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the finding that the signal had been lowered amounted to a different breach, viz., a breach of Rule 51. Nothing has been urged before us which leads me to think that the conviction in regard to Rules 109 and 112 is not fully justified upon the findings of the two lower Courts. The contention about there having been previous breaches, which were acquiesced in, was, in my opinion, rightly rejected; and it cannot be said that, because there may have been some such previous irregularities, which were not censured or checked by superior authorities, the rules had been modified by proper authority. It seems to me that the conviction of the applicant, at any rate of a breach of Rules 109 and 112, is one that there is no reason for our disturbing in revision. I would only, therefore, give him the benefit of the doubt in regard to the question of the lowering of the signal and quash the conviction so far as it depends upon a breach of Rule 51. The sentence imposed is certainly very lenient, having regard to the loss of life and property occasioned by the accident and is fully justified by the breach of Rules 109 and 112, in respect of which he has been convicted. With regard to them I would dismiss the application.

MIRZA, J. :—I agree.

*Application dismissed.*

R. R.

## CRIMINAL REVISION

*Before Mr. Justice Fawcett and Mr. Justice Mirza.*

EMPEROR v. MERWANJI M. MISTRY.\*

*Criminal Procedure Code (Act V of 1898), section 245—City of Bombay Municipal Act (Bom. Act III of 1888), section 471—Conviction under section to be followed by legal sentence.*

A conviction under section 471 of the City of Bombay Municipal Act, 1888, must be followed by a legal sentence. An accused person so convicted but found to have abated the nuisance complained of cannot merely be warned and discharged.

\*Criminal Applications for Revision Nos. 381 and 382 of 1927.

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THESE were applications under the criminal revision jurisdiction of the High Court against convictions and sentences passed by N. T. Jungalwala, Presidency Magistrate, Fifth Court, Bombay.

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The facts are sufficiently stated in the judgment.

*Kemp*, with *Crawford, Bayley & Co.*, for the applicant, the Municipal Commissioner.

*P. B. Shingne*, Government Pleader, for the Crown.

The accused present in person.

FAWCETT, J. :—In this case the opponent, the owner of certain stable premises, was prosecuted for offences under section 471 of the City of Bombay Municipal Act, 1888, in having allowed stable litter to be kept on his premises, and having allowed dung from these premises to pass into certain drains in contravention of provisions of the City of Bombay Municipal Act. There were two separate cases which came up for hearing before the 5th Court, Presidency Magistrate, on July 26, 1927. It was then represented on behalf of the accused that the accumulations of stable litter had been removed and that the obstruction to the drains was due to the action of tenants and that also would be removed. The Magistrate thereupon postponed the cases to August 9, 1927, in order to give the opponent an opportunity of removing the accumulations and obstructions complained of, and of furnishing the names of the tenants that were referred to. On August 9, the Magistrate was informed, as the petition admits to be the case, that the accumulations and obstructions had been removed, and he then passed an order in each case as follows: "Complied: warned and discharged."

The Municipal Commissioner for the City of Bombay comes to us in revision and urges that this order was illegal and that it should accordingly be set aside, and

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such order passed as this Court deems fit. It is pointed out by Mr. Kemp for the petitioner that the two offences in question were punishable only with fine under section 471 of the City of Bombay Municipal Act; that, therefore, the two cases were tried as summons cases in accordance with section 4 (i) (v) of the Criminal Procedure Code, and that, under section 245 of the Code, the Magistrate was bound to record an order either of acquittal or of conviction, and, in the latter case, he was bound, unless he proceeded in accordance with the provision of section 562, Criminal Procedure Code, to pass a sentence upon the accused according to law. The Magistrate's order "warned and discharged" is of a nature that suggests the analogy of an order for release of an accused after due admonition, such as is authorised by sub-section (1A) of section 562. But that particular sub-section does not apply in the present case, because it is confined to cases of an offence under the Indian Penal Code, whereas this is an offence punishable under the City of Bombay Municipal Act. This has already been pointed out by this Court in regard to offences under the Motor Vehicles Act, 1914, cf. *Emperor v. Pandu Ramji*.<sup>(1)</sup> Nor is the case one that falls under sub-section (1) of section 562, Criminal Procedure Code, because the offence is not punishable with imprisonment, but only punishable with fine. Therefore, the order, supposing it to be one of conviction, is illegal in that the Magistrate has not passed a sentence according to law.

