

other than the Bank of Bombay should bear their own costs. My reason for this is that the plaintiff was extremely careless with regard to the shares, debentures and Government promissory notes left by his father, and that this carelessness in great measure led to the forgeries being committed. I do not think he was free from all blame as the plaintiff was in *Barlon v. North Staffordshire Railway Co.*⁽¹⁾, which in that case was a circumstance which inclined the Court to give the plaintiff his costs.

As to the Bank of Bombay, I am of opinion that they must pay their own costs and also pay one day's costs of the plaintiff of the hearing, as they did not adopt the same line as the Allbless and Petit Trustees, but contested the plaintiff's case as to the forgeries to no purpose, and took up quite one day's hearing in that way.

I find on the issues (His Lordship stated the findings and concluded:—) and pass a decree for the plaintiff in the terms above set out.

Attorneys for the plaintiff:—Messrs.³ *Thakurdas, Dharamsi and Cama.*

Attorneys for the defendants:—Messrs. *Crawford, Brown and Co.*; *Mulji and Raghavji*; *Nanu and Hormasji*; *Craigie, Lynch and Owen*; and Mr. *Jamsetji Cursetji Cama.*

(1) (1888) 38 Ch. D., 458 at p. 467.

CRIMINAL REVISION.

Before Mr. Justice Parsons and Mr. Justice Ranade.

*IN RE KHIMJI JAIRAM.**

*Municipality—Bombay City Municipal Act (Bombay Act III of 1883), Sec. 249—
Notice to construct urinals in a particular place in the owner's premises—Illegality of such notice.*

Accused was convicted and fined Rs. 50 for not complying with a notice issued by the Municipal Commissioner of Bombay under section 249 of Bombay Act III of 1883. The notice required him to construct a urinal of six compartments in the open space inside the entrance gateway to the Cloth Market from Champawady, and a water-closet in the corner of the entrance from 1st Ganeshwady near the fire-engine station.

* Criminal Revision, No. 109 of 1899.

1899.

HUNSEAJ
v.
RUTTONJI,

1899

July 12.

1899.

IN RE
KHMJI
JAIRAM.

Held, reversing the conviction and sentence, that the notice was *ultra vires*, inasmuch as it required the accused to construct urinals in a particular place in his premises.

APPLICATION under section 435 of the Code of Criminal Procedure (Act V of 1898).

The accused was the managing director of a cloth market (called the New Piece Goods Market) in Bombay.

On the 2nd December, 1898, the Municipal Commissioner of Bombay issued a notice to the accused under section 249⁽¹⁾ of the Bombay Municipal Act III of 1888.

The notice required the accused to construct a urinal of six compartments in the open space inside the entrance gateway to the cloth market from Champawady and a water-closet of four seats in the corner of the entrance from 1st Ganeshwady near the fire-engine station.

The accused was convicted and sentenced to pay a fine of Rs. 50 by J. S. Slater, Chief Presidency Magistrate, for not complying with the notice.

Against this conviction and sentence the accused applied to the High Court under its revisional jurisdiction, contending (*inter alia*) that section 249 of Bombay Act III of 1889 did not authorize the Municipal Commissioner to require the accused to erect urinals in a *particular* spot in the cloth market.

Scott for the applicant.

Crawford for the Municipality.

PER CURIAM:—The notice being admittedly *ultra vires* of section 249 of the Bombay Municipal Act, 1888, in as much as it requires the applicant to construct urinals in a particular place in his premises, the Court reverses the conviction and sentence, and orders the fine paid to be refunded.

(1) Section 249 of Bombay Act III of 1888 provides as follows:—"Where it appears to the Commissioner that any premises are, or are intended to be used, as a market, the Commissioner may, by written notice, require the owner or occupier of the said premises to construct a sufficient number of water closets or latrines or privies and urinals for the separate use of each sex."