

chance of avoiding further litigation. In many cases a landlord will give up a substantial part of his claim if the tenant makes a fair offer accompanied with cash. The section is really not penal for the dishonest tenant may always evade it by pleading an absurdly low amount; it is intended to benefit the honest tenant and the honest landlord.

*Appeals dismissed.*

## REVISIONAL CRIMINAL.

*Before Bucknill and Ross, J.J.*

MADARAN KASSAB

v.

KING-EMPEROR.\*

*Bihar and Orissa Municipal Act, 1922 (Bihar and Orissa Act VII of 1922), section 259—Commissioners, refusal by, to renew license—failure to give reason, whether makes refusal illegal—Municipality, right of Commissioners to fix limits of.*

Inasmuch as the provisions of section 259, sub-section (2), of the Bihar and Orissa Municipal Act, 1922, themselves supply the only reason for which refusals of certain licenses can be made the omission on the part of the commissioners to give the only reason which they could give for the refusal to renew a license cannot be regarded as making such refusal illegal.

The municipal commissioners have the right to fix the whole area of the municipality as the local limits within which any buisness or trade which they consider offensive or dangerous shall not be established or maintained without a license.

*Syed Mokram Ali v. The Cuttack Municipality*(1), followed.

\* Criminal Revision no. 558 of 1924, from an order of P. C. Maulik, Esq., Subdivisional Magistrate of Dhanbad, dated the 30th of June, 1924, a petition against which was rejected by the judgment of J. W. Houlton, Esq., Additional District Magistrate of Dhanbad, dated the 22nd of July, 1924.

(1) (1912-13) 17 Cal. W. N. 581.

1924.

MAHARAJA  
BAHADUR  
KESHO  
PRASAD  
SINGH  
v.  
TRILOKE  
NATH  
TWARI.

1924.

Dec., 18.

1924.

MADARAN  
KASSAB  
v.  
KING-  
EMPEROR

The facts of the case material to this report are stated in the judgment of Bucknill, J.

*Azizul Fakhruddin*, for the petitioner.

*H. L. Nandkeolyar* (Assistant Government Advocate), for the Crown.

BUCKNILL, J.—This was an application in criminal revisional jurisdiction. It was made by one Madaran Kassab, who is a butcher by trade carrying on his business within the municipal limits of Dhanbad. The applicant was charged with having carried on his trade without license—an offence punishable under the provisions of section 263 of the Bihar and Orissa Municipal Act, 1922. He was convicted and sentenced to pay a fine of Rs. 25 on each charge (of which there were two) and, in default of payment of such fines, to one month's rigorous imprisonment.

The town of Dhanbad is controlled by a municipality which is subject to the Act which I have mentioned above. This Act is a very lengthy one and amongst its provisions is section 259 which deals with the power given to the commissioners of a municipality to prohibit, within such limits as they may think fit, the carrying on of certain offensive or dangerous trades without a license. Amongst these trades is the trade which the applicant carries on, that is to say, not the trade of a butcher, but the skinning or disembowelling of animals and the storing of hides, horns or skins. He (the applicant) himself states that his license, which he used to possess, was for storing hides, horns and skins of the slaughtered animals. The Dhanbad municipality appears to have been incorporated in 1919 and the applicant seems to have, since that year, held a license from the municipality without demur. But on the 24th of March of this year a renewal of his license was refused. It does not appear that any definite reason was given by the commissioners for refusing the renewal; but the only good ground which the commissioners could

have had for refusing the renewal is contained in sub-section (2) of section 259 of the Bihar and Orissa Municipal Act, 1922. This sub-section reads thus :

" A license for any of the purposes mentioned in sub-section (1) shall not be withheld unless the commissioners have reason to believe that the business which it is intended to establish or maintain would be offensive or dangerous to persons residing in or frequenting the immediate neighbourhood."

Now if the commissioners had, in refusing to renew the applicant's license, definitely said that it was an offensive trade (as it undoubtedly is) and that it was offensive to persons residing in or frequenting the immediate neighbourhood (of which there seems in this case adequate evidence), there would, I think, have been no possibility of this application having been contemplated. The applicant, after his license had been refused, continued to carry on his business. A complaint was made and sanction was given by the vice-chairman of the municipality for his prosecution. He was accordingly prosecuted and convicted as I have indicated before and his appeal from the order of the magistrate, by whom he was convicted, to the additional district magistrate was rejected.

