

REFERENCE
UNDER STAMP
ACT, s. 46.

“ this date to the end of Plavanga year the income of our service
“ inam dry half a visam land of our ancestors, lying within the
“ boundaries hereunder given, already in your possession and
“ enjoyment the rent of whereof has been agreed between us to be
“ rupees ten a year. The said land is situated in Venkapalam to
“ the south of Venkapalam of Sitanagaram, hamlet attached to
“ Anandapuram Tana, Vizianagram Samastanam, Anakapalle sub-
“ district, Anakapalle taluk, Vizagapatam district. Besides you
“ will have to pay road-cess six annas for the said land. At the
“ end of the period our land^c and document should be delivered
“ to us.”

Counsel were not instructed.

JUDGMENT.—In our opinion this is a usufructuary mortgage under which the rents and profits were estimated to satisfy both principal and interest, and accordingly no accounting on either side would become necessary. The case is quite different from that to which the Board refer.

APPELLATE CRIMINAL—FULL BENCH.

*Before Mr. Justice Shephard, Mr. Justice Subramania Ayyar,
Mr. Justice Davies, and Mr. Justice Boddam.*

QUEEN-EMPRESS

v.

JAYARAMI REDDI.*

Arms Act—Act XI of 1878, s. 4—Possession of unserviceable fire-arm without a license.

A revolver with a broken trigger is within the definition of “arms” in Indian Arms Act, 1878, section 4.

Whether in any particular case an instrument is a fire-arm or not, is a question of fact to be determined according to circumstances, and the circumstance that it is in an unserviceable condition is not conclusive.

APPEAL on behalf of Government under Criminal Procedure Code, section 417, against the judgment of acquittal pronounced by W. G. Underwood, Sessions Judge of Cuddapah, in Criminal

* Criminal Appeal No. 411 of 1897.

1897.
September
16.
November
5, 10.

Appeal No. 8 of 1897, reversing a conviction by A. T. Forbes, Acting Joint Magistrate of Cuddapah, under Indian Arms Act XI of 1878, section 19, clause (b).

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RINDI.

The accused was prosecuted and convicted by the Acting Joint Magistrate of the offence of possessing a gun without a license after having been dispossessed of arms by the District Magistrate. It appeared that the revolver in question was of good make, but the spring of the trigger was broken, and it was accordingly not serviceable at the time when it was in the possession of the accused. It was also found that at the cost of a few rupees it could have been repaired and rendered serviceable. On these facts the Sessions Judge held that the revolver did not come within the definition of "arms" and accordingly reversed the conviction.

The present appeal was preferred on behalf of the Crown.

The appeal having come on for hearing before COLLINS, C.J. and BENSON, J., they made the following order of reference to the Full Bench:—

ORDER OF REFERENCE TO THE FULL BENCH.—In view to the manner in which the case of *The Queen v. Siddappa*(1) has been interpreted by the Lower Appellate Court, and as we find it impossible to hold that a revolver, the trigger of which is out of order, does not, for that reason, come within the definition of "arms" in section 4 of the Arms Act (XI of 1878), we resolve to refer the case to a Full Bench to decide whether the ruling in *The Queen v. Siddappa*(1) is correct, and to consider whether the revolver in the present case does or does not come within the definition of "arms" in the said Act.

This case next came on for hearing before the Full Bench constituted as above.

The Public Prosecutor (Mr. E. B. Powell) for the Crown: contended that the offence was established although the revolver was not serviceable as such in the condition in which it was purchased and was in the possession of the accused. The object of the Act was to secure that information of the possession of arms and ammunition should be furnished to Government, and the possession kept under the control of Government. The actual condition in which a weapon is, is immaterial. Whether for instance fifty thousand stocks and fifty thousand barrels are imported separately

(1) I.L.R., 6 Mad., 60.

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or are imported together as fifty thousand complete weapons is entirely immaterial. Section 4 of the Act clearly applies to parts of weapons. [SUBRAMANIA AYYAR, J.—Would you contend that each portion or a part of a gun was within the definition of “arms” ?] If it were absolutely unserviceable, I would not contend that it were so, but it is otherwise, if it can be rendered serviceable. The decision in *The Queen v. Siddappa*(1) defeats the policy of the Act and places an unreasonable construction upon its terms. If that decision be maintained, it would be open to anybody possessing a revolver to remove the screw of the trigger and thus render it unserviceable as a weapon and thereby to evade the provisions of the law. Moreover, in the present case, the accused purchased with the revolver a supply of ammunition and in respect of this he is liable. [DAVIES, J.—He has not been charged with committing an offence as to the ammunition.] That is true, but the circumstance shows the intention with which the revolver was purchased.

Mr. N. Subramanyam for the accused: It has been found, as a matter of fact, that the revolver was unserviceable. [SHEPARD, J.—What has the question of its being serviceable to do with the matter? Is it not a gun?] It ceases to be a gun when it cannot be used as such. In its present state it is not a gun. The only possible test is that stated in *The Queen v. Siddappa*(1). Any other test would bring within the purview of the section arms which were kept as relics or curiosities.

JUDGMENT.—We think there is no doubt that the revolver in the case is a fire-arm within the meaning of the Act. The question is not so much whether the particular weapon is serviceable as a fire-arm, but whether it has lost its specific character and has so ceased to be a fire-arm. In referring to the serviceable character of the arm we think the decision in *The Queen v. Siddappa*(1) was not correct and that the proper test was lost sight of. Whether in any particular case the instrument is a fire-arm or not, is a question of fact to be determined according to circumstances. We answer the question in the affirmative.

This case again coming on for final disposal after the expression of the opinion of the Full Bench, the Court (COLLINS, C.J., and BENSON, J.) delivered the following judgment:—

(1) I.L.R., 6 Mad., 60.

JUDGMENT.—The ruling of the Full Bench renders it necessary to set aside the acquittal. We accordingly do this, and we restore the conviction and sentence passed by the Joint Magistrate.

QUEEN-
EMPRESS
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JAYARAMI
REDDI.

APPELLATE CIVIL.

Before Mr. Justice Davies and Mr. Justice Boddam.

GIDDAYYA (PLAINTIFF), PETITIONER,

1897.
November
12.

v.

JAGANNATHA RAU (DEFENDANT), RESPONDENT.*

Village Courts Act (Madras)—Act I of 1889, s. 73—Power of District Munsif on revision.

A District Munsif has no jurisdiction to reverse the decree of a Village Munsif on a question of evidence; he can only revise the proceedings of village courts on the grounds mentioned in section 73 of the Village Courts Act.

PETITION under Civil Procedure Code, section 622, praying the High Court to revise the proceedings of the District Munsif of Kurnool, in Civil Miscellaneous Petition No. 560 of 1896, by which he reversed the decree of the Village Munsif of Kurnool in Original Suit No. 118 of 1896.

This was a suit for Rs. 9-10-7, and the Village Munsif passed a decree for the plaintiff. The District Munsif reversed the decree saying:—"I have carefully gone through the record, and the plaintiff's account is not free from suspicion. The reasons given by the Village Munsif for giving a decree in plaintiff's favour do not seem to be sound. He seems to have been led away merely by probabilities The explanation given by plaintiff in regard to his accounts is not satisfactory."

The plaintiff preferred this petition.

Narayana Ayyangar and Balarama Rau for petitioner.

Mr. S. H. Bilgrami, Nizam-ud-din Sahib and Hyder Sheriff Sahib for respondent.

JUDGMENT.—The District Munsif has treated the matter as an appeal and has exceeded his jurisdiction, which, by section 73 of

* Civil Revision Petition No. 520 of 1896.