and *Emperor* v. *Bhimaji Venkaji*.[1] Other arguments have been advanced before us in support of a trial of this case before a Court of Session. On the whole I think that this is a fit case which ought to be tried by a Court of Session.

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We are not laying down a general proposition that every offence under section 124A or any offence in which the punishment exceeds the maximum sentence which a Magistrate is competent to inflict must be committed to the Court of Session. On the other hand it is the duty of the Magistrate to try cases which, in his opinion, could be adequately punished by him and not shirk his responsibility by committing them to the Court of Session in the absence of any overriding reason justifying the departure from the ordinary rule. Having regard to the large circulation of this paper, the gravity of the offence and the other circumstances which have been brought to our notice in the arguments before us, we think that the accused in the present case ought to be tried by the Court of Session.

I agree, therefore, with the order just proposed directing that the Magistrate should conduct the inquiry with a view to commit the accused to the High Court Sessions.

*Rule made absolute.*

B. G. R.

[1] (1917) 42 Bom. 172.

## CRIMINAL REVISION

*Before Mr. Justice Mirza and Mr. Justice Patkar.*

EMPEROR v. RATANSI HIRJI.*

1929 *February* 26.

*Bombay Municipal Act (Bom. Act III of 1888), sections 412A (b), 471, 394 (1) (a) (ii), Schedule M, Part II—Ghee kept for sale not in excess of quantity mentioned in schedule M—License from Municipal Commissioner—"Other milk products," meaning of.*

A person who keeps ghee for sale in his shop not in excess of the quantity specified in Part II of Schedule M does not require a license from the Municipal

* Criminal Application for Revision No. 433 of 1928.

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Commissioner under section 412A (*b*) of the Bombay Municipal Act for sale of such ghee, having regard to the provisions of section 394 (1) of the said Act.

The expression " other milk products " occurring in section 412A (*b*) of the Bombay Municipal Act does not include " ghee."

*Clark* v. *Gaskarth*[1] and *Sandiman* v. *Breach*,[2] referred to.

Per PATKAR J. :—" In the case of penal statutes and fiscal enactments a strict construction most favourable to the subject ought to be adopted."

*Mylapore Hindu Permanent Fund (Limited)* v. *The Corporation of Madras*,[3] *Manindra Chandra Nandi* v. *Secretary of State for India*[4] and *Emperor* v. *Kadarbhai*,[5] referred to.

APPLICATION to revise the order of conviction and sentence passed by H. P. Dastur, Chief Presidency Magistrate, Bombay.

The accused had a grocer's shop in Kolsa Mohala outside the fort of Bombay, where he used to sell corn, oil and ghee in retail. On July 24, 1928, the Municipal Commissioner wrote a letter to the accused asking him forthwith to obtain a license for the sale of ghee under section 412A of the Bombay Municipal Act. The accused declined to do so and contended that he kept ghee less than four cwts. which was the maximum quantity specified in Schedule M, Part II, for which no license was required under the Act. On August 10, 1928, three tins of ghee weighing about one cwt. were found in his shop and as the accused had no license, he was prosecuted by the Bombay Municipality under section 412A (*b*) of the Municipal Act before the Chief Presidency Magistrate who convicted him under the said section and sentenced him to pay a fine of Rs. 10.

The accused applied to the High Court.

*G. N. Thakor*, with *V. N. Chatrapati*, for the accused.

*H. C. Coyaji*, with *Crawford Bailey & Co.*, for the Municipality.

(1) (1818) 8 Taunt. 431.
(2) (1827) 7 B. & C. 96.
(3) (1908) 31 Mad. 408.
(4) (1907) 34 Cal. 257 at p. 268.
(5) (1927) 29 Bom. L. R. 987 at p. 995.

MIRZA, J. :—This was a test case brought against the applicant at the instance of the Bombay Municipality for an offence under section 412A (*b*) of the City of Bombay Municipal Act (Bom. III of 1888). The Chief Presidency Magistrate, before whom the applicant was tried, convicted and sentenced him to pay a fine of Rs. 10, From the conviction and sentence the applicant has come before us in revision.

Section 412A (*b*) of the City of Bombay Municipal Act, 1888, was inserted by Bombay Act VI of 1913. As since modified it reads as follows :—

412A. No person shall without or otherwise than in conformity with the terms of a license granted by the Commissioner in this behalf. . . . .