Now two points of a preliminary nature may here perhaps be mentioned. It was suggested that there was some irregularity in the sanction which had been accorded by the vice-chairman for the prosecution of the applicant in that it was not definitely stated by the vice-chairman as to of what offences the applicant was alleged to be guilty. I do not think there is any substance in this point in view of the fact that the whole circumstances are set out in great detail in the report, which was made as to the applicant's doings, to the vice-chairman upon which the vice-chairman sanctioned the prosecution.

The second point is that as the refusal of the applicant's license was unaccompanied by any reason, such refusal was illegal. I need hardly say that it would of course have been much more courteous if the municipality had given its only reason which it could

1924.

---

MADARAN  
KASSAB  
v.  
KING-  
EMPEROR.

BUCKNILL, J.

1924.

MADABAN  
KASSAB  
v.  
KING-  
EMPEROR.  
BUCKNILL, J.

give for the refusal of the license, namely, that it was a trade of a character offensive to persons residing in the neighbourhood. But, in pointing out that the provisions of sub-section (2) of section 259 of the Municipal Act themselves supply the only reason for which refusals of these licenses can be made, I think that it must be taken that the commissioners had a right to refuse the renewal of the license and that their omission to give the only reason which they could give for such refusal cannot be regarded as making their refusal illegal.

Now this case has been somewhat complicated and confused by several issues which have perhaps not really very much to do with the prosecution of this individual. In the first place it has been said that the Act contemplates that a municipality should establish its own slaughter-house for animals and that unless and until it does so it cannot prohibit the slaughter of animals within the municipality itself. That would appear to be true enough; but it will be observed that the mere slaughter of animals is not a trade which is in itself one falling within the category of offensive and dangerous trades within the meaning of section 259 of the Municipal Act, 1922. The added fact that, in this case, it is admitted that the Dhanbad municipality has *not* established any slaughter-house under its own control does not, to my mind, affect the position here; for, although the applicant is a butcher, yet skinning or disembowelling of animals is undoubtedly a necessary concomitant to the action of killing, whilst his license was not only for those purposes but also for the storage of hides, horns and skins. The position, therefore, of the municipality as regards the duties of that municipality in the provision of slaughter-houses, which is dealt with in section 279 of the Act, is not material to the matter which is now before this Court's consideration.

Now the second circumstance which has been introduced here relates to the attitude of the

municipality with regard to, not the storage of hides and skins or even the slaughter of animals generally, but with regard to the killing of cattle. It will be observed that under section 259 of the Act it is contemplated that within the limits of the municipality (the commissioners shall fix such local limits as they think fit) no place can be used for one of these offensive or dangerous trades without a license being obtained; and it is noticeable that on the 30th of July, 1923, a resolution was duly passed by the Dhanbad municipality that the whole of the municipality should be fixed as the local limits contemplated under section 259 of the Act within which no trade of the class mentioned in that section could be carried on without any license. That this in itself is permissible there seems to be no doubt. It must be patent to any one that there may be trades which it would be highly undesirable to be allowed to be carried on within the municipality at all; and it may well be that such businesses as tanning or a slaughter-house would be much better situated outside the limits of a town than within its limits. It seems to have been decided in the case of *Syed Mokram Ali v. The Cuttack Municipality*<sup>(1)</sup> that a municipality has the right to declare the local limits contemplated under such circumstances as are given in section 259 of the Act to be the whole area of the municipality.

Now the applicant's application for renewal of his license came up before the commissioners on the 24th of March, 1924. On the same day the vice-chairman appears to have moved a resolution at the meeting to the following effect:

"In view of the fact that our country is suffering a great loss and innumerable miseries by the indiscriminate slaughter of cows and other animals of the bovine species, I propose that the existing slaughter-houses should be abolished and no license should be granted for that purpose in future."

The commissioners appear to have passed this resolution; and, after that resolution had been passed,

1924.

