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 NUSSEER-
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 RUSTOMJI
 AND OTHERS.

testator's residuary trust estate mentioned in the fifth paragraph of the will.

In their Lordships' opinion this would not be in accord with the intention of the testator as declared in the terms of his will.

Their Lordships will humbly advise His Majesty that the appeal shall be dismissed with costs to be paid out of the estate.

Solicitors for the appellant : *Watkins & Hunter.*

Solicitors for the respondents : *Wontner & Sons.*

A. M. T.

APPELLATE CRIMINAL.

Before Sanderson C. J. and Panton J.

LEGAL REMEMBRANCER

v.

TRAILOKYA NATH CHATTERJEE.*

Kiln—Panja not a kiln—Bengal Municipal Act (Beng. III of 1884), ss. 261, 273(2).

The process of burning bricks, called a *panja*, by laying alternative layers of fuel and unfired bricks with fire vents in which fires are kindled and allowed to burn till the fuel is consumed, is not a "kiln" within the meaning of ss. 261 and 273(2) of the Bengal Municipal Act.

THE accused, Trailokya Nath Chatterjee, was charged under s. 273 (2) of the Bengal Municipal Act, 1884, with having used a place as a kiln for making bricks at Konnagar without a license. It appeared that the accused burnt bricks by the process known as *panja*, which is described in the judgment of the

* Government Appeal No. 2 of 1922, against the order of Nirmal Kumar Sen, Sub-Deputy Magistrate of Ghatal, dated Jan. 3, 1922.

High Court. He was put on trial before Mr. N. K. Sen, a Sub-Deputy Magistrate of the third class at Ghatal, and acquitted on the ground that a *panja* was not a "kiln" within ss. 261 and 273(2) of the Act. The Local Government appealed against the order of acquittal.

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The Deputy Legal Remembrancer (Mr. Orr), for the Crown, referred to the evidence of the Sanitary Inspector of the Ghatal Municipality who stated that *panjas* were "kilns". Cites the definition of "kiln" in the Century Dictionary. The process of burning bricks in *panjas* which reach a considerable height and cover a large area is really that of a kiln.

Babu Manmatha Nath Mookerjee (with him *Babu Satindra Nath Mookerjee*), for the accused. There is a distinction between kilns and *panjas*. Refers to the evidence of J. K. Sarkar and the Encyclopædia Britannica, Vol. IV, p. 520, and the Oxford Dictionary. Section 261 prohibits the use of a place as a kiln and not its use for burning bricks in any other way.

SANDERSON C. J. This is an appeal by the Superintendent and Remembrancer of Legal Affairs, Bengal, against a decision of a Sub-Deputy Magistrate, third class, of Ghatal, and the matter arises out of a prosecution, in which one Trailokya Nath Chatterjee was the defendant, under section 273 (2) of the Bengal Municipal Act, which provides that, "whoever, in a Municipality, without a license, uses any place for any of the purposes specified in section 261, or section 263; or uses any place as a kiln in contravention of the provisions of section 262A" and so on, "shall be liable, for every such offence, to a fine". And the material part of section 261 which is applicable to this case is as follows:—"Within such local limits as may be

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“fixed by the Commissioners at a meeting, no place shall
 “ be used without a license from the Commissioners,
 “ which shall be renewable annually, for any of the
 “ following purposes, namely, as a tannery, slaughter-
 “ house, or kiln for making bricks, pottery, tiles or lime.”

The allegation in this case was that the defendant had, without a license, used a place as a kiln for making bricks. The brick-field was said to be about 50,000 square feet, and the method of manufacturing bricks was, what is called in this country, in “*panjas*”, or, as it has been said by one of the witnesses, “clamps”. The description of a “*panja*” or “clamp” is given by the witness, Joy Kumar Sarkar, who was called for the defendant. He says “there is a difference between a kiln and clamp. In a “clamp” or “*panja*” the fuel and bricks.....are placed in alternate layers. In a kiln, which means a room or masonry enclosure, with or without roof, in which the bricks are stacked without any fuel and burnt from places or flues arranged below the stack, in which the fires are lighted and kept up with fresh supplies of wood or coal till the bricks are burnt”. Then he says, “we never say Bull’s clamp but Bull’s kiln, and we say country clamp which does not mean a kiln”. Then in describing the process adopted by the defendant, he said, “I would not say that the bricks were burnt there in kilns, but they were burnt in ‘clamps’ or “country *panjas*”.

On the other hand, it has been contended that this process of burning bricks by placing the fuel and the bricks in alternate layers so that they reach up to a considerable height and cover a considerable area really, in effect, amounts to the creation of a kiln. The Magistrate decided in favour of the defendant holding that this process was not a kiln, and the Legal Remembrancer has appealed. The definition

of a kiln in the Oxford Dictionary is as follows:—
 “A furnace or oven for burning, baking or drying.
 “of which various kinds are used in different
 “industrial processes.” Then it gives an instance—“an
 “oven or furnace for baking bricks, tiles or clay vessels.
 “or for melting the vitreous glaze on such vessels”.

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That definition, in my opinion, points to a structure, which is of a permanent nature. Further, I was struck with the account which the learned vakil read from the Encyclopædia Britannica in Volume IV at page 520. It runs as follows “It is evident that the “best method of firing bricks is to place them in per-
 “manent kilns, but although such kilns were used by
 “the Romans some 2,000 years ago, the older method of
 “firing in clamps is still employed in the smaller brick
 “fields in every country where bricks are made. These
 “clamps are formed by arranging the unfired bricks in
 “a series of rows or walls, placed fairly closely together
 “so as to form a rectangular stack. A certain number
 “of channels or fire mouths are formed in the bottom
 “of the clamp and fine coal is spread in horizontal
 “layers between the bricks during the building up of
 “the stack. Fires are kindled in the fire mouths and
 “the clamp is allowed to go on burning until the
 “fuel is consumed throughout. The clamp is then
 “allowed to cool, after which it is taken down and
 “the bricks sorted”. In that description there is clearly a distinction drawn between that which is a “clamp” and that which is a “kiln”, and the process of making bricks by means of “clamps” seems to be older than the kilns which were used by the Romans about 2,000 years ago. Giving to the word “kiln” its ordinary meaning, I am inclined to the opinion that the Magistrate was right in his construction. If, however, there is a doubt about it, the words of the section ought not to be strained

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unduly against the defendant. In my judgment there is force in the argument which the learned vakil presented, upon the construction of this part of the section. The words are, "using a place as a kiln for making bricks". His argument was that, if it had been intended to prohibit the manufacture of bricks not only by means of a kiln but also by means of the older system of "clamps", it would have been sufficient for the Legislature to provide that no place shall be used without a license from the Commissioners for the purpose of making bricks; consequently, we must take it that the words "no place shall be used as a kiln for making bricks" were advisedly used by the Legislature having regard to the ordinary meaning of the word "kiln" as distinguished from "clamps". In a case of this kind, in my judgment, it is not the function of the Court to strain the meaning of the particular section of the Act, because, if the process which is aimed at in this prosecution is really a nuisance and if it is in the opinion of the authorities such a process as ought to be brought within the purview of the section, it is open to them to amend the Act.

For these reasons, in my judgment, the appeal must be dismissed.

PANTON J. I agree.

E. H. M.

Appeal dismissed.