

## APPELLATE CRIMINAL:

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

QUEEN-EMPRESS,

v.

MAHALINGAM SERVAI AND OTHERS.\*

1897.  
November  
23.

*Abkari Act (Madras)—Act I of 1886, ss. 56, 64—Holder of a license and his servants.*

The words "being holder of a license" in Abkari Act, section 56, must be taken to include any person in the employ, or for the time being acting on behalf of the holder of a license.

APPEAL on behalf of Government under Criminal Procedure Code, section 417, presented against the judgment of acquittal pronounced by T. Kothandaramayya, Second-class Magistrate of Ramnad, in Calendar Case No. 549 of 1896.

The accused was charged under section 56 of the Abkari Act of 1886, with exposing for sale toddy mixed with patnini, and he was acquitted on the ground he was not the holder of the license, but only the servant of the holder of the license.

The Public Prosecutor (Mr. Powell) for the Crown.

Accused were not represented.

JUDGMENT.—In these cases the Government appeals against the acquittal of certain accused persons who were guilty of certain acts in breach of the Abkari licenses granted to their employers.

The Second-class Magistrate has acquitted the accused on the ground that, under section 56 of the Abkari Act I of 1886, only the holder of the license, but not his servants or employees can be convicted.

This view is erroneous. It was held by this Court in Criminal Revision Case No. 639 of 1886 (1) that sections 56 and 64 of the

\* Criminal Appeals Nos. 581 to 583 of 1897.

(1) Case referred for the orders of the High Court by the Acting District Magistrate of Tinnevely, being Calendar Case No. 131 of 1886, on the file of the Second-class Magistrate of Satur, in which two persons were convicted under section 56 (b) of Act I of 1886. The Acting District Magistrate said:—"The second accused is the licensee and his conviction is legal under the provisions of section 61, paragraph 2. The first accused not being the licensee does not come within section 56, which relates only to the holder of a license. I cannot interpret the words 'as well as the actual offender' used incidentally in section 64 as justifying his conviction, because the words imply that the person has already committed an offence, i.e., an act punishable." Muthusami Ayyar and Brandt, JJ., delivered the following judgment:—

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Abkari Act must be read together and that the words "being the holder of a license" in section 56 must be taken to include any person in his employ and acting on his behalf for the time being, as otherwise the words in section 64 "for any offence committed by any person in his employ and acting on his behalf under section 56" would have no meaning or application. This view of the law is, in our opinion, correct.

We set aside the acquittal in each case and we convict each of the accused Mahalingam Servai and Venkatachalam Sorvai of offences punishable under sections 56 and 64 of Madras Act I of 1886, and we sentence Mahalingam Servai to pay a fine of Rs. 15 (fifteen rupees) or in default to suffer rigorous imprisonment for three weeks, and Venkatachellam Servai to pay a fine of Rs. 10 (ten rupees) or in default to suffer rigorous imprisonment for fourteen days.

As regards Ramasami Servai, accused in Criminal Appeal No. 583, we direct that he be re-tried in accordance with law, as the Magistrate does not appear to have gone into the facts in his case.

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## APPELLATE CIVIL.

*Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.*

SIVATHI ODAYAN AND ANOTHER (DEFENDANTS), APPELLANTS,

v.

RAMASUBBAYYAR (PLAINTIFF), RESPONDENT.\*

*Transfer of Property Act—Act IV of 1882, s. 85—Mortgagee's Suit—Parties—Redemption.*

A mortgaged lands X, Y and Z to B for Rs. 5,000. Lands X and Y were sold and the proceeds applied towards the discharge of the mortgage. Land Z was sold to C for Rs. 990, which was not so applied. C transferred his rights to the

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JUDGMENT.—We do not consider that the construction suggested by the District Magistrate can be adopted. Section 56 and section 64 of the Abkari Act must be read together, and if, as suggested by the District Magistrate, no offence could be committed under section 56 but by the holder of the license, the words "for any offence committed by any person on his employ and acting on his behalf under section 56" would be insensible. The words "being the holder of a license" in section 55 must be taken to include any person in his employ and acting on his behalf for the time being. We decline to interfere.

\* Second Appeals Nos. 905 and 906 of 1896.

1897.  
July 23.  
October 2<sup>d</sup>.  
November 30.