APPELLATE CIVIL.

Before Mr. Justice Barlee and Mr. Justice Macklin.

THE BANDRA MUNICIPALITY, THROUGH ITS CHIEF OFFICER E. B. GINI (ORIGINAL DEFENDANT), APPELLANT *v.* THE BURMAH SHELL STORAGE AND DISTRIBUTING Co. OF INDIA LTD., BOMBAY (ORIGINAL PLAINTIFF), RESPONDENT.*

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Bombay Municipal Boroughs Act (Bom. XVIII of 1925), section 73, clause (ii) — "Kept for use within the said borough"—Interpretation.

Section 73 of the Bombay Municipal Boroughs Act, 1925, is a taxing section and must be construed strictly in favour of the tax-payer.

The words, "kept for use within the said borough" occurring in clause (*ii*) of section 73 of the Act mean "maintained with the main object of being used."

SECOND APPEAL from the decision of D. S. Oka, Assistant Judge, Thana, confirming the decree passed by D. S. Gupte, Subordinate Judge, Andheri.

Suit for declaration and injunction.

The Burmah Shell Storage and Distributing Company of India (respondent) sued the Bandra Municipality (appellant) for a declaration that the levy by the Municipality of the wheel-tax of Rs. 295–4–0 on the motor lorries maintained by the Company was illegal, for recovery of the said amount, and for an injunction restraining the Municipality from imposing a tax on the said lorries. It was alleged that the Company owned a fleet of motor lorries which were kept and garaged within the limits of the Bombay Municipality, that the Company paid wheel-tax to that Municipality, that from time to time the lorries were used to convey petrol to various depots belonging to the Company, including a depot at Bandra, that the lorries in question were not kept for use within the said Bandra Municipality and that therefore the Company claimed to recover the amount of the tax paid under protest to the Municipality.

* Second Appeal No. 730 of 1933.

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The defendant Municipality contended, *inter alia*, that the tax was neither unwarranted nor illegal as the said lorries were used for burden and "kept" for use within the limits of the Municipality.

The learned Subordinate Judge allowed the claim and, on appeal, the learned Assistant Judge affirmed, with a slight variation, the decree passed by the trial Court.

The Municipality (defendant) appealed.

A. G. Desai, for the appellant.

O'Gorman, with *Craigie, Blunt & Caroe*, for the respondent.

MACKLIN J. The only question in issue in this appeal is the meaning of the words "kept for use within the said borough" occurring in clause (*ii*) of section 73 of the Bombay Municipal Boroughs Act (XVIII of 1925). The whole clause runs as follows :—"A tax on all vehicles, boats or animals used for riding, draught or burden and kept for use within the said borough, whether they are actually kept within or outside the said borough". The last words "whether they are actually kept within or outside the said borough" were imported into the section in consequence of the decision of this Court in *Surat Municipality* v. *Maneklal*.[1]

In the present case the plaintiffs, who are the Burmah Shell Storage and Distributing Co. of India Ltd., sued for a declaration that they were not liable to pay wheel-tax to the Bandra Municipality. The Company maintains a petrol storage pump at Bandra and maintains a fleet of lorries in Bombay for the supply of its pumping stations both in Bombay and outside Bombay when supplies are necessary. The Bandra Municipality has taxed them in respect of four lorries, each one of which makes an occasional visit to Bandra when replenishment is required at the filling station.

[1] (1920) 22 Bom. L. R. 1104.

The plaintiffs contend that although the lorries are in fact occasionally used for this purpose, nevertheless upon a true construction of section 73 of the Act it cannot be said that they are kept for that particular use so as to enable the Bandra Municipality to tax them. Both the Courts below have accepted that view, and the Bandra Municipality has come in second appeal.

It has been held as a fact, and we are bound by that finding, that the bulk of the work of these lorries is done in Bombay, where they are actually housed, and only a small part of it is done in Bandra. Nevertheless it is the defendant Municipality's contention that the words "kept for use" involve a liability to tax in the case of every vehicle which is kept with the intention of being used even occasionally within the borough imposing the tax, and that the number of occasions on which its services are required, and are known to be likely to be required, is entirely immaterial. In other words, user on one day in the year at a profit even less than the amount of the tax would render a vehicle liable to tax in Bandra, provided that the probability of an annual visit to Bandra was present to the mind of the owner of the lorry. This is perhaps reducing the argument to an absurdity. But the section is a taxing section and has to be construed strictly in favour of the tax-payer. Both the Courts below have taken it that what has to be considered is "the main real or pressing object" in keeping the vehicle; in other words they take it that the words "kept for use" really mean "maintained with the main object of being used". With that interpretation we find it impossible to disagree.

Unfortunately it is not possible to lay down a general rule which would be applicable in every particular case, because in each case what matters is the main object with which the lorry is kept and that is always a question of fact. In the present case, however, upon the facts it is clear that the supply of the filling station at Bandra is a very

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minor object, and on that ground we do not think that the plaintiff's lorries are liable to be taxed by the Bandra Municipality. The declaration sought for must therefore be given, and to that extent the appeal of the Municipality must be dismissed.

But the Courts below have granted the plaintiff a permanent injunction against the levy of the tax on these lorries in future, though it is impossible to say that in future circumstances may not arise which would justify the imposition of the tax. We therefore set aside that part of the order of the Courts below which deals with the injunction but in other respects dismiss the appeal with costs.

Decree varied.

Y. V. D.

APPELLATE CRIMINAL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Norman.

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EMPEROR *v.* RAMCHANDRA RAOJI GUJAR (ACCUSED).*

Indian Stamp Act (II of 1899), section 68 (c)—Entries relating to loans—Receipt—Acknowledgment—Stamp not affixed—Intention to defraud Government—Proof of intention essential.

Where an Act of Parliament makes an offence dependent on proof of intention, the Court must have proof of facts sufficient to justify it in coming to the conclusion that the intention existed.

The accused, a money-lender, kept a book called *Vyaj Vahi* containing entries relating to loans. The two entries giving rise to the prosecution were signed by the borrower, but no stamp was affixed to either. The money-lender having been prosecuted for an offence under section 68 (c) of the Indian Stamp Act, 1899 :—

Held, (1) that the first entry was a receipt and that the second one was in the nature of an acknowledgment;

(2) that the Government had failed in this case to prove any intent on the part of the accused to defraud Government of duty;

*Criminal Reference No. 91 of 1937.