Before Mr. Justice Dalal.

EMPEROR *v.* BHAN DEB.* 1928 August, 17.

Act (Local) No. II of 1916 *(U. P. Municipalities Act), section* 178(2)—*"Adjacent to" a public street, meaning of—Building divided from public road by a wall and a canal distributory.*

A building which is divided from a public road by a wall and a canal distributory is not "adjacent to" a public road within the meaning of section 178(2) of the U. P. Municipalities Act. "Adjacent" must mean "joining at some point" and cannot mean to include two properties which are divided.

THE facts of the case sufficiently appear from the judgement of the Court.

Dr. *Kailas Nath Katju*, for the applicant.

The Assistant Government Advocate (Dr. *M. Waliullah*), for the Crown.

DALAL, J. :—The laxity with which penal statutes are made use of by public bodies is a matter of grave concern. No one takes the trouble of reading the law before launching a prosecution. In the present case the applicant has been convicted of an offence under the Municipal Act, section 307(*b*), on the ground that within the limits of a Municipality he erected a new part of a building or made material alterations therein without the Board's permission. Obviously clause (2) of section 178 of the Municipalities Act was lost sight of—that the notice referred to in sub-section (1) to be given by a person, who desires to erect a new part of a building or to make material alterations, shall only be necessary when the building abuts on or is adjacent to a public street or place or property vested in His Majesty or in the Board. In the Magistrate's court everything was taken for granted. It appears, however, that the reason

*Criminal Revision No. 493 of 1928, from an order of F. D. Simpson, Sessions Judge of Kumaun, dated the 11th of May, 1928.

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for prosecution was clearly defined in the sessions court, and it was alleged that the buildings adjoined a public road. The Sessions Judge pointed out that what is marked by I on exhibit E was nowhere near a public road. The Sessions Judge says that the building marked II was adjacent to a public road, because it was divided from a public road by a canal and a wall only. Obviously by a canal the learned Judge meant a distributory, i.e. a narrow channel of water. If there is a wall separating this house from the public road, it is difficult to understand how the building can be called adjacent to the road. "Adjacent" must mean "joining at some point," and the meaning of the word is made clearer by the words "abutting on." What is attempted to be avoided is the danger of obstruction or encroachment on a public road. When there is a dividing wall there cannot be any obstruction or encroachment. However that may be, a penal statute must be strictly interpreted, and adjacent cannot mean to include two properties which are divided. The Government Pleader pointed out that the building was adjacent to a distributory. That, however, was not the material portion of the charge. There is nothing to show that the distributory is vested in the Notified Area, nor that the property is vested in His Majesty. There was no intention of prosecuting the applicant because he failed to obtain permission for making alterations in a building which was adjacent to a canal distributory. The prosecution cannot be permitted at the last moment, without notice to the accused, to change its ground. I am certain that the authorities connected with the Notified Area have not stopped to think of the limited nature of the property for which a notice under section 178(1) is necessary and fully believe that wherever in the notified area a building is erected, altered or added to, a notice is necessary. It is in this wrong belief that the present prosecution was launched.

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In the notice itself no reference is made to the buildings being adjacent to any public street or place or property vested in His Majesty or in the Board.

Two other objections were raised, but they have no substance. [These are not material for the purpose of the report and are omitted.]

I set aside the conviction and sentence and order the fine, if any recovered, to be refunded.

Before Mr. Justice Dalal.

EMPEROR *v.* GAYA PRASAD.*

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August, 30.

Indian Penal Code, section 336—"Rashly or negligently"—Deliberate act not included—Indian Penal Code, section 153.

A rash act is primarily an over-hasty act and is opposed to a deliberate act; even if it is partly deliberate, it is done without due thought and caution.

Where a *pujari* of a temple left the temple at night and from outside deliberately threw bricks at it, hoping that the Hindus of the locality would believe that the bricks came from the Muhammadan quarter and that this would lead to a riot between the two communities, *Held* that the act was a deliberate one and not a rash or negligent act within the meaning of section 336 of the Indian Penal Code; also, that the provisions of section 153 did not apply to the case.

THE facts of the case sufficiently appear from the judgement of the Court.

Mr. *H. C. Desanges*, for the applicant.

The Assistant Government Advocate (Dr. *M. Waliullah*), for the Crown.

DALAL, J. :—It is difficult to understand the arguments of the two subordinate courts. The applicant has been convicted of an offence under section 336 of the

*Criminal Revision No. 599 of 1928, from an order of Syed Iftikhar Husain, Additional Sessions Judge of Pilibhit, dated the 5th of April, 1928.