APPELLATE CRIMINAL

Before Mr. Justice Gajendragadkar and Mr. Justice Vyas.

THE UNION OF INDIA *v.* CAUFIELD HOLLAND LTD. AND ANOTHER 1953
Industrial Disputes Act (XIV of 1947), s. 29—Mens rea *whether essential constituent of offence under s. 29—Necessity of proving* mens rea *in criminal cases—Exceptions to rule.* *Jan.* 23

Mens rea is not an essential ingredient of the offence under s. 29 of the Industrial Disputes Act, 1947.

Generally speaking a person cannot be convicted of a criminal offence unless he commits an overt act with a wrongful or illegal intention. It is, however, open to the Legislature to provide for offences where *mens rea* is not an essential element. If the Legislature expresses such intention in unambiguous and clear language, the principle that *mens rea* must ordinarily be established in a criminal case would have no application. In the absence of clear and unambiguous language indicating such an intention on the part of the Legislature, it is permissible to ascertain the intention of the Legislature by examining the object of the statute in question and its general scheme.

Sherras v. *De Rutzen*,[1] *Coppen* v. *Moore*,[2] *Mousell Brothers* v. *London and North-Western Railway*,[3] and *Srinivas Mall Bairoliya* v. *Emperor*,[4] referred to.

The scheme and object of the Industrial Disputes Act, 1947, seem to indicate that the obligation to comply with a binding award under the Act is unqualified, absolute and categorical, and its breach would invite the penalty under s. 29 without proof of *mens rea*.

CRIMINAL APPEAL against an order of acquittal passed by the Chief Presidency Magistrate, Bombay.

Caufield Holland Ltd. (accused No. 1), a joint Stock Company incorporated in England, was carrying on business at Bombay which consisted of doing outside jobs of electrical wiring and the like, making repairs to electrical appliances in a workshop of their own and so on. The great majority of shares of the Company were owned by L. Holland (accused No. 2) who was also the Managing Director of the Company.

In 1949, a dispute arose between the company and its employees in respect of the scales of pay, bonus for 1946-47 and other allied matters. The Government of Bombay referred

* Criminal Appeal No. 887 of 1952.

[1] (1895) 1 Q. B. 918.
[2] (1898) 2 Q. B. 306.
[3] (1917) 2 K. B. 836.
[4] (1947) 49 Bom. L. R. 688, (P. C.)

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that dispute to the adjudication of the Industrial Tribunal, Bombay, under the Industrial Disputes Act, 1947. The Tribunal made its award on November 30, 1950, whereby most of the demands of the employees were granted.

From this decision the Company went in appeal to the Labour Appellate Tribunal of India at Bombay under the Industrial Disputes (Appellate Tribunal) Act, 1950. On June 5, 1951, the Appellate Tribunal substantially confirmed the award made by the Industrial Tribunal. The Company, however, did not carry out the terms of the award after it became enforceable. Negotiations followed between the parties but ultimately they failed, and on November 5, 1951, the Assistant Commissioner of Labour, Bombay, acting on behalf of the Union of India instituted proceedings against the accused under s. 29 of the Industrial Disputes Act, 1947, in the Court of the Chief Presidency Magistrate at Bombay.

The accused confessed to the breach of the award but their defence was that the breach was inevitable in that it was absolutely beyond their financial resources to comply with the provisions of the award. They, therefore, pleaded that unless the breach committed by them was wilful or was accuated by *mens rea*, they would not be liable for the penalty imposed by s. 29.

The learned Presidency Magistrate upheld the plea raised by the accused and acquitted them on April 17, 1952.

The Union of India appealed to the High Court against the order of acquittal.

A. A. Mandgi, Assistant Government Pleader, for the appellant.

Y. V. Chandrachud, appointed for the accused.

Gajendragadkar J. The short question which arises for decision in this appeal relates to the construction of s. 29 of the Industrial Disputes Act (India Act XIV of 1947). This section provides that if any person commits a breach of any term of an award which is binding on him under the Act, he shall on his first conviction therefor be punishable with fine which may extend to two hundred rupees and in the event of a second or subsequent conviction with fine which may extend to five hundred rupees. The prosecution case was that Caulfield Holland