---

MADARAK  
KASSAB  
v.  
KING-  
EMPEROR.

BUCKNILL, J.

---

(1) (1912-13) 17 Cal. W. N. 581.

1924.

MADARAN  
KASSAB

v.

KING-  
EMPEROR.

BUCKNILL, J.

the applicant's petition for the renewal of his license was rejected; it is said by a majority of one vote.

Now it has been argued strenuously that the real reason why the applicant was refused a renewal of his license was because of this resolution and, indeed, it may be the fact that that was so. The refusal of a license, which he had hitherto received for some years without demur, no doubt is a hardship to the applicant who, I take it, is a Muhammadan butcher and admittedly kills cattle such as cows and oxen: doubtless he kills other animals as well such as goats and sheep. It is difficult, however, to see how, if the commissioners had a good reason for refusing the applicant's license, the fact that what might have moved in their minds was not in itself a good reason could be held to render their refusal illegal. Beyond the passage of the resolution there was nothing at this stage when the refusal was made to show whether it was the sentimental consideration contained in that resolution which operated on their minds or, whether, as has been suggested, there was basically an idea that the applicant was carrying on a trade which was offensive within the meaning of sub-section (2) of section 259 of the Municipal Act.

Now it is contended by the learned Vakil who has appeared for the applicant that this is a case of very great hardship. I am not in a position to say whether it is one of hardship or not. I think that the conviction is legal and, I think, it must be upheld. I should further point out that in so saying I have taken the occasion to look into the evidence and I there find considerable testimony quite ample to show that the trade or business which the applicant was carrying on was in fact an offensive one within the meaning of sub-section (2) of section 259 of the Act.

Now it is asked what remedy has the applicant and have others who may be situated in a similar position in this or any other municipalities; for, it is pointed out, that although there may be possibly

a power in municipalities to prohibit, by the refusal of these licenses, the killing of cattle throughout the municipal area, such procedure, based as it may be upon religious or sentimental grounds, is not such as was ever contemplated under any of the provisions of the Bihar and Orissa Municipal Act. I think, however, that such questions have very little to do with the matter. We have to construe the Act as we find it. If there is power given by the Act to the municipalities to do certain things, obviously they are in a position to do them unless the Act is changed or unless the commissioners bring themselves within the provisions of certain sections to which I now propose to draw attention.

1924.

---

 MADARAN  
 KASSAB  
 v.  
 KING-  
 EMPEROR.

BUCKNILL, J.

It may be said at once that the applicant has endeavoured to draw public attention to his position. He has applied in the first place to the additional deputy commissioner asking that he should take action under section 383 of the Bihar and Orissa Municipal Act. This section gives the district magistrate power to suspend the execution of any order made by the commissioners of any municipality where he thinks that its effect might be to cause a serious breach of the peace or to cause serious injury to the public or to any class or body of persons. The district magistrate, however, refused to entertain the application. He, in the course of a long decision, did not think that the effect of this resolution by the municipality of Dhanbad would be likely to cause any of the results which would have justified him in taking action under the provisions of the section which the applicant has invoked. The applicant, also, I understand, applied to the district magistrate of Manbhum who also refused to take any steps in the matter.

Now it was suggested that there were other remedies. In the first place it was thought by the learned Assistant Government Advocate that the applicant might have appealed to the board of commissioners contemplated under the provisions of

1924.

MADARAN  
KASSAB  
v.  
KING-  
EMPEROR.

BUCKNILL, J.

section 373 of the Municipal Act, which can be called into being for the purpose of hearing the complaints of any person aggrieved by any prohibition, notice or order made by the commissioners under powers conferred upon them by virtue of certain provisions of the Act. Now it is curious that although in some corresponding sections of similar type to sub-section (2) of section 259 of the Act, the board is expressly empowered to deal with matters which are contemplated under those sections, yet for some reason (which may perhaps be a slip) sub-section (2) of section 259 is not included within the purview of section 373 of the Act. It therefore appears as if the provisions of section 373 were not perhaps available to the applicant as a means of redress.

