

Rs. 8. One cannot, therefore, say that under section 7 he was indirectly trying to recover more rent than was allowed by the Act. The conviction is bad and must be set aside and the fine refunded.

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Rule made absolute.

R. R.

 CRIMINAL REFERENCE.

Before Mr. Justice Shah, and Mr. Justice Kajji.

EMPEROR v. HAJI ABOO*.

1920.

 May 5.

*Bombay District Municipal Act (Bombay Act III of 1901), section 142 (1)†—
 Unwholesome meat, sale of—Destruction of meat—Power of District
 Municipality—Vendor cannot be convicted under the section.*

* Criminal Reference No. 9 of 1920.

† The material portion of the section runs as follows :—

142. (1) The president, vice-president or any councillor or officer authorised by the Municipality in this behalf—

(a) may at all reasonable times enter into any place for the purpose of inspecting, and may inspect, any animals, carcasses, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, milk, ghee, butter or other articles intended for human food or drink or for medicine, whether exposed or hawked about for sale, or deposited in, or brought to any place for the purpose of sale or of preparation for sale, or may enter into and inspect any place used as a slaughter-house, and may examine anything which may be therein ; and

(b) in case any such animal, carcasses, or other articles before mentioned appear to be diseased or unsound or unwholesome or unfit for human food or drink or medicine may seize the same.

Any article which is of a perishable nature may, under the orders of the president, vice-president or chairman of the managing committee or of a committee appointed under section 29 to exercise all or any of the powers vested in the Municipality under this sub-chapter, if in his opinion it is diseased, unsound, unwholesome or unfit for food, drink and medicine, forthwith be destroyed.

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Under section 142 (1) of the Bombay District Municipal Act (Bombay Act III of 1901), a District Municipality has the power to order destruction of unwholesome meat which is exposed for sale in a market; but it is not competent to a Magistrate to convict the vendor under the section.

THIS was a reference made by G. S. Campbell, District Magistrate of Thana.

The accused Haji Aboo owned a beef stall in the Bandra Municipal Market. His servant sold at the stall meat which was found unfit for human food. The accused and his servant were thereupon convicted by the Resident Magistrate at Bandra of an offence punishable under section 142 (1) of the Bombay District Municipal Act, 1901, and were each sentenced to pay a fine of Rs. 20.

It was found that the meat in question was taken from a carcass which was certified as sound by the Municipal authorities. It was taken possession of by the Municipal authorities, who destroyed it.

The District Magistrate of Thana being of opinion that the convictions were not in accordance with law, referred the case to the High Court.

K. N. Koyajee, for the complainant:—Both the District Magistrate and the trying Magistrate failed to notice that section 142 (1) of the Bombay District Municipal Act did not render the possession of a perishable

Every animal and every article which is not of a perishable nature, if seized as aforesaid, shall be taken before a Magistrate.

If it appear to the Magistrate upon sufficient evidence that any such article is diseased or unsound or unwholesome or unfit for human food, drink or medicine, the owner or person in whose possession it was found, not being merely bailee or carrier thereof, shall, if in such case the provisions of section 273 of the Indian Penal Code do not apply, be punished with fine which may extend to one hundred rupees, and the Magistrate shall cause such article to be destroyed or to be so disposed of as to prevent its being exposed for sale or used for food or drink or medicine.

article of food an offence under the section. I therefore cannot support the conviction under that Act. But I submit that the facts found would justify the conviction under section 273 of the Indian Penal Code. I submit this Court has the power under sections 423 and 439 of the Criminal Procedure Code to alter the finding as to the enactment under which the conviction could be made and to confirm the conviction and sentence; *Lala Ojha v. Queen-Empress*⁽¹⁾, *Emperor v. Gur Narain Prasad*⁽²⁾ and *Kali Charan Mukherjee v. Emperor*⁽³⁾.

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D. G. Patwardhan, for the accused, not called upon.

PER CURIAM:—In this case the accused have been convicted under section 142 (1) of the Bombay District Municipal Act. (Bombay Act III of 1901) for selling at a beef stall meat unfit for human food. The District Magistrate of Thana has made a reference to this Court against these convictions.

No offence with reference to meat which is an article of a perishable nature could have been committed under section 142 (1) and the convictions are clearly wrong. The power which the section gives to the Municipality is the power to destroy forthwith any article which is of a perishable nature, and which in its opinion is diseased, unsound, unwholesome or unfit for food, drink and medicine. The last paragraph of sub-section (1) relates to any animal and any article which is not of a perishable nature, and which under the next preceding paragraph can be taken before a Magistrate. Mr. Koyaji for the Municipality has not contested this position. But he has suggested in the argument before us that these convictions ought to be upheld on the ground that the facts which are alleged

⁽¹⁾ (1899) 26 Cal. 863.

⁽²⁾ (1903) 25 All. 534.

⁽³⁾ (1913) 41 Cal. 537.

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in the information disclose an offence under section 273 of the Indian Penal Code. It is clear that the complaint related to an offence under a special Act, and not to an offence under section 273, and it would not be fair to allow the case at this stage to be treated as one relating to an offence under the Indian Penal Code. Further, having regard to the wording of the last para. of the sub-section, the Magistrate's finding involves the result that the provisions of section 273, Indian Penal Code, do not apply to this case. We, therefore, set aside the convictions and sentences, and direct the fine, if paid, to be refunded.

Convictions and sentences set aside.

R. R.

 APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Fawcett.

1920.

 case 7.

MADHAVRAO MORESHWAR BHADANEKAR SARDESAI PANT AMATYA, STATE BARODA (ORIGINAL PLAINTIFF), APPELLANT v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL (ORIGINAL DEFENDANT), RESPONDENT*.

Pensions Act (XXIII of 1871), sections 4 and 6—Suit to recover Sardeshmukhi Haq—Pensions and grants in Ratnagiri District—Pensions Act, whether ultra vires—Bombay Regulation (XXIX of 1827), section 6—Civil Court—Jurisdiction.

Plaintiff filed a suit against Government to recover two per cent. Sardeshmukhi Haq on certain villages in Ratnagiri District not on the old Jamabandi but on survey assessment. The District Judge held that the suit was barred under section 4 of the Pensions Act, 1871. On appeal it was contended that the Pensions Act so far as it dealt with pensions and grants of land revenue in Ratnagiri District was *ultra vires*.

Held, that the Pensions Act was not *ultra vires* and that the suit was barred under section 4 of the Act.

* First Appeal No. 86 of 1918