

prompted by that common object and directed towards accomplishing it. The evidence of the common association of all the petitioners for that one purpose was particularly strong. TARANAGOWD,
In re.

I do not find that any objection on the ground of joint trial was taken before the trial Court, and it certainly was not made a ground of appeal, before the Sessions Judge. In these circumstances, I am not prepared to say that the joint trial was illegal or in any way prejudiced the accused. I am not prepared to interfere in this case and dismiss the petition.

B.C.S.

APPELLATE CRIMINAL.

*Before Mr. Justice Madhavan Nair and Mr.
Justice Reilly.*

PUBLIC PROSECUTOR, APPELLANT,

v.

PALANIYANDI NAICKEN, ACCUSED.*

1927,
October 19.

Madras Local Boards Act, sec. 3 (18) (c)—Public road—Meaning of road poramboke—Encroachment on—Not causing obstruction to public—Conviction for.

Under section 3 (18) (c) of the Madras Local Boards Act public road includes land registered as road poramboke and which lies on either side of the roadway up to the boundaries of the adjacent property. Such land is vested in the District Board and the public have a right of way over every part of it.

Failure to vacate an encroachment on road poramboke after notice and conviction renders the person encroaching liable to conviction under sections 159 (1) and 207 (2) of the Madras

* Criminal Appeal No. 540 of 1927.

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Local Boards Act, even though the encroachment caused no obstruction to the public

APPEAL under section 417 of the Code of Criminal Procedure, 1898, against the acquittal of the aforesaid accused by the order of the Court of the Joint Magistrate of Kumbakonam in C.A. No. 5 of 1927 on his file (C.C. No. 197 of 1925, on the file of the Court of the Stationary Second-class Magistrate, Papanasam).

Public Prosecutor for the Crown.

T. S. Krishnaswami (amicus curiae) for the accused.

JUDGMENT.

MADHAVAN
NAIR, J.

MADHAVAN NAIR, J.—The facts are briefly these—
The accused encroached on Road No. 18 within the limits of Melatoor(5), Sethi Resta 1, in the District Board, Tanjore, and notice was served upon him under section 159 (1) of the Local Boards Act to vacate the encroachments. This was disobeyed and he was convicted by the Sub-Magistrate, Papanasam, in C.C. No. 240 of 1925. He preferred no appeal against this conviction. He did not, however, remove the encroachment; and, as the offence continued, the present case was brought against him under sections 159 (1) and 207 (2) of the Madras Local Boards Act. The Stationary Sub-Magistrate of Papanasam found him guilty and fined him Rs. 61. This conviction was set aside on appeal. This present appeal has been preferred by the Public Prosecutor against the acquittal of the accused by the Joint Magistrate of Kumbakonam.

P.W. 2, the Local Fund Road Maistry, deposed that the encroachment in question lies outside the line of avenue trees on the road and on land which is required for road conservancy purposes and that there was no obstruction to traffic. The conviction was set aside by the learned Joint Magistrate mainly on the ground that "public road" as defined by section

3 (18) of the Local Boards Act means the actual road over which the public have a right of way and that none of the clauses of section 3 (18) is wide enough to include a road poramboke used for conservancy purposes. I think that the conclusion of the learned Magistrate is based upon a misreading of section 3 (18). Sub-clause (c) of that section says a public road includes land which lies on either side of the roadway up to the boundaries of the adjacent property. The land which is in question in this case clearly comes within this description. It is registered as "road poramboke" and is vested in the District Board. The public have a right of way over every part of land registered as road poramboke. The fact that the encroachment does not cause any obstruction to the public does not in the slightest degree affect the case. The District Board which owns the public roads has every right to ask those who encroach upon them to remove the obstruction.

It was argued on behalf of the accused that he had perfected his title to the land in question by adverse possession for over thirty years. This ground was raised in the grounds of appeal to the lower Appellate Court but in the judgment we find no discussion of the point. The judgment is confined exclusively to a consideration of the question whether the encroachment was on the public road as defined in section 3 (18). It appears to us that this point has not been pressed before the learned Magistrate; I agree with the Sub-Magistrate that the evidence does not conclusively show that the case of adverse possession has been made out by the accused.

In these circumstances I set aside the acquittal and convict the accused of the offence under sections 159 (1) and 207 (2) of the Madras Local Boards Act and

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sentence him to pay a fine of Rs. 61 or in default to suffer simple imprisonment for 2 months.

REILLY, J.

REILLY, J.—I agree. In regard to the definition of a “public road” in the Madras Local Boards Act it appears to me that *prima facie* the public have a right of way over every part of every road poramboke. Therefore, if we find a place of road poramboke which lies between the roadway and the boundary of adjacent property, that will be a public road as defined in the Act unless it is shown that in some way the public have lost their right of way over it.

B.C.S.

APPELLATE CRIMINAL.

Before Mr. Justice Devadoss.

1927,
November 13.

MUHAMMAD ABDUL KHUDUS SAHIB AND FIVE OTHERS
(PETITIONERS), PETITIONERS,

v.

MUHAMMAD ASHROOF SAHIB AND THREE OTHERS
(COUNTER-PETITIONERS), RESPONDENTS. *

Criminal Procedure Code (Act V of 1898), sec. 147—Claim to bury dead in a burial ground—If section applicable to—Vacant portion of burial ground—Improperly used for cultivation—If defeats claim.

Section 147 of the Code of Criminal Procedure applies to a claim to bury the dead in a burial ground and a magistrate acting under the section has to see whether the right which is exercisable only on particular occasions or at particular seasons was in fact exercised during the last of such occasions or seasons.

Improper use of vacant portions of a burial ground for cultivation will not take away the right of persons entitled to bury their dead when occasion arises.

*Criminal Revision Case No. 504 of 1927.