Section 120 of the Negotiable Instruments Act was referred to as creating an estoppel. Though the question does not arise on this reference, it may be observed that this suit is by the payee on a note which is on the face of it illegal and not therefore by "any holder in due course."

I agree that the second question cannot be answered in the present state of the record, as it depends on facts which have not yet been tried and found. If there is an obligation apart from one under the note *itself* it may clearly be enforced. The fact that the "loan and the note are contemporaneous" is not conclusive on the non-existence of such obligation. Attention may be drawn to the observations of SRINIVASA AYYANGAR, J., in *Shanmuganatha Chettiar* v. *Srinivasa Ayyar*(1).

I therefore agree in answering the first part of question (1) in the affirmative and the second part in the negative understanding it as referring to a decree upon the note itself. I decline to answer the second question.

KRISHNAN, J.

N.R.

APPELLATE CRIMINAL.

Before Mr. Justice Oldfield and Mr. Justice Seshagiri Ayyar.

Re MATURI VENKATASUBBAYYA (ACCUSED), PETITIONER.* 1916. October 3.

District Municipalities Act (IV of 1884), ss. 188, cl. (5) and 189—Application for license to boil paddy—Refusal of license, more than thirty days after application—Boiling paddy subsequent to refusal—Charge under section 189 of the Act—Conviction, if legal.

Where a petitioner applied to the Chairman of a municipality for the continuance of a license for boiling paddy at a certain place during the next financial year, but the license was refused more than thirty days after the receipt of the application by the Chairman, and the applicant used the place for boiling paddy notwithstanding the refusal;

Held, that the petitioner was not guilty of an offence under section 189 of the District Municipalities Act, as the place in question should be held to be duly licensed for the financial year for which the license was sought under section 188, clause (5) of the Act.

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(1) (1916) 4 M.L.W., 27; s.c., 31 M.L.J., 138.

* Criminal Revision Case No. 451 of 1916.

RE VENKATA-SUBBAYYA.

PETITION under sections 435 and 439 of the Code of Criminal Procedure (Act V of 1898), praying the High Court to revise the order of W. H. H. CHATTERTON, the Sub-Divisional Magistrate of Gudivada, in Summary Trial No. 2 of 1916.

The petitioner held a license for boiling paddy at a particular place within a municipality; the period of the license expired on the 30th April 1915; he applied for a fresh license on the 4th May 1915 for the next financial year, but no order was passed granting or refusing a license until the 6th September 1915, when his application was refused by the Chairman of the Municipality. He appealed to the Municipal Council against the refusal, but the appeal was dismissed. The petitioner was charged under section 189 of the District Municipalities Act (IV of 1884) with having used the place for boiling paddy on the 29th September 1915, without having a license therefor, and convicted and fined Rs. 100 by the Sub-Divisional Magistrate of Gudivada. The petitioner preferred a revision petition to the High Court against the conviction and sentence of the Sub-Divisional Magistrate.

B. Narasimha Rao for the petitioner.

E. R. Osborne, Acting Public Prosecutor, for the Crown.

OLDFIELD AND SESHAGIRI AYYAR, JJ.

ORDER.—The petitioner has been convicted of an offence punishable under section 189, Act IV of 1884; that is boiling paddy in an unlicensed place.

There is no dispute as to the facts. The offence is alleged to have been committed on 29th September 1915. The petitioner's last license expired on 30th April 1915. He applied for a fresh license on 4th May 1915, but received no order granting or refusing one until 6th September 1915, when his application was refused. He subsequently appealed against the refusal unsuccessfully. But that is not material, because he argues that under section 188 (5), if a license is not refused within thirty days of its being applied for, the place in question shall be held to be duly licensed for the financial year, for which the license was sought.

This argument is justified by the wording of section 188 (5), for we cannot accept the learned Public Prosecutor's suggestion that it should be read subject to the reference to the refusal of the license in section 189. If it were so read, section 188 (5) would to a large extent be deprived of necessity. We set aside

the decision of the Sub-Divisional Magistrate, acquit the accused and order that the fine, if paid, be refunded.

Re VENKATA-SUBBAYYA.

K.R.

OLDFIELD AND SESHAGIRI AYYAR, JJ.

APPELLATE CRIMINAL.

Before Mr. Justice Oldfield and Mr. Justice Seshagiri Ayyar.

Re VENKATAKRISHNAYYA AND ANOTHER (ACCUSED NOS. 4 AND 5).*

1916. October 17 and 24.

Criminal Procedure Code (Act V of 1898), sec. 413—Joint trial of several accused—Appealable sentence on some and non-appealable sentence on others—No right of appeal for the latter—Section 408 of Criminal Procedure Code, no guide to the interpretation of section 413 of Criminal Procedure Code.

Section 413 of Criminal Procedure Code prohibits an appeal by a person against whom a non-appealable sentence has been passed even though appealable sentences have been passed against others jointly tried with him.

Though for convenience a joint trial of several accused persons under certain circumstances is allowed, on conviction each accused must be deemed to have been convicted in a separate case of his own for the purposes of section 413 of Criminal Procedure Code.

The analogy of section 408, Criminal Procedure Code, cannot be extended to section 413 of Criminal Procedure Code.

PIGGOT, J.'s view in *Emperor* v. *Lal Singh* (1916) I.L.R., 38 All., 395, not followed.

Palani Koravan v. *Emperor* (1907) 17 M.L.J., 248, distinguished.

Reg. v. *Muliya Nana* (1868) 5 Bom. H.C.R., 24 (Cr. C.) and *Reg.* v. *Kalubhai Meghabhai* (1870) 7 Bom. H.C.R., 35 (Cr. C.), referred to.

It does not follow as a matter of course that because some of the accused tried along with others are acquitted on the merits on appeal by them, others should necessarily have the benefit of the finding of the Appellate Court.

Citation of the rulings of the Chief Court of Burma disallowed.

CASE taken up by the High Court to revise the order of acquittal by H. R. BARDSWELL, the Sessions Judge of Kurnool, in Criminal Appeals Nos. 41 and 42 of 1916, preferred against the conviction of the Joint Magistrate of Nandyal in Calendar Case No. 4 of 1916.

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* Criminal Revision Case No. 558 of 1916.