

APPELLATE CRIMINAL.

Before Newbould and B. B. Ghose JJ.

RADHA KISSEN CHAMARIA

v.

EMPEROR.*

1924

June 16.

Erections—Fixtures—Calcutta Port Act (Eng. III of 1890), ss. 2(5), 83, and 84—Right of private proprietors to make erections on their lands below low water mark.

Section 83 of the Calcutta Port Act prohibits the erection of certain structures on private land which is clearly an interference with the rights of their owners. Such rights are not, therefore, saved by s. 2(5) of the Act.

THE facts of the case were that, on the 20th December 1923, the Secretary to the Port Commissioners lodged a complaint, under the Calcutta Port Act (III of 1890), sections 83 and 84,† before the Chief Presidency Magistrate, against the appellant and his brothers, alleging that they had erected certain brick walls on the foreshore and below the high water mark of the river Hughli without the consent of the Local Government. The case was tried

* Criminal Appeal No. 188 of 1924, against the order of A. Z. Khan, Third Presidency Magistrate, dated March 7, 1924.

† *Calcutta Port Act (III of 1890), section 83* :—It shall not be lawful for any person or persons, save the Commissioners, to make, erect or fix below high water mark within the port any wharf, quay, stage, jetty, pier, erection or mooring, unless the assent of the Local Government shall have been first obtained.

Section 84 :—Any matter or thing which may be so made, erected or fixed, may be removed by the Commissioners; and the person who shall have so made, erected or fixed any such matter or thing shall be liable on conviction to a fine which may extend to Rs. 1,000.

