

PACHAMUTHU made a ground of appeal, and as the deed of mortgage to the defend-
 CHINNAPPAN. ^{v.} dant No. 5 is found to be fraudulent.

This second appeal is dismissed with costs.

APPELLATE CRIMINAL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
 Mr. Justice Parker.*

QUEEN-EMPRESS

against

BAODUR BHAI AND OTHERS.*

*Madras District Municipalities Act—Act IV of 1884, ss. 191, 192, 193, 198—
 Butchers' licenses—Private market, meaning of.*

A Municipal Council, under the Madras District Municipalities Act, refused to give licenses to certain persons keeping butchers' shops not used as slaughter-houses, except on the condition that they should remove to a fixed market:

Held, that butchers' shops are not "private markets" within the meaning of the Act, and that the action of the Municipal Council was *ultra vires*.

THIS was a petition under ss. 435 and 439 of the Code of Criminal Procedure praying the High Court to revise an order of the District Magistrate of Bellary dismissing the complaint in case No. 43 of 1886 on the file.

The *Acting Government Pleader* (Mr. E. B. Powell) for the Crown.

The accused were not represented.

The facts and arguments sufficiently appear for the purpose of this report from the Judgment of the Court (Collins C.J., and Parker, J).

JUDGMENT.—The Prosecuting Inspector to the Municipal Council of Bellary laid a complaint before the District Magistrate against four persons for failing to take out licenses for their shops, under s. 191, cl. 2 of the District Municipalities Act. The accused are keepers of butchers' shops in Cowle Bazaar, and have never hitherto been called on to take out licenses for their shops. They are willing to take out licenses, but the Municipal Councillors require them to remove their shops to the municipal market in

* Criminal Revision Case 456 of 1886.

order that the District Surgeon and his assistant may be able to see daily whether they are selling good meat, such supervision being difficult if butchers' shops are scattered all over the town.

The District Magistrate held that the action of the council in declining to give licenses to existing shopkeepers, except on the condition that they should remove to a fixed market, was *ultra vires*, and dismissed the complaint. This criminal revision petition is presented by the Public Prosecutor.

The first point for determination is whether the defendants are bound to take out licenses for their shops. By s. 198, cl. 1, it is provided that the owner of every *private market* for the sale or exposure for sale of animals or articles of food shall obtain from the Municipal Council a license to keep open such market, and by cl. 2, the Municipal Council is empowered to refuse such license, if, in their opinion, the market is by position, construction, or arrangement unfit for the purpose of a market and calculated to be a nuisance to the neighbourhood.

Are then these butchers' shops, private markets, for the sale of articles of food within the meaning of the Act?

The term "market" is defined in s. 3, cl. 25 of the Act as "any place ordinarily used for the sale of meat, &c., which is, at the passing of this Act, a licensed market, or which may hereafter be declared by the Municipal Council to be a market."

These shops were not licensed markets at the passing of the Act, nor have they since been declared by the Municipal Council to be markets.

It is contended, however, that in s. 191, cl. 2, it is enacted that *no place in any Municipality* shall be used as a slaughter-house or for the slaughtering of any animal intended for food or for selling or storing the flesh thereof, unless a license for such use thereof has been previously obtained from the Chairman.

This section, however, is one of those relating to "slaughter-houses," and the intention of the legislature in ss. 191-193 was clearly to provide for the maintenance of public or licensed slaughter-houses in places under Municipal control, in which slaughter-houses animals intended for food might be slaughtered, or the flesh thereof sold or stored for sale. It is necessary that cls. 2 and 3 of s. 191 should be read together, and a reasonable construction put upon them. Clause 2 is wide enough in its terms to be construed into a prohibition against killing a chicken intended

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for food in any house within the Municipality, but that such cannot have been the intention of the legislature may be inferred from cl. 3, which expressly prohibits the slaughter of any cattle, sheep, goats, or pigs within the Municipality except in a public or licensed slaughter-house.

Having regard to the subject matter of legislation (slaughter-houses), the preceding clause and the context, we think that the expression "the flesh thereof" in cl. 2 can only be taken to mean the flesh of the animal intended for food and slaughtered in the same place, otherwise there was no necessity for cl. 3 which prohibits the slaughtering of cattle, sheep, or pigs otherwise than in a public or licensed slaughter-house.

If the butchers used the premises on which their shops are situated as slaughter-houses, their action would be punishable under s. 192. This, however, is not alleged in the complaint. If they merely sold in their shops a supply of meat obtained elsewhere, which is all that is apparently alleged, they have committed no offence.

The view we have taken appears to be similar to that taken by the High Court of Bombay in *Rája Paba Khaji, in re* (1), and *Queen-Empress v. Magan Harjivan* (2).

On these grounds, the order dismissing the complaint was right, and we must dismiss this petition.

APPELLATE CRIMINAL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Parker.*

MILLARD AND ANOTHER, *in re*.*

1887.
March 22.
April 1.

Penal Code, ss. 103 and 494—Native Christian—Marriage by relapsed convert.

A was baptized in infancy into the Roman Catholic Church, but subsequently relapsed, with the rest of her family, into Hindúism and was married to a Hindú. Her Hindú husband since discarded her, and alleged that he would not have married her if he had known that she had been baptized. A was subsequently re-admitted into the Roman Catholic Church and married by B, a priest, to a Roman Catholic during the lifetime of her Hindú husband

(1) I.L.R., 9 Bom., 272.

(2) I.L.R., 11 Bom., 106.

* Criminal Revision Case No. 55 of 1887.