

(1919) 04 CAL CK 0022

Calcutta High Court

Case No: Rev. No. 105 of 1919

Syed Mohdmmmed Raziuddin

APPELLANT

Vs

The Corporation of Calcutta

RESPONDENT

Date of Decision: April 30, 1919

Judgement

1. This is a Rule calling upon the Chairman of the Corporation and the Municipal Magistrate to show cause why the order complained of should not be set aside. The order complained of was passed by the Municipal Magistrate on the 23rd December 1918. He has held a, certain structure to be a fixture which is liable to be removed under sec. 341 of (he Calcutta Municipal Act (III of 1899) and has directed its demolition under sec. 450 (3) of that Act. In our opinion it has not been proved that the provisions of sec. 341 are applicable to the structure which is the subject-matter of this dispute. The structure in question is a masonry pint-form which extends in front of the Petitioner"s building and over a drain in the public street. There is no evidence when this masonry platform was erected. But witnesses have deposed that so far as living memory goes the masonry platform has been in existence as a part of the building. In order to take advantage of a penal section it is necessary for the prosecution to prove the facts on which the applicability of that section depends. Sec. 341 applies to a fixture which " has been attached to a building so as to form part of the building and causes a projection, encroachment or obstruction over or on any public street." As we understand them, the words " fixture which has been attached to a building "" cannot be applied to a part of the building which was constructed at the same time as the main building itself. The words " when a fixture has been attached " seem to us to mean that the building must first be in existence and the attachment of the fixture subsequent to the erection of the building. Taking this view, as it has not been proved that the platform in question was constructed after the building was ejected we must hold that the Municipal Magistrate had no power to pass the order complained of and we must therefore make this Rule absolute and set aside that order.