(*b*) use any place in the city for the sale of milk, butter or other milk products.

The words " butter or other milk products " appearing after the word " milk " in clause (*b*) of this section were inserted by Bombay Act VI of 1916, section 8. It is admitted by the applicant that he uses a place in the Bombay City for the sale *inter alia* of ghee, but he contends that he never keeps in that place a quantity of ghee for sale in excess of 4 cwts. He further admits that he has no license from the Bombay Municipality for the sale of ghee but contends that under the provisions of section 394 of the Municipal Act he is exempt from taking out a license for the sale of ghee which is not in excess of 4 cwts. Section 394 of the Municipal Act *inter alia* provides :—

" (1) Except under and in conformity with the terms and conditions of a license granted by the Commissioner no person shall—(*a*) keep, in or upon any premises, for any purpose whatever, (i) . . . . or (ii) any article specified in Part II of Schedule M, in excess of the quantity therein prescribed as the maximum quantity of such article which may at one time be kept in or upon the same premises without a license . . . . . "

Schedule M, Part II, mentions " Ghee kept for sale," and the " Maximum quantity which may be kept at any one time without a license " as " 4 cwts." The present section 394 of the Municipal Act was substituted for

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the original section by Bombay Act II of 1911, section 15. The clause "Ghee kept for sale . . . 4 cwts." was inserted in Schedule M, Part II, by Bombay Act VIII of 1918, section 22 (*a*).

The learned Magistrate is of opinion that "ghee" falls under the description "other milk products" in section 412A (*b*). For the meaning to be given to the term "ghee" he relies upon section 4 (ii) explanation (1) of the Bombay Prevention of Adulteration Act (Bom. V of 1925) which states that ghee or butter which contains any substance not exclusively derived from milk shall be deemed to be an article of food not of the nature, substance or quality it purports to be.

It will not be disputed that "ghee" is derived from milk but can it be said of "ghee" as it can be said of cream, butter, whey or curd that it is a direct product of milk? For one thing "ghee" is not subject to the same speedy decay as these products of milk along with milk are. In this respect "ghee" does not resemble milk to the same extent as these products of milk do. "Ghee" is made from melted butter. Pure "ghee" no doubt is derived from milk, as it is made from butter which is a product of milk. "Ghee," however, is not the same as butter. It possesses certain qualities, e.g., durability, which make it distinct from butter. In many respects "ghee" and butter are put to different uses

The contravention of section 412A is made penal under section 471 of the Municipal Act. The subject of contravention in section 412A (*b*) is mentioned in section 471 as "milk, butter, etc., not to be sold without a license," the words "other milk products" are not mentioned.

Section 412A (*b*) read with section 471 being a penal section which affects the finances of the subject

must, according to the recognised rules of interpretation, be strictly construed. "Ghee" is a well known article of food of which the legislature must be deemed to be aware. It is expressly set out in certain parts of the Municipal Act, e.g., in sections 414 and 415. The words "other milk products" appearing in section 412A (*b*) should, in my opinion, be construed *ejusdem generis* with reference to what precedes those words. In that view "other milk products" would be of the same kind or nature as milk or butter. The meaning to be given to the words "other milk products" should be less comprehensive than they would otherwise be if they stood by themselves without the words "milk, butter" preceding them. Thus in *Clark* v. *Gaskarth*[1] in construing the words "or other product" in "corn, grass, or other product" appearing in 11 Geo. II, c. 19, it was held that young trees were not distrainable under these words. Similarly, the Sunday Observance Act, 1677, 29 Car. II, c. 7, enacts that no tradesman, artificer, workman, labourer, or other person whatsoever shall follow his ordinary calling on Sunday. In *Sandiman* v. *Breach*[2] the word "person" appearing in this section was construed as being confined to persons of callings of the same kind as those specified by the preceding words, so as not to include a farmer.

The construction for which the prosecution contends would bring section 412A into conflict with section 394 (1) (*a*) (ii), read with Schedule M, Part II, whereby the possession of "ghee" for sale without a license is permitted up to 4 cwts. Where two co-ordinate sections are apparently inconsistent an effort must be made to reconcile them: see *Ebbs* v. *Boulnois*.[3] The language

(1) (1818) 8 Taunt. 431. (2) (1827) 7 B. & C. 96.
(3) (1875) L. R. 10 Ch. 479 at p. 484.

