R. v. O'CONNOR.

A Criminal Review Case of 1931.

Liquor Licencing Proclamation No. 15 *of* 1916, *section* 13—*drunk in a public place—meaning of "Public Place".*

The following review judgment deals not only with the above case but also with another similar case, viz., *R.* v. *Samuel Gould* reported at page 43 *ante*.

The note of the Police Magistrate in the present case reads:

> "The accused was convicted and warned.
>
> Accused was found lying outside of the Cator Huts used as single quarters at Nkana Mine.
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> The 'single quarters' in question are on Mine property. The huts are arranged in rows, there is no fence round them and everyone has access. Pedestrians (white and black) and motor cars pass along between the huts, and these passage-ways are in the nature of thoroughfares.
>
> The question is whether the accused can be said to have been drunk in a 'public place'."

The offence of being found drunk and incapable in a public place is now contrary to section 157B (1) of the Penal Code. The expression "public place" is defined in section 5 of the Penal Code.

Gordon Smith, A.J.: Both these cases raise the point as to what is a "public place". In the first case the accused was conducting a "Crown and Anchor" board outside the Mine Club, Nkana, the place being on unenclosed Mine property and to which anybody had access. In the other the accused was found lying drunk outside one of the Cator Huts which constitute the single quarters, similarly on Mine property. Pedestrians and motor cars pass along and between the huts and the passages are in the nature of thoroughfares.

In many Acts, public places are defined. In the Street Betting Act, 1906, "public place" is defined as including "any public park, garden or seabeach and any unenclosed ground to which the public for the time being have unrestricted access and shall include every enclosed place (not being a public park or garden) to which the public have a restricted right of access whether on payment or otherwise if at or near every public entrance there is conspicuously exhibited by the owners or persons having the control of the place a notice prohibiting betting therein". The Act does not apply to Ireland and is restricted in its application to Scotland so, I apprehend, it does not apply here, but I make no ruling on this point.

In *Langrish* v. *Levy*, 10 Q.B.D. 44, a railway carriage, on its journey, was held to be " an open place to which the public have access ", within the meaning of the section under which the accused Gould was charged. The inside of a cab standing on a public rank was similarly so held an open and public place. The roof of a house within the view of many persons was also held to be a public place in a case of indecent exposure, although the actual spot where the accused was could not be seen from the street (*R.* v. *Thallman* 33 L.J.M.C. 58). I might mention the fact that the wording of section 3 of the Vagrancy Act Amendment Act, 1873, speaks of " any street, road, highway or other open and public place or in any open place to which the public have or are permitted to have access ".

In section 13 of Proc. 15/1916 the expression is " public place " and not " open and public place ". A public place would therefore appear to include any place to which the public are accustomed to resort without being interfered with, though there is no legal right to do so, and it would appear to be immaterial whether the place is enclosed or not.

Both convictions are therefore affirmed.