

**CRIMINAL REVISION.***Before Mr. Justice Holmwood and Mr. Justice N. R. Chatterjea.*

1911

Aug. 3.

TRIPENDESWAR MITTER

v.

CORPORATION OF CALCUTTA.\*

*Building*—"Re-erection"—Renewing or repairing a roof replaced on its former site—Reconstruction not exceeding one-half its cubical extent—"Building," whether a shed with posts and tin roof is a—Building line of a road, encroachment on—Calcutta Municipal Act (Beng. III of 1899), ss. 3(3), (39)(a), 351, 449.

The removal of an old roof of a shed consisting of posts and the replacing on the same site either of a new roof or the former one after repairs, without an alteration exceeding one half its cubical extent, is not a "re-erection" within s. 3 (39) (a) of the Calcutta Municipal Act.

The offence of infringing on a building line within the meaning of s. 351 is, having regard to the definition in s. 3 (3), the erection or re-erection of the wall of a building within that line, and not the removal of an old roof and replacing it on the same site.

THE petitioner had a timber yard at No. 61, Russa Road North, on which there was standing, before the building line of the road had been laid down, a shed consisting of four posts and a tin roof. In January 1911, after the line was prescribed, he took off the roof, and subsequently put up either a new tin roof or the old one repaired on the identical site of the former one, without any alteration in its dimensions or height, except a small one not exceeding one-half its cubical extent. The petitioner was prosecuted before the Municipal Magistrate for having re-erected a hut without sanction, for encroachment on the building line in contravention of s. 351 of the Act, and for

\* Criminal Revision No. 797 of 1911, against the order of N. C. Ghatack, Municipal Magistrate of Calcutta, dated June 9, 1911.

not having kept an open space of six feet between the hut and the masonry building on the north. The Magistrate found these facts established, and held that a clear case of re-erection under s. 449 (1) (c) of the Act had been made out. He accordingly, by his order, dated the 9th June 1911, directed that so much of the hut, re-erected without sanction, be demolished, at the petitioner's expense by the Chairman, as would remove the same from the prescribed building line or leave six feet of open space between it and the masonry building on the north. The petitioner, thereupon, moved the High Court and obtained the present Rule.

1911  
 TRIPENDES-  
 WAR MITTER  
 v.  
 CORPORATION OF  
 CALCUTTA

*Babu Provas Chunder Mitter and Babu Susil Madhab Mullick*, for the petitioner.

*Babu Debendra Chunder Mullick*, for the opposite party.

HOLMWOOD AND N. R. CHATTERJEA, JJ. This conviction is for re-erecting a building within the building line of a certain road. It appears that before the building line was laid down, the shed consisting of four posts and a tin roof stood in identically the same spot as it does now. After the building line was laid down, the owner had occasion to take the roof off, and the municipal authorities happened to see this place when there was no roof on the shed. Whether the owner repaired the same bits of tin, or whether he put in new bits of tin, or what he did in renewing or repairing his roof, there is nothing to show. But he eventually put up a roof either made of new tin or repaired, it does not matter which, in identically the same place as the old roof.

Now, this is certainly not a "re-erection." It is admitted that section 3 (39) (a) is the only definition

1911  
 TRIPENDES-  
 WAR MITTER  
 v.  
 CORPORATION  
 OF  
 CALCUTTA.

which can apply in this case, and this is reconstruction of the building if more than one-half of the cubical contents has been taken down. Now, the removal of this roof for the purpose of repairing did not alter the cubical contents of this shed in the least, except a small area which the lean-to roof may have contained. That certainly cannot have been anything like one-half or even a quarter of the whole cubical contents. The expression "re-erected" does not apply.

Now comes the question whether section 351 has been infringed. "No portion of any building or wall abutting on a public street shall be constructed within the line." We cannot find any definition of the word "building," and we are not at all clear that this roof with four posts is a "building," but from the use of the expression "wall abutting on a public street," we presume that the offence intended was one which is indicated in section 3 (3) of the Act where the "building line" is defined as meaning "a line (in rear of the street alignment) up to which the main wall of a building abutting on a street may lawfully extend." It is, therefore, clear that the offence of infringing on a building line is the erection or re-erection of the wall of a building within that line, and we do not think that the replacing of the roof upon the same posts can fall within the purview of the law. Admittedly it is the front posts and not the roof which caused the trouble, and if the Municipality wish to remove the obstruction, they must obtain powers obviously to remove the posts, because the roof cannot be removed unless the posts are removed, and the posts appear to have been always in the same position as they are now. The Rule must, therefore, be made absolute, and the order of the lower Court discharged.

E. H. M.

*Rule absolute.*