

the decree in 1884 the decree-holder did not, through the operation of s. 99 of Act IV of 1882, gain a right to have the property sold in satisfaction of the decree, and therefore his procedure must be governed by s. 67. See *Dinendra Nath Sanyal v. Chandra Kishore Munshi*, (1) and *Bhobo Sundari Debi v. Rakhal Chunder Bose*. (2)

KAVERI
2.
ANANTHAYYA.

The order of the District Judge must be set aside with costs, and that of the District Munsif restored.

APPELLATE CRIMINAL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Brandt.

QUEEN-EMPRESS

against

BODAPPA.*

1886.
Dec. 17.

Arms Act, 1878, ss. 5, 19.

B. having obtained a license under the Arms Act, 1878, for a match-lock, had the same converted into a percussion gun. He was convicted under s. 19 of the said Act, on the ground that the license did not permit him to keep a percussion gun :

Held that the conviction was bad.

CASE referred under s. 438 of the Code of Criminal Procedure by G. Stokes, Acting District Magistrate of Cuddapah.

The facts of the case were stated as follows by the District Magistrate :—

“The accused has been charged with possessing a cap gun, while the license he produced covered only a match-lock. The defence of the accused is, that the gun now in his possession and about which the question has arisen is the same that he had with him when he obtained the license, but that for convenience sake he had it altered from a match-lock to a cap gun after he obtained the license. .

“In convicting the accused, the Joint Magistrate has not been without doubt as to the legality of the conviction. He has found distinctly that the license produced was granted for the very gun in question. I consider that the legality of the conviction is very

(1) I.L.R., 12 Cal., 436.

(2) I.L.R., 12 Cal., 583.

* Criminal Revision Case 467 of 1886.

QUEEN-
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doubtful and therefore refer the case for the orders of the High Court."

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

The Court (*Muttusami Ayyar* and *Brandt, JJ.*) delivered the following

JUDGMENT:—The question is, whether the accused had in his possession an "arm" in contravention of the provisions of s. 19 of the Arms Act, 1878, that is, whether he had in his possession a fire-arm "not in the manner and to the extent permitted" thereby. As to the extent there is no question; that clearly refers to the number of arms or quantity of ammunition, &c., for which the license is given, and as to the manner the license does not cease to protect the possession by reason of its having been altered from a match-lock to a percussion gun; the word "manner" as used in s. 5 appears to us to have reference to the conditions under which a license for the weapon is given; *e.g.*, as to how it is to be kept and used, and as to its being produced at the times required. There is no distinction drawn in the Act between the various kinds of explosive firearms; and if reference is had to schedule II, it will be seen that a distinction is there drawn, not between the different kinds of guns, as for example a rifle and a smooth-bore but between firearms and firearm barrels, and pistols and pistol barrels. We must hold that the conviction is not good in law, and we set it aside and direct that the fine, if levied, be returned to the accused.

It was suggested that the accused might have been and may now be convicted with reference to the provisions of s. 5 of the Act, which enacts that "no person shall manufacture, *convert*, or sell, or keep or offer for sale any arms, ammunition, &c., without a license." On referring to the statement made by the accused, we find he first said that he had the gun converted from a match-lock into a percussion gun; it is true he afterwards used the words "I changed it into a percussion-gun," but, reading the statement as a whole, we cannot say that he intended that he himself in fact converted it, and we are not prepared to convict him of an offence different from that which he was called upon to meet.
