
(1874) 06 CAL CK 0006

Calcutta High Court

Case No: None

The Queen

APPELLANT

Vs

William Jackson

RESPONDENT

Date of Decision: June 5, 1874

Judgement

Markby, J.

In this case a rule was issued calling upon Mr. Beadon, the committing Magistrate, and the prisoner William Jackson, to show cause why the commitment should not be quashed as contrary to the provisions of Regulation XX of 1825. The rule was issued upon an affidavit of Major-General Johnson, the Adjutant-General of Her Majesty's Indian Army, stating that, on the 16th May last, the Officiating Deputy Commissioner of Hazaribagh committed William Jackson, an European British subject and a private in Her Majesty's 2-22nd Regiment stationed at Hazaribagh, to take his trial before this Court at the next Sessions on a charge of murder of a comrade committed at Hazaribagh, a place distant more than one hundred and twenty miles from Calcutta; and that the Commander-in-Chief was desirous of having the prisoner made over to the Military Authorities at Hazaribagh to be dealt with according to the Military law. Mr. Beadon has not appeared to show cause, but he has sent an affidavit stating the circumstances under which the commitment took place; and according to the usual practice in these cases, we have referred to that affidavit in order to acquaint ourselves with those circumstances. The prisoner has appeared by counsel, and has shown cause against the rule; and through his counsel he has expressed his desire that the commitment should not be quashed, and that he should be tried by the Civil Power. Now, before proceeding to discuss the law on the subject, I think it necessary to refer shortly to the circumstances under which this commitment was made. It appears from the affidavit of Mr. Beadon, that he received from the Adjutant of the 2-22nd Regiment, on the 15th May, a letter, informing him that Private Taylor, a soldier in the Regiment, had been shot by a comrade on the previous night; and Mr. Beadon treated that (and I think he was fully justified in so treating it) as a request to him as a Magistrate to take the usual proceedings in the matter. He replied to that letter immediately, acknowledging its receipt, and requesting

that the culprit should be made over to the custody of the Police, in order that he might be conveyed to the European Penitentiary, and that the case should be brought up for preliminary inquiry on the following day, that is, on the 16th May. He also asked that the witnesses and the prisoner should be produced before him on that day for this purpose. The prisoner and the witnesses were produced accordingly, and the commitment was at once made. Under these circumstances, I think we must take it that these proceedings were taken at the request, and with the assent and concurrence, of the Military Authorities; and the question which we have to determine is whether the proceedings so taken are void as being in contravention of the provisions of Regulation XX of 1825.

2. Now the first objection taken on the part of the prisoner is that Regulation XX of 1825 is not in force in Hazaribagh, where this offence was committed. It appears that, by Regulation XIII of 1833, certain parts of the country, which were formerly included in the Districts of Ramghur, Jungle Mehals, and Midnapore, were separated from those districts; and by s. 3 of that Regulation, it is declared that the operation of the rules for the administration of civil and criminal justice, as well as the rules for the collection of the land revenue and other matters, together with all other rules contained in the Regulations printed and published in the manner prescribed by Regulation XLI of 1793, were suspended and were to cease to have effect therein from the date specified in the preamble of the Regulation, except as thereafter provided. Then all that is thereafter provided is, that the Governor-General may, by an order in Council, make such rules as he thinks proper. Now I think it can scarcely be contended that the portion of Regulation XX of 1825, which is now relied on, and which is said to prescribe the course to be taken in dealing with a European British subject, who has committed an offence, is not a rule for the administration of criminal justice. Therefore, it falls clearly within the provisions of s. 3. But it is contended that the preamble of the Act shows that the only object was that special rules for the administration of civil and criminal justice should be provided in order to prevent the mischief there spoken of, namely, the disturbed condition of the country, which could have no reference whatsoever to the administration of criminal justice so far as the European British subjects were concerned. But I think we must apply to this Regulation the rule which I believe to be a well established rule for the construction of Acts of the Legislature, namely, that the preamble of the Statute can only restrict the words of the Statute itself where there is any ambiguity in those words; and I must say that it appears to me that the words of s. 3 are perfectly clear, and that it is not possible to raise upon them any ambiguity whatsoever. It seems to me that the operation of the rules for the administration of civil and criminal justice is by that section wholly suspended. It is said, however, that it is quite impossible that the country should be left in that condition, and that something must have been substituted for the rules which were suspended by this Regulation; and that it is quite possible that those rules, although rescinded by this Regulation, may have been restored by the Governor-General in Council under the powers reserved to him by the Act. Now it is well known that the state of the law in these Non-Regulation districts is one which it is extremely difficult to ascertain. As a matter of fact, what I believe generally took place was that no attempt was made formally to

