

1905

RAM TAHAL
SINGH
v.
DUBBI RAI.

and the plaintiff's suit, therefore, failed. A similar question to the one before the Court was decided in several recent cases, and amongst others in the cases of *Munro v. The Cawnpore Municipal Board* (1), *Muhammad Ahmad v. Muhammad Siraj-ud-din* (2) and *Jagram v. Chatarpal* (3). The learned Judge of this Court relies upon a decision of the Madras High Court in the case of *Valambal Ammal v. Vythilinga Mudaliar* (4). We may point out, however, that the Madras High Court has not taken the same view of section 28 of the Court Fees Act as was adopted by the Full Bench of this Court. We, therefore, allow the appeal, set aside the decree of the learned Judge of this Court, and restore the decree of the District Judge with costs.

Appeal decreed.

[See also *Chatarpal v. Jagram* (5).—ED.]

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January 2.

CRIMINAL REFERENCE.

Before Mr. Justice Banerji.

EMPEROR v. SALIG RAM.*

Act No. XLV of 1860 (Indian Penal Code), section 273—Sale of noxious food—Definition—Sale of grain in bulk in a closed pit.

Where, as a matter of trade, the owner of a grain pit sold the contents of the pit before it was opened at a certain sum per maund whether the grain was good or bad, and on the pit being opened it was found that a large proportion of the grain was unfit for human consumption, it was held that the vendor could not be convicted under section 273 of the Indian Penal Code.

In this case one Rabi Dat, a dealer in grain, and his Muhib, Salig Ram, sold the contents of a closed grain pit to one Jhunna Lal. The agreement was that Rs. 3 per maund should be paid for the grain, in whatever condition it was found when the pit was opened. On opening the pit and taking the grain out to weigh it, it was found that a considerable proportion of it was bad and unfit for human consumption. Both the dealer and his

* Criminal Reference No. 674 of 1905.

(1) (1889) I. L. R., 12 All., 57.

(3) Weekly Notes, 1904, p. 133.

(2) (1901) I. L. R., 23 All., 423.

(4) (1900) I. L. R., 24 Mad., 331.

(5) (1904) I. L. R., 27 All., 411.

servant were charged with an offence under section 273 of the Indian Penal Code, but the latter only was convicted. He was fined Rs. 25, and applied in revision to the Additional Sessions Judge of Aligarh, who being of opinion that, on the facts disclosed, the applicant could not rightly be convicted under section 273, referred the case to the High Court under section 438 of the Code of Criminal Procedure with the recommendation that the conviction and sentence should be set aside.

BANERJI, J.—The Deputy Magistrate who convicted the accused in this case clearly misconceived the scope of section 273 of the Indian Penal Code. What is punishable under that section is the sale or offer or exposure for sale of noxious articles *as food or drink* and not the mere sale or offer or exposure for sale of noxious articles. In this case the accused did not sell any article *as food or drink*. He sold to a trader in grain a grain pit containing some 350 maunds of grain, a portion of which was found to be in a state unfit for human consumption. As the sale was for purposes of trade and not as food, no offence under section 273 was committed. Acceding, therefore, to the recommendation of the learned Sessions Judge, I set aside the conviction and sentence, and, acquitting Salig Ram of the offence of which he was convicted, direct that the fine, if paid, be refunded.

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 EMPEROR
 v.
 SALIG RAM.

Before Mr. Justice Banerji.

EMPEROR v. MIAN JAN.*

Criminal Procedure Code, section 403—Charge of an offence under section 414 of the Indian Penal Code—Previous conviction under section 411 in respect of other property stolen at the same time and from the same person.

Held, that where a person had been convicted under section 411 of the Indian Penal Code in respect of certain property stolen on a particular occasion from a particular person, he could not subsequently be tried for an offence under section 414 of the Code in respect of other property stolen on the same occasion from the same person. *Queen-Empress v. Makhani* (1) referred to.

THIS was a reference made under section 438 of the Code of Criminal Procedure by the Sessions Judge of Moradabad

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* Criminal Reference No. 707 of 1905.

(1) (1898) I. L. R., 15 All., 317.