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JAGANNA.
WALLER, J.

over 50 years was not questioned till it was dissented from by JACKSON, J., last year in Criminal Revision Case No. 229 of 1925. With great respect, I am unable to follow his line of reasoning. He appears to think that there is something in the section that prevents a Magistrate from taking up a particular case twice on the same day, that, in fact, a Magistrate cannot if a complainant does not appear in the morning, adjourn the case till the afternoon. I can myself see nothing in the section that prevents a Magistrate from so doing. Indeed, I think that, as a rule, he would be well advised to give a complainant whose case is called on early in the day, some latitude before he decides to apply section 247. If, however, he decides to act at once, when a complainant fails to appear on his case being called on, I am clearly of opinion that he has jurisdiction to do so and that he is not obliged to wait till the close of the Court day before doing so. I agree therefore in dismissing the petition.

B.C.S.

APPELLATE CRIMINAL.

Before Mr. Justice Devadoss and Mr. Justice Wallace.

RAMACHANDRAN SERVAI (PETITIONER),

v.

PRESIDENT, UNION BOARD, KARAIKUDI

(RESPONDENT).*

Madras Local Boards Act (XIV of 1920), ss. 164 and 221—Proceedings taken by a Local Board under sec. 221 to recover penalty for encroachment—If defaulting party can raise a contention regarding the factum of encroachment.

Where a Local Board has instituted proceedings before a Magistrate under section 221 of the Madras Local Boards Act

* Criminal Revision Case No. 614 of 1924.

for the recovery of a penalty imposed on a person for encroachment, he cannot plead the non-existence of the encroachment, as section 221 only prescribes the manner of recovery and does not permit the reopening of the question of liability.

In re Smith, (1923) 45 M.L.J., 731, *In re Krishnaswami*, 21 L.W., 254, *Municipal Council, Chicacole v. Seetharamayya Naidu*, 21 L.W., 280, referred to.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the order, dated 30th June 1924, in M.C.No. 13 of 1924, on the file of the Court of the Subdivisional First-class Magistrate of Devakottai.

S. Swaminathan for *K. K. Ranganatha Ayyar* for the petitioner.

S. Ranganatha Ayyar for the respondent.

Public Prosecutor for the Crown.

JUDGMENT.

The question for decision in this case is whether, when a Local Board moves a Magistrate under section 221 of the Madras Local Boards Act XIV of 1920 to recover a penalty imposed for encroachment, the defaulting party can ventilate before the Magistrate his claim that there was no encroachment at all, and plead such a defence to the case.

It is obvious that, if petitioner's contention that he is allowed to plead such a defence be sound, the Magistrate is constituted a sort of appellate authority over the Local Board in the matter of deciding whether or not there has been in fact an encroachment; and a wholesale application of such a principle would mean that in all cases of demand by the Local Board for fees, tolls, costs, compensation, damages, penalties, charges, expenses or other sums due to it, the Magistrate, a Judge appointed for the trial of criminal matters, is set up as

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the final Judge over the Local Board, except in so far as either party may take the matter before a Civil Court.

This is to our minds a startling proposition, and, unless the wording of the section clearly imports it, we do not accept it. Clause (1) of the section clearly lays down that what has to be ascertained by the Magistrate is the "amount or apportionment of the sum," if that is disputed, and that, we take it, is the "question" that has to be determined under clause (3). Here petitioner is not disputing as to the amount due or its apportionment. He contends that the penalty is not leviable at all. We therefore see no support for petitioner in the wording of the section.

Under section 164, petitioner is "bound" to pay such sum as may be demanded by the Local Board by way of penalty, which sum "may be recovered in the manner hereinafter provided," i.e., as in section 221. This makes it quite clear that section 221 only applies to the manner of recovery and does not re-open the question whether petitioner is "bound to pay." Petitioner is not able to refer us to any reported case directly in support of his view. The case *In re Smith*(1) was a case of prosecution of a person who had erected some machinery without permission of the Commissioner of the Madras City Municipality, and thus was said to have contravened section 288 of the Madras City Municipal Act IV of 1919. There, this High Court went into the question of whether such permission was required in the case and decided that it was not. We do not think this can throw any light on the proper interpretation of sections 164 and 221 of the Local Boards Act. The same learned Judge has held in a case *In re Krishnaswami*(2) that, in a prosecution for contravention of

(1) (1923) 45 M.L.J., 731.

(2) 21 L.W., 254.

section 166 (1) of the Local Boards Act, it was not open to the accused to plead that the motor-bus licence ought not to have been refused by the President of the Local Board. Another learned Judge of this Court has taken a similar view in a case *Municipal Council, Chicasole v. Seetharamayya Naidu*(1), a case of disobedience to a notice under section 219 (1) of the Madras District Municipalities Act V of 1920.

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We find no support for petitioner's contention in these cases or any others cited before us. We dismiss this petition.

B.C.S.

APPELLATE CRIMINAL.

Before Mr. Justice Devadoss.

E. C. KENT (COUNTER, PETITIONER), PETITIONER,

1925,
March 27.

v.

MRS. E. E. L. KENT (PETITIONER), RESPONDENT.

Criminal Procedure Code (Act V of 1898), sec. 488—More than one person for whom petition presented—Maximum of Rs. 100 for all or for each—"In the whole," meaning of—Order of English Probate Court for alimony, if bar to application under sec. 488.

Under section 488 of the Criminal Procedure Code a Magistrate can order a person to pay a monthly maintenance not exceeding Rs. 100 to each of his dependants, viz., wife and children.

The words "in the whole" in the section do not mean that Rs. 100 is the maximum limit for all the dependants together, but mean "for all the kinds of expenses of each dependant, such as boarding, lodging, medical expenses, school fees, etc."

(1) 21 L.W., 280.

* Criminal Revision Case No. 98 of 1925.