

QUEEN
EMPERESS
v.
NARAYANA-
SAMI.

In Criminal Revision Case 3 of 1882 from the Godávári District a judgment was passed containing the following expressions:—"The Bench tried the case summarily, being duly authorized; there is, therefore, no appeal." But in that judgment, as explained very shortly afterwards by the learned Judges who delivered it, it was erroneously assumed that the Bench had been duly authorized to act as a first-class Magistrate. They, therefore, informed the District Magistrate of Godávári that they never intended to hold that no appeal lay against the decision of a Bench with only second or third class powers.

I entertain no doubt that the District Magistrate had jurisdiction to entertain the appeal, and, consequently, I refuse to disturb his order.

APPELLATE CRIMINAL.

Before Mr. Justice Parker.

OOTACAMUND MUNICIPALITY

against

O'SHAUGHNESSY.*

1885.
August 24.

Towns Improvement Act, 1871, (Madras Act III of 1871), ss. 62, 169—Profession tax, Non-payment of—Offence, Nature of—Prosecution—Limitation.

A complaint having been laid (on the 26th March 1885), under s. 62 of Act III of 1871 (Madras) against O for having exercised his profession for more than two months in the official year 1884-85 in a municipality without paying the tax in respect thereof, the Magistrate dismissed the complaint, on the ground that the prosecution was barred by s. 169 of the Act, inasmuch as five months had elapsed since the last payment in respect of the tax became due:

Held, that the complaint if laid within three months from the close of the official year, or, if O ceased to exercise his profession before the close of the official year, within three months from such date, was not barred by s. 169 of the Act.

This was a case referred to the High Court under s. 438 of the Code of Criminal Procedure by L. R. Burrows, District Magistrate of the Nilgiris.

The facts appear sufficiently for the purpose of this report from the judgment of the Court (Parker, J.)

Counsel were not instructed.

* Criminal Revision Case 237 of 1885.

PARKER, J.—The complaint laid against the accused was that he had exercised his profession for more than two months in the official year 1884-85 without paying the tax in respect thereof, and was therefore liable to conviction under s. 62, Act III of 1871.

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The first-class Magistrate (Mr. Clarke) dismissed the charge on the ground that the prosecution was not instituted till more than five months after the last payment on account of the tax became payable and was therefore barred under s. 169, Act III of 1871.

It was held in High Court Proceedings of 11th August 1882, No. 1568, that the offence imputed in a similar case was not that the accused made default in payment of the tax on a certain day, but that, having received the prescribed notice, he had exercised his profession for two months in the official year without having paid the tax.

The Court held that the offence was a continuing offence and that it was immaterial at what part of the year it was first completed, and that a complaint was within time if laid within three months after the close of the official year; or when the accused had before the end of the official year ceased to exercise his profession within three months from the time at which he so ceased to exercise it.

According to this ruling the complaint, having been made on 26th March 1885, was in time.

The order of the Magistrate is set aside, and he is directed to restore the complaint to his file and dispose of it in due course of law.

APPELLATE CIVIL.

Before Mr. Justice Hutchins and Mr. Justice Parker.

RÁGAVA (PLAINTIFF), APPELLANT,
and

RÁJAGOPÁL AND ANOTHER (DEFENDANTS), RESPONDENTS.*

1885.
August 31.
September 4.

Jurisdiction—Cause of action—Suit to set aside order of Revenue Court directing ejection—Res judicata.

A Revenue Court having ordered a tenant to be ejected under s. 10 of the Rent Recovery Act on the ground that he had refused to accept a pattá as directed by

* Second Appeal 194 of 1885.