There is, however, still a further section which gives the local Government the right to intervene in certain circumstances. These are sections 384 and 385 of the Act. It is conceivable that if it was thought necessary that there should be either public slaughter-houses within the confines of a municipality or, that in the alternative, the municipality should provide a slaughter-house itself within or outside the municipal limits, the provisions of section 384 of the Act might be brought into operation. It is also possible that if it could be said that the refusal to grant licenses under the provisions of section 259 of the Act was carried to such an extent as to constitute an excess of the use or an abuse of the use of the commissioners' powers, that the provisions of section 385 might be brought into operation. It must be admitted that merely on such religious or sentimental grounds as are contained in the resolution of the Dhanbad municipality licenses under section 259 of the Act could not be refused.

It is of course quite open to the applicant to draw the attention of the local Government to what he conceives is in fact a grievance and a hardship affecting not only himself but a class of respectable persons in the municipality. Whether there really is any serious



hardship or not and whether any case can be made out for the interference by the local Government under the powers which it possesses seems of course a matter which depends in each case upon the evidence which can be produced to justify such a contention. All I can say in this case is that according to the decision of the additional deputy commissioner of Dhanbad, dated the 7th of April, 1924, declining to interfere or to exercise any of his powers under section 383 of the Act, it would appear that he was well satisfied with the decision to refuse this applicant's license and, indeed, was of the opinion that the general view which the municipality had taken in refusing this and other licenses for offensive trades within the confines of the municipality was a sound and sensible one. At the same time, one cannot help feeling that it is quite natural that the applicant felt somewhat aggrieved at the sudden refusal to renew a license under which he was for some years carrying on his business.

The case is one which has been considered as a test case. I think that, in view of the somewhat equivocal manner in which the municipality appears to have acted, that is to say, in giving no reason or appearing perhaps to give a *wrong* reason for a right act, the penalty which has been inflicted upon the applicant is altogether too high. It was desirable that he should have taken some other course and, instead of deliberately flouting the order of the municipality and carrying on his business without a license, he might have chosen to try and obtain one of the remedies to which I have drawn attention or, possibly, have commenced some civil proceedings to enable him to obtain what he wants. In these circumstances, I think, that it is only fair that the fine in each case here should be reduced to Re. 1. I trust that the applicant will clearly understand that in thus reducing the fines I am not expressing any satisfaction at his action. I do, however, feel that there is some possible danger that resolutions of the character which have been passed (if they are made the ground for refusing

1924.

---

 MADARAN  
 KASSAB  
 v.  
 KING-  
 EMPEROR.

BUCKNILL, J.

1924.  
 MADARAN  
 KASSAB  
 v.  
 KING-  
 EMPEROR.  
 BUCKNILL, J.

licenses of this nature) are not only worthless as reasons for such refusals but in themselves are incapable of having any legal effect; and, in addition, might I think give rise not only to some hardship in certain instances but also possibly to some disturbance between those whose ideas are against the slaughter of cattle and those whose ideas are not against the slaughter of cattle.

The application, therefore, must be rejected and the convictions will stand; but the penalties will be reduced to the amounts which I have already indicated.

Ross, J.—I agree.

S. A. K.

*Application rejected.*

*Penalty reduced.*

---

## APPELLATE CIVIL.

---

*Before Jwala Prasad and Adami, J.J.*

SHIB DUTTA SINGH

v.

SHEIKH KARIM BAKISH.\*

*Code of Civil Procedure, 1908 (Act V of 1908), Order XXII, rule 4(3)—Abatement of appeal—death of a respondent—application for substitution of some of the heirs, appellant being unaware of the existence of others—Limitation.*

Wehr an appellant applies within time for the substitution of such of the heirs of a deceased respondent as he *bona fide* believes to be in existence the appeal does not abate under Order XXII, rule 4(3), Civil Procedure Code, 1908, even though in fact there are in existence other heirs of the respondent of whose existence the appellant is unaware.

*Ram Anuj Sewak Singh v. Hingu Lal*(1), *Krishnaji Janardon v. Murrarray and Narsingray*(2), followed.

---

\* In the matter of an application for substitution in Second Appeal no. 932 of 1922.

(1) (1931) I. L. R. 3 All. 517.

(2) (1938) I. L. R. 12 Bom. 48.