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of every enactment must be so construed, as far as possible, as to be consistent with every other which it does not in express terms modify or repeal. See Maxwell on Interpretation of Statutes, 5th edition, page 253. Repeal by implication is not favoured. See Maxwell *ibid* 268.

The learned Magistrate has attempted to reconcile his view of section 412A with section 394 in this manner: He says the words " ghee kept for sale," appearing in section 394, Schedule M, Part II, must mean ghee kept in such a place not for storing purposes, but for sale although that place itself is not a place for sale. Mr. Coyajee for the prosecution adopts this argument. He has urged before us that as long as a person keeps any quantity of ghee stored in his house or godown he is under no obligation to obtain a license for doing so; but if he stores " ghee " in excess of 4 cwts. without selling any part of it but intending eventually to sell the same he must obtain a license for such storage. Schedule M, Part II, according to this argument, would govern such a case only. " Ghee " stored up to any quantity for private consumption or up to 4 cwts. for sale would require no license. But before any part of the " ghee " could be sold although the total quantity stored at the time may be under 4 cwts. a license would be required. Section 412A (*b*) would, according to this argument, apply to such a case. Mr. Coyajee admits that the construction he is seeking to put on section 394 read with section 412A would necessitate in some cases the obtaining of two separate licenses in respect of the same goods: one license for storing " ghee " in excess of 4 cwts. with the intention of selling the same and another license to enable the storer to sell any part of these goods. The legislature in my opinion could not have intended such a result.

I am unable to agree with this attempt to reconcile section 412A with section 394. "Ghee" kept for sale, in my opinion, means that it may be sold where it is kept. Section 394, Schedule M, Part II, relating to "ghee" is a later enactment than section 412A. Part II of Schedule M relating to "ghee" must in my opinion be regarded as forming part of section 394. There is no apparent contradiction or inconsistency between section 412A and the provisions of Schedule M, Part II, relating to "ghee" which would call for the application of the rule of construction that the provisions of the section should prevail against those of the Schedule to the Act. Section 394 read with Schedule M, Part II, relating to "ghee" forms one enactment of the legislature, and section 412A forms another enactment of the legislature although both are embodied in the Municipal Act which, for the sake of convenience and ready reference, is made to read as a whole. It does not follow that if a conflict or inconsistency is found to exist between two provisions appearing in the Municipal Act regard will not be had to the respective dates of their enactment in order to ascertain whether the later enactment cannot by implication be said to have repealed the earlier. If an attempt at reconciling section 394, Schedule M, Part II, with section 412A is impossible, then section 394, Schedule M, Part II, relating to "ghee" being the later enactment of the legislature must be deemed by implication to have repealed section 412A which is earlier. See *Wood* v. *Riley*.[1]

Mr. Coyajee has relied upon the Statement of Objects and Reasons in connection with Bill No. 6 of 1918 which became Bombay Act VIII of 1918 as a help towards construing the meaning to be given to the words "other milk products" in section 412A. He has called our

(1) (1867) L. R. 3 C. P. 26.

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attention to the *Bombay Government Gazette*, Part V, 1918, page 602, paragraph 22, which states: "Ghee is as combustible as vegetable oils, particularly when kept in a large quantity. Under Part IV a license is required for manufacturing ghee." In construing the provisions of a statute it is not open to us to consider the Statement of Objects and Reasons as they form no part of the Statute. I am unable, however, to agree that the Statement of Objects and Reasons to which Mr. Coyajee has referred supports his contention. If on this argument the intention of the Legislature was to embody in Schedule M, Part II, the Statement of Objects and Reasons here relied on, it would have made the provisions for the licensing of "ghee" in excess of 4 cwts. applicable to all cases and not restricted to cases where there is intention to sell.

Section 412A in its present form was enacted as far back as 1916. This test case and its companion cases are the first attempt on the part of the Municipality since then to apply its provisions to "ghee." The construction now sought to be put on section 412A by the prosecution cannot in my opinion be sustained in view of the express provisions of section 394, Schedule M, Part II, relating to "ghee" and the absence of any express mention of "ghee" in section 412A.

