

REG. V. BHIKOBÁ' VINOBA' and others.

1867.
July 10.

*Bombay Act No. III. of 1866, Sec. 1, Cl. 2—The words "Three Miles"
—Construction.*

Held that the words "three miles" in Bombay Act No. III. of 1866, Sec. 1, Cl. 2, must be construed as three miles measured in a straight line along the horizontal plane, that being the most convenient meaning of the words, and the most capable of being ascertained.

THIS was a conviction of thirteen persons charged, under Sec. 4 of the Bombay Act No. III. of 1866, with gaming in a common gaming-house, 'not more than three miles' distance from' the railway station at Kurlá, and one of them, under Sec. 3 of the Act, with keeping a common gaming-house, and sentenced, by I. Draçup, Magistrate F. P. in the Tháná District, to pay fines of various amounts, or in default to be imprisoned for certain periods.

Six of the accused appealed for the reversal of the conviction and sentence, to R. H. Pinhey, Session Judge of the Konkan, who referred the case for the order of the High Court with the following remarks:—

"The only argument urged in this court was that the appellants committed no offence; because the gambling-house, in which they gambled, is more than three miles distant from the railway station at Kurlá.

"The question is, how are the three miles mentioned in the Bombay Act No. III. of 1866, Sec. 1, Cl. 2, to be measured. If by the road, then it is clear that the appellants committed no offence; for the house in which they gambled is by the road $3\frac{1}{2}$ miles from the Kurlá station. But I do not think the three miles mentioned in this clause need be measured along a macadamised road; for it would often happen that no such road had been made between a station-house and some particular gambling-house. I am of opinion that the three miles should be measured from point to point—from the station-house to the gambling-house—along such a line as it is possible for the gamblers to go, without incurring break-neck obstacles. Under this view of the

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meaning of the Law, I think it must still be held in this case that the gambling took place 'more than three miles from' the Kurlá station. The surveyor, Náráyaṅ Gopál Paṭvardhan (witness No. 2), who measured the distance between the Kurlá station-house and the house of the appellant Bhikobá Vinobá, with a prismatic compass and chain, brought the distance to less than three miles by about six hundred feet, by adopting a radius line stretching from point to point, and passing through all obstacles, hills included. But neither gamblers nor any other men can go through hills in this way; and, therefore, the surveyor's radius line is as useful for the purposes of this case, as a line drawn through the earth's centre to the antipodes would be to a traveller who wanted to know the distance between Tháná and the opposite side of the globe. It is evident that too great reliance must not be placed on the surveyor's radius line, for he himself says: 'If the distance were measured with a chain, it might exceed three miles.'

"I am, therefore, of opinion that it cannot be held in this case that the house in which the gambling took place, is (in the words of the Act) 'not more than three miles' distance from' the railway station at Kurlá; and I, therefore, reverse the conviction and sentence, recorded by the Magistrate F. P., against the six accused persons who appealed to this court.

"As to the remaining seven persons, who were convicted and sentenced by the Magistrate F. P., I have no jurisdiction to interfere, as they have not appealed; but if my view of the Law is correct, these seven persons are equally entitled to have their convictions reversed with the six whose convictions I have reversed."

PER CURIAM (COUCH, C.J., and NEWTON, J.):—The Court is of opinion that the Legislature, in Sec. 1, Cl. 2, of Bombay Act No. III. of 1866, must be considered to have intended to express the meaning which would be the most convenient, and the most capable of being ascertained; and that, in accordance with that principle of construction, the "three

miles" must be measured in a straight line along the horizontal plane.

The courts in England have put this construction upon similar words in Acts of the Imperial Legislature: *Lake v. Butler* (a); and the reason for doing so is equally applicable to this Act.

The Court declines to reverse the decision of the Magistrate, which is right.

Conviction affirmed.

(a) 5 E. & B. 92.

REG. V. KUSHYA' BIN YESU.

Sept. 18.

Previous Conviction—Punishment after—Ind. Pen. Code, Secs. 75 and 380.

A prisoner convicted, under Sec. 380 of the Indian Penal Code, of theft in a building used for the custody of property, was sentenced, under Sec. 75, to fourteen years' transportation, as he had been previously convicted thirteen times of offences now punishable, under Chap. XVII. of the Code, with imprisonment for three years or upwards:—

Held that, as all the previous convictions were prior to the passing of the Indian Penal Code, the present offence was not punishable under Sec. 75.

THE prisoner was convicted by R. F. Mactier, Session Judge of Sátará, under Sec. 380 of the Indian Penal Code, of the offence of theft in a "building used for the custody of property," and sentenced, under Sec. 75 (a), to transportation for fourteen years; as he had been previously convicted thirteen times of offences now punishable, under Chap. XVII. of the Code, with imprisonment for three years or upwards.

The record and proceedings having been sent for on hearing the prisoner's petition, the case came on for disposal this day before COUCH, C.J., and NEWTON, J.

(a) Sec 75.—"Whoever, having been convicted of an offence punishable, under Chapter XII. or Chapter XVII. of this Code, with imprisonment of either description for a term of three years or upwards, shall be guilty of any offence punishable under either of those chapters with imprisonment of either description for a term of three years or upwards, shall be subject for every such subsequent offence to transportation for life, or to double the amount of punishment to which he would otherwise have been liable for the same; provided that he shall not in any case be liable to imprisonment for a term exceeding ten years."

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