illegality.

THIS was a reference made by E. Clements, Sessions Judge of Ahmedabad.

The accused was charged before the City Magistrate of Ahmedabad with an offence punishable under section 82A of the Indian Registration Act (XVI of 1908). The Magistrate, however, instead of trying the case himself

* Criminal Reference No. 61 of 1913.