

1909.

TRIMBAK  
RAMCHANDRA  
v.  
SHEKH  
GULAM  
ZILANI.

more than 12 years before suit the defendants have acquired a title to the limited interest claimed by them and cannot be ejected.

We, therefore, allow the appeal. We set aside the decree of the lower appellate Court and dismiss the suit with costs throughout.

*Decree set aside and suit dismissed.*

G. B. R.

## APPELLATE CRIMINAL.

*Before Mr. Justice Batchelor and Mr. Justice Knight.*

EMPEROR v. BALVANTRAO ANANTRAO.\*

1910.

January 19.

*Bombay A'bkári Act (Bombay Act V of 1878), sections 43 (b), 47†—Cocaine—  
—Illegal possession—Removal—Transportation of cocaine.*

Accused No. 1 who was illegally in possession of cocaine brought it from his room and gave it to accused No. 2 who stood opposite his house. The latter carried it to some distance and delivered to a Pürdeshi. The two accused were, under these circumstances, charged with transporting cocaine, an offence punishable under section 43 (b), of the Bombay A'bkári Act, 1878. The Magistrate however, acquitted them of the offences and convicted them of illegal possession of cocaine, under section 47 of the Act. Against this order of acquittal, the Public Prosecutor appealed to the High Court:

*Held*, that the Magistrate was right in declining to convict the accused under section 43 (b), of the Bombay A'bkári Act, 1878, inasmuch as the accused's

\* Criminal Appeal No. 413 of 1909.

† Sections 43 (b) and 47 of the Bombay A'bkári Act (Bombay Act V of 1878) runs as follows:—

43. Whoever, in contravention of this Act, or of any rule or order made under this Act, or of any license, permit or pass obtained under this Act,—.....

(b) transports or removes liquor, hemp or any intoxicating drug from one place to another, or ..... shall be punished for each such offence with fine which may extend to one thousand rupees or with imprisonment for a term which may extend to six months, or with both.

47. Whoever, except under the authority of some license, permit, pass or special order obtained under this Act, has in his possession within any local area or place to which the provision of section 17 has been applied, any larger quantity of country liquor or of any intoxicating drug than may legally be sold by retail under the provision of the said section, shall be punished with fine which may extend to two hundred rupees.

offence consisted not in moving the cocaine from one place to another, but in the unauthorised possession of it at any place in contravention of the Act.

Section 43, clause (b), seems to contemplate rather the case of a person who is in lawful possession of cocaine at one place, but is by law forbidden to remove it either partly or wholly to another place.

APPEAL by the Government of Bombay from an order of acquittal recorded by A. H. S. Aston, Chief Presidency Magistrate of Bombay.

Balwantrao and another were tried for an offence punishable under section 43 (b) of the Bombay A'bkāri Act, 1878, the former on a charge that on the 30th September 1909 at Fanas Wadi, Bombay, he transported 13 ounces of cocaine and the latter that he aided and abetted the offence.

The possession of cocaine by Balwantrao was unlawful from its inception. It was removed by him from his room at Fanas Wadi and handed to accused No. 2 who stood near the gate of the Wadi; and then the latter proceeded with the cocaine from thence to Bhang Wadi where he handed the parcel to a Purdeshi.

The Magistrate found that as the word "place" was not defined in the Bombay A'bkāri Act, 1878, there was no illegal transport or removal of the cocaine within the meaning of section 43 (b) of the Act: he, therefore, acquitted both the accused of the offence, and convicted them only of illegal possession of cocaine under section 47 of the Act. His reasons were as follows:—

"The word 'place' is not defined in the A'bkāri Act and the defence contends that the removal of cocaine from accused's house at Fanas Wadi to Bhang Wadi would not be a removal from one place to another within the meaning of section 43, that a removal from one place to another must mean a removal from one village or town or district to another and that if the evidence is believed the only section under which accused can be convicted is that possession under section 47. The defence also contend that in the absence of evidence to show the transport was illegal the only section under which accused can be convicted is section 47. I think this later contention must be upheld. I convict accused under section 47."

The Public Prosecutor appealed to the High Court from the order of acquittal.

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*M. B. Chaudal*, Government Pleader, for the Crown.

*Gadgil*, with *D. R. Patwardhan*, for the accused.

PER CURIAM :—We think that we ought not to interfere with this acquittal, and that the Magistrate was right in declining to convict the accused under section 43 (b) of the Bombay A'bkari Act V of 1878. The fact was that the accused's possession of this cocaine was altogether illegal, and, in these circumstances, it seems to us that section 43 (b) does not apply. That section seems to contemplate rather the case of a person who is in lawful possession of cocaine at one place, but is by law forbidden to remove it either partly or wholly to another place. Here the offence consisted not in moving the cocaine from one place to another, but in the unauthorised possession of it at any place in contravention of the Act. The appeal, therefore, must be dismissed.

*Appeal dismissed.*

R. R.

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## APPELLATE CRIMINAL.

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*Before Mr. Justice Batchelor and Mr. Justice Knight.*

EMPEROR v. MULJI DAMODARDAS.\*

1910.

*January 19.*

*City of Bombay Municipal Act (Bom. Act III of 1888), section 390—  
Factory—Municipal Commissioner, permission of—Unauthorised factory.*

The accused obtained the Municipal Commissioner's permission (section 390 (1) of the City of Bombay Municipal Act, 1888), to establish a hand-loom factory worked by an oil engine: but by means of this oil engine he also established a flour mill—without any permission. The accused was, therefore, charged with the offence under section 390 (1) of the Act:—

*Held*, that the accused was guilty of a technical offence under section 390 (1) of the City of Bombay Municipal Act, 1888: for although the accused had leave to establish the hand-loom factory, he had no leave to establish the flour mill factory, which was not the less another and a separate factory because it happened to be worked by the same power which it was proposed to employ in the permitted factory.

\* Criminal Appeal No. 452 of 1907.