

of the Succession Act with reference to the 8th clause is applicable to clause 13. It may be doubted whether the words which follow the direction, that the sons may divide and take the whole of the residue in equal shares, are so clear as to show that only a restricted interest was intended to be given to them. In their Lordships' opinion, clause 18 is that which is now applicable to the residue, and there is no difficulty in its construction. It gives the residue to the sons in equal shares absolutely, except in the case of the subsequent birth of a son or a daughter. Their Lordships cannot agree with the appellate Court in thinking that the two clauses must be read together and reconciled and must be treated, not as antagonistic, but as mutually explanatory of each other. They are intended to provide for different circumstances. They will humbly advise Her Majesty to reverse the decree of the High Court, except the order therein as to the costs of the suit, and to declare that Damodardas and Dayabhai each took an absolute interest in a half share of the residuary estate of the testator. The costs of this appeal of both parties, to be taxed as between solicitor and client, will be paid out of the property of the testator.

Appeal allowed.

Solicitors for the appellant:—Messrs. *Payne and Luttey*.

Solicitors for the respondent, Dayabhai Tapidas:—Messrs. *T. L. Wilson & Co.*

Solicitors for the respondent, Karsandas Dayabhai:—Messrs. *T. L. Wilson & Co.*

CRIMINAL REFERENCE.

Before Mr. Justice Jardine and Mr. Justice Romé.

QUEEN-EMPRESS *v.* WILLIAM PLUMNER.*

1897.

February 4.

Criminal procedure—Continuing offence—Cantonments Act (XIII of 1889), Sec. 26—Rule 2 of the Rules made under Section 26—Additional fine for continuing offence.

The additional fine referred to in Rule 2 of the Rules framed under section 26 of the Cantonments Act, XIII of 1889, is not only to be imposed *after* the first

* Criminal Reference, No. 137 of 1896.

1897.

QUEEN-
EMPRESS
v.
WILLIAM
PLUMNER.

conviction, but is to follow proof that failure is persisted in. The additional fine cannot be imposed as a threat in case of possible persistence, which, being in the future, cannot be made matter of present proof. The continuing failure must be matter of later and separate inquiry and proof.

In re Limbaji⁽¹⁾ followed.

REFERENCE under section 438 of the Code of Criminal Procedure (Act X of 1882).

The accused was charged under the cantonment regulation⁽²⁾ framed under section 26 of the Cantonments Act (XIII of 1889) with having failed to rebuild latrines according to a certain plan in houses Nos. 9 and 10, Queen's Garden, Poona.

He was convicted by a Cantonment Magistrate at Poona and sentenced to pay, in respect of each of the said houses, a fine of Rs. 15 and a further fine of Rs. 5 for each day the latrine remained unbuilt.

The District Magistrate referred to the High Court the question whether the additional fine for a continuous offence was legal.

The reference was heard by a Division Bench (Jardine and Ranade, JJ.).

PER CURIAM:—The reasoning in *In re Limbaji*⁽¹⁾ applies to "continuing failure" under Rule 2 of the General Order of the Government of India, No. 723, dated 19th June, 1896, (for which see the *Bombay Government Gazette*, Part I, of 1896, p. 615). This rule shows in plain language that the additional fine is not only to be *after* the first conviction, but is to follow proof that the failure is persisted in. The additional fine cannot be imposed as a threat against possible persistence, which, being in the future,

(1) See *ante* p. 766.

(2) 1. The Cantonment authority may, by notice in writing:—

(3) if any plan for the construction of private latrines or urinals has been approved by the Cantonment authority—

(f) require any person having the control of a private latrine or urinal to rebuild or alter the same in accordance with such plan.

(2) Whoever fails to comply with any notice issued under Rule 1 shall be punishable with fine which may extend to fifty rupees, and in case of a continuing failure with an additional fine which may extend to five rupees for every day after the date of the first conviction on which the failure is proved to have been persisted in (see *Bombay Government Gazette* for 1896, Part I, p. 615).

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.