conviction, but reduce the sentence on Azmat Shah to one of six months' rigorous imprisonment and on Abdul Hakim, Najibullah, Asghar Husain, Wahidyar Khan, and Abdulla to one of three months' rigorous imprisonment each.

Mr. Hamilton has argued that the concluding words of the appellate court's order are *ultra vires*. The learned Sessions Judge says:—"I am not satisfied that the whole of the *katha* (catechu) recovered was that taken from Krishnanand and the parties will be left to establish their claim to it in the Civil Court." It is argued that under section 517 of the Criminal Procedure Code the only court that could pass orders under that section was the court trying the case, and reliance is placed on *In re Devidin Durgaprasad* (1). This decision, however, was passed before the present Code of Criminal Procedure came into force. It seems to me that section 520 gives an appellate court full power to pass such an order. The same view was taken by the Calcutta High Court in *Baloram Gogai* v. *Chintaram Kohta* (2).

Application rejected.

Before Mr. Justice Tudball.

EMPEROR *v.* NANNA MAL.*

1913
April, 11.

Act (Local) No. I of 1900 (United Provinces Municipalities Act), section 88—Municipal Board—Power of Board to order demolition of structure over-hanging a public road—Compensation—Offer to pay compensation not a condition precedent to order for demolition.

The owner of a house to which was attached a balcony overhanging a public road repaired the balcony, which had become dilapidated, and made it serviceable, but without obtaining the permission of the Municipal Board thereto.

The board thereupon issued notice to the house-owner under section 88 of the Municipalities Act, 1900, to remove the balcony, and, in default of compliance, prosecuted him.

Held that the board had power, under section 88, clause (2) of the said Act, to order the removal of the balcony without assigining any reason, and that it was not necessary for the board, in the case of a notice issued under section 88, to tender or express its willingness to pay compensation in respect of the structure the demolition of which was ordered.

THE facts of this case were as follows:—

One Nanna Mal was the owner of a house in the town of Hathras. There was a balcony attached to this house overbanging a

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* Criminal Revision No. 804 of 1912 from an order of Muhammad Nur-ul-Hasan Khau, Magistrate, first class, of Aligarh, dated the 11th of June, 1912.

(1) (1897) I. L. R., 22 Bom., 844. (2) (1904) 9 C. W. N., 549.

public road. It fell into disrepair and the applicant reconstructed it and made it serviceable. He also had a privy in this house, the upper portion of the screening wall of which fell down. He accordingly rebuilt this wall so as to screen the privy from the public gaze. He acted, in both instances, without any sanction from the Municipal Board. On the 22nd of July, 1911, the Board issued a notice to the applicant, as the heading of the notice shows, under section 91, clause (1), and section 88 of the Municipalities Act, and ordered him to remove both the privy and the verandah. He did not comply with the order, and was prosecuted and convicted of an offence under section 147 of the Municipalities Act, and has been fined Rs. 20. In the meantime he also brought a civil suit for a declaration that the notice issued by the Municipal Board was *ultra vires* and that he was not bound by it. The suit partly succeeded and partly failed. In so far as the notice under section 91 is concerned, which relates to the privy, the suit was decreed. In so far as the balcony was concerned, the suit was dismissed.

Against his conviction and sentence Nanna Mal applied in revision to the High Court.

Babu *Piari Lal Banerji*, for the appellant.

The Assistant Government Advocate (Mr. *R. Malcomson*), for the Crown.

TUDBALL, J.:—The facts out of which this revision has arisen are as follows. The applicant is the owner of a house in the town of Hathras. There was a balcony attached to this house overhanging a public road. It fell into disrepair and the applicant reconstructed it and made it serviceable. He also had a privy in this house, the upper portion of the screening wall of which fell down. He accordingly rebuilt this wall so as to screen the privy from the public gaze. He acted, in both instances, without any sanction from the Municipal Board. On the 22nd of July, 1911, the Board issued a notice to the applicant, as the heading of the notice shows, under section 91, clause (1), and section 88 of the Municipalities Act and ordered him to remove both the privy and the balcony. He did not comply with the order and was prosecuted and convicted of an offence under section 147 of the Municipalities Act and has been fined Rs. 20. In the meantime he also brought a civil suit for a declaration that the notice issued by the Municipal Board

was *ultra vires* and that he was not bound by it. The suit partly succeeded and partly failed. In so far as the notice under section 91 is concerned, which relates to the privy, the suit was decreed. In so far as the balcony was concerned the suit was dismissed. The question now before me is whether the applicant should have been found guilty of an offence under section 147 of the Act.

