

they were no less interested in contesting the suit than defendants 1 to 3. Moreover, a specific issue on the question of attestation was framed by the learned Subordinate Judge. On the whole, our conclusion is that the view taken on this point by the Subordinate Judge is right and it is difficult to hold on the internal evidence furnished by the contents of the document itself taken along with the statements of witnesses that the bond was attested in due and proper manner. This being our view, the other question as to whether we should pass a mortgage decree in this case in exercise of our powers under Order 41, Rule 33, Civil Procedure Code, in spite of the fact that the plaintiffs did not challenge the decision of the trial court by way of appeal or cross-objection does not require to be considered.

The result is that the appeal is allowed, the judgments and decrees of both the courts below are set aside and the plaintiffs' suit dismissed. Having regard to the facts and circumstances of this case, we would direct that each party would bear its own costs in all the courts.

Appeal allowed.

Agent for the appellant : *I. N. Shroff.*

Agent for the respondents : *R. C. Prasad.*

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UNION OF INDIA—*Intervener.*

BICHAN CHAND MOHTA *v.* THE STATE

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Oct. 4.

[HARILAL KANIA C. J., PATANJALI SASTRI,
MUKHERJEA, DAS and CHANDRASEKHARA AIYAT JJ.]

Essential Supplies (Temporary Powers) Act (XXIV of 1946), ss. 1 (3), 7—Applicability to "excluded areas"—Duration of Act extended in British India by Governor-General, and by Constituent Assembly after Indian Independence Act, 1947—Whether Act continues to be in force in excluded areas—Necessity of fresh notification—Delegation of legislative powers—Government of India Act, 1935, s. 92 (1).

The Essential Supplies (Temporary Powers) Act (XXIV of 1946) came into force on 19th November, 1946. By a notification

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of 14th December, 1946, under s. 92 (1) of the Government of India Act, 1935, the Governor of Bengal directed that the Act shall apply to the District of Darjeeling which was an "excluded area". Section 1 (3) of the Essential Supplies Act provided that it shall cease to have effect on the expiration of the period mentioned in s. 4 of the India (Central Government and Legislature) Act, 1946. By a notification issued by the Governor-General under s. 4 the operation of the Essential Supplies Act was extended up to 31st March, 1948. The Constituent Assembly in which the powers of the Houses of Parliament under s. 4 of the abovesaid India Act of 1946 became vested after the passing of the Indian Independence Act, 1947, passed resolutions extending the operation of the Essential Supplies Act up to 31st March, 1950. appellant, who was convicted under s. 7 of the Act in respect of an act committed on the 14th October, 1949, within Darjeeling, contended that the Act was not validly extended to the District of Darjeeling and was not therefore in force there on the date of the alleged offence. *Held*, that, as the Governor's notification extended the Act to the District of Darjeeling without specifying any particular period for its applicability, the Act would remain in force in this district as long as it remained in force in the rest of India and a fresh notification of the Governor under s. 92 (1) of the Government of India Act, 1935, was not necessary. Under the adaptations made under ss. 9 and 19 of the Indian Independence Act the powers conferred on the Houses of Parliament became vested in the Constituent Assembly and the Act was in force in the district of Darjeeling on the date of the alleged contravention of the Act.

Held further, that there was no question of delegation of legislative power in this case as the Legislature had itself applied its mind and fixed the duration of the Act, leaving only the machinery to reach the maximum period to be worked out in a particular manner.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeals No. 7 of 1950 and No. 25 of 1951.

Criminal Appeal No. 7 of 1950 was an appeal under Art. 134 (1) (c) from the Judgment and Order of the High Court of Calcutta dated 23rd May, 1950, in Government Appeal No. 2 of 1950 and Criminal Appeal No. 25 of 1951 was an appeal by special leave from the Judgment and Order of the same Court dated 4th May, 1950, in Criminal Revision No. 132 of 1950.

Ajit Kumar Datta and *S. N. Mukherjee* for the appellant in both the appeals.

B. Sen for the respondent in both appeals.

G. N. Joshi for the Intervener.

1951. October 4. The Judgment of the Court was delivered by

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CHANDRASEKHARA AIYAR J.—These two criminal appeals are from convictions of the appellants by the High Court at Calcutta. In the first case, leave to appeal to this Court was granted by the High Court under article 134(1)(c) of the Constitution of India. In the second case, special leave to appeal was granted by this Court under article 136(1) of the Constitution. The appeals were heard together, but as they are by different parties and the facts are different, it is desirable to have two separate judgments.