Ltd., who are a joint stock company incorporated in England and who carry on business at Ballard Estate, Bombay, and Mr. Holland, the Managing Director of the said Company, had committed a breach of an award which was binding on them. The two accused admitted that a breach had been committed but they pleaded that the breach was inevitable because it was absolutely beyond their financial resources to comply with the provisions of the award. Therefore, their plea was that unless the breach committed by them was wilful or was actuated by *mens rea*, they would not be liable for the penalty imposed by s. 29. On the other hand, the prosecution contended that the presence of *mens rea* or a blameworthy condition of the mind is not an essential ingredient of the offence under s. 29. The learned Chief Presidency Magistrate has upheld the plea raised by the defence and has acquitted the accused of the offence charged. This order of acquittal is challenged by the State of Bombay and the only question which we have to consider is whether *mens rea* is an essential ingredient of the offence under s. 29.

The material facts relevant for the purpose of deciding this case are very few. It appears that a concern called Holland & Co. which was owned by Mr. L. Holland (accused No. 2) had been carrying on business for a number of years in Bombay. The business of this concern consisted of doing outside jobs of electrical wiring and the like, as well as making repairs to electrical appliances in a small workshop which the concern owned. The firm was originally established in 1908, and carried on its business until it became a joint stock company in 1947. Caulfield Holland Ltd. took over the original firm along with its entire assets, business and goodwill. This joint stock company had a share capital of £ 52,000 divided into £ 1 shares. 37,000 shares out of these were subscribed, of which 36,000 were assigned to accused No. 2 in consideration of his having sold his business and its assets to the joint stock company.

In 1949 a dispute arose between the employees of the joint stock company and the company and this dispute was in respect of pay, bonus for 1946-47 and other allied matters. The Government of Bombay referred this dispute to the adjudication of the Industrial Tribunal under the provisions of the Industrial Disputes Act. The Tribunal made its award on November 30, 1950, by which substantially the demands of the workmen were upheld. This award was published in the Bombay Government Gazette on January 4, 1951. The award

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directed that the amounts becoming payable thereunder shall be paid within two months from the date on which the award became enforceable. The Company went in appeal under the provisions of the Industrial Disputes (Appellate Tribunal) Act, 1950, (Act No. XLVIII of 1950). The Appellate Tribunal gave their decision on June 5, 1951. The appellate decision was published on June 28, 1951. After the decision of the Appellate Tribunal the employees called upon the Company to comply with the award. This demand was followed by negotiations between the parties, but the negotiations failed and the Company unequivocally refused to comply with the demands made by the workers under the award on November 4, 1951. On November 5, 1951, a complaint was filed against the two accused for the breach of the award committed by them.

At the hearing of this appeal the learned Assistant Government Pleader contended that the Chief Presidency Magistrate was in error in assuming that the prosecution had conceded before him that *mens rea* or a blameworthy condition of the mind was not present in the breach of the award committed by the two accused in the present case. The contention is that the prosecution undoubtedly mentioned to the Chief Presidency Magistrate that according to them it was unnecessary to prove the presence of *mens rea* in bringing home to the accused the charge under s. 29 and from that point of view the learned Public Prosecutor may have told the Chief Presidency Magistrate that he was not interested in proving *mens rea* against the accused. That, however, does not mean and was not intended to mean as a concession that the prosecution admitted that *mens rea* was absent. Therefore, Mr. Mandgi for the State wanted liberty to be reserved to him to prove the presence of *mens rea* in case we accepted the construction put upon s. 29 by the learned Chief Presidency Magistrate. We are not prepared to accede to this request. From the judgment of the Chief Presidency Magistrate it does appear that substantially it was conceded by the Public Prosecutor that the prosecution did not wish to prove *mens rea* against the present accused. Whatever may have been the intention of the Public Prosecutor, if the statements made by him were understood by the Chief Presidency Magistrate as amounting to a concession and were treated alike by the accused, we do not think it would be fair in a criminal case to allow the prosecution to fall back upon that plea in the alternative. Therefore, in dealing with

the present appeal we will assume that if *mens rea* is required to be proved against them to bring home to the accused the charge under s. 29, the order of acquittal passed by the learned Chief Presidency Magistrate would be right.

