

REVISIONAL CRIMINAL.

1917
February, 15.

Before Justice Sir Pramada Charan Banerji,
EMPEROR v. MUHAMMAD YUSUF.*

Act (Local) No. II of 1916, (United Provinces Municipalities Act), sections 209 and 210—“Erect a structure” — Movable planks placed across a public drain in front of a shop.

Held that the placing, without the permission of the Municipal Board, of movable planks over a municipal drain outside a shop, the planks being put out in the morning when the shop was opened and removed at night, did not amount to an offence under the United Provinces Municipalities Act, 1916. The expressions used in section 209 of that Act indicate that it refers to something of a permanent nature. *Kanta Nath v. The Municipal Board of Allahabad* (1) referred to.

THIS was a reference made by the Sessions Judge of Saharanpur in the case of two persons, Muhammad Yusuf and Janki Das, who had been convicted and fined in respect of offences under section 210 of the United Provinces Municipalities Act, 1916. Both the persons convicted owned shops abutting on a public road in Dehra Dun. There was a drain in front of these shops running along the edge of the road. The charge against Muhammad Yusuf was that he had placed wooden planks in front of his shop, supporting them by the culvert one side and a tin canister on the other. Janki Das was prosecuted for putting planks over the space between two culverts so as to cover the drain. The Sessions Judge found as follows:—

“In both cases the erections, if they can be so denominated, are temporary ones. Neither the planks nor Muhammad Yusuf’s canister are fixtures; all are placed in site in the mornings and removed when the shops are closed in the evenings. Presumably they can be and are also removed if and when it is desired to clean the drain, if it is necessary to remove them in order to perform this operation”.

Being of opinion that the acts done by the accused did not fall within the purview of section 209 of the Municipalities Act, 1916, he accordingly recommended that the convictions and sentences should be set aside.

The parties were not represented.

* Criminal Reference No. 104 of 1917.

(1) (1905) I. L. R., 28 All., 196.

BANERJI, J.—Muhammad Yusuf, the accused in this case, and Janki Das, the accused in the connected case No. 106 of 1917, have been convicted under section 210 of Act II of 1916, the United Provinces Municipalities Act, and each of them has been sentenced to a small fine. The two cases have been submitted by the learned Sessions Judge with the recommendation that the convictions and sentences should be set aside. Muhammad Yusuf and Janki Das own shops abutting on a public road within the municipal limits of Dehra Dun. There is a drain in front of their shops which was apparently built at their expense. The drain is at the edge of the public road. Culverts have been built over the drain, but the present dispute does not relate to the culverts. The charge against Muhammad Yusuf was that he had placed wooden planks in front of his shop, supporting them by the culverts on one side and a tin canister on the other. Janki Das was prosecuted for putting planks over the space between two culverts, so as to cover the drain. The learned Sessions Judge finds: "In both cases the erections, if they can be so denominatad, are temporary ones. Neither the planks nor Muhammad Yusuf's canister are fixtures; all are placed in site in the mornings and removed when the shops are closed in the evenings. Presumably they can be and are also removed if and when it is desired to clean the drain, if it is necessary to remove them in order to perform this operation". Section 210 of the United Provinces Municipalities Act provides that any person erecting or re-erecting any such projection or structure as is referred to in section 209 without the permission thereby required or in contravention of any permission given thereunder shall be liable on conviction to a fine which may extend to two hundred and fifty rupees. Clause (b) of sub-section (1) to section 209, which is the clause applicable to the present case, refers "to the erection or re-erection of any projection or structure so as to overhang, project into, or encroach on, or over a drain in a street." There is no question of projection in this case. The question is whether the accused had 'erected' any 'structure' encroaching over a drain in a street. The learned Sessions Judge is of opinion that a structure referred to in section 209, must mean a structure of a permanent nature. It seems to me that the view taken by the learned Judge is right. The use of the words "erect or

1917

 EMPEROR
 v.
 MUHAMMAD
 YUSUF.

1917

EMPEROR
v.
MUHAMMAD
YUSUF.

re-erect" which precede the word "structure" indicates a structure of a permanent nature. The word "structure" is not defined in the Act, but the use of the word "erect" shows, as was observed in the case of *Kamta Nath v. The Municipal Board of Allahabad* (1), that what was meant was something of the nature of a permanent structure. It does not seem to me that in enacting section 209 the Legislature intended to place any other meaning on the word "erect" than that held in the case to which I have referred. In this view the fixing of a portable plank cannot be deemed to be the erection of a structure within the meaning of section 209 of the Act. The conviction of the accused was therefore in my opinion illegal. I accordingly set it aside and direct that the fine imposed on the accused, if paid, be refunded.

Conviction quashed.

MISCELLANEOUS CIVIL.

Before Mr. Justice Piggott and Mr. Justice Walsh.

BAJI LAL AND OTHERS (PETITIONERS) v. NAWAL SINGH (OPPOSITE PARTY.)^{*}
Civil Procedure Code (1908), order XLI, rule 21—Appeal decided ex parte—Application by respondent for rehearing—Non appearance of counsel for respondent due to conduct of respondent's agent.

The respondent to a second appeal pending in the High Court appointed one Nathu Ram as his agent for the purposes of instructing counsel and of seeing that the appeal was properly prosecuted. Nathu Ram did instruct counsel, but after a time took away the papers, so that counsel was unable to appear, and the consequence was that the appeal was decreed *ex parte*. Held that this misconduct on the part of the agent afforded his principal no ground for applying for rehearing of the appeal. *Har Prasad v. Abdul Rahman* (2) referred to.

A SECOND APPEAL was heard and decreed *ex parte* by the High Court. An application was made by the sole plaintiff and principal respondent in the case for setting aside the *ex parte* decree. The applicant made an affidavit to the effect that he had deputed one Nathu Ram, who was a distant relation of his and who had been his *pairokar* in the lower court, to go to Allahabad, engage counsel and make all arrangements for defending the appeal. It appeared that Nathu Ram had engaged counsel and duly instructed him, but had subsequently taken away all the papers from the

^{*}Civil Miscellaneous No. 242 of 1916.

1917
February, 15.