It is contended by the learned Government Pleader that the order does not say that the accused is convicted and that the Magistrate may have intended to acquit the accused. In my opinion that is not a construction that can be put upon the order, because the facts I have already mentioned show that it was admitted that

<sup>(1)</sup> (1926) 28 Bom. L. R. 297.

there were certain accumulations of litter and obstructions to drains, and time was given to the accused to get the accumulations and obstructions removed, so that the note that the Magistrate has made—"complied"—can only mean that the accused had taken action which put an end to the offences in question, but which did not in any way affect the fact that such offences had been committed at the time when they were alleged to have been committed. I think, therefore, the Magistrate's note must be taken as meaning that there had been an offence in each case, but that, in view of the compliance by the accused with what he had undertaken to do at a previous hearing, he considered it sufficient merely to warn and discharge him. But, as I have already pointed out, this warning and discharging was not a form of sentence or order that the Magistrate had power to pass in the case; and it was contrary to the provisions of section 245 that he should pass a sentence upon the accused according to law. Therefore I think that the objection that the order passed was illegal must be admitted.

We might send the case back to the Magistrate, after setting aside that order, with the direction that he should pass an order in each case according to law. But the accused who has appeared in person says that he would prefer this Court to dispose of the case, and we think that in the circumstances that will be the best course. The case appears to us to be one where a nominal fine will meet the ends of justice, especially as this application for revision is made mainly in order that Presidency Magistrates may not pass such an order of "warned and discharged" in future cases where they have no authority to do so. Therefore, we set aside the order "warned and discharged," and substitute an order convicting the accused of offences under section 471 of the City of Bombay Municipal

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Act, 1888, with reference to the contravention of sections 372 (f) and 258 (d) of the Act that was complained of, and sentence the accused in each case, to a fine of Re. 1 which must be paid within three days.

MIRZA, J. :—I concur.

*Rule made absolute.*

R. R.

## CRIMINAL REVISION

*Before Mr. Justice Parrett and Mr. Justice Mirza.*

EMPEROR v. GANU SADU.\*

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January 12

*Criminal Procedure Code (Act V of 1898), sections 260, 530, clause (q) and 537—Summary trial—One of offences not summarily triable—Conviction for offence summarily triable—Irregularity—Illegality—Void proceedings.*

A Magistrate tried the accused summarily for offences punishable under sections 147, 323 and 506 of the Indian Penal Code, but convicted him only for an offence under section 323 of the Code. On an application for revision on the ground that an offence under section 147 was not triable in a summary way, the Sessions Judge was of opinion that the irregularity had not led to any injustice and was cured under section 537 of the Criminal Procedure Code. On further application to the High Court :—

*Held*, that the case fell under section 530, clause (q) of the Criminal Procedure Code, and that the proceedings of the Magistrate were void.

THIS was an application under criminal revisional jurisdiction of the High Court against conviction and sentence passed by M. R. Deshpande, Resident Magistrate, First Class, at Karad, upheld on revision by A. Montgomerie, Sessions Judge of Satara.

The accused was tried summarily for offences punishable under sections 323, 147 and 506 of the Indian Penal Code, and was convicted only for the offence under section 323 of the Code and fined in a sum of Rs. 60.

An application was made to the Sessions Judge to interfere in revision on the ground that the offence under section 147 was not one which could be tried summarily, and that the illegality of the procedure vitiated

\*Criminal Application for Revision No. 372 of 1927.