Criminal Appeal No. 7 of 1950.

The appellant, Joylal Agarwala, who was a salesman in a retail shop in Pulbazar in the district of Darjeeling in the State of West Bengal, was charged with having sold a piece of textile cloth at a price in excess of the controlled price. For this contravention of the provisions of clause 24(1) of the Cotton Textiles Control Order, 1948, he was convicted by the Sub-Divisional Magistrate of Darjeeling under section 7 of the Essential Supplies (Temporary Powers) Act (Act XXIV) of 1946 (hereinafter referred to as the Essential Supplies Act), and sentenced to six months' rigorous imprisonment. On appeal to the Sessions Judge, the appellant was acquitted on two grounds, *viz.*, (1) that no sanction was previously obtained for the prosecution as required by clause 36 of the Cotton Textiles Control Order, and (2) that the Essential Supplies Act was not in force in the district of Darjeeling on the date of the occurrence. On appeal to the High Court by the State of West Bengal, the point about the absence of sanction under clause 36 of the Control Order was given up by the present appellant as its necessity had been abolished by a later Notification of the Central Government. On the second point, the learned Judges of the High Court held that the Act was validly extended to the district of Darjeeling and was in force in that area on the date of the occurrence, *viz.*, 14-10-1949. The acquittal of the appellant

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was set aside; the order of conviction passed by the Magistrate was restored, and the appellant was sentenced to four months' rigorous imprisonment.

To understand the main legal argument as to whether the Essential Supplies Act of 1946 was in force at the time of the alleged commission of the offence, it is necessary to set out the relevant provisions of a few Acts and Orders and their dates. The Essential Supplies Act came into force on 19-11-1946. Section 92(1) of the Government of India Act, 1935, provided as follows :—

“.....no Act of the Federal Legislature or of the Provincial Legislature, shall apply to an excluded area or a partially excluded area, unless the Governor by public notification so directs, and the Governor in giving such a direction with respect to any Act may direct that the Act shall in its application to the area,.....have effect subject to such exceptions or modifications as he thinks fit.”

In exercise of the powers conferred on him by this section, the Governor of Bengal by a notification published on the 14th December, 1946, directed that the Essential Supplies Act shall apply to the district of Darjeeling, which was an excluded area.

Section 1(3) of the Essential Supplies Act provides that it shall cease to have effect on the expiration of the period mentioned in section 4 of the India (Central Government and Legislature) Act, 1946 (9 & 10 Geo. 6, Ch. 39). Section 4 of the latter Act provides as follows :—

“The period mentioned...is the period of one year beginning with the date on which the Proclamation of Emergency in force at the passing of this Act ceases to operate or, if the Governor-General by public notification so directs, the period of two years beginning with that date :

Provided that it and so often as a resolution approving the extension of the said period is passed by both Houses of Parliament, the said period shall be extended for a further period of twelve months from

the date on which it would otherwise expire so, however, that it does not in any case continue for more than five years from the date on which the Proclamation of Emergency ceases to operate."

The Proclamation of Emergency referred to in this section ceased to operate on 31-3-1946. In the absence of a notification by the Governor-General under the second part of the section, the Essential Supplies Act remained operative only till 31-3-1947, under the first part. The Governor-General, however, issued a notification on 3-3-1947 continuing its force for a period of 2 years from the date of cessation of emergency. By virtue of this notification, therefore, the Essential Supplies Act would remain in force till 31-3-1948. On 18-7-1947, the Indian Independence Act was passed, and India became a Dominion on 15-8-1947. Under section 9 read with section 19(4) of the Indian Independence Act, 1947, the Governor-General passed an Order on 14-8-1947, which substituted the words "Dominion Legislature" for "both Houses of Parliament" in the proviso to section 4 of the India (Central Government and Legislature) Act, 1946, and also introduced a new section 4A by way of adaptation, providing that the powers of the Dominion Legislature shall be exercised by the Constituent Assembly. On 25-2-1948, the Constituent Assembly passed its first resolution extending the operation of the Essential Supplies Act by one year up to 31-3-1949. On 23-3-1949, a second resolution was passed by the Assembly extending the life of the Act by one more year up to 31-3-1950.

