BOMBAY HIGH COURT

The Hospital Mazdoor Sabha

Vs.

The State of Bombay

O.C.J. Appeal No. 65 of 1955: Miscellaneous No. 113 of 1955

(M.C. Chagla, C.J. and Desai, J.)

05.04.1956

JUDGMENT

M.C. Chagla, C.J.

1. The petitioners Nos. 2 and 8 were employed in the J.J. Group of Hospitals as Ward-servants and their services were terminated, in the case of petitioner No. 2 from November 1, 1954, and in the case of petitioner No. 3 from December 1, 1954. The petitioners have filed this petition challenging the order passed terminating their services and contending that their services were wrongly terminated.

2. It appears that a notice was served upon the two petitioners and in that notice it was stated that as certain people had been retrenched from the Civil Supplies Department and as room had to be made for them, the services of the two petitioners were being dispensed with and in their place two others from the Civil Supplies Department were employed. The contention put forward by the petitioners is that in law this is a case of retrenchment and the retrenchment is bad because the conditions precedent laid down in the Act before which a valid retrenchment could be made had not been complied with. "Retrenchment." has been defined in Section 2(oo) of the Industrial Disputes Act, 1947, as a termination by the employer of the services of a workman for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action. Then follow three categories which would not constitute a retrenchment. Admittedly the ease does not fall in any of these categories. Admittedly, the service of the petitioners has not been terminated as a punishment inflicted by way of disciplinary action, and as we pointed out in *K.N. Joglekar v. Barsi Light Railway*[1] the definition given by the Legislature to the word "retrenchment" is of the widest import, and whatever the reason for the termination may be, it would constitute retrenchment as defined by the Industrial Disputes Act, 1947. Therefore, there can be no doubt that although the reason that actuated the Government for terminating the services of petitioners Nos. 2 and 3 may be the most laudable of reasons, even though the Government may be wanting

to replace the services of petitioners Nos. 2 and 3 by the services of people who had been retrenched from some other department and who had been longer in Government service, as far as the industrial law is concerned, the termination of the services of petitioners Nos. 2 and 3 would constitute retrenchment for the purpose of the Industrial Disputes Act.

[1](1955) 57 B.L.R. 448

3. Now, the conditions precedent to the retrenchment of workmen are set out in Section 25(F). It is significant to note that the heading given by the Legislature to this particular section is "Conditions precedent to retrenchment of workmen". Now, it is true that if the language of the section is clear, the section must be construed according to that language irrespective of what the head-note or the marginal note may be, but in order to construe the section it is always permissible to look at the marginal note or the heading as indicating the drift of the section. But when we examine the language of Section 25(F), it becomes clear that the head-note of this section correctly suggests what the Legislature intended and what the Legislature has actually provided by the clear language used in that section. Section 25(F) is in the following words:

> "No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until".

4. Then comes the first condition which is giving a month's notice which condition was complied with in this case. Then comes the second condition:

> "The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months".

5. Then comes the third condition with which for the time being we are not concerned, and what was urged by the petitioners is that Government having failed to pay retrenchment compensation as provided by Section 25(F)(b), one of the conditions precedent to retrenchment was not complied with and therefore the retrenchment was bad and the service of the petitioners was not legally and effectively terminated. Government admits that they have not paid the retrenchment compensation. Now, the view taken by the learned Judge was that the failure to pay the retrenchment compensation did not affect the validity of the retrenchment itself, and in coining to this conclusion the learned Judge relied on Section 25(I), and that section deals with recovery of moneys due from employers under this chapter and it lays down the procedure for recovering compensation or wages payable under the Chapter. Now, with respect the learned Judge would have been perfectly right in the view that he has taken if Section 25(I) referred only to the compensation payable under Section 25(F). Then it may well be argued that if the intention of the Legislature was that the compensation payable under Section 25(F) should be recovered in the manner laid down in Section 25(I), then the Legislature could not possibly have intended that the retrenchment would be bad because compensation was not paid. If the retrenchment was cad, then no question of recovery of compensation could possibly arise. But again with respect what

