

REG. V. BHAGTIDA'S BHAGVA'NDA'S.

1868.
July 1.

Obstruction of Public Servants—Ind. Pen. Code, Sec. 186—Private Houses—Survey—Act I. of 1865 (Bombay).

Conviction and sentence under Sec. 186 of the Indian Penal Code reversed, as the conduct of the accused—refusing to accompany a measuring clerk employed under Act I. of 1865 (Bombay) to his (the accused's) house and permit it to be measured—did not constitute the offence of obstructing a public servant in discharging his public functions.

Quere—Whether Sec. 11 of Act I. of 1865 (Bombay) justifies surveyors in entering private houses for the purpose of measuring them.

THIS was an application to the High Court, in the exercise of its extraordinary jurisdiction, under Sec. 404 of the Criminal Procedure Code.

The facts were stated to be as follows:—A measuring clerk employed in the Revenue Survey Department went to measure the house of the petitioner at Broach. He found the house open, and some women in it. They told him to go to the owner of the house, who was at his shop, and obtain his permission to enter the house to measure it. He accordingly went to the shop, where he saw the petitioner, whom he desired to accompany him to the house and permit it to be measured. The petitioner replied that he was busy; that there was no *gumástá* to leave the shop in charge of; that he himself did not wish his house to be measured, but that if the clerk went there the next day, when he, the petitioner, was at leisure, he would allow the house to be measured. Upon this, the measuring clerk lodged a complaint against the petitioner, in the Court of the Subordinate Magistrate of the First Class at Broach, stating that Act I. of 1865 (Bombay) had been extended to the City of Broach by a Government notification*; that, under Sec. 11 of that Act, he had a right to enter the accused's house; that he wanted to measure the house internally under that Act; that

* The Notification, published in the *Government Gazette* of the 19th of July 1866, p. 176, is as follows:—

“Under the provisions of Sec. 4 of (Bombay) Act I. of 1865, His Excellency the Governor in Council is pleased to sanction the extension of the Revenue Survey to the Towns of Surat, Broach, and Bulsar, in the Surat Collectorate.”

1868.
REG.
2.
BHAGTIDÁS
BHAGVÁNDÁS.

the accused did not permit him to do so ; and that, therefore, he charged him, under Sec. 186 of the Indian Penal Code, with the offence of obstructing a public servant in the discharge of his public functions.

The Magistrate recorded the following finding :—

“The accused, Bhagtidás Bhagvándás, stands charged with obstructing a public servant in discharging his public functions, in not having permitted the complainant, who is employed in making survey and measurement of houses in the City of Broach, to measure his house. The complainant says that when he requested the accused to allow him to measure his house, he replied that there was no necessity for taking the measurement. The statement of the complainant is corroborated by the evidence of his witnesses Nos. 2 and 3.

“The accused states that he did not make any obstruction, and that, as he was busy, and there being no *gumástá* in his shop, he told the complainant to come on the following morning. The accused produces two witnesses to support his statement. These witnesses (Nos. 5 and 6) depose in favour of the accused. But witness No. 6 says that there were four or five *pátíls* present in the shop at the time the accused gave the answer to the complainant. Neither the accused nor his witness No. 5, Dádábháí Narsi, have stated anything about the presence of these *pátíls* in the shop. The Court, therefore, does not believe the evidence of the witnesses on the part of the accused. His answer to the complainant, telling him to come on the following day to take measurement of the house, is in itself sufficient evidence to show that he did not allow the work to be done, and thereby obstructed the Kárkún in his duties.

“The work of taking measurement of houses in the City is distasteful and unpleasant to the people ; and the Court believes that the accused must have purposely obstructed the complainant in his work.

“The Court accordingly finds that Bhagtidás Bhagvándás is guilty of the offence charged, namely, obstructing a public servant in the discharge of his public functions, and that

he has thereby committed an offence punishable under Sec. 186 of the Indian Penal Code; and the Court directs that Bhagtidás Bhagvándás pay a fine of ten rupees, or in default of payment suffer one week's simple imprisonment."

1868.
 C REG.
 v.
 BHAGTIDÁS
 BHAGVA'NDÁS

The case was heard this day, before NEWTON and TUCKER, JJ.

