

1910.  
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it happens to be worked by the same power which it was proposed to employ in the permitted factory. We are, therefore, of opinion that the acquittal should be set aside, and that the respondent should be convicted of the offence charged. He has undertaken, through his Counsel, not to work the flour mill beyond to-day, without permission under section 390, and in these circumstances we think that a nominal fine of one rupee will be sufficient.

*Appeal allowed.*

R. R.

## APPELLATE CRIMINAL.

*Before Mr. Justice Batchelor and Mr. Justice Knight.*

EMPEROR v. RAJA BAHADUR SHIVLAL MOTILAL.\*

1910. 7  
 January 19.

*City of Bombay Municipal Act (Bombay Act III of 1888), section 377†—  
 Municipal Commissioner—Neglected premises—Notice to remove nuisance  
 —Magistrate's discretion.*

The accused was served with a notice of requisition under section 377 of the City of Bombay Municipal Act, 1888, requiring him to remove filth, rubbish, heaps of *cutchera* and stable refuse from a large piece of vacant land belonging to him. He failed to comply with the requisition, and a prosecution was instituted against him. The Magistrate viewed the premises; and having so viewed them, but without hearing any evidence, acquitted the accused, as the premises did not appear to him to be in a filthy condition:—

\* Criminal Appeal No. 453 of 1909.

† Section 377 runs thus:—

(1) If it shall appear to the Commissioner that any premises are overgrown with rank and noisome vegetation or are otherwise in an unwholesome or filthy condition or, by reason of their not being properly enclosed, are resorted to by the public for purposes of nature, or are otherwise a nuisance to the neighbouring inhabitants, the Commissioner may, by written notice, require the owner or occupier of such premises to cleanse, clear or enclose the same, or, with the approval of the standing committee, may require him to take such other order with the same as the Commissioner thinks necessary;

(2) Provided that, in so far as the unwholesome or filthy condition of such premises or such nuisance as abovementioned is caused by the discharge from or by any defect in the municipal drains or appliances connected therewith, it shall be incumbent on the Commissioner to cleanse such premises.

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*Held*, that the premises having appeared to the Commissioner in a filthy condition, the notice was validly issued under section 377 of the City of Bombay Municipal Act, 1888; and that there having been a non-compliance with the notice, the offence was complete.

*Held*, further, that the Magistrate was wrong in acquitting the accused on the sole ground that the premises did not appear to him to be in such a condition as to justify the issue of a notice under section 377.

Section 377 of the City of Bombay Municipal Act, 1888, enacts that the only condition precedent to the valid issue of a requisition is that it shall appear—not to the Magistrate but—to the Commissioner that the premises are in the condition specified in the section.

CRIMINAL appeal by the Government of Bombay, from the order of acquittal passed by P. H. Dastur, Second Presidency Magistrate of Bombay.

The Municipal Commissioner of the City of Bombay issued a notice under section 377 of the City of Bombay Municipal Act, 1888, calling upon the accused Raja Bahadur Shivilal Motilal to remove the filth, rubbish, heaps of *cutchera* and stable refuse from a large piece of vacant land belonging to him.

The accused failed to comply with the requisition. He was therefore prosecuted.

The Magistrate heard the complainant, recorded the accused's plea of not guilty, and postponed the further hearing as he was desirous of personally viewing the premises. The Magistrate did so: and on the next day of hearing, without hearing any evidence, acquitted the accused, remarking: "The heap was seen by me and it is not *cutchera* but only earth."

As a matter of fact, however, though the accumulation of the rubbish in question had outwardly the appearance of an undulating mound of earth of varying height extending for above thirty yards along the length of the western side of the vacant land, it was found on inspection by the Municipality to be nothing less than a heap of house and stable refuse in all stages of decomposition and that there were at least eighty cart-loads of such refuse in the said heap. The evidence of these facts was available to the complainant at the hearing and the Magistrate was also informed of it.

