

## APPELLATE CRIMINAL.

*Before Mr. Justice Batty and Mr. Justice Aston.*

EMPEROR *v.* WALLACE FLOUR MILL COMPANY.\*

*Bombay Municipal Act (III of 1888), section 394.—Storing of oil,—what amounts to “storing.”*

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August 10.

The wording of section 394 of the City of Bombay Municipal Act requires that the premises, in order to attract the operation of the section, should be used for the purpose of storing. The phrase “for the purpose” indicates that it must be the intention of those using the premises to store; that storing must be the object aimed at;—the final cause for which the premises are used. There is nothing in the exemption which sub-section 3 declares in favour of the mills specified to imply that sub-section 1 was intended in the case of premises not so exempted, to include any use to which they might be put which was merely incidental or subsidiary to the paramount purpose to which the premises are devoted.

APPEAL under the Criminal Procedure Code, Act V of 1898, section 417, from the judgment of J. W. S. Dracup, Fourth Presidency Magistrate, acquitting the accused. The facts of this case are fully set out in the Magistrate’s judgment, which ran as follows:—

“The question for consideration in this case is whether the quantity of oil found on the premises of the Wallace Flour Mill on the 26th September last was such as to amount to ‘storing’ within the meaning of section 394 of the Municipal Act III of 1888.

“According to the evidence of the two Municipal Inspectors, Muncherji Bomanji Modi and Nawroji Bhikaji, who visited the Mill on the 26th September, there were 115 gallons of different kinds of oil on the premises that day contained in two iron tanks and three barrels.

“On the other hand, it appears from the evidence of Khatoo Vallabji, who is a store clerk in the Mill, that according to the storebook kept the balance of oil in stock on the date in question was 59½ gallons.

“The evidence regarding the measurement of the oil in the tanks and barrels is conflicting. Inspector Muncherji says the oil was measured by an employé of the Mill named Gandhabhoy with a rod and that Gandhabhoy read out the measurements which he noted down. He also states that he did not touch the rod nor did he check the measurements. The other Inspector Mr. Nawroji contradicts Inspector Muncherji and says the latter first read the gauge and asked Gandhabhoy if the reading was correct and he answered ‘yes.’

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Gandabhoj says he never read the measurements at all. It may here be noted that only two of the tanks have gauges marked on them while the barrels have no such gauges and from the evidence of Inspector Nawroji it appears that the oil in the barrels was roughly measured. It also appears that the capacity of oil tanks in India varies according to the temperature. Taking all these circumstances into consideration it is clear that the figures given by the Inspectors cannot be accepted as correct.

"It appears that the oil is kept in the Mill for lubricating purposes and when supply runs low or is exhausted a fresh supply is obtained. For the defence it is contended that no license is required for keeping oil for such purposes and that the quantity so kept does not amount to 'storing.' It is clear, however, from sub-section (1) of section 394 of the Municipal Act and Schedule M that no person shall use any premises for storing oil without a license irrespective of the purpose for which the oil is stored, and the only point for determination is whether the quantity of oil kept in the Mill amounts to 'storing' although the evidence regarding the quantity of oil found on the Mill premises on the 26th of September is conflicting; it is admitted by the defence that the average quantity of oil kept in the Mill during the months of August, September and October was 119 gallons. From the evidence of Mr. May, the Manager of the Mill, it appears that on an average about 8 or 9 gallons of oil are used daily. At this rate therefore the quantity kept would last for 13 or 14 days. Taking these facts into consideration, the Court is of opinion that the quantity of oil kept does not amount to 'storing' within the meaning of the Act. What does or does not amount to 'storing' is entirely a question of fact and cannot be decided by merely considering the quantity kept, as what may amount to 'storing' in one case may not be so in another. If quantity is the only criterion then every house-holder who keeps a tin of kerosine oil, which lasted for 10 or 15 days, would be liable to take out a license for storing oil, which is certainly not the intention of the Act. In determining therefore what is 'storing' it is necessary to consider not only the quantity kept but also the quantity consumed. If compared with the consumption the quantity kept is excessive this would no doubt amount to 'storing.' In the present case having regard to the quantity consumed daily, the Court is of opinion that the quantity of oil kept cannot be regarded as excessive and such as would amount to 'storing.' The Court, therefore, holds that no license was required and acquits and discharges the accused under section 245 of the Criminal Procedure Code."

From this judgment an appeal was presented to the High Court.

*Basil Scott* (Advocate General), for the Crown.

The keeping of oil under these circumstances was such an use of the premises as to render a license necessary under section 394 of the City of Bombay Municipal Act. Sub-section 3 of section 394

shows that the maxim *expressio unius est exclusio alterius* applies in such cases, *i. e.* only Mills therein specified are exempted from the provision of section 394.

*Davar* for the accused.

• There is no evidence of exclusive use of the room for storing purposes. Spinning and weaving Mills require lubricating oil which is not combustible. It would be most inconvenient to send out for oil every day. Section 394 of the Municipal Act must be read with Schedule M of the Act.

These premises were used for grinding corn and not for storing oil.

The implication of what is not expressly mentioned must be a clear one, Maxwell on the interpretation of Statutes. Chapter XV of the Municipal Act relates to sanitary provisions and the regulation of factories and trades.