Now, the broad principles which apply in deciding the question as to whether *mens rea* must be proved in regard to a given criminal offence are well established. Generally speaking a person cannot be convicted unless he commits an overt act with a wrongful or illegal intention. In other words, the presence of *mens rea* is usually treated as a condition precedent for the successful prosecution of a person. It is, however, open to the Legislature to provide for offences where *mens rea* may not be an essential element. If Legislature expresses its intention in that behalf in unambiguous and clear language, the principle that *mens rea* must ordinarily be established in a criminal case would have no application. Instances where Legislature had expressed such an intention are not unknown. These, however, constitute statutory offences of a minor and *quasi criminal* character. In the absence of clear and unambiguous language indicating such an intention on the part of the Legislature it may be permissible to ascertain the intention of the Legislature by examining the object of the statute in question and its general scheme. As often happens it is not very difficult to enunciate these broad principles; the difficulty arises in applying them to the facts in a particular case.

On this subject the judgment of Mr. Justice Wright in *Sherras* v. *De Rutzen*,[1] is always cited with respect. Indeed, it is treated as a classic on the point. In *Sherras*' case the Court was dealing with s. 16 (*2*) of the Licensing Act of 1872 under which a licensed victualler was prohibited from supplying liquor to a police constable while on duty and it was held that the said subsection does not apply where the licensed victualler *bona fide* believes that the police constable is off duty. In other words, the decision was that the presence of *mens rea* was an essential condition of the liability for penalty under s. 16 (2). Mr. Justice Wright started his judgment by emphasizing that there is a presumption that *mens rea*, an evil intention, or a knowledge of the wrongfulness of the act is an essential ingredient in every offence; but he added that the said presumption is liable to be displaced either by the words of the statute creating the offence or by the subject-matter with which it deals and both must be considered. The learned Judge then

[1] (1895) 1 Q.B. 918.

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proceeded to classify the exceptions into three principal classes. "One is a class of acts which, in the language of Lush J. in *Davies* v. *Harvey*[1] are not criminal in any real sense, but are acts which in the public interest are prohibited under a penalty."

"Illustrations of cases falling under this class are then mentioned by the learned Judge. "Another class", says the learned Judge, "comprehends some, and perhaps all, public nuisances..." "Lastly, there may be cases in which, although the proceeding is criminal in form, it is really only a summary mode of enforcing a civil right."

The general observations made by Lord Russell C. J. in *Coppen* v. *Moore*[2] emphasize another aspect which Courts have to consider in dealing with this question. Referring to the earlier decision in *Bond* v. *Evans*[3] the learned Chief Justice said: "The Court in fact came to the conclusion that, having regard to the language, scope, and object of those Acts," i.e., the Licensing Acts—"the Legislature intended to fix criminal responsibility upon the master for acts done by his servant in the course of his employment, although such acts were not authorized by the master." "When the scope and object of the Act are borne in mind," added the learned Chief Justice, "any other conclusion would to a large extent render the Act ineffective for its avowed purposes". From these observations the principle which was deduced by Viscount Reading C. J. in *Mousell Brothers* v. *London and North Western Railway,*[4] is, with respect, of considerable assistance in deciding the question of *mens rea.* Says Viscount Reading C. J. (p. 844):

".....where the language of an Act is not so plain as to leave no room for doubt, the Court may bear in mind the avowed purpose of the Act and consider whether a particular construction will render the Act effective or ineffective for that purpose."

We may refer to another decision where this question was considered by the Privy Council in reference to the provisions of rule 81 (4) of the Defence of India Rules. In *Srinivas Mall Bairoliya* v. *Emperor,*[5] it was observed that unless the statute. either clearly or by necessary implication, rules out *mens rea* as a constituent part of a crime, a defendant should not be found guilty of an offence against the criminal law unless he has got a guilty mind. It was held that the offences punishable under rule 81 (4) of the Defence of India Rules did not rule out *mens rea* and so in the absence of its proof the accused could not be held to be guilty. In dealing with the offences where *mens rea* is not an essential constituent, their Lordships

[1] (1874) 9 Q. B. 433.
[2] (1898) 2 Q. B. 306 at p. 312.
[3] (1888) 21 Q. B. D. 249.
[4] [1917] 2 K. B. 836.
[5] (1947) 49 Bom. L. R. 688.

observed that these are within that class which are "usually" of a comparatively minor character, and it would be a surprising result of this delegated legislation if a person who was morally innocent of blame could be held vicariously liable for a servant's crime and so punishable "with imprisonment for a term which may extend to three years".

Bearing these principles in mind, let us examine the scheme of the Act and the terms of the material section itself.

