

cannot be matter of present proof. The continuing failure must, therefore, be matter of later and separate inquiry and proof. The Court, therefore, sets aside the sentences of further fine of Rs. 5 per day.

1897.
 QUEEN-
 EMPRESS
 v.
 WILLIAM
 PLUMMER.

CRIMINAL REVISION.

Before Mr. Justice Parsons and Mr. Justice Ranade.

*IN RE RAHIMU BHANJI.**

*Municipality—Bombay District Municipal Act (Bom. Act VI of 1873),
 Sec. 84—Taxation—Duty on goods imported within municipal limits—
 “Imported”—Meaning of the word.*

1897.
 June 24.

A rule of the Thána Municipality provided for the levy of octroi duty on certain articles “when imported within the Thána Municipal District.”

Held, that goods merely passing through the municipal district in the course of transit to Bombay were “imported” within the meaning of the rule and were, therefore, liable to duty.

APPLICATION under section 435 of the Criminal Procedure Code (Act X of 1882).

The Municipality of Thána passed a rule or bye-law imposing an octroi duty on certain articles “when imported within the Thána Municipal District.” The accused was prosecuted (under section 84 of Bom. Act VI of 1873) for refusing to pay the duty imposed on certain goods which, it was alleged, he had imported. He contended that inasmuch as the goods in question merely passed through the district in the course of transit from the village of Válva to Bombay they were not “imported” within the meaning of the rule, and were not, therefore, subject to duty.

It was admitted by the prosecution that the goods passed out of municipal limits on the same day on which they came within those limits.

The Magistrate held that, though the goods merely passed through the municipal limits, they were “imported” within those limits, and were, therefore, liable to pay the duty.

Against this order the accused applied to the High Court under its revisional jurisdiction to set aside the Magistrate’s order.

* Criminal Revision, No. 55 of 1897.

1897.

Trimbak R. Kotwal for the accused.IN RE
FAMIMU
BIANSI.*M. F. Bhat* for the municipality.

Ráo Bahádur *Vasudev J. Kirtikar*, Government, Pleader, for the Crown.

PER CURIAM:—We must give the word “imported”, in the rules of the Thána Municipality, its ordinary meaning. As soon, therefore, as the goods in the present case passed within the limits of the municipality, they were imported, that is, brought within those limits from a place without its boundaries. The only remedy of the applicant, if he exports them, whether that is done on the same day or at some other more distant time, is to claim a refund of the duty paid. We reject the application.

Application rejected.

CRIMINAL REVISION.

Before Mr. Justice Parsons and Mr. Justice Ranade.

IN RE DEVIDIN DURGAPRASAD.*

1897.

July 15.

Criminal Procedure Code (Act X of 1882), Ss. 517 and 523—Disposal of property produced before a Court during an inquiry—Restoration of previous possession, if no offence is committed.

Section 517 of the Code of Criminal Procedure (Act X of 1882) is the only section under which a Court can make an order for the disposal of property produced before it in the course of an inquiry or trial. And it has jurisdiction to pass the order only if the case falls within the section, that is, if it is property “regarding which an offence appears to have been committed, or which has been used for the commission of an offence.” Otherwise, the only legal order which the Court can pass is one restoring the previous possession.

A Presidency Magistrate, finding the evidence not sufficient to warrant a conviction, discharged the accused but ordered the property which had been produced during the inquiry to be detained until the title of the rightful owner was proved before a Civil Court. On a subsequent day he, apparently acting under section 523 of the Code, ordered the property to be delivered to the complainant, from whose possession it had not been taken.

Held, that both the orders were *ultra vires*. The Magistrate was, therefore, directed to dispose of the property in a legal manner. If he found that the case fell within section 517, he should pass such order as he thought fit; if he found that it did not, he must restore the previous possession.

* Criminal Revision, No. 137 of 1897.