

APPELLATE CRIMINAL.

Before Mr. Justice Jackson.

PUBLIC PROSECUTOR (APPELLANT)

1927,
February 28.

v.

P. A. S. RANGANAYAKULU CHETTY (ACCUSED),
RESPONDENT.*

*Madras District Municipalities Act (V of 1920), sec. 249—
Machinery likely to be dangerous to human life—Outside
public, if limited to—Madras Local Boards Act (XIV of
1920), sec. 193—Effect of—One statute cancelling another
—Test of.*

Machinery likely to be dangerous to human life within the terms of Schedule V (g) of the Madras District Municipalities Act is not confined to machinery dangerous to the outside public. Human life means the life of any person whether he be within or without the premises of the factory.

Section 249 of the Act has not been impliedly repealed by section 193 of the Madras Local Boards Act, as the two are not mutually destructive.

APPEAL under section 417 of the Code of Criminal Procedure, 1898, against the acquittal of the accused by the Subdivisional First-class Magistrate of Salem in C.A. No. 91 of 1925 against the conviction and sentence by the Second-class Magistrate of Salem in C.C. No. 1077 of 1925.

Public Prosecutor for appellant.

K. P. Sarvothama Rao, for the accused, (*amicus curiae*).

JUDGMENT.

Appeal under section 417, Code of Criminal Procedure, against the acquittal of accused in C.C. No. 1077 of 1925 on the file of the Court of the Sub-Magistrate, Salem Town (Criminal Appeal No. 91 of 1925 on the

* Criminal Appeal No. 274 of 1926.

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file of the Court of the Subdivisional Magistrate, Salem).

The accused was charged under sections 249 and 338, Madras Act V of 1920, for using a rice mill within three miles of Salem Municipality without a licence.

The learned Magistrate has acquitted accused for two reasons both of which are unsound. He thinks that machinery likely to be dangerous to human life within the terms of Schedule V (g) of the Act is confined to machinery dangerous to the outside public. It would be a queer machine in a factory that jeopardised the passers-by, and of course human life means the life of any person whether he be within or without the premises of the factory. The Health Officer has clearly deposed that the factory is dangerous to health, and it is difficult to understand why the Magistrate goes out of his way to argue round that fact. A process may still be unwholesome though it neither emits a smell nor breeds bacteria.

When it is argued that section 249 has been repealed, because Local Boards have similar powers of licensing under section 193 of Madras Act XIV of 1920. Each local authority is invested with similar power because each authority has similar responsibility. To take the present case, the Health Officer of the Municipality and the Health Officer of the District may each find that lung disease is prevalent, and each trace it to the rice mill; and each ask his governing body to take necessary steps. The point in Maxwell which the learned Magistrate overlooks is that for one statute to cancel another they must be mutually destructive; for example, the legislature would not have constituted two distinct bodies to name the streets in a town. The question is whether the legislature can be said not to have intended the two rights to exist together (see Halsbury, Vol. 27,

paragraph 323, where the case law is cited). There is no reason to presume that the legislature did not want both the Municipality and the District Board to be vigilant in the interests of public health; in fact the natural presumption is exactly the other way. The Subdivisional Magistrate admits that he has found the law difficult, and in such matters he will derive his best guidance from common sense, which leads to the same destination as properly understood law.

The appeal is allowed and the judgment and sentence of the Sub-Magistrate are restored and the order of the Subdivisional Magistrate reversed.

B.C.S.

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SPECIAL BENCH.

*Before Sir Murray Coutts-Trotter, Kt., Chief Justice,
Mr. Justice Beasley and Mr. Justice
Srinivasa Ayyangar.*

THE COMMISSIONER OF INCOME-TAX, MADRAS,
REFERRING OFFICER,

1927,
February 7.

v.

T.S. FIRM, TANJORE AT NEGAPATAM, ASSESSEE.*

Income-tax Act (XI of 1922), sec. 4 (2)—Resident in British India, meaning of—Test of residence of firm—Residence of partners, whether relevant in determining residence of firm—Central control and management of the whole business, necessary—Possibility of two or more places of residence of firm—Delegation of a portion of the business, insufficient, but one of a portion of the management as a whole, necessary.

A firm or partnership resides for the purposes of income-tax at the place where its real business is carried on; and the real

* Referred Case No. 23 of 1925.