Broadly stated, the scheme of the Act appears to be to provide for the investigation and speedy settlement of industrial disputes between the employers and the employees. The Act defines "industrial dispute" and provides for the reference of such a dispute either to the Board for promoting a settlement thereof or to the Tribunal for adjudication. The power to refer dispute is left with the appropriate Government under s. 10 (*1*), which lays down that this power would be exercised by the appropriate Government if it is of opinion that any industrial dispute exists or is apprehended. When a dispute is referred to the Tribunal for its adjudication, s. 15 requires the Tribunal to hold its proceedings expeditiously and to submit its award to the appropriate Government as soon as practicable on the conclusion of the said proceedings. Section 17 requires that the award of the Tribunal shall be published within one month from the date of its receipt by the appropriate Government, and s. 17A makes the award enforceable on the expiry of thirty days from the date of its publication under s. 17. This section confers upon the appropriate Government the power either to reject or to modify the award if it is satisfied that it would be expedient on public grounds so to do. When this power is exercised by the appropriate Government, an obligation is laid upon the Government to place the award together with its reasons for rejecting or modifying the same before the Legislative Assembly of the State. This is the effect of s. 17A (*2*). Sub-s. (*3*) of the said section provides that the award of a Tribunal shall come into operation with effect from such date as may be specified therein; but where no date is specified it shall come into force on the date when the award becomes enforceable under sub-s. (*1*). Section 18 is very important because it makes the award binding on all parties to the industrial dispute. Under s. 19 (*3*) an award which has become enforceable shall, subject to the provisions of s. 19, remain in operation for the period of one year. Power is given to the appropriate Government under the pro-

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viso to this sub-section to extend the period of operation of any such award by any period not exceeding one year at a time, and not exceeding three years all told from the date on which the award comes into operation. Sub-s. (4) of s. 19 is again very material. Under this sub-section the appropriate Government either of its own motion or on the application of any party bound by the award can consider whether there has been a material change in the circumstances on which the award was based since it was passed and if satisfied that there has been such a change, it may refer the award or part of it to a Tribunal for decision as to whether the period of the operation of the award should not be shortened in consequence of the said change. The decision of the Tribunal on such reference shall be final subject, of course, to the provision of an appeal. The reference of the industrial disputes to the Tribunal is dealt with by Chapter III. The procedure, powers and duties of the Tribunal are dealt with in Chapter IV, while Chapter VI deals with penalties. It is with s. 29 in this Chapter that we are directly concerned. This section provides in absolute terms that a breach of an award is liable to the penalty as mentioned in the section, and the question is whether even this absolute provision is subject to the requirements that the breach must be wilful or, in other words, *mens rea* must be proved as an essential constituent of the breach before the penalty can attach to it.

It seems to us that the object of the statute was to create special Tribunals for deciding the industrial disputes between the employees and their employers and we are disposed to take the view that Legislature intended to confer exclusive jurisdiction on these special Tribunals in respect of such industrial disputes. In the present case, when the dispute was referred to the Tribunal both the parties were represented and evidence was led by both of them in support of their rival contentions. The Tribunal examined the financial position of the Company as it was disclosed by the balance sheet. The profits made by the Company were taken into account, the number of workmen, the nature of the demands made by them, the total liability which may arise if the demands were considered in relation to the financial resources of the Company were examined before the award was made. In fact, it appears from the award that the Tribunal specifically examined the contention of the Company that it had no capacity to pay dearness allowance with retrospective effect as demanded. The conclusion of the

Tribunal was that having regard to the financial position of the Company 66-2/3 per cent. of the textile scale would be a proper scale of dearness allowance for the workers of the Company. After the award was made, the Company went in appeal and the Appellate Tribunal again examined the rival contentions. The accounts with regard to the business of the Company were again subjected to scrutiny. The Appellate Tribunal took into account the fact that the Company had not kept anything in reserve, that its business was in a moderate way, that its work depended on orders secured from sources that use machinery and that its profits had never been sufficient to provide for a reserve or any other fund on which the Company could rely in an emergency. They also found that the available surplus would be greatly diminished if not exhausted if the profits were diverted to reserves. Even so, the award made by the Tribunal was substantially confirmed by the Appellate Tribunal. They only set aside the direction of the Tribunal's award in regard to the grant of bonus for the year 1946. It would thus be clear that when the award was finally made by the Appellate Tribunal on June 5, 1951, all the pleas made by the accused in regard to their ability or otherwise to make payments under the award were duly and properly considered. In our opinion, it would be difficult to sustain the plea of the accused that even if the Appellate Industrial Tribunal came to the conclusion that the award which they were confirming in appeal was reasonable and that it would be possible for the Company to comply with the directions of the award, as soon as the accused are prosecuted for the breach of the terms of the award they would be entitled to ask the Criminal Court to examine the same question over again. If the argument as to *mens rea* is to prevail, the accused would be entitled to plead their inability to comply with the terms of the award even without alleging a change in their financial circumstances. They would be entitled to say that they were not actuated by any wilful intention to commit the breach of the award; but that the Industrial Tribunals, both original and appellate, were wrong in holding that it was financially possible for them to comply with the directions of the award. In other words, their plea to the Criminal Court would be to examine their financial position to satisfy itself that the breach committed by them was inevitable. Now, if this plea were to prevail, virtually the Criminal Court would be sitting in appeal over the decisions of the Industrial Tribunals and that,

