1940 *Present* : **Moseley S.P.J.**

NESADURAI *v.* MOHIDEEN.

612—M. M. C. Colombo, 5,605.

Housing and Town Improvement Ordinance* (Cap. 199), *ss. 5 and 15—Charge of erecting a building and of occupying same without a certificate—Offences committed in the course of same transaction—Criminal Procedure Code, s. 180 (1).

Where a person was charged (*a*) with erecting a building the plan of which had not been approved by the Chairman of the Municipal Council in breach of section 5 of the Housing and Town Improvement Ordinance, (*b*) with occuping the same or permitting the same to be occupied without a certificate of conformity from the Municipal Commissioner in breach of section 15 of the said Ordinance,—

***Held*, that the two offences had been committed in the course of the same transaction within the meaning of section 180 (1) of the Criminal Procedure Code.**

APPEAL from a conviction by the Municipal Magistrate of Colombo.

J. E. M. Obeyesekere (with him *M. M. I. Kariapper*), for accused, appellant.

L. A. Rajapakse, for respondent.

Cur. adv. vult.

December 3, 1940. MOSELEY S.P.J.—

The appellant was charged with the following offences :—

(1) between October 10 and 25, 1939, erecting a building in breach of section 5 of Cap. 199 (that is to say, not in accordance with plans, drawings, and specifications approved by the Chairman of the Municipal Council) ; and

(2) from and after November 14, 1939, occupying or allowing to be occupied the said building without first obtaining a certificate of conformity from the Municipal Commissioner in breach of section 15 of the said Ordinance.

In the Municipal Court no evidence was called for the defence. The accused was convicted on both charges, and has appealed against conviction and sentence.

The petition of appeal contains no less than ten grounds but all of these were abandoned and learned Counsel for the appellant argued the appeal on the following grounds :—

(1) that there is no evidence that the appellant erected the building, or that he occupied it or allowed it to l occupied;

(2) that the second charge is bad in that it alleges the alternative offences of occupying and allowing to l occupied; and

(3) that there is a misjoinder of charges i that the offences alleged in the first and second charges to have been committed by the appellant are not so connected together as to form part of the same transaction and do not therefore come within the scope of section 180 (1) of the Criminal Procedure Code (Cap. 16).

In regard to the facts it is not disputed that the appellant was the lessee of the land on November 14. An Inspector, who visited the premises on October 10, and saw the building going on, described the

appellant, whom he saw on the premises on that day and to whom he spoke on the subject of the building, as the lessee. On November 14 the appellant wrote to the Municipal Engineer expressing his willingness in certain circumstances to demolish the building. In my view there was a strong prima facie case that it was the appellant who was erecting the building. That case was not answered by the appellant.

In the same way, on November 14, the building was found to be occupied. The inference that the occupation, if it was not by the appellant himself, was with his permission is overwhelming. The statement by a prosecution witness that the appellant had leased out the buildings and that they were occupied was not controverted by him.

No objection was taken at the trial to the second charge in that it alleges alternative offences. The fact of occupation is the gravamen of each allegation and the appellant could not be prejudiced by the alleged duplicity, if indeed in this particular instance such exists.

There remains to be dealt with only the ground alleging misjoinder of charges. Counsel for the appellant referred to the case of *The King v. Amam*[1] in which Bertram C.J. reviewed a number of decisions relating to section 180 (1) of Cap. 16. I would quote from his judgment an observation by Benson J. in *Cheragudi Vankatadri v. Emperor*[2] which is as follows :—

> "I do not think it necessary or advisable to attempt to define the expression 'the same transaction' which the Legislature has left undefined. Whether any series of acts is so connected or not must necessarily depend on the exact facts of each case, but these are so varied in character that it is impossible to provide a completely accurate definition."

In *Weerakoon v. Mendis*[3] there was no connection whatever between the two offences, other than that the second was committed shortly after the first, and there was therefore an obvious misjoinder.

In *Lockley v. Emperor*[4] which was brought to my notice by Counsel for the respondent it was said that the "true test . . . . is that there should be a continuous operation of acts leading to the same end and a common purpose should run through the acts."

Again in *Amritalal Hazra and others v. Emperor*[5] Mookerjee J. said "it is not possible to frame a comprehensive formula of universal application to determine whether two or more acts constitute the same transaction, but circumstances which must bear on the determination of the question in an individual case may be easily indicated; they are, proximity of time, unity or proximity of place, continuity of action and community of purpose or design". It would be foolish to suppose that in the present case the appellant erected the building with any purpose other than of occupying it or allowing it to be occupied.

It seems to me therefore that each of the elements referred to above, if indeed all are necessary, is present. In the circumstance I hold that the charges were properly joined. The appeal is dismissed. The conviction and sentence are affirmed.

Affirmed.

[1] *21 N. L. R. 375.*
[2] *33 Mad. 502.*
[3] *27 N. L. R. 340.*
[4] *(1920) L. V. Indian Cases 345.*
[5] *A. I. R. 1916 Cal. p. 196.*