which the temple is built. But it is the worship which is disputed, and not the use of the land. The expression "land" is not defined in the Code of Criminal Procedure, but it is to be observed that, for the purposes of the somewhat analogous provisions of section 145, it is not referred to as necessarily including buildings. Another view has been adopted by the Madras High Court in *Kader Batcha* v. *Kader Batcha Rowthan* (1), following a previous decision of the same Court; but we can only say that, looking at the obvious purposes for which the section was intended, and considering also the scope of section 145 of the Code, we think that the present dispute is certainly not one which it was intended that section 147 should cover.

The result is that the rule is discharged.

E. H. M. *Rule discharged.*

(1) (1905) I. L. R. 29 Mad. 237.

CRIMINAL REVISION.

Before Mr. Justice Stephen and Mr. Justice Carnduff.

1910

March 23.

ISHWAR CHANDRA SINGH
v.
EMPEROR.*

Opium—Illicit sale—Proof of the factum of the sale—Presumption from inability to account satisfactorily for opium in absence of evidence of any sale—Opium Act (I of 1878) ss. 9, 10.

The effect of ss. 9 and 10 of the Opium Act, 1878, is that, when once it is proved that the accused has dealt with opium in one of the ways described in s. 9, the *onus* of showing that he had a right so to deal with it is placed on him by s. 10. But the commission of the act, which is the foundation of the particular offence charged under section 9, must be proved before the presumption raised by section 10 comes into operation at all, and the presumption cannot be used to establish such act.

Where, therefore, there is no evidence to prove the fact of any sale of opium by a person accused of illicit sale, the deficiency is not supplied by the statutory presumption, and a conviction of illicit sale is bad.

* Criminal Revision No. 27 of 1910, against the order of G. C. Banerjee, Sessions Judge of Chittagong, dated Nov. 1, 1909.

1910

ISHWAR CHANDRA SINGH v. EMPEROR.

THE petitioner, Ishwar Chandra Singh, was the servant of one Johiruddin Bepari, a licensee for the sale of opium at a shop in Mahajan's Hât, some miles from the town of Chittagong, and was in charge, with one Serajuddin, of his master's *guddi* in Feringi Bazar in the town, where all the opium and exciseable articles were kept for the night. On the 22nd March 1909, Ishwar bought a ball of opium, weighing a seer, on behalf of his master, from the local treasury, and took it to the *guddi*, where it was kept in a tin box. It was the duty of the petitioner, under the rules, to transport the opium within two days of the purchase to the shop at Mahajan's Hât, where alone, under the terms of the license, it could be sold. On the morning of the 23rd the Excise Sub-Inspector went to the Chittagong railway station and found Ishwar there. The latter, on being questioned about the opium, is alleged to have said that he had left it behind, whereupon the Sub-Inspector accompanied him to the Feringi Bazar *guddi*, but failed to find it there. Ishwar is said next to have explained that he had left it with Serajuddin, but the latter stated that it was kept in the tin box, the key of which was with Ishwar. Finally, on the 25th the petitioner reported to the police that it had been stolen. The petitioner and Serajuddin were put on their trial, under section 9 (*f*) of the Opium Act, 1878, before Babu Ramani Mohan Das, Deputy Magistrate of Chittagong, who convicted them on the 26th July and sentenced each to a fine of Rs. 500. On appeal, the Sessions Judge acquitted Serajuddin, and reduced the fine of Ishwar to Rs. 150, holding that, although there was absolutely no evidence of the sale, there was some circumstantial evidence which, taken with the provisions of section 10 of the Act, was sufficient to establish it. Both Courts disbelieved the story of the theft of the opium eventually set up by the accused. The petitioner, thereupon, obtained the present rule from the High Court.

The Deputy Legal Remembrancer (*Mr. Orr*), for the Crown. There was no direct evidence of the sale of the opium purchased by the petitioner, but it is found by both Courts that his

story of theft is false. He has not, therefore, accounted for the opium, and, under section 10, the presumption arises that he has committed an offence against the Opium Act.

Babu Harendra Narain Mitra, for the petitioner. Section 10 of the Opium Act does not mean that, because a man cannot account satisfactorily for opium found with him, he must be taken to have committed one of the acts specified in section 9. It must first be proved that he has done a particular act enumerated in clauses (*a*) to (*f*), and then the presumption applies if he cannot satisfactorily account for the opium: *Chedi Mala* v. *King-Emperor* (1). The presumption cannot be used to prove the fact of sale as has been done in his case by the learned Judge. There was no transport of opium here. It was bought at the Excise Office and taken to the *guddi* for safe custody pending transport to Mahajan's Hât.