the learned Judge has overlooked is that compensation is payable under this chapter otherwise than by provisions of Section 25(F) and the Legislature may well have provided for the mode of recovery of that compensation. Therefore, even if we give a construction to Section 25(F) which we propose to give, Section 25(I) would not be superfluous and the mode of recovery of ether compensation due under this chapter had to be provided for by Parliament and Parliament has so provided by Section 25(I). If that be so, then it is difficult in our opinion to take the view that because a mode of recovery of compensation and wages is provided by another section of the Act, the clear language of Section 25(F) should be whittled down and an important right conferred upon, the employee should be taken away from him. The language of Section 25(F) leaves no doubt as to the intention of the Legislature. The provision is mandatory. There is prohibition against an employer retrenching an employee until he has carried out the conditions laid down in that section and the Advocate General had to concede and in fairness he could not argue to the contrary, that if Section 25(F) stood by itself, it would be very difficult to urge that the conditions laid down in that section were not conditions precedent to the retrenchment of workmen. But as we have already pointed out the provision of Section 25(I) in the Act does not in any way affect the mandatory language of Section 25(F) nor the important right conferred upon the employee by the Legislature. It will be immediately realised that to compel an employer not to retrench a workman without paying him compensation is very different from leaving the employee to resort to a legislature to recover the compensation after he has been thrown one and the Legislature in its wisdom in passing this social legislation advisedly prevented an employer from throwing an employee out until he had first paid him his compensation. Our anxiety should be to give full scope to this social legislation, and the object which the Legislature obviously had in mind. By trying to read Section 25(F) and Section 25(I) if the result is to render the safeguards given to the employee less substantial, then we must reject that canon of construction and read Section 25(F) as it stands and as it was enacted by the Legislature. In our opinion, therefore, with respect we are unable to agree with the learned Judge that the failure to comply with the condition with regard to the payment of compensation affords to the employee only the right to recover the compensation as provided by Section 25(I). The right that the employee gets is the right to challenge his retrenchment and to contend that his services were not legally and effectively terminated.

6. Another interesting point was also urged before the learned Judge and that was that even assuming this was a valid retrenchment, under Section 25(H) the employees had the right to be re-employed in preference over other persons, and therefore the employment of persons from the Civil Supplies Department offended against the provisions of Section 25(H) and the petitioners were entitled to be re-employed. The view taken by the learned Judge is that Section 25(H) has no application because the retrenchment and the new appointment should be deemed to be simultaneous acts and the section only applies when there is an interval of time between the retrenchment and the re-employment. Mr. Gokhale has drawn our attention to the serious consequence that may result from accepting this construction of Section 25(H). He has pointed out that if this was the true view of the law, then an employer can always get round the salutary

provisions of Section 25(H) if he did not like an employee all that he had to do would be to give him a notice and say that he wanted to employ someone else in his place, in which case he would be under no obligation to comply with the provisions of Section 25(H) and he also pointed out that the true effect of Section 25(H) was that so long as an employee was willing to serve a particular job, he had a prior claim to that job over anybody else. This contention raises a very interesting question but in view of the fact that we have decided in favour of the petitioners with regard to Section 25(F), it is unnecessary to decide this question on this appeal.

7. A contention was also raised before the learned Judge that this was not an industry to which this Act applied. The learned Judge did not decide that question because he held that in any view of the case, the petitioners were not entitled to any relief under Section 25(F). But now that we have held that the petitioners are entitled to relief, the Advocate General wants to argue that this was not an industry to which the Act applies. As the question raised is of considerable importance, we first were inclined to send the matter back to the learned Judge to decide this question, as he had not considered this contention. But both the Advocate General and Mr. Gokhale suggest that it would be better if this question was decided by this Court, as it is a question of law and it would avoid a remand and a further appeal.

8. We will, therefore, adjourn this Appeal to April 17, 1956.

April 18, 1956.

9. This matter has come before us again for our decision on the question which we left over on the last occasion viz, whether the Hospital in which the petitioners were engaged was an industry to which the Act applied.

