

lease deed standing solely in second defendant's name, he is alleged to be bound to pay them their share of the rent in case first defendant is not found liable."

SRINIVASA  
RAGHAVA  
AYYANGAR  
v.  
PICHAI-  
KARAN.

As against first defendant the suit is for rent, and is clearly cognisable by a Small Cause Court. As regards second defendant the only question is whether the suit comes under article 31, schedule II, Small Cause Courts Act, and is "a suit for the profits of immoveable property belonging to the plaintiff, which have been wrongfully received by the defendant." With these remarks, the matter will be submitted for the decision of the High Court. The petitioner has been ordered to deposit process fees within seven days from 13th December. As the matter is referred to the High Court, it is unnecessary for me to decide the appeal, which is dismissed. No order as to costs.

The parties were not represented.

JUDGMENT.—We are of opinion that the suit is substantially one for rent and does not fall within article 31 of the second schedule, Provincial Small Cause Courts Act, and the Small Cause Court has jurisdiction.

The Subordinate Judge of Kumbakonam will therefore receive the plaint on his file and dispose of it according to law.

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## APPELLATE CRIMINAL.

*Before Sir S. Subrahmania Ayyar, Officiating Chief Justice.*

ABU BAKER (ACCUSED), PETITIONER,

v.

THE MUNICIPALITY OF NEGAPATAM, RESPONDENT.\*

1905  
October 9,  
16.

*District Municipalities Act (Madras) IV of 1884, ss. 197, 191—Market, definition of—Use of, as market, what amounts to.*

Private property is used as a market when it is used as a public place for buying and selling.

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\* Criminal Revision Case No. 151 of 1905, presented under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the judgment of C.T.H. Johnson, Esq., First-class Sub-Divisional Magistrate of Negapatam, in Criminal Appeal No. 78 of 1904, confirming the decision of the Court of the Bench of Magistrates of Negapatam in Summary Trial No. 1101 of 1904—*vide* Criminal Revision Case Nos. 152, 153, 154 and 155 of 1905.

ABU BAKER  
v.  
THE MUNICIPALITY OF  
NEGAPATAM

Where a private market had been ordered to be closed, a person using the place for selling fish and flesh after a license had been refused is guilty of an offence under section 197 of the Madras District Municipalities Act, or at any rate, of an offence under section 191.

THE petitioner in this case was charged with having sold mutton without having obtained a license before the Bench of Magistrates at Negapatam. The place where the accused sold the mutton was originally a market which was closed by order in 1888. The accused applied for a license which was refused.

The accused was convicted under sections 191, 197 and 264 of the Madras District Municipalities Act and the conviction was affirmed on appeal.

The accused preferred this criminal revision petition.

V. *Ryru Nambiar* for petitioner.

The respondent was not represented.

ORDER.—The convictions in these cases are clearly sustainable. The place where the fish or mutton was sold was originally a recognized market. It was closed under orders in 1888. No license having since been granted for the use of the place as a market, the sales conducted by the accused, in respect of which the charges are made, are punishable under section 197 of the District Municipalities Act, if the use of the place which is private property was as a market, *i.e.*, as a public place for buying and selling, such being the meaning of the term "market" in law (*see* Bouvier's 'Law Dictionary', volume II, p. 316). Even if it were otherwise, the accused were guilty of an offence under section 191, clause (2), of the Act as they *without license* sold "flesh" or fish "intended for food." The petitions are dismissed.

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