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v.  
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observations made do not help the appellant, because they are based upon the Government of India Notification of 1889 which has now been cancelled. There seems to be no ruling of this Court which is directly in point and it seems unnecessary to refer to any cases which were decided before the cancellation of the Government of India Notification of 1889.

Under the present law it appears that certain anomalies will arise. The court fee in a suit for possession of an entire khewat khata would probably be less than in a suit for possession of half the khata. If the contention for the Crown is accepted as correct, as I think it must be, then the result is that these anomalies must be accepted and the present practice must be altered, unless the Local Government think fit to issue a notification under section 35 of the Court Fees Act on the lines of the Government of India Notification of 1889.

In my opinion section 7(v)(b) is not applicable and there is no notification under section 35 to be taken into account, so section 7(v)(d) applies and the court fee must be paid on the market value of the property in suit. I allow three months to the parties for making good the deficiency in court fees.

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## REVISIONAL CRIMINAL

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Before Mr. Justice Bajpai

EMPEROR v. ASA RAM\*

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March, 2

*Municipalities Act (Local Act II of 1916), sections 241, 293 heading F(a), (b) and (d)—Bye-law requiring licence for sale of milk, dahi etc.—Ultra vires—Power to establish, regulate and inspect markets etc. does not include power to impose and levy licences.*

A bye-law framed by a Municipal Board prohibiting a shop-keeper from selling milk and dahi etc. without previously obtaining a licence from the Board is *ultra vires*.

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\*Criminal Reference No. 823 of 1932.

Under section 298, clause (2), heading F(d) the Board has the power to provide for the establishment, regulation and inspection of markets, etc., and of places for the manufacture, preparation or sale of specified articles of food or drink, but this sub-clause does not speak of requiring or levying licences; and it would be doing violence to the language to hold that a power to make bye-laws for the above-mentioned purposes includes a power to make bye-laws requiring licences and levying fees for the sale of specified articles of food or drink. The power to make bye-laws regarding granting of licences is contained in section 241 and in sub-clauses (a) and (b) of heading F of section 298, but that is confined to the sale of meat, fish, fruits and vegetables and does not apply to the sale of any other articles of food or drink.

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 EMPEROR  
 v.  
 ASA RAM

Messrs. S. K. Dar and S. N. Seth, for the applicant.

The Assistant Government Advocate (Dr. M. Waliullah), for the Crown.

BAJPAI, J. :—By this reference the learned Sessions Judge of Fatehpur recommends that the conviction of the applicant under section 299(1) of the Municipalities Act, Local Act II of 1916, be set aside. The recommendation is opposed by the Municipal Board of Fatehpur. The facts are that the applicant is a shopkeeper having his shop within the municipal limits of Fatehpur, and the charge against him is that he was selling milk and *dahi* without having obtained previously a licence from the Municipal Board. The bye-law which he is said to have infringed is to the effect that “No person shall sell or expose for sale milk, cream, *rabri*, *dahi*, butter, or ghee within the limits of the municipality unless he has been granted a licence in this behalf on payment in advance of an annual fee of Rs.2 for such licence, whether it is of the whole year or for a part thereof.” The courts below have held that there is sufficient evidence on the record to show that the applicant was selling milk or *dahi* at his shop within the municipal limits and it is admitted that he had not taken a licence.

It is, however, contended that the bye-law in question was *ultra vires*. The Municipal Board purports to have

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framed the bye-law under a power given to it by section 298, clause (2), heading F(d) of the Municipalities Act. Under clause (1) of that section a Board can make bye-laws consistent with the Act, and it is argued that looking at the scheme of the Act the legislature intended that the Municipal Board should not levy any licence for the sale of articles like milk and *dahi*. Under section 130 of the Municipalities Act of 1900 the Board had the power by rules to prohibit the sale of *any specified articles of food or drink* except in accordance with the conditions of a licence granted by the Board, and it is clear, therefore, that under the old Act the Municipal Board could levy licence on articles like milk and *dahi*. The power to levy a licence was, therefore, given by the Act itself and not by means of any bye-law framed under the bye-law making power of the Board. Under section 241 of the present Act, it has been laid down that the right of any person to use any place as a *market or shop* for the sale of animals, meat or fish intended or human food, or as a *market* for the sale of fruit or vegetables shall be subject to bye-laws made under heading F of section 298. It would thus appear that the wide powers conferred by section 130 of the Act of 1900 to control and regulate places for the sale of articles of food and drink have been considerably curtailed in this section and section 298F. There is, therefore, some force in the argument advanced on behalf of the applicant that the bye-law in question is not in keeping with the spirit of the Act. Coming to section 298(2), heading F(d), it seems that the Board has the power to provide for the establishment and for the regulation and inspection of markets and slaughter houses, etc., etc., of places for the manufacture, preparation or sale of specified articles of food or drink, and the contention of the Board is that they have framed a bye-law for the levying of the licence for the sale of milk and *dahi* etc., under this power. This particular sub-clause does not either speak of prohibition or of levying of a licence. The power to make rules regarding prohibition

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and the granting of licences is contained in section 298(2), heading F(a) and (b), and that is confined to the sale of animals intended for human food, meat, fish, fruit and vegetables. It would be doing violence to the language to hold that when a Board attempts to make a bye-law for the establishment, and for regulation and inspection, of places for the sale of specified articles of food or drink, the Board has the power to make a bye-law for the levying of licence on specified articles of food or drink. They can provide for the establishment, for the regulation and for the inspection, of places for the manufacture or sale of specified articles of food, but they cannot under the dubious expression "regulate places" charge a fee for licence. "A statutory power conferred upon a Municipal Council to make bye-laws for regulating and governing a trade does not, in the absence of an express power of prohibition, authorise the making it unlawful to carry on a lawful trade in a lawful manner." This was held by their Lordships of the Privy Council in *Municipal Corporation of Toronto v. Virgo* (1). The Board has the power under section 294 of the Municipalities Act to charge a fee to be fixed by a bye-law for any licence, sanction or permission which it is entitled or required to grant by or under this Act, but as I have indicated above, the change in the present enactment shows that they are empowered to require licences to be taken out only for *markets* used for the sale of animals, meat, fish, fruit, or vegetables, and that as regards *shops* the Boards are empowered to require licences to be taken out only in the case of shops used for the sale of animals, meat or fish. They are not empowered to demand a licence in the case of a shop used for the sale of milk, *dahi*, cream, etc. I, therefore, accept the recommendation of the learned Sessions Judge, set aside the conviction of the applicant and direct that the fine, if paid, be refunded.

(1) [1896] A. C., 88.