legislate for these Non-Regulation districts; but the questions which arose there were dealt with as, what I may call, executive matters; and with reference to the questions which from time to time arose, directions, sometimes in a general form, and sometimes having reference only to the particular case which had arisen, were issued by the Governor-General or some other executive authority. No doubt, it is also well known that all these rules were recognized, and I may say legalized by the Indian Councils Act, and so have become part of the law of the land. But at the same time we must say that we are not aware of any rule made by the Governor-General, or any other authority, which has restored this particular Regulation XX of 1825. On the other hand, Mr. Beadon, who is an able and competent officer in the district, has informed us that, in his opinion, this Regulation is not now in force in this district. That is really the only information which we have upon this subject, and therefore it seems to me that, as far as we have any information before us, we must hold that Regulation XX of 1825 has been rescinded in Hazaribagh.

3. But I do not wish to rest my judgment solely upon that. It will, I think, be more satisfactory if we give our opinion upon the construction of the Regulation, and it seems to me upon the best consideration which I have been able to give to this Regulation, that even if it is applicable to this district, the proceedings taken in this case are not in contravention of it, bearing of course always in mind that we take it, as I have already said, that those proceedings were taken at the request of, and were assented to, by the Military Authorities.

4. The jurisdiction of the civil Magistrate in a case of this kind can only be taken away by the express words of the Legislature, and in coming to a conclusion as to whether or no that has been done by this Regulation, I think we ought to see what were the provisions of the English Statute which led, as it appears from the preamble, to the passing of this Regulation. It is contended for the Crown that, even upon the English Statutes, the jurisdiction of the civil Magistrate is taken away; but certainly I am unable to come to that conclusion. The Statute 4 Geo. IV, c. 81, which led to the passing of Regulation XX of 1825, no doubt, does say in s. 3, that if any person liable to be tried by a Court Martial for an offence alleged to have been committed at a place in India above one hundred and twenty miles from the Presidencies of Fort William, Fort St. George, and Bombay, respectively, and for which no proceeding shall have been commenced in any ordinary Court of competent civil or criminal jurisdiction, shall be apprehended by the authority of or brought before any Magistrate for such offence, it shall and may be lawful for such Magistrate, and he is hereby required to deliver over such accused person to the commanding officer of the Regiment, and so forth. No doubt, the words "he is hereby required" are imperative words, and so far as regards the matter to which they relate they undoubtedly compel the Magistrate to comply with this Act. But then I think it is quite clear upon these words, and looking to the words of the 16th section, that the jurisdiction of the civil Magistrate is not altogether excluded, because the 16th section says that "nothing in this Act contained shall extend or be construed to exempt any officer or soldier