The conviction of the applicant is reversed, the sentence set aside and the fine, if paid, is ordered to be refunded.

PATKAR, J.:—The accused in this case is charged under section 412A, clause (*b*), of the City of Bombay Municipal Act, III of 1888, for having used a place for the sale of ghee without a license from the Municipal Commissioner. On July 24, 1928, the Municipality called upon the accused, who has a grocer's shop, to apply for a license. The accused refused to do so on

the ground that he was selling a few tins of ghee a month and that it was not necessary to apply for a license. On August 10, three tins of ghee were found in his shop and as he had no license the present prosecution was launched against him. The defence of the accused was that he was entitled to keep 4 cwts., that is about 12 tins of ghee for sale in his shop under section 394 (1) (*a*) (ii) of the Bombay Municipal Act. Section 394 (1) (*a*) (ii) provides that " except under and in conformity with the terms and conditions of a license granted by the Commissioner no person shall keep, in or upon any premises, for any purpose whatever, any article specified in Part II of Schedule M, in excess of the quantity therein prescribed as the maximum quantity of such article which may at any one time be kept in or upon the same premises without a license." Schedule M, Part II, enumerates the articles and the maximum quantities which may be kept at any one time without a license, and by Act VIII of 1918, section 22, ghee kept for sale was enumerated as one of the articles and the maximum quantity which may be kept at any one time without a license was prescribed to be 4 cwts. It is clear, therefore, that the accused was entitled to keep in or upon his premises ghee for sale up to 4 cwts. The quantity found in his shop was about 1 cwt. Section 412A (*b*) enacts that " no person shall without or otherwise than in conformity with the terms of a license granted by the Commissioner in this behalf use any place in the City for the sale of milk, butter or other milk products." It is urged on behalf of the prosecution that ghee is included in the words " other milk products," and, therefore, it was necessary for the accused to get a license from the Commissioner if he intended to use the shop for the sale of ghee in any quantity whatsoever. It is further urged that sections 394 and 412A are

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enacted for two independent purposes, the former for the purpose of regulating the storage of certain specific inflammatory or combustible articles, and the latter for regulating the sale and preventing the adulteration of articles of human consumption, and that two separate licenses were necessary under the two different sections. It is urged on the other hand that ghee is not included in the words "other milk products," that ghee is not a direct product of milk though butter is a product of milk and ghee can be prepared from butter, that under section 394 the accused was entitled to keep in the shop ghee for sale to the extent of 4 cwts., and that if ghee is included in the words "other milk products," the amendment of the Schedule M, Part II, by Act VIII of 1918, section 22, by inserting "ghee kept for sale" would be rendered nugatory.

These sections 394 and 412A may have been enacted to secure two different objects, namely, the regulation of storage of inflammatory and combustible articles and the prevention of adulteration of articles of human consumption. It appears that by the insertion of "ghee kept for sale" in Schedule M, Part II, with reference to section 394, there arises an inconsistency between the provisions of sections 394 and 412A. Under section 394 the accused was entitled to keep in his shop ghee for sale to the extent of the quantity found in his shop, for it was less than 4 cwts. Though he could keep the ghee for sale in his shop, he could not, under section 412A, use that shop as a place for sale if ghee is considered to be included in the words "other milk products."

The question that arises for consideration is whether ghee is included in the words "other milk products." Clause (*b*) of section 412A says that no person shall without a license use any place for the sale of milk, butter or other milk products. The Presidency Magistrate,

3rd Court, in Case No. 864/M of 1928 held that milk products do not include ghee. In this case the Acting Chief Presidency Magistrate held that the words " other milk products " must be read *ejusdem generis* with the words " milk " and " butter " but held that he saw no reason why ghee does not fall under the category of " other milk products."

Section 412A was enacted by Bombay Act VI of 1913, section 7, and the words " other milk products " were inserted by section 8 of Bombay Act VI of 1916. Section 394 was substituted for the original section by Bombay Act II of 1911, section 15, and the insertion of ghee for sale in Schedule M, Part II, referred to in section 394 (1) (*a*) (ii) was made in 1918 by Act VIII of 1918, section 22. It appears that the Municipal Act refers to ghee specifically in section 414. If ghee is included in " other milk products " in clause (*b*) of section 412A, there appears to be an inconsistency in section 412A, clause (*b*), and section 394 read with Schedule M, Part II. In Halsbury's Laws of England, Vol. XXVII, paragraph 246, it is stated :—

" Where two co-ordinate sections are apparently inconsistent an effort must be made to reconcile them. If this is impossible the later will generally override the earlier."