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we think, is plainly inconsistent with the scheme of the Act in general and with the specific provisions of s. 18 in particular, which make the awards binding on all parties to the industrial disputes. If there is no material change in the circumstances of the accused, the Criminal Court would be bound to treat the award as conclusive between the parties and would have to proceed on the assumption that it was obligatory on the accused to comply with the directions of the award. The Criminal Court would not be justified in examining the merits of the dispute as to the financial capacity of the accused afresh because the award is binding as much on the accused as on the employees.

This view is further strengthened if we examine the provisions of s. 19 (4) of the Act. It is conceivable that after the award is made there may be such a material change in the circumstances of the employer as would make it impossible for the employer to comply with the provisions of the award, and *prima facie* if the accused were to plead such a material change in defence to a charge under s. 29 it might appear to be unfair to the accused to hold him guilty though he may be in a position to prove such a material change. This position has been, however, advisedly provided for by s. 19 (4). In case of a material change in the circumstances of the Company, it would be perfectly competent to the Company to move the Government and request that the award be referred to the Tribunal to enable them to obtain relief consequent upon the change of their circumstances. Indeed, the appropriate Government may of its own motion make such a reference. In other words, the policy of the Act seems to be to leave the decision of all material questions in regard to the settlement of the industrial disputes and the modification of the award which may become necessary to the exclusive jurisdiction of the special Tribunals.

There is another safeguard provided by the Act and that is contained in s. 34. Under this section the Court can take cognizance of any offence punishable under the Act or its abetment only on a complaint made by or under the authority of the appropriate Government. That is to say, the offences punishable under this Act are not cognizable on the complaint of the employees, but are cognizable only at the instance of the appropriate Government. If the appropriate Government were to feel that the breach committed by the employer is due to the

change of circumstances or due to the employer's honest inability to comply with the provisions of the award, the appropriate Government would not file a complaint against him. In dealing with the scheme of the Act it is not possible for us to accede to the contention urged before us by Mr. Chandrachud that if the appropriate Government acts vindictively or *mala fide* the employer may in conceivable cases go without a remedy. The whole Act is based upon the assumption that the appropriate Government will act fairly both by labour and its employers. That is why the appropriate Government has been deliberately given the power either to refer or refuse to refer an industrial dispute to the Tribunal both under s. 10 (*1*) and under s. 19 (*4*) of the Act. Therefore, in our opinion, the scheme of the Act and the object in passing the Act seem to indicate that the obligation to comply with the award is unqualified, absolute and categorical and its breach would invite the penalty under s. 29 without proof of *mens rea* as such.

We are disposed to think that the provisions of s. 29 in the present Act might fall both under class one and class three of exceptions enumerated by Mr. Justice Wright in *Sherras* v. *De Rutzen*. The breach charged against the accused is not criminal in any real sense. It really amounts to an act which has been prohibited in the public interest. Mr. Chandrachud, however, has contended that the public interest which is mentioned by Lush J. in reference to the first class of exceptions must be the interest of the public in general and not the interest of a section of the public. In support of this contention Mr. Chandrachud has invited our attention to a decision of the Privy Council in *Hamabai Framjee Petit* v. *Secretary of State for India*,[1]. In this case their Lordships of the Privy Council approved of the view which had been expressed by Mr. Justice Batchelor that the expression 'public purposes', "whatever else it may mean, must include a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and virtually concerned." We must concede that the argument is ingenious, but we are not prepared to treat it as sound in this case. The importance of keeping industrial peace in a modern state can hardly be exaggerated. Legislature appears to have taken the view that the progress of the State is so inextricably connected with the continuance of peaceful relations between labour and capital

[1] (1914) L. R. 42 I. A. 44.

