

in the case of *Papireddi v. Narasareddi*(1). That *dictum* has been doubted by the Full Bench of the Allahabad High Court (*Bayam v. Muhammad Yakub*(2), and by a Divisional Bench of this Court (*Pangi Achan v. Parameswara Patter*(3)). We must also say that we find difficulty in accepting it as correct, although, as pointed out by Edge, C.J., the decision could be supported on the ground that in that case the defendant had unsuccessfully brought a suit for specific performance and had in it set up a contract which differed from the actual contract. In the present case the plaintiff brought his suit for ejection before the expiration of the time within which the defendants might have sued for specific performance of the contract to renew the lease. In such a case to allow the plaintiff to eject the lessee would, in our opinion, be to give the plaintiff a decree in fraud of his contract of lease. We, therefore, agree with the Lower Appellate Court that the plaintiff's suit was premature, and we dismiss this Second Appeal No. 1646 of 1896 with costs.

ITTAPPAN
v.
PARANGODAN
NATAR.

APPELLATE CRIMINAL.

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

QUEEN-EMPRESS,

v.

AYYAKANNU MUDALI.*

1898.
February 16.

District Municipalities Act (Madras) — Act IV of 1884, s. 189—Keeping a private cart-stand without a license.

It is not necessary, in order to establish the offence of using a place as a cart-stand without a license under District Municipalities Act IV of 1884 (Madras), section 189, to prove that the cart-stand is offensive or dangerous or that fees are levied there.

APPEAL on behalf of Government under Criminal Procedure Code, section 417, against the judgment of acquittal pronounced by P. Rajagopala Chari, Second-class Magistrate of Chengam, in Calendar Case No. 220 of 1897.

(1) I.L.R., 16 Mad., 464.

(2) I.L.R., 16 All., 344.

(3) Second Appeal No. 730 of 1894 (unreported).

* Criminal Appeals Nos. 14 and 15 of 1898.

QUEEN-
EMPRESS
v.
AYYAKANNU
MUDALI.

The accused was charged with the offence of keeping a private cart-stand without a license within the limits of a municipality under District Municipalities Act IV of 1884 (Madras), section 189, amended by Act III of 1897. The Magistrate said :—“ It is “pleaded, on behalf of the accused, that the place cannot be considered as a cart-stand in the sense used in the Act, as no fees are levied, and that the place exists purely for purposes of facilitating his trade as a broker. It is alleged that carts bringing paddy, &c., for his bazaar stay there temporarily until the price of the articles is settled, the brokerage due to him being either deducted at once on the spot or adjusted subsequently between himself and the bandyman. The Sanitary Inspector has been examined as an only witness for the prosecution. He swears that, after a license has been applied for and refused, to the accused, a large number of carts was allowed to stand on the site belonging to the accused on the 17th and 18th April; but, when he visited it, he further found the place uncleanly and otherwise objectionable from a sanitary point of view The question now for my consideration is whether, in the circumstances described by the accused, he is liable for an offence under the Municipal Act. In my opinion, he is not liable; section 188 of the Act and the following sections purport apparently to make provision against offensive and dangerous trades being carried on in a municipality.” The trade carried on by the accused, viz., that of receiving brokerage in the circumstances represented by him, is certainly not a trade falling under either of the above two categories; for the trade by itself is neither offensive nor dangerous.”

The present appeal was preferred on behalf of Government.

The Public Prosecutor (Mr. *E. B. Powell*) for the Crown.

Pattabhirama Ayyar for the accused.

JUDGMENT.—We do not agree with the Sub-Magistrate that it is necessary for the prosecution to prove that a cart-stand is “offensive” or “dangerous,” or that fees are levied in the cart-stand in order to justify a conviction under section 189 of the Madras District Municipalities Act IV of 1884, though, no doubt, those are matters regarding which the Court would usually require evidence to be given in order to guide it in finding whether the alleged cart-stand is such as the section contemplated and also to guide it in passing sentence in the event of conviction.

The heading "Offensive and dangerous trades" is manifestly not exhaustive of the matters dealt with in the succeeding sections, nor can it be taken to restrict the plain terms of the sections. Again, the levying of fees is not necessary in order to constitute a place where carts stand a "cart-stand" within the meaning of the section. On the other hand, we think that a place is not necessarily a "cart-stand" within the meaning of the section, merely because one or more carts stand there. It cannot have been intended to apply to the keeping, let us say, of one or two carts on the premises of the owner of the carts any more than the words "horse lines" in the same section can be held to include the ordinary stables attached to a dwelling house. The term must be construed reasonably with due regard to all the circumstances of the case, *e.g.*, how many carts use the place from time to time, whether they belong to one or more persons, whether fees are levied, how long the carts remain there, and the purpose for which they go there, whether for the sale of goods to the owner of the premises or to others, or for the purpose of being engaged for hire, and so forth.

In the present case it appears that the place was licensed as a cart-stand last year, but that the municipality refused to renew the license this year for some reason which is not stated. It also appears that as many as thirty carts are found there at one time, and that they belong to different persons, and, according to the first witness for the defence, carts for hire go there and carts from that place go for hire elsewhere. These facts would seem to indicate that the place is used as a cart-stand within the meaning of the section. These matters have not been sufficiently considered by the Magistrate.

We, therefore, resolve to set aside the acquittal and direct the Magistrate to re-try the case, taking further evidence as to the character of the alleged "cart-stand," and to dispose of the case according to law and with reference to the above remarks.