whatsoever from being proceeded against by the ordinary course of law, unless such officer or soldier shall have been tried by a Court Martial in manner hereinbefore provided in respect of offences committed within the territories of any foreign state, or in any country under the protection of Her Majesty or the said United Company, or at any place in the territories of the said United Company situate above one hundred and twenty miles from the said Presidencies of Fort William, Fort St. George, and Bombay respectively." I think therefore that it is clear upon this Statute that the state of things which was intended to be introduced was this, that if the Military Authorities desire to do so, they have power to require persons to whom this provision relates to be handed over to them, and can deal with them for the offences which they have committed; but if they do not choose to do so, or if they desire it, then the civil Magistrate can deal with such cases. The words of 3 & 4 Vict., c. 37, are not identically the same as those of c. 81, 4 Geo. IV; but I think the words of that Act also give not exactly concurrent jurisdiction, but rather (I would say) preferential jurisdiction to the Military Authorities, in cases occurring more than one hundred twenty miles from the Presidency Town. Now that being so upon the English Statutes, we have now to consider the words of Regulation XX of 1825. Of course, it may very well be that the authorities here might choose to restrict the power of the Civil Magistrate within narrower limits than the Imperial Parliament thought fit to do. I have, however, come to the conclusion that in substance the provisions are the same. The first clause of the second section of the Indian Statute provides that if any European British subject who shall be apprehended by or brought before a Magistrate on a charge of murder, rape, robbery, theft, or other criminal offence, shall be found to have been a soldier, and that the offence was committed at a place above one hundred and twenty miles from the Presidency Town, then it shall be the duty of the Magistrate by whom such person may be apprehended, instead of proceeding to hear evidence to the charge as directed in such cases in the Regulations, to deliver over such person so charged, together with a statement of the charge brought against him, to the commanding officer, and so forth. There again the words of the section are, as in the English Acts, imperative upon the Magistrate. But the question still remains whether these words do entirely exclude him from all jurisdiction whatsoever in the matter. Now there is no doubt that this Act in one respect is stronger against the jurisdiction of the Magistrate than the English Act. It does not contain anywhere any express saving of the authority of the Civil Power as is contained in the Acts of the Imperial Parliament. But in the fourth clause of that section, where the Magistrate was intended to be entirely prohibited, the prohibition is contained in express terms. That clause says that "the several Zilla and City Magistrates are hereby prohibited from receiving and inquiring into any criminal charge of the nature described in s. 2 of Statute 4 Geo. IV, c. 81, which may be preferred to them against any British commissioned or non-commissioned officer, soldier, or other person attached to the army, who may have been regularly brought to trial under the provisions of the said Act, and acquitted or convicted by the sentence of a Court Martial of such offence." Now the only case in respect of which the Act contains an express prohibition altogether to the Magistrate from interfering, is the case in which the accused has been regularly tried, and either acquitted or convicted by a Court Martial, and that seems to me to indicate that this

was the only prohibition intended. Then there follows a proviso, which, no doubt, at first sight, might seem to point out that in all other cases the Magistrate is also prohibited, but on further consideration it appears to me that it is not so. The proviso is this: that in any case wherein it may be ascertained by the Magistrate on due inquiry, that any person accused of such criminal offence, who may be subject to trial by Court Martial, has not been brought to trial, and that no effectual proceedings have been taken, or have been ordered to be taken, against him, then the Magistrate is to refer the matter to the Governor-General in Council, who will give him proper directions how to proceed; and the Magistrate, if so authorized, shall be competent to proceed against the offender. Now I think that that proviso was put in to meet this class of cases. The second section provides what the Magistrate is to do when the prisoner has been apprehended by or brought before him, and then it is clearly his duty to hand him over to the Military Authorities, if they are willing to take him. The fourth clause, on the other hand, I think, provides for the cases in which the prisoner has not been apprehended by or brought before the Magistrate, but if the Magistrate finds upon inquiry that an offence has been committed, and that the Military Authorities have not taken and are not about to take any steps to bring the offender to trial, then he can refer the matter to the Governor-General in Council. I think that that proviso was put in to prevent, on the one hand, the offender from being let go unpunished; and at the same time not to allow the Magistrate to assume any power which might bring him in conflict with the Military Authorities.

