

costs are not fully recovered from the Trust Funds. I regret I can find no precedent enabling me to give him priority as to his costs. The only order under the circumstances, I can make, is that the costs of all parties appearing before me be paid out of the Trust property—those of the Advocate-General being taxed between attorney and client. Costs to be taxed as if this Originating Summons had been a long cause.

I cannot conclude this judgment without expressing my sense of obligation to the members of the legal profession engaged in this case, most especially to Mr. Bahadurji, for the very valuable assistance they have rendered to the Court throughout the case.

Attorneys for the plaintiff:—*Messrs. Wadia, Gandhi & Co.*

Attorneys for defendant No. 1:—*Messrs. Pestonji, Rustim & Kola.*

Attorney for defendants Nos. 10 and 11:—*Mr. P. S. Ballivala.*

Attorneys for defendant No. 12:—*Messrs. Jehangir, Gulabhai and Billimoria.*

B. N. L.

*Note*—Italicised words or sentences, occurring in quotations from treatises or comments and embodied in this judgment, indicate that Mr. Justice Davar desired to phrase those particular words or sentences and do not indicate that they were italicised in the originals from which the quotations are taken.—EDITOR.

## CRIMINAL REVISION.

*Before Chief Justice Scott and Mr. Justice Heaton.*

EMPEROR v. BABULAL KANAIYALAL.\*

*Legal Code (Act XLV of 1860), secs. 21, 186—Public Servant—Obstruction of public servant—Clerk in the cess-collection department of a District Municipality—Bombay District Municipal Act (Bombay Act III of*

*1908.)—Clerk in the cess-collection department of a District Municipality constituted under the Bombay District Municipal Act (Bombay Act III of*

\* Criminal Application for Revision No. 86 of 1908.

1907.

JAMBHEDJI  
C. TARA-  
CHAND  
v.  
SOONABAT.

1908.

July 17.

1908.

EMPEROR  
v.  
BAREILAL.

1901), is a public servant within the meaning of section 21, clause 10 of the Indian Penal Code (Act XLV of 1860); and any obstruction offered to him in execution of his duties is an offence punishable under section 186 of the Code.

THIS was an application for revision under section 435 of the Criminal Procedure Code (Act V of 1898) against the conviction and sentence recorded by the Honorary First Class Magistrate of Ahmedabad.

The complainant was a clerk in the cess-collection department of the Ahmedabad City Municipality.

The Municipality served a bill for privy tax (Rs. 2-1-0) upon the accused, in respect of his house. The amount not having been paid, a notice of demand was served upon the accused. The Municipality subsequently obtained a warrant of attachment, which they attempted to serve through their clerk, the complainant. When the complainant went to the accused's house to execute this warrant he was obstructed by the accused, who was thereupon tried for and convicted of an offence punishable under section 186 of the Indian Penal Code (Act XLV of 1860). The accused was sentenced to pay a fine of Rs. 25.

The accused applied to the High Court.

*L. A. Shah*, for the accused:—

The complainant is not a public servant within the meaning of section 21 of the Indian Penal Code. The act of the accused therefore does not amount to an offence under section 186 of the Code.

There was in the old Municipal Act (Bombay Act II of 1861 section 46) a provision making all Municipal servants public servants within the meaning of section 21 of the Indian Penal Code. The present Municipal Act (Bombay Act III of 1900 section 45) however makes only particular servants public servants for certain limited purposes.

The case of *Reg v. Nantamram Uttamram* (1), which is generally my contention, was decided under the old Municipal Act of 1861 where there was no provision corresponding to section 45 of the

(1) (1869) 6 Bom. H. C. R. Cr. Ca. 64.