BARRY, J.:—This is an appeal presented by the Bombay Government against the acquittal of the accused who was charged under clause (a), sub-section (1) of section 394 of the City of Bombay Municipal Act. The effect of that clause is to declare that no person shall use any premises for any of the purposes specified in Schedule M. Schedule M enumerates *inter alia* the storing of oil. The accused are the proprietors of a Flour Mill. In a room on their premises 20 gallons of castor oil together with other oil of lubricating properties amounting in all to 115 gallons were found. It is not denied that oil about the same in quantity, a little more or less as occasion requires, is kept in the same room for use from time to time.

• The Advocate General for the Crown contends that the keeping of oil in the circumstances stated was such a use of the premises as to render a license necessary under the section above cited. If this contention is correct, then no one in Bombay can without license keep a supply, however small, of any of the articles mentioned in the 4th part of Schedule M. Several of the articles mentioned in that part of the schedule are such as may be required for constant use in almost every private house. Candles, fish, matches, meat, oil cloth, soap and wool are obvious instances. It is difficult to believe that the section in question was intended so to be applied. And it is urged for the defence

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that as its provisions impose a burden on the subject and restrict his liberty, they should, if ambiguous, receive a strict interpretation in his favour.

I think the wording of the section is certainly susceptible of a construction more favourable to the subject than that which the Advocate General suggests. That wording requires that the premises, in order to attract the operation of the section, should be used for the purpose of storing. The phrase "for the purpose" indicates that it must be the intention of those using the premises to store: that storing must be the object aimed at;— the final cause for which the premises are used.

The actual use is by itself insufficient in the absence of proof as to the object aimed at. It would be appropriate to speak of a promenade or exercise-ground as used for the purpose of walking. It would be a strain of language to speak of a portion of a factory as used for the purpose of walking merely because it was necessary to walk over it to get from one part to another. And so with storing. The purpose to store must be the dominant motive. The use of a part of the premises for storing may be incidental and unavoidable. But this is insufficient if storing is not the thing aimed at. It is not urged that the Flour Mill Company desired the accumulation of oil on their premises. On the contrary, the record shows their supply was for use, not storage.

The learned Advocate General has cited sub-section (3) of section 394 as showing that on the maxim *expressio unius est exclusio alterius* only mills therein specified are exempted from the provisions of section 394. Sub-section 3 is somewhat infelicitously drafted. It is, I think, clearly intended only to give an exemption to mills for spinning or weaving cotton, wool, silk, or jute, in respect of those particular articles with which these mills are concerned, and was not intended to touch or in any way affect their liability in respect of any other articles mentioned in Schedule M. The sub-section could not have been intended, for instance, to exempt such premises if used for the purpose of storing dynamite, fireworks, gunpowder, bones or manure, &c. There is nothing in the exemption which sub-section (3) declares in favour of these specified mills, to imply

that sub-section (1) was intended, in the case of premises not so exempted, to include any use to which they might be put which was merely incidental or subsidiary to the paramount purpose to which the premises are devoted.

The marginal note suggests that the section has reference to *trades*. In *Kameshar v. Bhikhan*<sup>(1)</sup> it was held that marginal notes might be consulted in case of ambiguity. But even if this be not permissible, the position of the section in a part of the Act dealing with the regulation of factories and trades, indicates that the main intention of the Legislature in this section was to control the use of premises for the purposes specified, where such purposes constitute the object of a trade or business carried on there. It is true this may not be the sole intention of the sub-section. And clause (d) of sub-section (1) has been referred to by the Advocate General as suggesting that the storing contemplated in the other clauses would include storing even for domestic use. No doubt the articles mentioned in clause (d), such as hay and fuel, are not uncommonly stored in considerable quantities by persons who neither require them for purely domestic use nor for the purpose of trading in them, but who have a continuous demand for them and wish to guard against a rise in the price of such articles. And in such bulky materials this object could not in any case be attained unless a considerable quantity were kept in hand. Storage in this case is therefore exempted, even though it is deliberately made—provided it is only for domestic use. In this case, therefore, even though the storing is “for the purpose of storing,” and is deliberate and intentional, yet it is allowed within the specified limits of the maximum required for domestic use. In the cases mentioned in the other clauses, the test is not whether the storing is for domestic consumption or not, but whether there is a deliberate intention to store at all. And where articles are kept on the premises, not because of a purpose of storing them, but merely because they have not been consumed as rapidly as anticipated or for other similar reason, it cannot reasonably be said that the premises are used on purpose for storing. The purpose or

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(1) (1893) 20 Cal. 609 at p. 628.

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intention is the test. No doubt the relative quantity of the articles kept, in proportion to the exigencies of consumption, must in each case be important evidence as to the purpose or intention. But such an intention is negatived if the quantity retained is only reasonably sufficient for the varying exigencies of consumption. In the present case the supply in hand would have sufficed only for about 12 days' use. And it seems only reasonable to suppose, that in keeping the oil on the premises, the purpose was to consume it, and that there was no desire to use the premises for the purpose of storing it. The temporary storage in such a case is not designed but unavoidable. I would therefore dismiss the appeal.

ASTON, J. :—The question is one of degree and intention to be decided upon the facts of each particular case.

In this case the quantity of oil, less than a fortnight's supply kept in a room in the mill premises, was not unreasonably in excess of current requirements for use or consumption, and "storing" was not in itself an object in view in keeping a supply limited to such requirements. In my opinion, therefore, use of the premises for the purpose of storing is not established in this case, and an offence under section 394, clause (a), sub-section (1) of the City of Bombay Municipal Act is not proved.

*Appeal dismissed.*

Attorneys for the Crown :—*The Public Prosecutor.*

Attorneys for the accused :—*Messrs. Bhaishanker, Kanga and Girdharlal.*

W. L. W.