Reference may also be made to Maxwell on the Interpretation of Statutes, 6th Edition, pages 280, 281.

The provision with regard to section 394 (1) (*a*) (ii) relating to ghee for sale is of a later date, that is 1918, whereas the amendment of section 412A by inclusion of the words " other milk products " is of 1916. The later amendment of the Act which must, in my opinion, be considered to form part of section 394 must prevail.

It is urged that the provision in the Schedule cannot override the provisions of an enactment of a section, and

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reliance is placed on Maxwell, 6th Edition, page 283, where it is stated :—

" Where a passage in a schedule appended to a statute was repugnant to one in the body of the statute, the latter was held to prevail."

I think the provision with regard to ghee for sale incorporated in Schedule M, Part II, would form part of section 394 (1) (*a*) (ii) and in my opinion there is inconsistency between section 394 (1) (*a*) (ii) and section 412A (*b*) if ghee is included in the words " other milk products." It is inconsistent, in my opinion, to authorise a subject to keep in his shop ghee for sale up to 4 cwts. and at the same time to penalise him for using his shop as a place for sale of ghee which is less than 4 cwts. If the above two inconsistent provisions be attempted to be reconciled, it would be in the direction of putting a strict construction on section 412A, clause (*b*). Section 412A was enacted in 1916 and no attempt has been made for so many years since its enactment to apply it to ghee. Further, ghee is specifically referred to in the Municipal Act in other sections, and section 414 makes ample provision for the constant and vigilant inspection of ghee. Section 412A (*b*) refers to the sale of milk, butter or other milk products and if the words " other milk products " are to be used *ejusdem generis* with butter they would include such products of milk as are the direct results of milk as butter, that is curd, whey, cream, etc., but would not include ghee which is not a direct product of milk but is prepared out of butter which is a direct product of milk. Further, " other milk products," if construed strictly, and *ejusdem generis* with milk and butter, would include such products of milk as are liable to speedy decay, like butter, as for example, whey, curd, or cream, and would not include ghee which is not liable to speedy dacay. In *Clark* v. *Gaskarth*,[1]

[1] (1818) 8 Taunt. 431.

where it was contended under Statute 11, Geo. II, c. 19, section 8, which empowered the landlord to seize as a distress for rent " corn, grass or other product whatsoever which shall be growing on any part of the estate demised," that trees and shrubs came within that description and were also liable to be distrained for rent, it was held that the word " product " did not extend to trees and shrubs growing in a nursery-man's ground, but it was confined to products of a similar nature with those specified in that section, viz., corn or grass to all of which the process of becoming ripe, and of being cut, gathered, made, and laid up when ripe, was incidental. If, therefore, " other milk products " are read in the strict sense as being direct products or products which are liable to speedy decay like butter, ghee would not be included in the words " other milk products." Where general words follow particular and specific words, they must be confined to things of the same kind as those specified. See Craies on Statute Law, pages 162 and 163 and Maxwell's Interpretation of Statutes, 6th Edition, pages 583 and 587. In the case of penal statutes and fiscal enactments a strict construction most favourable to the subject ought to be adopted. See *Mylapore Hindu Permanent Fund (Limited)* v. *The Corporation of Madras*[1]; *Manindra Chandra Nandi* v. *Secretary of State for India*[2]; *Emperor* v. *Kadarbhai*,[3] and Halsbury's Laws of England, Vol. XXII, paras. 339 and 345.

On these grounds I think that the accused is not guilty under section 412A read with section 471 of Bombay Act III of 1888. I would, therefore, set aside the conviction and sentence of the accused and order the fine, if paid, to be refunded to him.

*Rule made absolute.*

B. G. R.

(1) (1908) 31 Mad. 408. (2) (1907) 34 Cal. 257 at p. 268.
(3) (1927) 29 Bom. L. R. 987 at p. 995.