

1919.

GOPALJI  
KUNVERJI  
v.  
MORARJI  
JERAM.

Solicitors for appellant: Messrs. *Madhavji, Kamdar and Chhotubhai.*

Solicitors for respondent No. 1: Messrs. *Ardeshir, Hormusji, Dinsha & Co.*

Solicitors for respondent No. 2: Messrs. *Motichand & Devidas.*

*Appeal allowed.*

G. G. N.

### CRIMINAL REVISION.

*Before Mr. Justice Heaton and Mr. Justice Shah.*

EMPEROR v. BYRAMJI PUDUMJI (No. 1).\*

1919.

April 2.

*Cantonment Code, 1912, Rules 107A and 97†—Order to repair a building in a bad condition—Disobedience of the Order—Power to inflict daily fine for disobedience—Fine can be levied for disobedience in the past only.*

The owner of a bungalow within Cantonment limits, having failed to carry out repairs to the bungalow, was, on the 27th October 1918, ordered by

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†107 A. Whoever fails to comply with any notice issued under sub-section (3) of section 92 or under any other section of this Chapter, shall be punishable with fine which may extend to fifty rupees, and in the case of a continuing failure, with an additional fine not exceeding five rupees for every day after the first in regard to which he is convicted of having persisted in the failure.

97. Where any building, wall or structure, or anything affixed thereto, or any bank or tree, is, in the opinion of the Cantonment authority, in a ruinous state or in any way dangerous either, in the case of an occupied building, to the occupier or to the public, the Cantonment authority may, by notice in writing, require the owner or occupier thereof forthwith either to remove the same or to cause such repairs to be made as it may think necessary for the safety of the occupier or of the public, and, if there is, in the opinion of the Cantonment authority, imminent danger, it shall forthwith take such steps to avert the danger as it may think necessary.

a Magistrate, under Rule 107A of the Cantonment Code of 1912, to pay a daily fine of Rs. 5 from the 1st November 1918 until such time as the repairs were carried out:—

*Held*, that Rule 107A did not authorise the Magistrate to convict the owner of a failure in regard to the future, though he was competent to impose a fine for the past failure.

THIS was an application to revise an order passed by A. S. A. Westropp, District Magistrate of Poona.

The applicant owned a bungalow within the limits of the Cantonment at Poona. The Cantonment authority at Poona issued a notice to the applicant, on the 25th May 1918, under Rule 97 of the Cantonment Code of 1912, requiring him to carry out certain repairs to the bungalow within thirty days. For failure to comply with this notice, the applicant's agent was fined a sum of Rs. 50 on the 7th August 1918. On the 25th September 1918, the Cantonment Magistrate issued a summons against the applicant to answer a charge of failure to comply with the notice of the 25th May 1918. The case was transferred to the District Magistrate of Poona, who passed the following order on the 27th October 1918:—

"A daily fine of Rs. 5 per diem is hereby imposed from the 1st November on the owner Mr. Byramji until such time as the bungalow...is repaired to the satisfaction of the Cantonment authorities."

The applicant applied to the High Court.

*Velinkar* with *Payne & Co.*, for the applicant.

*S. S. Patkar*, Government Pleader, for the Crown.

HEATON, J.:—It is urged—and I think correctly urged—that the order made by the District Magistrate of Poona fining the applicant is, in the form it took, illegal. The order was made under the provisions of Rule 107A of the Cantonment Code. It was proved to the satisfaction of the District Magistrate on the 27th of October 1918 that the owner of a house in the Poona

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Cantonment had persisted in failure to carry out an order made under Rule 97, and, taking the words of Rule 107A, he was punishable with a fine not exceeding Rs. 5 for every day after the first in regard to which he was convicted of having persisted in the failure. He could of course be convicted with having persisted in the failure only as regards the past; he could not be convicted of a failure in regard to the future. A fine of Rs. 5 a day therefore might have been imposed for the material days up to the 27th of October. But that was not done. The District Magistrate, taking, I have no doubt, a sensible broad view of the affair, came to the conclusion that it was unnecessary to impose a fine for the past failure. But to emphasise the need of obedience to the order previously made, he directed that a fine of Rs. 5 a day should be paid from the 1st of November. That date was in the future, and as the words of the rule show, he was not empowered to make an order as to the future. That part of his order therefore is illegal and must be set aside and the fine, if paid, should be refunded.

SHAH, J.:—I agree.

*Order set aside.*

R. R.

### CRIMINAL REVISION.

*Before Mr. Justice Heaton and Mr. Justice Shah.*

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EMPEROR v. BYRAMJI PUDUMJI (No. 2).<sup>o</sup>

*April 3.*

*Cantonment Code, 1912, Rule 97†—Notice of removal—Cantonment authority—Building in a ruinous condition.*

A notice issued under Rule 97 of the Cantonment Code of 1912 can require the owner to do one of the two things, viz., to remove the building or to

<sup>o</sup> Criminal Application for Revision No. 38 of 1919.

† The rule is set out in the judgment.