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that they have prohibited the breach of the award in the public interest. And if that be so, whoever commits an act which is prohibited in the public interest would be guilty whether or not he had the guilty mind in committing the said breach.

It would also be possible to take the view that the cases of breach under s. 29 are criminal only in form because the main object of s. 29 is to provide for a summary mode of enforcing a civil right. On this point again Mr. Chandrachud ingeniously suggests that the right which is enforced is not strictly a civil right, and that may be true. But we apprehend that it would not be fair to lay too much emphasis on the words "Civil right" used in describing this class of exceptions. The penalties under Chapter VI of the present Act, in our opinion are intended to enforce the provisions of the award and in that sense we feel that the breaches contemplated in s. 29 should form an exception to the general rule that *mens rea* is an essential constituent of a criminal offence. The nature and extent of the penalty imposable under s. 29 is also a relevant factor to consider. For the the first offence the maximum penalty is Rs. 200 and for the second or subsequent offence it extends to Rs. 500. As we have already pointed out, in *Srinivas Mall Bailroliy* v. *Emperor*[1] the Privy Council have expressed the view that the sentence awardable for the commission of the offence in question is itself a relevant fact in considering whether *mens rea* is essential. The application of this test to s. 29 in our opinion supports the view that *mens rea* is not an essential constituent of the offence under this section.

In this connection it may not be immaterial to refer to ss. 28 and 30 in Chapter VI of this Act where *mens rea* is specifically made an essential constituent of the offences dealt with by these two sections. S. 28 which provides a penalty for giving financial aid to illegal strikes and lockouts requires that the prosecution must show that the accused gave such aid knowingly. Similarly, s. 30 which provides for a penalty for disclosing confidential information makes the wilfulness of the disclosure an essential constituent of the offence. If the Legislature made *mens rea* an essential constituent of some offences under Chapter VI by using appropriate words in that behalf, it would not be an illegitimate inference to draw that the omission to use the said words in s. 29 indicates an intention on the part of the Legislature not to make *mens rea* an essential constituent of the offence under this section. We think it would not be an unreasonable

[1] (1947) 49 Bom. L. R. 688.

view to take while construing these sections that the omission of the material words in s. 29 is deliberate. In this connection it would be necessary to refer once more to the decision in *Sherras'* case because Mr. Chandrachud has relied upon the observations made by Mr. Justice Day in his judgment in the said case to show that the omission of the appropriate words does not lead to the conclusion that *mens rea* is not essential. In referring to *Sherras'* case I have already mentioned that s. 16 (*1*) of the Licensing Act, 1872, used the words "knowingly", whereas sub-s. (*2*) of the same section did not use that word. Dealing with the argument based upon the absence of the word "knowingly" in sub-s. (*2*) Mr. Justice Day observed that in sub-s. (*1*) where the word was used it was for the prosecution to prove the knowledge, while in sub-s. (*2*) where the word was not used the defendant had to prove that he did not know. In other words, the only effect of the absence of the word "knowingly" in sub-s. (*2*) was to shift the onus from the prosecution to the accused. Mr. Chandrachud says that even if these observations are taken at their face value, he is prepared to take the onus on himself and he points out that he has in fact satisfied the Chief Presidency Magistrate that *mens rea* was not present in the present case. Mr. Chandrachud, however, has argued that even the observations of Mr. Justice Day have been subsequently doubted by Mr. Justice Devlin in *Roper* v. *Taylor's Central Garages (Exeter), Limited.*[1] This is what Mr. Justice Devlin has observed in reference to the judgment of Mr. Justice Day: (p. 288):

> "...But where the statute contains no express provision, that is where it does not contain the word "knowingly," the first thing is to examine the statute to see whether the ordinary presumption that *mens rea* is required applies or not. If it is found that it does not apply, the mere doing of the act is itself an offence and guilty knowledge is irrelevant. If it does apply, I should have thought that the natural result would be that the prosecution must discharge the burden of showing guilty knowledge. All that the word "knowingly" does is to say expressly what is normally implied, and if the presumption that the statute requires *mens rea* is not rebutted I find difficulty in seeing how it can be said that the omission of the word "knowingly" has, as a matter of construction the effect of shifting the burden of proof from the prosecution to the defence."

