

Court was presented on 5th November 1888. The first clause of section 589, Act XIV of 1882, by which appeals from orders in cases of insolvency lay to this Court was repealed by section 56 of Act VII of 1888, which came into force on the 1st July 1888. An appeal from such orders was, however, allowed by section 588 (17), and the question is, to what Court did the appeal in this case lie? It certainly did not lie to the High Court, because the first clause of section 589, which constituted the High Court the Court of appeal, had been repealed. Inasmuch as the suit in which the decree was passed was a small cause suit from which no appeal lay, clause 2 of the former section 589 did not apply. In the absence of any special provision as to the forum, the District Court would be the Court to which an appeal from an order passed by a Sub-Judge would lie. The proviso added to section 589 by section 3 of Act X of 1888 appears to us to explain what was intended to be the law when the first clause of section 589 was repealed.

The appeal therefore must be dismissed with costs.

SITHARAMA  
v.  
VYTHILINGA.

## APPELLATE CRIMINAL.

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

QUEEN-EMPRESS

v.

SITHARAMAYYA AND OTHERS.\*

1889.  
April 10.

*Arms Act—Act XI of 1878, s. 19(a)—Sale of sulphur and ammunition  
by agent of a license-holder.*

Sale of sulphur and ammunition by the agent of one holding a license (in form VI) under Act XI of 1878 is not illegal.

CASE reported for the orders of the High Court under section 438 of the Code of Criminal Procedure by H. G. Turner, District Magistrate of Vizagapatam.

The case was stated as follows:—

“In this case the Senior Assistant Magistrate convicted two persons: the first under section 19(a) of the Arms Act, Act XI of 1878 (offering for sale without license) and the second under

\* Criminal Revision Case No. 61 of 1889.

QUEEN-  
EMPERESS  
v.  
SITHA-  
RAMAYYA.

“ sections 19(a) of Act XI of 1878 and 109 of Penal Code, and  
“ sentenced them to Rs. 5 and 15, fines, respectively. The second  
“ of these was a licensed sulphur and ammunition dealer at Parva-  
“ tipur, and the first was his gumasta. The circumstances under  
“ which they were convicted are briefly these :—

“ In the latter part of March last, the second accused, having  
“ had occasion to go to Vizagapatam, applied to the Taluk  
“ Magistrate of Parvatipur for one month's leave, proposing at  
“ the same time that his gumasta, the first accused in the case,  
“ should be allowed to conduct his business during his absence.  
“ The Taluk Magistrate sent on the application with his recom-  
“ mendation to the Senior Assistant Magistrate, who informed the  
“ Taluk Magistrate that the applicant might, if he liked, leave the  
“ place, closing his shop, but that if he wished to have his business  
“ carried on during his absence by his gumasta, he must apply to  
“ the District Magistrate for a temporary transfer of his license to  
“ that individual. Meantime, that is, before the Taluk Magistrate  
“ communicated to him the Senior Assistant Magistrate's order,  
“ the second accused had left Parvatipur in anticipation of his  
“ leave, leaving the business of his shop in the hands of his  
“ gumasta, the first accused, as originally proposed.

“ Some time after this, the Police Inspector of Parvatipur  
“ requested the Senior Assistant Magistrate to inform him whether  
“ a license-holder could, during his absence from the station at  
“ which he was licensed, have his business carried on on his behalf  
“ by his gumasta, and his reply that he could not, without a  
“ temporary transfer of the license by the District Magistrate,  
“ resulted in the Police charging the two accused before him as  
“ above.

“ On these facts, I doubt the legality of the Senior Assistant  
“ Magistrate's conviction of the accused. Though rule 24 of the  
“ Arms Act rules says in general terms that a license granted  
“ under the rules covers only the articles and the persons named  
“ therein, the restriction is distinctly stated in the instructions  
“ given in the cases of licenses in forms VIII and IX and not in  
“ that of license form VI which forms the subject-matter of this  
“ reference. This shows that in respect of this restriction the  
“ latter class of licenses was intended to be treated differently from  
“ the former class. Regarding a license issued under the old  
“ Abkari Act (Madras Act III of 1864), the High Court have

“decided that the license covers the agent also. See High Court’s Proceedings, 11th December 1871, No. 1982, printed at page 405 of Weir’s Criminal Rulings, 3rd edition. The Senior Assistant Magistrate seems to think that, if the transactions are carried on by an agent while the license-holder is present in the station, though not in the shop, the requirements of the law are fulfilled, but I do not see how his (the license-holder’s) temporary absence elsewhere could affect the question when by the steps he took he sufficiently declared to the authorities that the transactions would be carried on on his behalf and on his responsibility.”

The *Acting Government Pleader (Subramanya Ayyar)* for the Crown.

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

JUDGMENT.—We can see nothing in the Act or the rules which renders sale by the agent of a license-holder illegal. The Government Pleader supports the reference and contends that the conviction is illegal. Although in the rules endorsed on the license the words “or his authorized agent” are not to be found, yet from the wording of rule 6 it would appear that as the license is intended to cover sales effected upon the premises, and as it cannot reasonably be insisted that every sale on the premises of a license-holder must be conducted by the license-holder in person, the sale by an agent was contemplated.

We set aside the conviction and order the fines to be refunded.

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## APPELLATE CRIMINAL.

*Before Mr. Justice Muttusami Ayyar and Mr. Justice Shephard.*

QUEEN-EMPRESS

v.

NARAYANA.\*

1889.  
May 8.  
July 10.

*Penal Code, s. 138—Criminal Procedure Code, ss. 133, 134, 135, 136—Service of notice of orders under s. 133.*

A Magistrate made an order under s. 133 of the Code of Criminal Procedure requiring N. to fence a certain well in a public street or to appear before him and

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\* Criminal Revision Case No. 159 of 1889.