

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

1933

Feb. 13.

C. T. MUDALIAR

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MAYMIYO MUNICIPAL COMMITTEE.\*

*Burma Municipal Act (III of 1898), ss. 142, 148—Table of offences under the Act—Breach of a bye-law relating to licenses—Breach not included in Table of Offences—Breach whether a punishable offence.*

S. 148 of the Burma Municipal Act specifically provides for the punishment of the offences therein referred to, and those offences relate to breaches of "any of the sections, sub-sections or clauses of the Act mentioned in the first column of the following table or of any rule or bye-law made thereunder." S. 142, dealing with licenses, is omitted from the first column of the table; and consequently a breach of a bye-law passed under s. 142 (e) is not an offence punishable under s. 148.

*Broken v. National Provident Institution, (1921) 2 A.C. 222—referred to.*

*Tambe* for the applicant. S. 148 of the Burma Municipal Act, as amended by Burma Act I of 1931, makes punishable the breaches of those sections (and the bye-laws made thereunder) that are mentioned in the Schedule to that section. S. 142 does not find a place in s. 148, and an offence under s. 142 (e) therefore is not punishable thereunder.

*A. Eggar* (Government Advocate) for the respondent. S. 142 is an important section, and the omission to mention that section in s. 148 is probably due to an error in drafting. Where the main object and intention of a statute are clear it must not be reduced to a nullity by the draftsman's unskilfulness, except in the case of the absolute intractability of the language used. See Maxwell, *Interpretation of Statutes* (7th Edition), 198; *Ram-Bharose v. Ganga Singh* (1). The object of the Act is clear, and it is difficult to imagine that s. 142

\* Criminal Reference No. 12 of 1933 arising out of Criminal Revision No. 145B of 1932 of this Court at Mandalay.

(1) I.L.R. 54 All. at p. 165.

was intentionally omitted. It is no doubt true that it is not the duty of a Court to supply a lacuna or defect appearing in an enactment, but in choosing between two competing constructions it is not irrelevant to consider that one of them is consistent with the obvious purpose of the Act, while the other would render the statute capricious or abortive. *Brown v. The National Provident Institution* (1). No doubt penal statutes are to be strictly construed, but when the above rule can fairly operate, it should be applied.

Moreover the "omnibus" clause in the second column of the Schedule to s. 148 renders all offences punishable for which no separate penalty is therein provided.

PAGE, C.J.—The question referred is "whether s. 148 of the Burma Municipal Act contains any provisions for the punishment of the breach of a bye-law made under s. 142 (e) of that Act."

On the 20th of June 1932, one C. T. Mudaliar was fined Rs. 50 by the Subdivisional Magistrate of Maymyo for the breach of a bye-law made by the Maymyo Municipality under s. 142 (e) of the Act. S. 142 (e) is in the following terms :

"142. The Committee may, from time to time, at a special meeting, make bye-laws—

(e) for rendering licenses necessary for pawn-brokers and determining by public auction or otherwise the amount to be paid for any such license and the conditions subject to which they shall be granted and may be revoked."

An application for revision of the order of the 20th June 1932 was filed, and the application was heard by Otter J., who died before the application was decided. The application was then re-heard by Mosely J., who expressed the opinion that the

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Subdivisional Magistrate of Maymyo had no jurisdiction to order the applicant to pay a fine for the breach of a bye-law made under s. 142 (2). The Subdivisional Magistrate, in passing the order under consideration, purported to act under s. 148 of the Burma Municipal Act, 1898 (as amended by s. 12 of Burma Act I of 1931). S. 148 runs as follows :

"Whoever—

- (a) contravenes, or fails to comply with, any provision of any of the sections, sub-sections or clauses of this Act mentioned in the first column of the following table, or of any rule or bye-law made thereunder ; or
- (b) fails to comply with any direction lawfully given to, or requisition lawfully made upon him, under any of the said provisions shall be punished for each such offence with fine which may extend to the amount mentioned in that behalf in the third column of the said table."

S. 142 does not find a place in the first column of the table annexed to s. 148, but at the end of the table in the second column appears the following sentence :

"Notices, directions, requisitions and bye-laws generally for carrying out the purposes of this Act, for the contravention of which no penalty is specifically provided therein."

In *Brown v. National Provident Institution* (1) Lord Cave observed :

"It is no doubt true that if on the true construction of a statute, not excluding a taxing statute, a lacuna or defect appears, it is no part of the duty of the Court to supply the deficiency ; but in choosing between two competing constructions, each of them possible, it is not irrelevant to consider that one of them is consistent with the obvious purpose of the Act, while the other would render the statute capricious or abortive."

On behalf of the applicant it is contended that, whatever may have been the intention of the

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(1) (1921) 2 A.C. 222 at p. 241.

Legislature, it has not thought fit to include s. 142 in the first column of the table annexed to s. 148, and therefore that s. 142 is outside the ambit of s. 148. On the other hand it is contended by the learned Government Advocate that the "omnibus" sentence at the end of the second column of the table is wide enough to include the breach of a bye-law passed by the Municipality under s. 142 (*e*). That, of course, is true, but whatever may have been the intention of the Legislature, in my opinion, having regard to the language in which s. 148 is couched, there is only one reasonable construction that can be placed upon the terms of the section. The section specifically provides for the punishment of the offences therein referred to, and those offences relate to breaches of "any of the sections, sub-sections or clauses of this Act mentioned in the first column of the following table, or of any rule or bye-law made thereunder;" and so soon as it becomes apparent that s. 142 is omitted from the first column of the following table, it follows that a breach of a bye-law duly passed under s. 142 (*e*) is not an offence punishable under s. 148. It appears to me that this is a *casus omissus*, and that in the public interest the matter should be set right by the Legislature. As the law stands at present, in my opinion, the conviction and sentence passed upon the applicant cannot be sustained.

The result is that the application in revision is accepted; the conviction and sentence passed upon the applicant are set aside and the fine, if paid, will be refunded.

MYA BU, J.—I agree.

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