In respect of these Acts and notifications three questions were urged on behalf of the appellant:— firstly, whether the Governor's notification of the 14th December, 1946, continued the operation of the Essential Supplies Act in the district of Darjeeling beyond the then period of life of the Act, namely, the period of one year from the date of cessation of emergency; secondly, whether a fresh notification by the Governor under section 92(1) of the Government of India Act was not necessary, after the life of the Essential

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Supplies Act was extended by the Governor-General's notification of 3-3-1947; and thirdly, whether the resolutions passed by the Constituent Assembly could operate to extend the life of the Essential Supplies Act.

Now, it is clear that under section 1(3) of the Essential Supplies Act, it shall cease to have effect on the expiration of the period mentioned in section 4 of the India (Central Government and Legislature) Act, 1946. The period mentioned in that section is not necessarily one year from the date of cessation of emergency. It can be 2 years if the Governor-General by notification so directs, and it may go up to a maximum period of 5 years in instalments of 1 year each, under the proviso. The fixation of the period of operation of the Essential Supplies Act is thus not left to any other enactment. It is provided by the Act itself. As stated already, the notification of the 14th December, 1946, issued by the Governor applied the Essential Supplies Act to the Darjeeling district, and its life was extended up to 31-3-1948 by the notification of the Governor-General. It is difficult to see why a fresh notification under section 92(1) of the Government of India Act is required to continue the life of the Act in the district of Darjeeling. The Governor's notification extended the Act to Darjeeling without specifying any particular period for its applicability to that district, and it follows therefore that the Act would remain in force in the district so long as it remained in force in the rest of India. It is only if its effect had ceased earlier than the coming into force of the Indian Independence Act and there was a re-enactment by the legislature which was sought to be applied to an excluded area, that a notification by the Governor under section 92 (1) of the Government of India Act might be necessary. Otherwise, the question of a fresh notification does not arise.

Section 19(4) of the Indian Independence Act, 1947, provides as follows:—

“In this Act, except so far as the context otherwise requires—

References to the Government of India Act, 1935, include references to any enactments amending or supplementing that Act, and, in particular, references to the India (Central Government and Legislature) Act, 1946 ;.....”

The adaptations made by the Governor-General under sections 9 and 19 of the Indian Independence Act substituted the words “Constituent Assembly” for “both Houses of Parliament” in section 4 of the India (Central Government and Legislature) Act, and the Constituent Assembly by two resolutions of different dates has extended the life of the Essential Supplies Act till 31-3-1950. As soon as the adaptations came into force by order of the Governor-General, the Constituent Assembly acquired the powers conferred on both Houses of Parliament under section 4 of the India (Central Government and Legislature) Act. The validity of the adaptations is beyond question.

The case of *Jatindra Nath Gupta v. The Province of Bihar and Others*⁽¹⁾ has no application here. In the case now before us, the Legislature has itself applied its mind and has fixed the duration of the Act, but has left the machinery to reach the maximum period by instalments to be worked out in a particular manner. There is here no question of delegation at all, much less delegation of any legislative power.

The appeal therefore fails and is dismissed.

Criminal Appeal No. 25 of 1951.

In this case, the appellant Bichan Chand Molla was charged with loading 28 bags of millmade cloth from a truck into a specially chartered aircraft at the Dum Dum airport, on behalf of his employers, Messrs. Amarchand Pannalal, without a permit, as required under clause 4 (2) of the West Bengal Cotton Cloth and Yarn Movement Control Order, 1947. He was convicted under section 7 (1) read with section 8 of the Essential Supplies Act and sentenced to 9 months' rigorous imprisonment and a fine of Rs. 1,000 by the

(1) [1949] F.C.R. 596.

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Ist Class Magistrate of Barrackpore. The Sessions Judge of 24-Parganas dismissed the appeal preferred by the accused. A revision application filed by him in the High Court shared the same fate.

The legal argument urged in this appeal was the same as in the earlier appeal, and has to be repelled as untenable for the reasons already stated. A special point was sought to be argued that the element of *mens rea* was wanting. But the the question was considered by the High Court, and it was held that there are two facts from which *mens rea* could be inferred. When questioned, the accused stated that he was loading handloom bales and not millmade cloth. He had no permit with him and was not able to produce any even from his employers. These facts under the circumstances warrant the inference of a criminal intent.

This appeal also will therefore stand dismissed.

Agent for the appellant : *R. R. Biswas.*

Agent for the respondent : *P. K. Bose.*

Agent for the intervener : *P. A. Mehta.*