5. I do not wish to deny that I have come to this conclusion upon the Regulation with considerable hesitation, because, if this Regulation stood alone, and it was now for the first time that it had to be considered, there are, every one must admit, some expressions in it which might seem to show that the Civil Authority was entirely to be excluded. But that that was not the intention of the Imperial Statute, and that this Regulation was only intended to carry out in India, in a convenient way, the principle which had been already laid down by the Imperial Act is, I think, shown by the way the Regulation has always been understood in India. We must recollect that this Regulation has now been in force for nearly fifty years, and, as far as we have been able to discover, the construction which has been put upon it, not by express decision (because, as far as I am aware, the question has never been expressly decided until now), but by the practice of the Courts in the administration of criminal justice, I believe to be that the jurisdiction of the Civil Magistrate is not thereby entirely ousted. It is certainly within my own knowledge that several soldiers have been sent up to this Court to be tried from places situate above one hundred and twenty miles from Calcutta, and it was not denied that many prisoners so sent up had also been tried by the late Supreme Court.

6. Now with regard to the prisoners who were tried by the Supreme Court, it was argued, and I think correctly argued, that there the jurisdiction would not be touched by Regulation XX of 1825, and that therefore in the Supreme Court and also in the High Court, down to the year 1865, when the Grand Jury was abolished, there might be no objection to the trial of such prisoners under this Regulation. But, nevertheless, until the year 1865, it is

perfectly well known that, as a matter of fact, no trial except on very very rare occasions,--that is, no ordinary trial--did take place merely upon the presentment of the Grand Jury; and that the prisoners were always sent up here to be tried under the commitment of a Magistrate. We therefore cannot escape from this, that if the construction which is now sought to be put upon this Regulation is a correct one, then in every one of these cases, at any rate until the prisoner arrived at this Court, the custody was illegal, and all the proceedings were illegal; and if the construction which was sought to be put upon the Imperial Statute is also correct, as far as I can see, all the proceedings in the Supreme Court and the High Court would have been illegal; because if the English Statute were to be taken as containing a prohibition of the Civil Power, then that would apply to the High Court and Supreme Court just as much as to the Magistrate of the District. The words "Civil Magistrate" in the English Acts are the words which are always used in these Acts to express the Civil Power as distinguished from the Military Authorities, and do not refer to a Magistrate holding inferior power as distinguished from Courts having full jurisdiction to deal finally with the case. It will be found that prisoners are constantly spoken of as being tried and convicted or acquitted for such crimes as theft, robbery or murder, &c., by the Civil Magistrates. Now if the contention that the English Statutes prohibit the Civil Magistrate is good, it prohibits the jurisdiction of the High Court just as much as the jurisdiction of a Magistrate, and all such trials were without jurisdiction. But even if the prohibition depends upon the Regulation, then all the proceedings up to commitment were illegal, and every trial which has taken place since the Grand Jury were abolished, has been upon an illegal foundation; because, since that time, the commitment by the Magistrate and the charge drawn up by him are the foundation of the trial by the High Court, and they were all illegal. I think that, we may well hesitate before coming to any such conclusion. And under these circumstances, it appears to me that, having regard to the principles laid down by the Imperial Statute, and the course of practice which has been adopted in this country, we should not be justified in saying more than that the Military Authorities can require a Magistrate to hand over to them any prisoner who may be apprehended and brought before him for an offence committed at a place more than one hundred and twenty miles from Calcutta; but that the proceedings before a Magistrate, when they are taken at the request of and are assented to by the Military Authorities, are not absolutely void, and that a commitment so made is not an invalid commitment. That seems to me to be a reasonable construction of the Regulation and of the Statutes. If the Military Authorities choose to assert their claim to deal with the case and punish the offender, they can do so at the proper time. But if they choose to hand the prisoner over to the Civil Power, they can do that also; and can hardly conceive that the Military Authorities would so long have continued the practice of handing over prisoners to the Civil Power, unless it were that in a certain class of cases, or under certain circumstances, they found it convenient to do so.

7. For these reasons I think that the rule must be discharged. On the two other points taken in this case, it is unnecessary for us to express any opinion whatever. The one is whether, having regard to s. 33 of the Code of Criminal Procedure, a commitment can be

quashed at the request of the Crown. We express no opinion whatever upon this point, nor do we express any opinion whatsoever upon the other point that was raised, namely, whether the Indian Legislature had power to pass the Regulation XX of 1825.*

* The prisoner was tried at the ensuing Criminal Sessions of the High Court, convicted, and executed.