

APPELLATE CIVIL.

Before Mr. Justice Munro and Mr. Justice Abdur Rahim.

1909.
August 25.

HAJEE SHAIK MEERA ROWTHER (APPELLANT), PETITIONER,

v.

THE PRESIDENT OF THE CORPORATION OF MADRAS
(RESPONDENT), RESPONDENT.*

City Municipal Act (Madras) III of 1904, s. 120—'Exercising a trade,' what amounts to.

Where a person has a servant at A, who purchases piece-goods there and forwards them to B, where they are sold and the profits are earned, such person 'exercises his trade' within the meaning of section 120 of the Madras City Municipal Act at B and not at A.

There may be kinds of business in which the buying of goods is the most important part of the business and in such cases it cannot be said that the profits are earned elsewhere.

CASE stated under section 176 of the Madras City Municipal Act by Messrs. J. R. Coombes and P. Rajaratnam Mudaliar, Second and Third Presidency Magistrates, Georgetown, Madras, in Criminal Case No. 37342 of 1908.

The facts are sufficiently stated in the judgment.

T. Narasimha Ayyangar for *C. R. Tiruvankatachariar* and *K. R. Krishnasami Ayyangar* for *T. Narasimhachariar* for appellant.

P. Duraiswami Ayyangar for respondent.

JUDGMENT.—In this case the question is whether the appellant exercises his trade in the town of Madras within the meaning of section 120 of the Madras City Municipal Act, III of 1904. Under that section a man is not liable to pay any profession tax if he carries on a trade elsewhere, but only does some act in Madras incidental to the exercise of such trade. On the other hand it is not necessary that all the acts incident to the carrying on of his trade should be done in Madras to make him liable under section 120. The question therefore is whether the appellant, who is a trader in piece-goods and has a shop in Tinnevely where he sells the goods and earns his profit, can be said to carry on the trade here because he buys his goods at Madras through a servant who forwards them to Tinnevely. He has no office here, and the

* Referred Case No. 1 of 1909.

servant who buys the goods, so far as it appears merely carries out his orders. No doubt in certain kinds of business the buying of the goods may be the most important and difficult part of the business, and it is not a conclusive test in such cases that profits are earned elsewhere. There can be no doubt, however, on the facts of this case that the appellant carries on his trade in Tinnevely and not in Madras. In holding this we follow the principle laid down in *Sulley v. The Attorney General*(1), *San Paulo Brazilian Railway Company (Limited) v. Carter*(2) and *Lovell and Christmas (Limited) v. Commissioner of Taxes*(3). The answer to the reference will therefore be that the appellant is not liable to be taxed under section 120 of the Municipal Act.

MUNRO
AND
ABDUL
RAHIM, JJ.
HAFEZ
SHAIK
MEERA
ROWTHEN
V.
THE
PRESIDENT
OF THE
CORPORATION
OF
MADRAS.

APPELLATE CRIMINAL.

Before Mr. Justice Benson and Mr. Justice Miller.

THE CROWN PROSECUTOR (APPELLANT),

1909.
April 22.

v.

MOONOOSAMY AND OTHERS (ACCUSED).*

*City Police Act (Madras) III of 1888, s. 75—Arack shop is a place of
"public resort" within section.*

The public have a right, under the terms of the license granted to arack shopkeepers, to resort to such shops and such shops are places of public resort within the meaning of section 75 of the Madras City Police Act III of 1888.

APPEAL under section 417 of the Code of Criminal Procedure against the judgment of acquittal passed on the accused in Criminal Case No. 23186 of 1908 by Mir Sultan Mohiuddin, Esq., Presidency Magistrate of Egmore.

JUDGMENT.—The accused were charged by the police with an offence punishable under section 75, Madras City Police Act III of 1888, in that they were drunk and disorderly in a certain arack shop. The Presidency Magistrate acquitted the accused

(1) (1860) 5 H. & N., 711.

(2) (1895) 1 Q.B., 580.

(3) (1908) A.O., 46.

* Criminal Appeal No. 172 of 1909.