

1933

*In re* THE  
COMMISSIONER OF  
INCOME-TAX,  
BURMA  
v.  
THE  
BENGALUR  
URBAN CO-  
OPERATIVE  
CREDIT  
SOCIETY,  
LIMITED.  
PAGE, C.J.

the contention that the words "income" "profits" and "gains" in the Income-tax Act bear the same meaning. The Income-tax authorities, upon such material as is or may be placed before them, must now determine whether or not the income accruing to the society under items I, II, and/or IV forms part of the profits of the business carried on by the society. That question, in our opinion, has not yet been fully ventilated, and after determining it the assessment will be made in accordance with the construction that the Court has put upon the term "profits" as used in the notification. I would answer the question propounded in this sense.

DAS, J.—I agree.

MYA BU, J.—I agree.

### CRIMINAL REVISION.

*Before Sir Arthur Page, Kt., Chief Justice, and Mr Justice Mya Bu.*

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July 19.

### KING-EMPEROR v. KARAPAN AND OTHERS.\*

*Burma Municipal Act (III of 1898), ss. 124 (a) and 142 (r)—Burma Municipal (Public Health) Amendment Act (I of 1931), ss. 9, 10—Bye-laws made under s. 142 (r)—Repeal of s. 142 (r)—Re-enactment of provisions of clause (r) as s. 124 (a)—General Clauses Act (I of 1898), s. 24—Force of the old bye-laws.*

Clause (r) of s. 142 of the Burma Municipal Act, 1898 was deleted by s. 10 of Act I of 1931, but its provisions in identical terms were re-enacted as s. 124 (a) of the former Act by s. 9 of the latter Act. Under s. 24 of the General Clauses Act any bye-laws made under the repealed section continue in force unless and until superseded by bye-laws made under the new section.

In the absence of fresh bye-laws made under s. 124 (a) of the Burma Municipal Act, a person is liable to be convicted for keeping a larger number of cattle in his compound than is permitted under the bye-law made by a Municipal Committee under s. 142 (r) of the Act.

*Karapan Chettyar v. King-Emperor*, Cr. Rev. 198B of 1932, H.C. Ran.—*overruled.*

\* Criminal Revision No. 149B of 1933 from the orders of the Township Magistrate of Myingyan in Criminal Regular No. 29 of 1933.

A. *Eggar* (Government Advocate) for the Crown. S. 142 (*r*) of the Burma Municipal Act, 1898, was repealed by s. 10 of the Burma Municipal (Public Health) Amendment Act, 1931, but its provisions were re-enacted in s. 124 (*a*) by the amending Act. Any bye-laws made under the repealed section continue to be valid until superseded by fresh bye-laws made pursuant to the new section; see s. 24 of the General Clauses Act. No fresh bye-laws have been so made, and a conviction for keeping more cattle than is permitted by the old bye-law cannot be questioned on the ground that it has now become *ultra vires*.

P. B. *Sen* for first respondent was not called upon.

PAGE, C.J.—In this case the respondents were charged before the Township Magistrate, Myingyan, with contravening a bye-law of the Myingyan Municipal Committee of the 13th of November, 1916, because they had kept in the compound of their house a larger number of cattle than under the bye-law they were permitted to do. The Township Magistrate, Myingyan, was of opinion that the bye-law under consideration was authorized under s. 124 (*a*) of the Burma Municipal Act, but he dismissed the complaint upon the ground that it had been held by Cunliffe J. in Criminal Revision No. 198B of 1932, a case in which it so happened that the three respondents were the accused, that inasmuch as the bye-law in question had been made pursuant to s. 142 (*r*) of the Burma Municipal Act, and by s. 10 of Act I of 1931 s. 142 (*r*) of the Burma Municipal Act had been deleted, there was no statutory provision in force authorizing the making of the bye-law. The conviction of the respondents

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and the sentence in that case were set aside upon the ground that "people cannot be convicted under enactments which are no longer in force as law".

In Criminal Revision No. 198B of 1932 no learned advocate was instructed to appear on behalf of the Crown, as I think he ought to have been, and the attention of the learned Judge was not called to s. 124 (a) of the Burma Municipal Act, which was inserted in the Burma Municipal Act by s. 9 of Act I of 1931. S. 124 (a) and s. 142 (r) are in identical terms, and by s. 24 of the General Clauses Act (I of 1898)

"where an enactment is repealed and re-enacted by an Act with or without modification, then unless it is otherwise expressly provided, any appointment, notification, order, scheme, rule, form, or bye-law made or issued under the repealed Act shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, rule, form or bye-law made or issued under the provisions so re-enacted."

We are informed by the learned Government Advocate, who appears in support of the application in revision, that no bye-law has been enacted under s. 124 (a). It follows therefore that, notwithstanding the repeal of s. 142 (r) by s. 10 of Act I of 1931, the bye-law passed by the Myingyan Municipal Committee on the 13th of November 1916 at all material times, for the purposes both of Criminal Revision 198B of 1932 and of the present case, was in force as law.

The result is that the ground upon which the Township Magistrate in the present case dismissed the complaint against the respondents was not in accordance with law. In normal circumstances we should have accepted the application in revision

under s. 436, Criminal Procedure Code, and should have directed further enquiry by the Magistrate into the complaint which he had dismissed under s. 203. In the present case, however, as the learned Government Advocate fairly and properly pointed out, the respondents having regard to the fact that Cunliffe J., in the previous case in which they were acquitted, had held that the bye-law under consideration was no longer in force might reasonably contend that in keeping more cattle in their house than would have been permitted under the bye-law they did not think that they were committing any offence as they apprehended that the bye-law was not in force.

In these circumstances, in the exercise of our discretion, we do not propose to interfere with the order under revision, and the application is dismissed.

MYA BU, J.—I agree.

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