Taking first the case of the privy, it is quite clear that section 91, clause (1) or (2), could not apply to the facts of the present case. Under clause (1) the notice contemplated is one requiring the owner or occupier of any building or land to repair, alter, cleanse, disinfect or put in good order or to close any drain, privy or cess-pool. Clause (2) of the section relates really to a new privy built without permission or contrary to directions or regulations or the provisions of the Act or the rebuilding of any privy which the Board had ordered to be demolished or closed or not to be made. It is, therefore, quite clear that section 91 has really no application to the facts of this case and has wrongly been applied by the Board.

As regards the balcony, section 88 is the section under which the Board issued the notice. It must also be noted here that the Board took no action under section 87 of the Act. The notice was issued under section 88. Clause (1) of that section lays down that it shall not be lawful without the written permission of the Board to add to or place against or in front of any building any projection or structure overhanging, projecting into or encroaching on any street. Clause (2) then goes on to say that the Board may, by notice, require the owner or occupier of any building to remove or alter any projection or structure. To this clause there was a proviso that in the case of any such projection which was lawfully in existence at the commencement of the Act, the Board shall make reasonable compensation for any damage caused by the removal. There is nothing in the section limiting the right of the Board to issue the notice contemplated in clause (2) to cases in which the structure is dangerous to the public or insanitary or to cases of a similar nature. Apparently the Board has unlimited power, without assigning any reason, to issue the notice contemplated in clause (2). The proviso merely lays down that in certain cases the Board shall compensate the owner of the structure.

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It is urged on behalf of the applicant that the Board should, in its notice, either tender compensation or at least express its willingness to pay compensation. It seems to me impossible to hold that the Board must do this. It is only in cases of projections lawfully in existence at the commencement of the Act that the Board is bound to pay compensation. It might be, in a special case, that the Board denied that the structure was one such as to entitle the owner to the compensation mentioned in the proviso. It would be absurd to hold that the Board in such a case could not order the removal of a structure until the question of compensation had been settled. In the circumstances of the present case it was the duty of the present applicant to comply with the order of the Board, at the same time putting forward his claim for compensation. If the Board wrongly refused to pay what was due to him it would have been open to him to recover the amount in a legal manner. Under the notice issued, therefore, in so far as the balcony was concerned, the present applicant was wrong in not complying with the order. He has, therefore, been guilty of an offence under section 147 of the Act, and the conviction was according to law. The application, therefore, fails and is rejected.

Application rejected.

1913 *April*, 14.

APPELLATE CIVIL.

Before Mr. Justice Ryves and Mr. Justice Lyle.

ABDUL AHAD AND OTHERS (PLAINTIFFS) v. MAHTAB BIBI AND OTHERS (DEFENDANTS.)*

Act No. IX of 1908 (Indian Limitation Act), section 20—Limitation—Interest—Payment of part of interest due—Suit for foreclosure.

The word "interest" in section 20 of the Limitation Act means interest or any part of the interest due. *Kallu* v. *Halki* (1) and *Anwar Husain* v. *Lalmir Khan* (2) distinguished.

THIS was a suit for foreclosure of a mortgage, dated the 4th of December, 1874. The mortgagee was in possession and received periodically profits in *part* satisfaction of the interest agreed upon in the deed. The court of first instance held that these payments

*Second Appeal No. 1070 of 1912 from a decree of Sri Lal, District Judge of Ghazipur, dated the 30th of April, 1912, reversing a decree of Kashi Nath, Munsif of Saidpur, dated the 19th of February, 1912.

(1) (1896) I. L. R., 18 All., 295. (2) (1903) I. L. R., 26 All., 167.