

## CRIMINAL MOTION.

*Before Mr. Justice Macpherson and Mr. Justice Banerjee.*

1890  
April 2.

IN THE MATTER OF RAM CHANDRA GHOSE (PETITIONER) v. THE  
BALLY MUNICIPALITY (OPPOSITE PARTY).\*

*Bengal Municipal Act (Bengal Act III of 1884), ss. 6 (cl. 13), 30, and 217  
(cl. 5)—Obstructing road not vested in municipality over  
which public have a right of way—Road.*

The term "road" in clause 5 of section 217 of Bengal Act III of 1884 is not limited to roads vested in the Municipal Commissioners.

A person was charged at the instance of a municipality under that clause with obstructing a path through his paddy-field by erecting a fence at either end of it. It was found that the public had a right of way over the path, and the lower Courts convicted the accused of an offence under that clause. In revision it was contended that the conviction was bad, as the clause could only refer to a road which had vested in the Municipal Commissioners.

*Held* for the above reasons that the conviction was right and must be upheld.

In this case the petitioner was convicted of an offence under clause 5, section 217, Bengal Act III of 1884, at the instance of the Bally Municipality for obstructing a path by putting up fences across it. The path passed through the petitioner's land, and he claimed it as his own. The evidence showed that it consisted of an *al* or very low embankment, and the Deputy Magistrate found that the public had a right of way over it, and that they even passed over it when the crops were standing on both sides. He found also that the petitioner had erected fences across it at either end, and he accordingly convicted him under the section and sentenced him to pay a fine of Rs. 15, or undergo simple imprisonment for one week.

Amongst other contentions raised before the Deputy Magistrate, it was urged that the path had not vested in and did not belong to the Municipal Commissioners, and that the Municipality had no right to prosecute; but the Deputy Magistrate found that it was not necessary for the path to vest in the Commissioners or belong

\* Criminal motion No. 48 of 1890 against the order passed by G. M. Currie, Esq., Magistrate of Howrah, dated the 10th of December, affirming the order passed by Babu Gogan Chandra Banerjee, Deputy Magistrate of Howrah, dated the 19th of June 1889.

to them to enable them to prefer a charge under section 217 of the Act, and that if the path were within the municipal limits it was quite enough.

The petitioner appealed against the conviction to the Magistrate, but that officer dismissed the appeal, stating that he saw no reason to interfere.

The petitioner then applied to the High Court for a rule upon, amongst others, the following ground:—

That the path being merely a foot-path across a paddy-field and admittedly not belonging to the Municipality, the section under which he had been convicted had no application to the case.

A rule was issued upon that application, which now came on to be heard.

Babu *Umbica Churn Bose* for the petitioner.

Babu *Troylokia Nath Mitter* and Babu *Jagat Chander Bannerjee* for the opposite party.

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

The petitioner has been convicted under clause 5, section 217, Bengal Act III, 1884, of obstructing a road. This road is nothing more than a path, but it has been found that the public have a right of way over it. The contention before us is that the conviction is bad, because the road referred to in the clause above mentioned means only a road which is vested in the Municipality, and that this road was not so vested. In the Act a road is defined to be “any road, street \* \* \* or passage, whether a thoroughfare or not, over which the public have a right of way.” Section 30 enacts that all roads (not being private property and not being maintained by Government or at the public expense) shall vest in and belong to the Commissioners. We see no ground for holding that the word “road” in clause 5 of section 217 is limited to roads vested in the Municipality, and does not include all roads within the definition given in the Act. There is nothing in the context which would warrant us in putting the more narrow construction on it, and it is noticeable that in the first clause of that section the words “public road” are used.

The rule must therefore be discharged.

*Conviction upheld and rule discharged.*