

1910.  
 EMPEROR  
 v.  
 BALYANTHAO  
 ANANTHAO.

*M. B. Chhabal*, Government Pleader, for the Crown.

*Gadgil*, with *D. R. Patwardhan*, for the accused.

PER CURIAM :—We think that we ought not to interfere with this acquittal, and that the Magistrate was right in declining to convict the accused under section 43 (b) of the Bombay A'bkári Act V of 1878. The fact was that the accused's possession of this cocaine was altogether illegal, and, in these circumstances, it seems to us that section 43 (b) does not apply. That section seems to contemplate rather the case of a person who is in lawful possession of cocaine at one place, but is by law forbidden to remove it either partly or wholly to another place. Here the offence consisted not in moving the cocaine from one place to another, but in the unauthorised possession of it at any place in contravention of the Act. The appeal, therefore, must be dismissed.

*Appeal dismissed.*

R. R.

## APPELLATE CRIMINAL.

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

EMPEROR v. MULJI DAMODARDAS.\*

1910.  
 January 19.

*City of Bombay Municipal Act (Bomb. Act III of 1888), section 390—  
 Factory—Municipal Commissioner, permission of—Unauthorised factory.*

The accused obtained the Municipal Commissioner's permission (section 390 (1) of the City of Bombay Municipal Act, 1888), to establish a hand-loom factory worked by an oil engine: but by means of this oil engine he also established a flour mill—without any permission. The accused was, therefore, charged with the offence under section 390 (1) of the Act :—

*Held*, that the accused was guilty of a technical offence under section 390 (1) of the City of Bombay Municipal Act, 1888: for although the accused had leave to establish the hand-loom factory, he had no leave to establish the flour mill factory, which was not the less another and a separate factory because it happened to be worked by the same power which it was proposed to employ in the permitted factory.

\* Criminal Appeal No. 453 of 1907.

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

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 EMPEROR  
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 MULJI  
 DAMODARDAS.

Mulji Damodardas obtained from the Municipal Commissioner of the City of Bombay a permission, under section 390 (1) of the City of Bombay Municipal Act, 1888, for the establishment of a hand-loom factory to be worked by an oil engine.

It appeared that Mulji (accused) instead of using the oil engine solely for the purpose of working a hand-loom factory used it also for the purpose of working a flour mill.

The accused was under these circumstances tried for an offence under section 390 (1) ; but the Magistrate acquitted him.

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

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

*Inverarity*, with *T. R. Desai*, for the accused.

*PER CURIAM* :—The respondent here was charged before the Presidency Magistrate, with having committed an offence under section 390 (1) of the Bombay Municipal Act III of 1888. He was acquitted by the Magistrate, and the Government of Bombay appeals against that acquittal.

Section 390 (1) lays down that—

“No person shall newly establish in any premises any factory, workshop or workplace in which it is intended that steam, water or other mechanical power shall be employed, without the previous written permission of the Commissioner.”

The accused obtained the Municipal Commissioner's permission to establish a hand-loom factory, worked by an oil engine. But by means of this oil-engine the accused has also established a flour mill. It seems to us quite clear that he is guilty of a technical offence under section 390. The mechanical power or force is to be distinguished from the factory. And here, although the respondent had leave to establish the hand-loom factory, he had no leave to establish the flour mill factory, which, in our opinion, is not the less another and a separate factory because

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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.\*

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 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.