The Public Prosecutor appealed to the High Court against the order of acquittal.

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SHIVLAL  
MOTILAL.

*Strangman*, Advocate General, with *Nicholson*, Public Prosecutor, for the Crown.

*Setalvad*, with *Bhaishankar*, *Kanga* and *Girdharlal*, for the accused.

BACHELOR, J.:—The respondent here was served with a notice or requisition under section 377 of the Bombay Municipal Act III of 1888, requiring him to remove filth, rubbish, heaps of *cutehara* and stable refuse from a large piece of vacant land belonging to him. The requisition was not complied with and a prosecution was instituted in the Court of the Presidency Magistrate. The learned Magistrate, on the 25th of May, adjourned the case so that he himself might view the premises in question, and having so viewed them, but without hearing any evidence, acquitted the respondent, recording his reason for that acquittal in these words: "The heap was seen by me and it is not *cutehara* but only earth." On this appeal it is represented to us by the Advocate General, on behalf of the Municipal Commissioner, that though the accumulation of the rubbish in question had outwardly the appearance of an undulating mound of earth of varying height extending for about 30 yards along of the western side of the vacant land, it was found, on inspection by the Health Department to be nothing less than a heap of house and stable refuse in all stages of decomposition and that there were at least eighty cart-loads of such refuse in the said heap, that evidence of these facts was available and that the learned Magistrate was so informed. But however that may be, the respondent's acquittal cannot be sustained. The learned Magistrate, I think, has somewhat misread section 377 of the Municipal Act. He has read it as if it enacted that certain consequences should ensue when the premises appeared to the Magistrate to be in a filthy condition. But that is not so. As I understand the section, it enacts that the only condition precedent to the valid issue of a requisition is that it shall appear, not to the Magistrate, but to the Commissioner, that the premises are in such a condition. It is not denied here that these premises did appear to the Commissioner to be in the condition specified; and the notice was, therefore,

validly issued under section 377. That being so, the Magistrate was, I think, wrong in acquitting the accused on the sole ground that the premises did not appear to the Magistrate to be in such a condition as to justify the issue of a notice under the section. It is admitted before us now that the Municipal Commissioner's order has not been complied with. I am, therefore, of opinion that the acquittal should be set aside and that the respondent should be convicted under section 471 of the Act. But, in the circumstances of the case a nominal fine of one rupee will, I hope, be enough.

KNIGHT, J.—I concur.

*Appeal allowed.*

R. R.

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BAHADUR  
SHIVRAJ  
MOTILAL.

## APPELLATE CIVIL.

*Before Mr. Justice Chandavarkar and Mr. Justice Knight.*

SAKHARAM HARI AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS, v.  
LAXMIPRIYA TIRTHA SWAMI (ORIGINAL PLAINTIFF), RESPONDENT.\*

1910.

January 20.

*Limitation Act (XV of 1877), S'h. II, Arts. 131, 62—Cash allowance—  
Tastik—Arrears of cash allowance, suit to recover.*

The plaintiff, the manager of the temple of Shri Laxmi Narayan Dev at Hulekal, sued to recover from the defendants, the managers of the temple of Shree Madhukeshwar at Banavási, a sum of Rs. 96 as arrears of a cash allowance (tastik) which the former was entitled to receive from the property of the latter. The defendants admitted the title of the plaintiff to the allowance but pleaded limitation as to the arrears for two out of the six years. The lower Courts applied Article 131 of the Limitation Act, 1877, and allowed the whole of the claim. On appeal.

*Held*, that the claim was properly allowed.

A cash allowance of the nature as in the present case is, according to Hindu law, *nibandha* or immoveable property; where it is annually payable, the right to payment gives to the person entitled a periodically recurring right as against the person liable to pay. The right to any amount which has become payable stands as to such person on the same footing as the aggregate of rights to amounts which are to become payable and which have become actually due.

\* Second Appeal No. 595 of 1909.