10. The question is both an interesting and important one and we have heard fairly full arguments both from Mr. Gokhale and the Advocate General. The Industrial Disputes Act does not apply to all workmen nor does it regulate all employer-employee relations, A workman is defined as a person employed in any industry and therefore the application of the Act is confined to employer-employee relations in an industry as defined by the Act. Now, "Industry" is defined as meaning any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. The Industrial Disputes Act is a piece of social legislation, and although it is not the function of a Court of law to legislate, it is certainly the function of judicial interpretation to the extent that it is possible to help the Legislature to attain the object which it has in mind in passing a particular law. The Industrial Disputes Act embodies certain principles which ought to regulate relations between employer and employee. These principles are accepted by the Legislature as the proper principles in a progressive State, and, therefore, the duty of the Court must be to give to the expression "industry" as wide a definition as it is possible. If the Act embodies correct principles regulating the relations of employer and employee, then there is no reason why as many

workmen as possible should not obtain the benefit of the rights and safeguards given to workmen under this Act. There is also no reason, why, unless the Act expressly so provides, Government should be given immunity from the provisions of this Act. One should have thought that when Government insists upon private employers behaving in a particular manner towards their employees and when Government insists upon the rights of employees being fully safeguarded, Government itself, when it employs workmen, should not adopt a different attitude. There may, undoubtedly be instances, where the security of the State may be more important than social progress and there may be cases where it may be said that the governmental activities would be interfered with, if the provisions of the Industrial Disputes Act were to be applied to Government as an employer. But subject to these exceptional eases, as we shall presently point out, it was not the intention of the Legislature and could not have been the intention of the Legislature that Government as an employer should be placed in a different position from a private employer.

11. Now, when we look at the definition of "industry", it is not confined to an activity of a. commercial character. Nor does it import necessarily a profit motive or the employment of capital. Industry is not only any business or trade or manufacture, but it is also an undertaking or calling of employers, and no expression could have been used with a wider import and connotation than the expression "undertaking". Undertaking is, nothing more than any work or project which a person might engage in. Work or project may have no commercial implications. It might not be engaged in with the object of making profit. It might be engaged in from the motives of philanthropy, and even so it would be an undertaking in the wider sense in which that expression is used in the definition of "industry". Now, we have to consider whether the activity of the Government in connection with the hospitals constitutes an "undertaking" within the meaning of the expression used in the Act and thus constitutes that activity an industry. The facts are not in dispute and we have in the affidavit of Mr. D.P. Sethna, Superintendent of the J.J. Group of Hospitals, the facts very clearly and very succinctly set out. It is pointed out that Sir Robert Grant, the then Governor of Bombay, wanted to start an institution for the purpose of imparting medical education and funds were collected and the foundation of the Medical College building was laid some time in 1845. At about the same time, an idea of building a hospital for the sick people of all classes and castes was mooted and Sir Jamsetjee Jeejeebhoy offered a donation and some more money was collected and an opening ceremony of the J.J. Hospital was performed on May 15, 1845. Then the affidavit goes on to say how the Sir Cowasji Jahangir Ophthalmic Hospital was built from donations, Bai Motlibai Hospital and Petit Hospital were also built from donations and Byramji Jeejeebhoy Hospital for children was also similarly built, and there was an endowment made by R.B. Ellappa Ballaram which endowment brought in certain income of about ₹ 10,000, and this is the only income that the group of J.J. Hospitals, as has just been enumerated, has, whereas its expenditure exceeds ₹ 27,00,000 annually. It is pointed out that this J.J. Group of Hospitals is under the administrative control of the Surgeon General of the Government of Bombay and its day to day affairs are conducted and controlled by the Superintendent, who is a full-time Government servant, and all the residential staff including

Resident Medical Officers, Assistant Resident Medical Officers, Housemen, Nurses, etc., are also full-time Government servants, and the salaries of all the Government servants were drawn on establishment pay bills every month and are paid entirely by Government. It is also pointed out that the J.J. Group of Hospitals serve as a clinical training ground for students of the Grant Medical College, which is a Government Medical College run and managed by Government for imparting medical sciences leading to the degrees of Bachelor of Medicine and Bachelor of Surgery of the Bombay University as well as various Post Graduate qualifications of the Bombay University and the College of Physicians and Surgeons, Bombay. It is, therefore, submitted that the J.J. Group of Hospitals is run and maintained by Government to provide medical relief for and promote the health of the people of Bombay and they are also run so as to provide a training ground for students in all branches of medical knowledge and for the advancement of such knowledge. A contention is, therefore, put forward that this Hospital and the Grant Medical College are run by Government as a Government and in doing so Government is not running any "industry".

