1912
August.

REVISIONAL CRIMINAL.

Before Mr. Justice Sir George Knox and Mr. Justice Banerji.

EMPEROR *v.* IMAMI.*

Act (Local) No. I of 1900 *(United Provinces Municipalites Act), section* 128 *(h)* (i) *Municipal board—Power of Board to make rules—Rules regulating use by hawkers of patris of public roads.*

Held that the United Provinces Municipalities Act, 1900, does not empower a Municipal board to make rules regulating the sale or exposure for sale of goods in streets or public places under the control of the board.

The Municipal Board of Allahabad, purporting to act under section 128 *(h)* (i) of the United Provinces Municipalities Act, 1900, framed certain rules for the regulation of *tahbazari* within the municipality, providing, *inter alia*, that no person should sell or expose for sale any goods in any street or public place under the control of Board except by permission of the Board and on payment of such fees as the market committee might fix. One Imami, having been found guilty under section 132 of the Act of a breach of these rules, applied in revision to the High Court, contending that the rules for breach of which he had been convicted were *ultra vires* of the Municipal Board.

Babu *Satya Chandra Mukerji* (with him Babu *Jogindro Nath Chaudhri*), for the applicant.

The Assistant Government Advocate (Mr. *R. Malcomson*) and Munshi *Durga Charan Singh*, for the Crown.

KNOX and BANERJI, J J.—Imami, who has been found guilty under section 132 of Local Act I of 1900, because he had committed a breach of a rule lawfully promulgated by the municipality of Allahabad under section 128 *(h)* (i), has applied to this Court to interfere in revision and the two grounds taken in the petition are:—(1) "That the Municipal Board of Allahabad had no power to frame rules charging fees for licences to hawk articles of food on the public street; and (2) that the words 'places of public entertainment and resort' in section 128 *(h)* (i) of the Municipalities Act cannot be construed to mean the *patri* of a street."

The particular part of Allahabad in which Imami is said to have committed a breach of Municipal rules is a strip of land on the Balua Ghat road. It appears that on the 18th of May, 1910, the

*Criminal Revision No. 724 of 1911 from an order of J. N. G. Johnson, Magistrate, First class, of Allahabad, dated the 6th of November, 1911.

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Municipal Board of Allahabad published certain rules for the regulation of *tahbazari* in the Allahabad municipality. These rules profess to have been passed under section 128 *(h)* (i). They were duly confirmed by the local Government, and by them no person is allowed to sell or expose for sale any goods in any street or public place under the control of the Board except by permission of the Board and on payment of such fees as the market committee may fix. If the making of these rules is within the powers invested by law in the municipality of Allahabad, then Imami has undoubtedly committed a breach of the rule. On the other hand, if they are *ultra vires*, Imami has not committed any breach.

The Municipal Board derive their power to make rules from Local Act No. 1 of 1900. Section 128 of that Act lays down that any Board may by rules provide for the inspection and proper regulation, *inter alia*, of any place of public entertainment and resort, and for the charge of fees for the use of such places when vested in the Board. The question we have to decide is whether power has been given under this section to the Municipality to provide for (1) any place of public entertainment; (2) any place of public resort. This is the way in which the Municipal Board read the rule. They contend that they are empowered to provide for the inspection and proper regulation, not merely of any place of public entertainment but also of any place of public resort. The petitioner, on the other hand, contends that unless it can be shown that this strip of land is a place both of public entertainment and public resort, the Municipal Board are not empowered to provide for its inspection and to charge fees for its use. The question is by no means an easy one to decide and we have taken time to consider our judgement. We wished to find whether there existed any precedent which might show how other courts have interpreted similar rules. Careful search has been made and no precedent could be found, and we are left to interpret the Act by the ordinary rules for interpretation of Acts of this nature. The first consideration is, whether we may rightly conclude that it was the intention of the Legislature to give the municipality powers to provide for the inspection and proper regulation of every place of public resort. This will include places for worship, such as temples, mosques, cathedrals and churches. All these are places of public resort.

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The same reasoning may apply to courts of justice and many other public buildings to which the public from time to time resort. It seems to us far from likely that such was the intention of the Legislature.

Next, bearing in mind that when we interpret an Act like the present, which is an Act encroaching on the rights of the subject, we have a right to expect that the Legislature will manifest its intention plainly, if not in express words, at least by clear implication and beyond reasonable doubt [Maxwell's Interpretation of Statutes, 4th Edition, page 429, and cases cited therein]. On turning to the actual words used we find a number of places mentioned as places which may be inspected and regulated. Each of these is divided from the place following it by a comma. With the exception of "dairies and bakeries," which are lumped in one, each place is separately named and falls into a separate category. The last category appears to include places of public entertainment and resort, and we hold that if it had been the intention of the Legislature that places of public resort which are not places of public entertainment, should be inspected and properly regulated, the two kinds of places would have been separately named. In our opinion the word, "public entertainment and resort" cannot be read distributively. The one argument that tells against this interpretation is the collocation of dairies and bakeries in this very same section 128 *(h)* (i). But whether this was due to an oversight or to some other case, we need not in this cause consider.

Furthermore, we doubt whether it was ever the intention of the Legislature in section 128 *(h)* (i) to provide for the regulation of streets. Provisions for regulation of streets occur in other parts of the Act, and it seems a forced idea to talk of providing for the inspection of a street or the land adjoining the same.

Finally, we might add, that the word 'entertainment'—so far as Mr. Murray's Dictionary is any guide—could not properly be applied to a street or a *patri* adjoining a street.

For all these reasons, we have arrived at the conclusion that the rule with the breach of which Imami is charged was not a rule which the Municipal Board of Allahabad was empowered to pass under section 128 *(h)* (i). We, therefore, set aside the conviction and direct that the fine, if paid, be refunded.

Application allowed.