

1897 all these reasons we are of opinion that the second question raised in the case should also be answered in the negative. The result is, that the decree of the lower Appellate Court must be set aside and that of the first Court restored with costs in this Court and in the Court of Appeal below.

BHIRAMALI
SHAIK SHIK-
DAR
v.
GOPI KANTH
SHAIK.

F. K. D.

Appeal allowed.

CRIMINAL REVISION.

Before Mr. Justice Ghose and Mr. Justice Gordon.

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January 28. AUKHOY CHANDRA HATI (PETITIONER) v. CALCUTTA MUNICIPAL CORPORATION (OPPOSITE PARTY).*

Calcutta Municipal Consolidation Act (Bengal Act II of 1888), sections 335, 336—Date of taking out license.

In a case where the owner of a cowshed delayed taking out a license under section 335 of the Calcutta Municipal Consolidation Act (Bengal Act II of 1888), until the end of the month of May ;

Held, that under the section as it stands there is nothing to compel a licensee to take out his license before 1st June in every year.

THE petitioner in this case who was a goala was charged before the Deputy Magistrate of Sealdah by the Conservancy Inspector of Ward No. 4 of the Calcutta Municipality with keeping cows on 20th and 21st May 1896 in an unlicensed cowshed, and that he kept his shed on those two days in a noxious state, and had thereby committed an offence under sections 335 and 337 of the Calcutta Consolidated Municipal Act. In defence the petitioner did not deny the second allegation of the prosecution, but alleged that as regards the first allegation he had applied to the Municipality for a license in accordance with the provisions of the section. The Deputy Magistrate of Sealdah sentenced him to pay a fine of Rs. 50 for committing an offence under section 335 of the Calcutta Municipal Act.

Babu *Baidonath Dutt* and Babu *Hari Charan Sarkal* for the petitioner.—The prosecution was premature. The alleged offence under section 335 is said to have been committed on the 20th and 21st May 1896. Under section 335 of the Calcutta Municipal

* Criminal Rule No. 667 of 1896, made against the order of Babu Shamadhub Ray, Deputy Magistrate of Sealdah, dated 3rd of August 1896.

Act the owner of a cowshed is allowed time until 1st June in every year to take out his license. In this case the application for a license had already been made. This applies to all licenses and not merely to old licenses.

Mr. *Barrow* (Babu *Nogendranath Mitter* with him) for the opposite party.—No doubt paragraph 2 of section 335 allows an owner time up to the 1st June in every year to take out a license, but this only applies to a renewal of a license and not to cases where an owner has only just started keeping cows for profit. If that were so, an owner of cows might keep them in an unlicensed shed for the first five months of every year, and then abandon them without taking out a license. This was not the intention of the Legislature. Paragraph 1 of the section expressly prohibits any person from keeping any animal for profit, except in a place licensed by the Commissioners, that no place shall be licensed unless the conditions prescribed by the last paragraph of the section have been complied with, and that the penalty mentioned in section 336 is incurred whenever any animal is kept without a license. The license must be taken out before such animals are allowed to be kept. The petitioner has never taken out a license before and cannot defend himself by contending that he did not do so until 1st June of that year.

The judgment of the High Court (GHOSE and GORDON, JJ.) was as follows :—

The only question involved in this rule is what is the true construction of paragraphs 1 and 2 of section 335 of the Calcutta Municipal Consolidation Act, Bengal Act II of 1888.

The petitioner has been convicted under sections 335 and 336 of the Act of keeping cows for profit in an unlicensed shed on the 20th and 21st May 1896, and has been sentenced to pay a fine of Rs. 50 and Rs. 1-8 as costs.

Section 335 runs as follows :—

“No person shall keep any animal for profit within Calcutta except in a place licensed by the Commissioners. Such license shall be taken out yearly before the first day of June in every year. The word “animal” in this section shall include an elephant camel, horse, mule, donkey, horned beast, sheep, goat and pig.

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“The Commissioners in meeting shall determine the places where such animals may be kept, and the rules as to paving, drainage, water-supply, cubical space, light and other conditions, subject to which the license may be granted, and may impose an annual fee not exceeding Rs. 10 for such license, and no place shall be licensed until the conditions imposed have been complied with.”

It was contended on behalf of the petitioner before the Deputy Magistrate who tried him, and it has also been contended before us, that the conviction is illegal, because by paragraph 2 of section 335 he was allowed time up to the 1st June 1896 to take out a license, and that therefore the prosecution for keeping an unlicensed shed in the month of May was premature.

It has, however, been argued by the other side that paragraph 1 of the section expressly prohibits any person from keeping any animal for profit except in a place licensed by the Commissioners; that no place shall be licensed unless the conditions prescribed by the last paragraph of the section have been complied with; and that the penalty mentioned in section 336 is incurred whenever any animal is kept without a license. That section runs thus:—

“Whoever, being the owner of any land, permits any animals to be kept thereon in contravention of the provisions of the last preceding section, shall be liable to a fine not exceeding Rs. 100, and to a further fine not exceeding Rs. 20, for each day during which the offence is continued after he has been convicted of such offence, and the person keeping the animals shall also be liable to a similar fine,” and so on.

The section says: “In contravention of the provisions of the last preceding section.” The question is whether by keeping animals without a license on the 20th and 21st May, the petitioner contravened the provisions of section 335.

No doubt, the law prescribes that no person shall keep any animal except in a place licensed by the Commissioners; but what we have to see is whether it is intended that the license must be taken out *before* such animal can be allowed to be kept, and whether the penalty provided by section 336 is incurred whenever a party keeps an animal for profit without a license; or does not

the law allow such license being taken out at any time before the first day of June in every year, and the penalty is not incurred, unless the license is obtained by the end of the month of May.

With a view to enable us to arrive at a correct conclusion upon this question, we have examined several other sections relating to licenses for carriages and carts, profession, animals, slaughter house, market, and druggists' shop. We desire to refer particularly to section 368 (druggists' shop), sections 94 to 96 (carts), sections 87 to 90 (profession), sections 341 to 346 (slaughter houses).

It appears to us that, in cases where the Legislature thought that the penalty should be incurred immediately when the act is done without a license, they have unmistakeably expressed it in the Act (*e.g.*, section 341), but where they considered that persons might well be allowed to do acts subject to the license being taken out, and that some time might properly be given to them for obtaining such license, they have indicated their intention in different language and manner (*e.g.*, sections 368, 335 and 336).

The question no doubt is not free from difficulty, but it seems to us, after the best consideration we have been able to give to it, that section 335 was not intended to bear the meaning which the prosecution would have us to accept, and that when the Legislature have thought it fit to accord to persons the liberty of taking out licenses before the 1st of June in every year, the penalty provided by section 336 is not incurred, unless such license is not obtained by the end of the month of May, otherwise there would really be no object in inserting paragraph 2 in section 335.

Upon these grounds we think that the conviction is wrong and that this rule should be made absolute. The fine and costs, if realized, will be refunded.

C. E. G.

Rule made absolute.

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