12. Now, in a welfare State, Government undertakes more and more obligations. There was a time when it was said that that Government was best which governs least. Today, a Government is judged by considering to what extent it governs, and the more it governs, the better it is considered to be. Therefore, it is difficult to accept the contention that every governmental activity must be ruled out from the expression "industry" used in the Act. It was sought to be argued by the Advocate General that the maintenance of public health and giving of medical relief was part of the duty of Government, and if it was part of the duty of Government, then it could not constitute an "industry". It is very difficult today to define what is the duty of Government and what is not the duty of Government. It is the duty of Government of looking after public health of its people and giving them medical relief. Is it not equally the duty of Government to supply necessities of life to its people and to look after its comforts and welfare ? If one were to judge any activity of Government by the principle of duty, then practically every activity of Government would satisfy the test and would keep that activity out of the purview of the Act. In our opinion, that is not the correct approach. The correct approach must be to decide what activities are essential to the authority of Government as such, what are the functions which only Government can discharge and which it would not be competent for any private individual to discharge. If there is an activity which can be undertaken by a private agency and the same activity is carried on by Government, then it is difficult to understand why different principles should govern that activity when it is carried on by private agency or when it is carried on by Government. If that proposition were to be accepted, then if a private agency carried on a particular activity, it would be governed by the Industrial Disputes Act. If that activity was undertaken by Government, the Industrial Disputes Act would have no application. If the employees employed by the private agency doing the same activity should have the rights given to them under the Act, is there any reason in principle why they should be deprived of those rights when that activity is taken over by Government? The result of accepting this contention would be indeed very serious. One important aspect of a welfare State is the constant and

increasing inroad of the public sector upon the private sector. More and more activities which in the past were considered to be essentially private activities are taken over by Government, and therefore this extraordinary result would be achieved that the more important the activities of Government become and more it seeks to achieve the objective of a complete welfare State, the less rights labour would have in such a State. Therefore, in our opinion, the test we should lay down in order to determine whether a particular activity undertaken by Government is an "industry" would be to consider whether if that activity had been undertaken by a private agency, would it have been an industry to which the Act applied. If the Act had applied to that activity, then, in our opinion, it is entirely immaterial whether that activity is undertaken by Government.

13. Now, applying that test to the facts here, private hospitals are not uncommon in this country. Medical relief and medical education can be given by a private agency, and if the private agency were to engage in that activity, there is no reason why that activity would not be considered as an undertaking which would attract the application of the Act. Therefore, if the Industrial Disputes Act would apply to the workmen of a hospital run by a private agency, there is no reason why the Act should not equally apply to the workmen of a hospital run by Government. The running of a hospital is not in the strict sense an essential Government function. In the wider sense, undoubtedly in which we now understand governmental duty and governmental work, it may be considered to be a governmental function. But in its strict sense, the governmental function would be the maintenance of law and order, administration of justice, collection of tax and similar functions which must always be attributed to a Government and which can only be discharged by a Government, The fact that the Government is not making any profit out of this hospital, the fact that all the employees are Government servants are, in our opinion, undoubtedly beside the point. In every industry run by Government the employees are bound to be Government servants. In every industry run by Government the profit motive must be absent, the only profit that Government should think of making is the welfare of its citizens. Therefore, the true test is not the absence of any commercial element in the running of this hospital, nor the fact that the servants are Government servants, but the test is, as we might repeat, whether the running of an hospital is a function so essential to Government that it can only be discharged by Government and cannot be discharged by any private agency.

14. Turning to the authorities, there is a judgment reported in *D.N. Banerji v. P.R. Mukherjee*[2] and in that case the Supreme Court held that the "industrial dispute" in the Industrial Disputes Act, 1947, includes disputes between municipalities and their employees in branches of work that can be regarded as analogous to the carrying on of a trade or business. There the chairman of a municipality dismissed two of its employees, namely, the Sanitary Inspector and the Head Clerk, and the Municipal Workers' Union, of which these two employees were members, questioned the propriety of the dismissal and claimed that they should be re-instated, and the matter was referred by the Government to the Industrial Tribunal for adjudication under the Industrial Disputes Act, and an objection was raised by the municipality that the dispute was not an industrial dispute, and the Supreme Court held that it was an industrial dispute.

