

APPELLATE CRIMINAL.

Before Mr. Justice Macpherson and Mr. Justice Banerjee.

1895
August 27.

THE LEGAL REMEMBRANCER ON BEHALF OF THE LOCAL GOVERNMENT
(APPELLANT) v. SHAMA CHARAN GHOSE (RESPONDENT.)^{*}

*Bengal Municipal Act (Bengal Act III of 1884), sections 142 and 146—
“Habitually used,” Meaning of—Liability to pay a fine for non-registra-
tion of a cart.*

The accused kept his cart outside the limits of the Chanduria Municipality, but used to bring it within the limits twice a week throughout the year.

Held, he could not be said to be “habitually” using the cart within the Municipal limits, and was therefore not liable to pay a fine under section 146 of the Bengal Municipal Act (Bengal Act III of 1884) (1).

THE accused Shama Charan Ghose was prosecuted by the Chairman of the Chanduria Municipality under section 146 of the Bengal Municipal Act (Bengal Act III of 1884) for not registering his cart as required by section 142 of the Act. He did not keep his cart within the Municipal limits, but used to bring it twice a week throughout the year to a *hât* held there. The Deputy Magistrate acquitted the accused, holding that he could not be said to be “habitually” using the cart within the Municipality. The local Government appealed against the order of acquittal.

Mr. M. Ghose and Babu Hara Prasad Chatterjee appeared on behalf of the local Government.

Mr. Hill and Babu Saroda Charan Mitter appeared on behalf of the petitioner.

Mr. M. Ghose.—The lower Court has erred in holding that the cart was not used “habitually” within the meaning of section 142, Bengal Municipal Act. “Habitually” there means “regularly,” though it may be at fixed intervals. The use of the words “temporarily and casually” in clause (b) of the section makes it clear. The word “habitually” has not been defined, but from the

^{*} Government Criminal Appeal No. 2 of 1895, against the order of Babu Goti Kisto Newgee, Deputy Magistrate of Satkheria, dated the 13th of February 1895.

(1) See *Dinapore Municipality v. Watling*, Cr. Ref. 238 of 1894 decided by PETHERAM, C.J., and BEVERLEY J., on 6th September 1894.—*Ed. note.*

facts of the case the lower Court should have held that the cart was habitually used within the Municipal limits. 1895

Mr. Hill for the petitioner.—The word “habitually” has not been defined, and no hard and fast rule can be laid down. The question must be decided from the facts of each case; the word imports some degree of frequency, and in this case the cart was not so frequently used that it might be said to have been used “habitually.”

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The judgment of the Court (MACPHERSON and BANERJEE, JJ.) was as follows :—

This is an appeal on behalf of the Government of Bengal under section 417 of the Code of Criminal Procedure against an order of the Deputy Magistrate of Satkheria, acquitting the accused Shama Charan Ghose, who was prosecuted under section 146 of the Bengal Municipal Act (Bengal Act III of 1884), for not registering his cart according to the provisions of section 142 of that Act.

The facts of the case, which are few and simple and are admitted on both sides, are given in the following words in the judgment of the Court below :—

“It is admitted that the accused does not live within the Municipality and keeps his cart outside its limits. It is also admitted that the accused brings his cart twice every week within the Municipality throughout the year. A *hat* is held on Sunday and Wednesday within the Chanduria Municipality, and the accused brings his cart there on those days.”

Upon these facts the registration of the cart of the accused under section 142 of the Bengal Municipal Act would be necessary only if it could be held that it was “habitually used” within the limits of the Municipality, within the meaning of that section, by reason of its being brought within the said limits twice every week. The Court below has held that it could not be said to have been habitually so used, and it has accordingly acquitted the accused.

Mr. Ghose, who appears on behalf of the local Government, contends, firstly, that the word “habitually,” as used in section 142 of the Bengal Municipal Act, means “regularly,” though it

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may be at fixed intervals, and applies to cases where the use is periodical only, and that this view is borne out by the exceptive clause (b) of the section; and, secondly, that even if the word "habitually" be incapable of being defined as a matter of law, still, as a matter of fact, the Court below ought to have held that the cart was in this case habitually used within the limits of the Municipality.

We do not consider either of these contentions to be correct. If the first contention be accepted it would lead to most anomalous results. For not only use twice a week, but any periodical use, such as once a week, or once a month, or once in six months, would be habitual use, rendering registration of a cart so used necessary, a result which could never have been intended. Nor do we think that exceptive clause (b) of the section lends any support to the appellant's contention. That clause merely says that the section does not apply to "carts which are kept without the limits of the Municipality, and are only temporarily and casually used within such limits." But it does not mean that all carts kept outside the Municipality, which are used within it otherwise than casually and temporarily, come necessarily within the section.

It is not easy to say what meaning the Legislature intended to convey by the word "habitually." When it has used a vague word like that, and has not thought fit to define or explain it, we think the intention was, not to use it in any sense capable of being exactly defined as a matter of law, but to leave it to the Court to determine in each case, as a matter of fact, whether the use was habitual or not.

This brings us to the consideration of the second contention urged on behalf of the appellant. Without meaning to lay down any hard and fast rule, we think we may say that the word "habitually" imparts some degree of frequency, and that in order that a cart may be said to be "habitually used" within the limits of any Municipality, it must be used within those limits oftener than it is not, regard being had to the total extent of use within and without the Municipality to which in due course of business it is, or might reasonably be put. Considering the nature and extent of the use in the case before us,

we do not think it would be right to hold that the cart of the accused was "habitually used" within the limits of the Municipality.

The appeal, therefore, fails, and must be dismissed, and the order appealed from affirmed.

S. C. B.

Appeal dismissed.

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CRIMINAL REFERENCE.

Before Mr. Justice Macpherson and Mr. Justice Banerjee.

DUKHI MULLAH AND OTHERS (1ST PARTY) v. HALWAY, PROPRIETOR OF
MANJHAUL FACTORY THROUGH HIS MANAGER R. CROWDY
(2ND PARTY) *

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*Criminal Procedure Code (Act X of 1882), section 147—Right of fishing—
Easements—Profits a prendre—Parties to the enquiry.*

The words "right to do anything in or upon tangible immoveable property" in section 147 of the Criminal Procedure Code include the right of fishing.

The term "easements" includes profits a prendre; it has not been used by the Legislature of this country in the restricted sense in which it is used in English law so as to exclude profits a prendre.

Marginal notes are no part of an enactment.

For the purposes of the enquiry contemplated by section 147 of the Criminal Procedure Code it is sufficient if the persons who claim for themselves the right, though that right is derived from others, are made parties. The proprietors are not necessary parties.

Ram Chundra Das v. Monohur Das (1) and *Bathoo Lal v. Domi Lal* (2) distinguished.

THIS was a reference under section 438 of the Criminal Procedure Code by the Sessions Judge of Bhagalpore, recommending that an order of the Joint Magistrate of Beguserai under section 147 of the Code should be set aside. The facts of the case and the grounds of reference were fully stated in the letter of reference, which was as follows:—

"It seems that there is a lake called *Kabar jhil*, three to four miles in breadth

* Criminal Reference No. 167 of 1895, made by C. M. W. Brett, Esq., Sessions Judge of Bhagalpore, dated the 19th of June 1895.

(1) I. L. R., 21 Calc., 29.

(2) I. L. R., 21 Calc., 727.