

CIVIL REVISION.

Before U Thaung Sein, J.

ABDUL (APPLICANT)

v.

Q. H. AGNA (RESPONDENT).*

Burma Municipal Act, s. 141—Lairage fees—When can be collected—Taxing statute—Benefit of doubt.

Held: Under s. 141, Municipal Act, "Municipal Committee may charge fees for * * * * lairage" only where there is "use or occupation" of the lair. Where there was no use or occupation of the lair as in the present case no fees can be levied. S. 141 of the Municipal Act must be construed strictly and no taxes can be imposed except by words which are clear and the benefit of the doubt is the right of the subject.

The Executive Engineer, Mandalay v. The Maymyo Municipality, I.L.R. 13 Ran. 758, followed and applied.

The mere fact that the Municipal Committee had issued a licence to collect such fees cannot create any liability to pay the same.

K. R. Venkatram for the appellant.

U THAUNG SEIN, J.—The respondent Q. H. Agna is a Cattle Slaughter-house licensee of the Moulmein Municipality for the period 1st October 1947 to 30th September 1948 and according to the licence issued to him he is entitled to collect slaughtering fees and lairage fees in respect of cattle slaughtered at the Municipal Slaughter-house. The present applicant Abdul is a butcher who slaughtered a number of animals at the slaughter-house in question and he has paid to the respondent slaughter fees in respect of those animals. But he refused to pay the lairage fees on the ground that no lair had in fact been provided and the animals slaughtered by him had not been kept in the lair for observation prior to the slaughter. It appears

* Civil Revision No. 40 of 1948 against the decree of the Small Causes Court of Moulmein in Civil Suit No. 8 of 1948, dated the 26th March 1948.

that under the bye-laws of the Moulmein Municipality no animal should be slaughtered unless it has been kept under observation in the lair for at least four days. While in the lair the animals were to be fed and tended by the Municipal Committee or with the permission of the Committee, by the owner of the animals. The feeding charge for each animal while in the lair was fixed at eight annas per day. It is this lairage fee which the respondent as a licensee of the Moulmein Municipal Committee was empowered to collect from those who brought animals for slaughter.

It appears that the bye-law in question has been a "dead letter" for some time past and that animals had been slaughtered without any observation in the lair. The respondent claimed that he was entitled to lairage fees as laid down in his licence whether the animals were kept in the lair or not and accordingly sued the applicant in the Small Cause Court of Moulmein for the recovery of Rs. 126 for lairage fees in respect of the animals slaughtered by the latter. The learned Judge of the Small Cause Court has held that though the animals had not, in fact, been kept in the lair, yet the respondent's licence clearly mentioned that he was entitled to collect such fees and decreed the suit.

Now, lairage fees are charged for expenses incurred in feeding or tending animals while they are in the lair. The Municipal Committee are no doubt entitled to levy such fees under section 141 of the Municipal Act which runs as follows :

"141. The committee may charge rents or fees for the use or occupation of any municipal slaughter-house or any shed, standing, pen, lairage or other building or space therein."

But, I would stress that the Municipal Act permits the levy of such fees only where there is "use or occupation" of the lair. Where there has been no use

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or occupation of the lair as in the present case, I fail to see how they could levy such fees. It is clearly laid down in *the Executive Engineer, Mandalay v. The Maymyo Municipality* (1) that:

“No tax can be imposed except by words which are clear and the benefit of the doubt is the right of the subject.”

In my opinion section 141 of the Municipal Act must be construed strictly and it is clear that where there has been no use or occupation of a lair then, no fees could be leviable. The learned trial Judge was apparently under the impression that the licence issued by a Municipal Committee cannot be questioned by any other person. If that be so then Municipal Committees could issue licences for the collection of any fees or taxes which they deem fit. I feel certain that no one would assert that Municipal Committees possess such wide and unlimited powers of taxation. In issuing the licence to collect certain fees, the Municipal Committee does not guarantee its validity and the applicant was thus entitled to question it.

In the present case there was no use or occupation of the lair by the animals slaughtered by the applicant and no expenses were incurred by the respondent in respect of them. The applicant cannot be compelled to pay such charges merely because the Municipal Committee had issued a licence to collect it. On the whole the learned trial Judge erred in decreeing the respondent's suit and the application for revision is accordingly allowed.

The judgment and decree of the Small Cause Court of Moulmein is hereby set aside and the respondent's suit shall stand dismissed with costs in all Courts.

(1) I.L.R. 13 Ran. 758.