
(1930) 01 CAL CK 0033
In the Calcutta High Court

Chairman, Serajganj Local Board

APPELLANT

Vs

Budhiswar Patni and Others

RESPONDENT

Date of Decision : 17-01-1930

Acts Referred:

Bengal Ferries Act, 1885 — Section 16, 28

Citation : AIR 1930 Cal 281

Hon'ble Judges : Pearson, J;C.C. Ghose, J

Bench : Full Bench

Judgement

C.C. Ghose, J.—The facts involved in this case, shortly stated as follows: The accused, who are four in number, were put on their trial before the Deputy Magistrate, Pabna on charges u/s 16 read with Section 28, Bengal Ferries Act, on the allegation that they were plying a private ferry at a place called Simla or Sakha without the sanction of the District Magistrate within two miles of the public ferry at Dhangora. The accused plead not guilty. Evidence was adduced on the point whether the offending ferry was within two miles of the public ferry at Dhangora, The Magistrate found on the record before him that the distance between the two places by river was 3 & 17/18 miles whereas by land it was 1 & 1/2 miles and he accordingly acquitted the accused, holding that the distance contemplated by Section 16, Bengal Ferries Act, was the distance by river and not by land. It is against this order of acquittal that the present rule has been obtained, and the point for consideration is whether the word "distance" in Section 16 of the Act means distance by river or by land.

2. Section 16, Bengal Ferries Act, runs as follows:

No person shall except with the sanction of the Magistrate of the district, maintain a ferry to or from any point within a distance of two miles from the limits of a public ferry.

Provided that, in the case of any specified public ferry, the Lieutenant-Governor, may by notification, reduce or increase the said distance of two miles to such

extent as he thinks fit:

Provided also that nothing hereinbefore contained shall prevent persons keeping boats to ply between two places, one of which is without, and one within, the said limits, when the distance between such places is not less than three miles, or shall apply to boats which the Magistrate of the District expressly exempts from the operation of this section.

3. A ferry is a franchise that no one can erect without a license from the Crown. It is in the nature of a highway and is the exclusive right to carry passengers across a river or stream or arm of the sea. It is *publici juris* and when a ferry is erected, another cannot be erected without an *ad quod damnum*.. If a second ferry is erected without a license the Crown has a remedy by a *quo warranto*, and the former grantee has a remedy by action. *Blissett v. Hart* (1744) 125 E.R. 1293. The franchise of a ferry is not a grant of an exclusive right to carry across a stream by any means whatever, but only a grant of the exclusive right to carry across by means of a ferry. If, therefore, a person has a grant of a ferry another may not erect a second ferry upon the same river near to it, by which the former ferry is impaired. The erection of the second ferry in such circumstances will amount to a nuisance and an action will lie. What, however, amounts to a disturbance of a ferry must in each case be a question of fact : in other words the Court has got to determine what amounts to what is called sufficient proximity : see *Huzzey v. Field* 150 E.R. 186. This question is determined by measurement of the distance from one terminus to another of the water frontage. An instructive case on this point is to be found in one of the Canadian reports : see *Anderson v. Jellett* (1883) 9 S.C.R. 1. In that case, under a Crown license the town of B executed a lease to plaintiff granting the franchise "to ferry to and from the town of B to A," a township having a water frontage of about ten or twelve miles, directly opposite to B, such lease providing only for one landing place on each side, and a ferry was established within the limits of B. on the one side, to a point across the bay of Q., in the township of A within an extension of the east and west limits of B. Defendants established another ferry across another part of the bay of Q., between the township of A and a place in the township of S, which adjoins B., the termini being on the one side two miles from the western limits of B and on the A. shore, about two miles from the landing place of plaintiff's ferry. It was held that the establishment and use of plaintiff's ferry within the limits aforesaid for many years had fixed the termini of the ferry and defendant's ferry was no infringement of plaintiff's right. The above propositions are deducible from the cases in England and elsewhere where English law prevails. They are of some assistance in determining the precise meaning of Section 16, Bengal Ferries Act.

4. In India legislation was first had with respect to ferries in 1816 and Regn. 19 of that year laid down rules for the better management of ferries. Only authorized persons could erect ferries and unauthorized persons plying a ferry were liable to payment of fines not exceeding Rs. 100 or in default of payment of

fine to confinement with hard labour not exceeding three months. Regn. 19 of 1816 was replaced by Regn. 6 of 1819 and by Section 6 of that regulation the exclusive right to public ferries was first declared to belong to Government and all private ferries in their vicinity were prohibited or suppressed, the language used being "immediate vicinity." See Clarke's Bengal Regulations, Vol. 2 p. 544. The expression "immediate vicinity" would in this context certainly connote neighbourhood on the river frontage. With the passage of time, it became necessary to define the limit or limits of the vicinity and it is thus we finally arrive at Section 16, Bengal Ferries Act where the vicinity is limited to two miles. I am therefore of opinion that the distance must be measured by reference to the water frontage and not by land. The Magistrate has pointed out certain considerations which cannot be overlooked. I would therefore discharge the rule and refuse to interfere.

Pearson, J.

5. I agree.