

## APPELLATE CIVIL.

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

THE MUNICIPAL COMMISSIONERS FOR THE CITY OF MADRAS,  
PLAINTIFFS,

1888.  
February 3.

and

PARTHASARADI AND ANOTHER, DEFENDANTS.\*

*City of Madras Municipal Act, 1878, s. 318—President sole judge of necessity of  
cleansing tank likely to prove injurious to health.*

By s. 317 of the City of Madras Municipal Act, 1878, the President of the Municipal Commissioners was invested with a discretion as to the necessity of cleansing and filling up tanks and wells and draining off stagnant water likely to prove injurious to the health of the neighbourhood; and by s. 318 was empowered on neglect of the owner to comply with a requisition to do the necessary work, to get the work done and to recover the costs in the manner provided for the collection of taxes. No appeal was allowed by the act against the President's decision:

*Held*, in a suit by the Municipal Commissioners to recover from the defendants the cost of draining and cleansing a tank, that it was not open to the defendants to prove that the tank was not likely to prove injurious to the health\* of the neighbourhood.

CASE referred under s. 617 of the Code of Civil Procedure, by J. W. Handley, Chief Judge of the Court of Small Causes, Madras, in suit No. 19381 of 1884.

The case was stated as follows:—

“This was a suit by the Municipal Commissioners to recover under s. 318 of the City of Madras Municipal Act, 1878, from defendants as trustees of a pagoda, the cost of draining and cleansing a tank alleged to be the property of the pagoda. Defendants at first appeared by the same vakil and pleaded, *inter alia*, that the tank was not the property of the pagoda. The case was adjourned from time to time at the request of the parties with a view to a compromise, it being proposed on behalf of plaintiffs that the suit should be withdrawn upon defendants executing on behalf of the pagoda a release of all claims to the tank in favour of the Municipality. Ultimately, however, the

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\* Special Case 84 of 1887.

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negotiation fell through and the case came on for final disposal on the 11th November 1887, defendant No. 1 being represented by another vakil, and defendant No. 2 not appearing either in person or by pleader. If the question, whether the tank, the subject of the suit, was in fact at the time when the Municipality took action in the matter injurious to health or offensive to the neighbourhood within the meaning of s. 317 of the Municipal Act of 1878 had been open in this suit, I should have found on the evidence that plaintiffs had not shewn that such was the state of the tank. But I was of opinion that the Act left this matter entirely to the discretion of the President, and that if he considered the state of a tank to be such as is described in s. 317 he was entitled to issue the notice and, in default of compliance with such notice, proceed under s. 318. I therefore held that plaintiffs were entitled to recover, and having found that defendants as dharmakartas of the pagoda were the persons liable to pay and that Rs. 1,000 was the proper amount recoverable, I gave judgment for that amount and costs to be recovered from the property of the pagoda. The vakil of defendant No. 1 requested me to state a case for the opinion of the High Court as to the construction of 317 of the Act. Accordingly I made my judgment contingent upon the opinion of the High Court.

“The following is the question which I have to refer for the opinion of the High Court :—

“Is it open to the Court in this case to decide whether the tank, the subject of the suit, was at the time when the Municipality took action in the matter injurious to health or offensive to the neighbourhood within the meaning of s. 317 of the City of Madras Municipal Act, 1878 ?”

Mr. *Mitchell* for plaintiffs.

*Sundram Sastryar* for defendant No. 1. Defendant No. 2 did not appear.

The Court (Collins, C.J., and Parker, J.) delivered the following

JUDGMENT :—We agree with the learned Chief Judge that the Legislature in s. 317 of Madras Act V of 1878 has invested the President with the discretion to require the owner of the tank to drain off or remove the stagnant water from the tank, and in the event of the owner neglecting to comply with such requisition the President may execute the work and recover the expenses in the

manner prescribed in s. 318. No appeal is given and the President is constituted the sole judge of the necessity.

The defendants must pay the costs of this reference.

Solicitors for plaintiffs—*Barclay & Morgan.*

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## APPELLATE CRIMINAL.

*Before Mr. Justice Kernan and Mr. Justice Parker.*

QUEEN-EMPRESS.

against

BOLAPPA.

1888.  
Feb. 29.

*District Municipalities Act, 1884 (Madras), s. 173—Obstruction of public street.*

Section 173 of the District Municipalities Act, 1884 (Madras), provides that no person shall deposit anything so as to cause obstruction to the public in any street without the written permission of the Municipal Council:

*Held*, that the depositing by any person of an article in the street without the permission of the Municipal Council amounted to an obstruction.

CASE referred by H. Goodrich, District Magistrate of Bellary, under s. 438 of the Code of Criminal Procedure.

The facts were stated as follows:

“The accused in this case, a merchant of Bellary town, was charged by the Municipality under Bye-law 61, s. 255 of the District Municipalities Act IV of 1884 with having stored jaggery bags on the bazaar road within the Municipality. It was proved by the witnesses for the prosecution that the accused stored about 50 bags of jaggery on the public road in front of his shop, occupying a portion of the road surface measuring 5 yards long and 4 yards broad and causing obstruction to passengers. The accused admitted having stored 20 bags occupying about 2 yards in width of the road surface, but pleaded that he had a right to do so, as no obstruction was hereby caused to the public. In spite of this admission the accused was acquitted under s. 245 of the Code of Criminal Procedure, the Bench of Magistrates having held by a majority that the act of the accused did not constitute an offence.

“In their order, No. 559, dated 23rd March 1887, Government have sanctioned the levy of a fee of Rs. 12 a year from each grain