15. At page 310, Mr. Justice Chandrasekhara Aiyar, who delivered the judgment of the Court says that it was necessary to give the terms employed in the Act referring to such disputes as wide an import as reasonably possible, and considering the definition of "industry", the learned Judge says that the definition was apparently intended to include within its scope what might not strictly be called a trade or business venture. Then the learned Judge poses the question (p. 312) :

> "..If the public utility service is carried on by a corporation like a Municipality which is the creature of a statute, and which functions under the limitations imposed by the statute, does it cease to be an industry for this reason?"
> We may ask the same question here:
> Does the fact that the hospital is carried on by Government make it cease to be an industry, merely because of that reason?
> Then the learned Judge proceeds (p. 312) :
> "..The only ground on which one could say that what would amount to the carrying on of an industry if it is done by a private person ceases to be so if the same work is carried on by a local body like a Municipality is that in the latter there is nothing like the investment of any capital or the existence of a profit earning motive as there generally is in a business. But neither the one nor the other seems a sine qua non or necessary element in the modern conception of industry".

[2][1968] S.C.R. 302

The Advocate General has relied on a passage in the judgment where the learned Judge says (p. 317):

> "..we are forced to come to the conclusion that the definitions in our Act include also disputes that might arise between Municipalities and their employees in branches of work that can be said to be analogous to the carrying out of a trade or business,"

16. and the Advocate General says that running a hospital for the purpose of giving medical relief is not analogous to the carrying on of a trade or business. Now, with respect, this expression used by the learned Judge must be read in the light of the judgment as a whole and we have already pointed out that in the -earlier part of the judgment the learned Judge is emphasizing the fact that the employment of capital and profit motive were not an essential element in the composition of an industry as constituted by the Act. Therefore, when the learned Judge is here talking of an activity analogous to the carrying on of a trade or business, with respect, what he is referring to is the wider meaning of the expression "industry" which includes not only business but also an undertaking.

17. Then our attention was drawn to two Australian cases. One is reported in The *King v. Commonwealth Court of Conciliation and Arbitration;* Ex parte Victoria: *Victoria v. The Commonwealth*[3] and what was held there was that the expression "industrial matter" as used in

the National Security (Industrial Peace) Regulations, does not include questions relating to the employment of public servants of a State engaged in its ordinary governmental department, and at p. 502, the learned Chief Justice points out that the distinction between governmental and industrial matters has been clearly recognised by the Court, and he cites with approval the remarks of Mr. Justice Isaacs in the case to which we shall presently turn:

18. "In no casa has it ever been suggested that Crown officials engaged in administering true, essential governmental authority come within the ambit of the industrial disputes power."

19. So that the immunity is only given to government when it is administering true essential governmental authority. The Advocate General has rightly pointed out that the learned Chief Justice has emphasized the fact that the relevant question was not that the State was an employer, but that the State was engaged in an industry. We accept that principle, and as we have already pointed out, the Act does not purport to regulate relations between all employers and all employees. It only purports to regulate relations of all employers and employees engaged in an industry as defined by the Act.

20. Now, turning to, the other and earlier Commonwealth case which is reported in *Federated State School Teachers' Association of Australia v. State of Victoria*[4] the majority of the Judges held that the educational activities of the States carried on under the appropriate statutes and statutory regulations of each State relating to education did not constitute an "industry" within the meaning of Section 4 of the Commonwealth

[3](1942) 66 Commonwealth L.R. 488

[4](1929) 41 Commonwealth L.R. 569

Conciliation and Arbitration Act, 1904-1928, and the Advocate General has rightly relied on the majority judgment pointing out that an educational activity can be undertaken by a private agency as well and yet when it was undertaken by Government, the Court held that it was not an industry, and the learned Chief Justice Knox delivering the judgment of the majority says (p. 517):

> "..can it be said that the educational activities of the States constitute an industry? So far as the matter is one of fact, we would say that they cannot. They bear no resemblance whatever to an ordinary trade, business or industry. They are not connected directly with, or attendant upon, the production or distribution of wealth; end there is no co-operation of capital and labour, in any relevant sense, for a great public scheme of education is forced upon the communities of the States by law."

