
(1899) 02 CAL CK 0001
In the Calcutta High Court

Jadobram Dey

APPELLANT

Vs

Bulloram Dey

RESPONDENT

Date of Decision : 09-02-1899

Acts Referred:

Income Tax Act, 1961 — Section 38
Penal Code, 1860 (IPC) — Section 166

Citation : (1899) ILR (Cal) 281

Hon'ble Judges : Jenkins, J

Bench : Single Bench

Judgement

Jenkins, J.—As the plaintiff does not allege any specific agreement, but contends that the business had been carried on without anything being said as to the amount of the shares, and as the defendant on the other hand alleged a specific agreement that the shares were to be unequal, the presumption which exists as to the equality of partner's shares casts the burden of proof upon the defendant, who must therefore begin.

2. (2) A further question then arose as to the production of certain Income Tax returns made by the firm of Day and Cousin. It was alleged that it would appear from these returns that the firm had stated the shares of the partners to be as alleged by the defendant. Application had been made to the Registrar for the issue of a subpoena upon the Income Tax Collector to produce all returns made by the firm from the year 1886. The Registrar refused to issue the subpoena without the order of the Court by reason of Rule 16 issued u/s 38 of the Income Tax Act (II of 1886) (Calcutta Gazette, March 10th, 1886), which rule was as follows:

16. All public servants are forbidden to make public or disclose, except for the purpose of the working of Act II of 1886, any information contained in documents delivered or produced with respect to assessments under Part IV of the said Act, and any public servant committing a breach of this rule shall be deemed to have committed an offence u/s 166 of the Indian Penal Code.

3. On application being made to the Court by the defendant, the subpoena was ordered to issue to the Income Tax Collector for the production in Court of returns without prejudice to any objection raised hereafter by the parties as to the production in evidence of these documents. At the hearing a clerk from the Income Tax Office attended with two Income Tax returns (the preceding returns having been destroyed), but objected on behalf of the Collector to their production in evidence on the ground of their being confidential communications and on the ground of the rule abovementioned.

4. Mr. J.G. Woodroffe for the Defendant.--These documents are not privileged from production. It is for the Court, not the Registrar, to decide as to the production of the document in evidence. The rule was published with the object of regulating the conduct of the officers of the Income Tax Office, not with the object of depriving litigants of evidence which they would otherwise be entitled to use. The rule has no application where disclosure is sought under the process of Court. Even if the rule has such application production can in this case be enforced because there is in fact no disclosure. The rule is for the protection of persons making returns. There can be no disclosure where the person applying for the return is the partner in the firm which made it. This is not the case of a stranger applying for returns made by a firm with which he is not connected. In the case of *Ali Khan Bahadur v. Indar Parshad* I.L.R.(1896) , 23 Cal., 950: L.R., 23 IndAp, 92, the Judicial Commissioners held the returns to be inadmissible, but the Privy Council, while deciding nothing upon this finding, appear to have inspected the returns in question. [Jenkins, J.--There are the cases of *Lee v. Birrell* (1813) 3 Camp. 337; and *R. v. Yakataz Khan* (1863) 2nd Madras Sessions, cited in *Mayne's Criminal Law*, pp. 86, 87.] Those cases are in the defendant's favour. No doubt it does not there appear that there was any such rule then in force as that which is now published: See Act XVII of 1870; and 46 Geo. III, c. 65, Schedule F; but there is no substantial difference between the oath of secrecy there referred to and the rule in question.

5. Mr. Pugh for the Plaintiff.--The grounds on which the plaintiff objects to these documents being produced are because he knows nothing about them. In England there was no statutory provision, but the Income Tax Officer was appointed on taking an oath not to disclose secrets which came to his knowledge. The question before Lord Ellenborough was whether, notwithstanding the oath, he could be made to disclose the particulars. Here there is a statutory provision, and the facts in that case differ materially from those in the present case.

6. Mr. Woodroffe.--In reply.

Jenkins, J.

7. The point for my decision is whether certain Income Tax papers, which are desired in evidence, are privileged from production by virtue of a rule made by the Local Government in pursuance of the power contained in Section 38 of Act

II of 1886. This section and the rule framed under it appear to me to have been framed for the purpose of regulating the conduct of officers coming under its operation and from [for?] preventing any disclosures by them in the course of their duties, and its object was to secure the interests of those making the returns under the Act. I think, however, that the rule was not directed against their production in a Court of Law such as is sought in this case. I therefore think the objection fails. A somewhat analogous point was decided by Lord Ellenborough in the case of *Lee v. Birrell* (1813) 3 Camp. 337, and also apparently by Scotland, C.J., in the Madras Court. The reference to this decision appears in Mr. Mayne's Commentaries on the Criminal Law (Mayne's Criminal Law, pp. 86, 87). In both cases it was decided, notwithstanding the oath of secrecy taken on assumption of office, that the documents were not privileged from production.

8. [The returns were admitted upon its being proved that they had been compiled by the defendant in consultation with the plaintiff who had approved of their being made in the form in which they then appeared, and upon its appearing from the returns that the shares of the partners had been stated therein to be as contended for by the defendant.].