STEPHEN AND CARNDUFF, JJ. The petitioner in this case was charged with having sold opium in contravention of the provisions of the Opium Act, 1878, and the rules framed thereunder. This is, of course, a charge of an offence under section 9, clause (*f*), of the Act. The facts of the case have not been disputed before us, and, as far as we are concerned with them, are as follows. The petitioner, Ishwar Chandra Singh, is the servant of one Johiruddin Bepari, who has a shop at Mahajan's Hât, at some little distance from Chittagong, and is licensed under the Act to sell opium there On the 22nd March 1909, Ishwar bought, on behalf of his master, a seer of opium from the Excise Office at Chittagong. It was his duty, under the rules applicable to the case, to transport the opium within two days of its purchase to the premises at Mahajan's Hât, where alone, under the terms of the license, it was lawful to sell it, and it is not denied that it was an offence to sell it anywhere else. He did not take it to Mahajan's Hât within the prescribed time, and, when asked what had become of it, he said that it had been stolen, a statement which has been disbelieved, for very good reasons, by both the Courts below. He has, therefore,

(1) (1904) 8 C. W. N. 349.

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failed to account for the opium he received; but we have granted this rule on the District Magistrate calling on him to show cause why the conviction should not be set aside on the ground that the facts found do not disclose the commission of the particular offence charged.

The Judge in the Court of Appeal below has found that, although there is absolutely no evidence of the alleged sale, there is some circumstantial evidence, which, taken with the provisions of section 10 of the Act, was sufficient for the conviction of the petitioner. We agree as to the absence of any evidence of a sale, but prefer to say that what evidence there is merely shows that there was plenty of opportunity for a sale, and raises a suspicion that the petitioner sold the opium. But we fail to understand how any deficiency in the evidence as to the fact of sale can be supplied by the presumption referred to. Section 9 of the Act penalises certain acts done in relation to opium, if done illicitly, and section 10 runs as follows:—

"In prosecutions under section 9 it shall be presumed, until the contrary is proved, that all opium for which the accused person is unable to account satisfactorily, is opium in respect of which he has committed an offence under this Act."

Now, penal clauses in Acts must be construed in the same way as others; and it is obvious that in the latter provision some limitation must be placed on the words "all opium for which the accused is unable to account satisfactorily," as the phrase would in terms include in any case most of the opium in the world. The intention, however, seems to us evident, and the effect of the two sections appears to be simply this, that, when once it is proved that an accused person has dealt with opium in any of the ways described in section 9, the *onus* of proving that he had a right so to deal with it is thrown on him by section 10. But the commission of an act, which may be an offence, must be proved before the presumption comes into play at all, and, therefore, the presumption cannot be used to establish the fact.

The result is, that the defective evidence of the sale in this case cannot be supplemented by the presumption raised by

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section 10, and the conviction for illicit sale is bad. On the other hand, it is clear that on the facts proved the petitioner might have been convicted of the unlawful transport of opium. We do not, therefore, consider it necessary to interfere in revision, and the rule is discharged.

Rule discharged.

E. H. M.

CRIMINAL REVISION.

Before Mr. Justice Carnduff and Mr. Justice Richardson.

1910

March 30.

KISSORI LAL JAINI

v.

THE CORPORATION OF CALCUTTA.*

Demolition of building—Calcutta Municipal Act (Beng. Act III of 1899) ss. 18, 102 (1) (c), 391, 449—Sanction by District Building Surveyor of additions to contemplated building—Delegation of power by Chairman—Legality of sanction—Sanction of General Committee—Proceeding under s. 449—Application thereunder to Magistrate, signed for the Chairman by the Secretary to the Corporation and the General Committee—Irregularity.

An addition to a contemplated building sanctioned by a District Building Surveyor, to whom the power of sanction has been delegated by the Chairman under s. 18 of the Calcutta Municipal Act, 1899, is a duly authorized erection, and the sanction of the General Committee under s. 391 is not necessary.

Section 391 applies only to alterations of, and additions to, existing buildings.

Where the General Committee approved of the suggestion of the Building Sub-Committee that certain additions to a building were unauthorized, and that an application should be made to the Magistrate under section 449 of the Act, and directed the Chairman to make it, whereupon an application was made, purporting to come from the Chairman but signed by the Secretary to the Corporation, who was also Secretary to the General Committee :—

Held, that the irregularity, if any, was cured by section 102 (*1*) (*c*) of the Act.

ON 9th December 1907, the petitioner applied to the Chairman of the Calcutta Corporation for sanction to build a three-

* Criminal Revision No. 165 of 1910, against the order of Amrita Lal Mukerjee, Municipal Magistrate of Calcutta, dated Dec. 23, 1909.