21. Mr. Justice Isaacs, in delivering the minority judgment, has differed from his learned colleagues on certain fundamental Said basic matters. It has often happened in judicial history that although momentarily the verdict has gone against a Judge, the final and ultimate verdict has gone in his favor, and what was a dissenting judgment has come to be accepted as enunciating the sound principles of law. It must be borne in mind that this judgment was given in 1929 when

the world had still rather strange views about labor matters, social legislation and employer-employee relations, and it is rather striking to see the view put forward by Mr. Justice Isaacs in that year.

22. The learned Judge rejects the contention that it is only when there is co-operation between employer and employee to produce wealth in the sense of producing commodities that you have an enterprise which can be characterized as an "industry", because this contention is an echo from the dark ages of industry and political economy, and he takes the view that running of services is as much production of wealth as the making or manufacturing of commodities, and he found it difficult to understand the distinction between a Government producing commodities and a Government running services, if in the former ease the Government is assumed to be taking part in an industry and not so in the latter case, and at page 585, after considering the various cases, the learned Judge says:

> "In each of those instances the nature of the function actually performed was taken as the test. If it was a function that a private person could lawfully do and being so done was industrial, that was sufficient.

23. We agree with the learned Judge that that is the correct test and what we have to consider is the nature of the function and not the person or the authority who is performing the function. The judgment of the Australian Court, although entitled to the highest respect, is only a persuasive authority as far as we are concerned, and we regret that in this matter we are unable to accept the view taken by the majority and we prefer the view taken by Mr. Justice Isaacs.

24. The Advocate-General then relied on a judgment of the Madras High Court reported in *Etti v. Secretary of State for India*[5] In that case, the plaintiff took his infant child to the

[5][1989] Mad. 848

Government Hospital in Madras and that child was taken away by someone and he sued the Secretary of State for India for damages for negligence of the hospital authorities, and Mr. Justice Burn and Mr. Justice Luxmana Rao held that the Secretary of State was not liable for tort, since the Government in maintaining the hospital for the benefit of the public at the expense of the public revenues was discharging a proper function of Government in the exercise of its sovereign powers and not engaged in a business or commercial undertaking, and also the fact that such a hospital might be maintained by private persons as well as by Government did not make any difference. The Advocate-General very rightly from his point of view strongly relies on this decision as supporting his contention that the maintenance of a hospital is the discharging by Government of a function in the exercise of its sovereign powers and it is not engaged in a business or commercial activity. It must be borne in mind that the decision is based upon the English Common law rule that a King cannot be sued in tort and this principle was given effect to in India when the Crown took over the administration of the country from the East India Company. The East India Company came to this country on a commercial venture and it also

happened to acquire an empire. But a distinction was always drawn between the functions of the East India Company as a commercial organization and its functions as a Government of the country. Whereas it could be sued in respect of its commercial undertakings, it could not be sued if it was discharging governmental functions, and that distinction was maintained when the Crown took over the administration of the country and this has been ever so since the decision in *P. & O.S.N. Co. v. Secy of State for India*[6] *(Appx. A)*. But that principle cannot be applied in interpreting the Industrial Disputes Act, Everything which is not strictly germane to the commercial activity of the East India Company would fall in governmental functions and Government would have immunity against any action in tort. But the object of the Industrial Disputes Act is not to confer as large an immunity, and as we have already pointed out, the expression "industry" in the Industrial Disputes Act is not used in the same narrow sense in which it was understood, when questions of the liability of the Crown arose in this country on torts. In our opinion, therefore, the undertaking of Government in running these hospitals and employing workmen constitutes an "industry" within the meaning of the Act and the Act applies to these Hospitals.

25. Therefore, the workmen of these hospitals can claim all the rights given to workmen under the Industrial Disputes Act.

26. The result, therefore, will be that we must reverse the decision of Mr. Justice Tendolkar. The appeal will, therefore, be allowed. Order in terms of pray-or (b) of the petition. Respondents to pay to the petitioner costs of the petition and costs of the appeal. Costs of the petition will be quantified at ₹ 250. Costs of the appeal to be taxed. Liberty to the appellants' attorneys to withdraw the sum of ₹ 500 deposited in Court.

Solicitors for the appellant :- Nanavati Tijoriwala and Co.
Solicitors for the respondent :- Little and Co.
Appeal allowed.

[6](1861) 5 Bom. H.C.R. 1