It would, however, be noticed that even according to Mr. Justice Devlin the first point which the Court has to consider in dealing with the question of *mens rea* is to examine the statute to see whether the ordinary presumption applies or not, and the

[1] (1951) 2 T. L. R. 284.

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examination of the statute in the context must include the examination of the policy and the object of the statute. It is true that if on such examination it is found that *mens rea* is required to be proved, according to Mr. Justice Devlin it would make no difference whether the word "knowingly" is used or not. On the other hand, with utmost respect, we cannot underestimate the strength of the argument that the use of appropriate words in some sections and the absence of those words in other sections of the same Chapter would indicate the intention of the Legislature to make *mens rea* an essential constituent of the offences under the first set of sections and not under the second set. Indeed the use of appropriate words expressly making *mens rea* an essential constituent of only some, and not all, offences may itself have a material bearing on the first question as to whether the ordinary presumption about *mens rea* applies to such a statute or not. In the present case we have come to the conclusion that the scheme, the policy and the object of the Act clearly show that *mens rea* was not intended to be an essential constituent of the offence under s. 29; therefore the argument based upon the absence of the word "wilfully" in s. 29 is in a sense of secondary importance.

It only remains now to refer to similar provisions contained in the Australian and the New South Wales Acts. Section 62 of the Australian Act provides that no person shall wilfully make default in compliance with any order or award. It is interesting to note that the word "wilfully" was not present in the corresponding s. 49 under the old Act. But even under the present Act, ss. 29 and 59 provide for the penalty for defaults which need not be wilful. Similarly in s. 93 of the New South Wales Industrial Act the breach of an award is rendered penal even though *mens rea* may not be proved. (*Vide* Federal and State (N. S. W.) Industrial Laws by Nolan and Cohan, pp. 256 and 698 respectively). Obviously we cannot construe the provisions of s. 29 in the light of similar sections in the Acts to which we have just referred. The decision in the present case must depend solely upon the construction we put on the words of s. 29 itself. But the provisions in corresponding Industrial Acts in other States may incidentally help to show that in order to preserve industrial peace industrial legislation in modern States sometimes makes the breaches of industrial awards penal even without proof of *mens rea*.

In our opinion, therefore, the learned Chief Presidency Magistrate was wrong in holding that the accused were not

guilty because it was not proved against them that they deliberately or wilfully committed the breach of the award. We must, therefore, allow the appeal, set aside the order of acquittal passed by the learned Chief Presidency Magistrate and convict the accused of the offence under s. 29. We would accordingly direct both the accused to pay a fine of Rs. 50 each.

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Appeal allowed.

M. W. P.

INCOME-TAX REFERENCE

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Tendolkar.

RAMGOPAL GANPATRAI AND SONS LTD. (APPLICANTS) v. THE COMMISSIONER OF EXCESS PROFITS TAX, BOMBAY CITY, BOMBAY (RESPONDENT).*

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Excess Profits Tax Act (XV of 1940), s. 6 (1) proviso 2: s. 21—Indian Income-tax Act (XI of 1922), s. 66 (1)—Jurisdiction of the Appellate Assistant Commissioner and Income-tax Appellate Tribunal to allow and consider point of law not raised before the Excess Profits Tax Officer—Whether business of new Managing Agent appointed after cancellation of the Managing agency agreement of the previous Managing Agents is the same business or new business—Function of the High Court on reference under above Acts.

The assessee Company wanted to raise before the Appellate Assistant Commissioner a point of law which it had not urged before the Excess Profits Tax Officer. The Appellate Assistant Commissioner did not permit the assessee to raise the point. On appeal the Income-tax Appellate Tribunal also held that it was not open to the assessee to challenge the order of the Excess Profits Tax Officer on a ground not urged before such Officer. On reference,

Held, that every Appellate Tribunal has inherent jurisdiction to decide a question of law arising out of an order of the subordinate Court or Tribunal when such order is before it in appeal;

Held, therefore, that the Appellate Assistant Commissioner had jurisdiction to allow the assessee to raise before it and consider on merits a point of law not urged before the Excess Profits Tax Officer. The Income-tax Appellate Tribunal, too, had jurisdiction to allow the assessee to raise a point of law in appeal before it.

* Income-Tax Reference No. 34 of 1952.