Nánabhái Haridás, in support of the petition:—Act No. I. of 1865 is an "Act to provide for the survey, demarcation, assessment, and administration of *lands held under Government*," and not of houses owned by private individuals. Neither in the preamble of the Act, nor in the body of it, is the word "houses" anywhere mentioned; and looking to the various provisions of the Act itself, and to those of Reg. XVII. of 1827, of which it is to be read and construed as a part, the Legislature does not seem to have intended it to apply to houses. The absence of any provision in it with regard to giving notice to owners and occupiers of houses, similar to that in Sec. 62 of the Bombay Municipal Act—an Act intended to apply to houses in Bombay—and the fact that in the latter Act the Legislature has expressly, in Sec. 2, defined the term "land" as used therein to include houses, and not so in the former, strongly support this view. If this is the proper construction of the Act, the Governor in Council could not, by a proclamation in the *Government Gazette*, extend its operation, under Sec. 4, to *houses*; and consequently the measurement of houses in cities is not a part of the public functions of a survey officer under that Act. If, therefore, in doing that he is *really obstructed*, it is not an offence under Sec. 186 of the Indian Penal Code. But in this case there was in *fact* no obstruction.

Dhirajlál Mathurádás, for the prosecution:—Sec. 4 of Act I. of 1865 defines what the Revenue Survey is, and what is its object. It is to preserve record of title over the soil, and, therefore, the Survey was extended to the *Town of Broach*. Sec. 11 shows that it is competent to the Government to order the survey of any land, and Sec. 2 (*d*) includes land under houses. Taking Act I. of 1865 to be part of Reg. XVII. of 1827, Sec. 2, Cl. 2, of the said Regulation includes

1868.
REG. 23
v.
BHAGTIDA'S
BHAGVANDA'S.

all land, and, therefore, lands under houses are not exempt. The Municipal Act cannot in any way vary the meaning of the word "land," which is to be gathered from the words and general scope of the Act itself in which the word occurs.

The act of the accused was penal. The complainant was obstructed; he could not enter the premises in the absence of the accused from the house, where there were females alone. The accused refused to give permission.

NEWTON, J.:—It is not necessary to go into the first two points raised by Mr. Nánabhái. For myself, and for my brother Tucker also, I may say that we have grave doubts whether the Legislature intended to justify surveyors in entering private houses for the purpose of measuring them. It may be questioned whether the scope of Reg. XVII. of 1827 is such as to include village building sites; and it is to be remarked that in Sec. 62 of the Bombay Municipal Act, No. II. of 1865, provision is made for forty-eight hours' notice being given before a private house can be entered for the purposes of that Act, whereas no similar provision is made in the Bombay Survey Act, No. I. of 1865, passed only a few months previously. We do not, however, decide this point now. It is not necessary for us to do so in this case.

On the facts before the Magistrate, we are clearly of opinion that he was not justified in convicting the accused, and that he committed an error in law in holding that there was any obstruction caused to the complainant in the discharge of his public functions. The complainant says that when he went to the house of the accused on the 25th of February last, he found it open, and that there were some women in it, who told him that the owner of the house was at his shop, and that he should obtain his permission before entering. He found the accused at his shop, engaged in counting money, and desired him to accompany him to the house that it might be measured. The alleged obstruction, according to the complainant and his two witnesses, consisted in the accused replying that he did not wish his house to be measured, in his not accompanying the complainant, as desired by him,

and in telling him that he would have it measured when he had leisure. This was certainly no obstruction, within the meaning of Sec. 186 of the Indian Penal Code; and we, therefore, reverse the conviction and sentence complained of.

TUCKER, J., concurred.

Conviction and sentence reversed.

REG. V. BHAVA'NISHANKAR HARIBHA'I AND TWO OTHERS. July 1.

False Evidence—Joint Trial—Procedure.

A person accused of giving false evidence in a stage of a judicial proceeding is entitled to have the specific charge made against him tried independently of a like charge against another person.

THE accused were charged with having given false evidence in a trial before the Acting Senior Assistant Session Judge at Broach. Bhavánishankar Haribháí and Raghunáth Bháídás were said to have falsely stated that a Bheel of the name of Jogá did test certain rupees, and that Vallabh Vishvanáth, accused No. 3, was present at the time. The false statement alleged to have been made by Vallabh, was that he was present when the rupees were given to the Bheel. In the preliminary investigation before the Magistrate, and in the trial before the Assistant Session Judge, all three accused were tried jointly, and each of them, being convicted, was sentenced to undergo three years' rigorous imprisonment.

From the convictions and sentences the prisoners appealed.

The Appeal was heard before WARDEN and GIBBS, JJ.

Dunbar (with him *Shántárám Náráyan*) contended that each of the accused was entitled to have the specific charge made against him tried quite independently of the like charge against the others; that a joint trial deprived him of the benefit of the evidence of his fellow-prisoners; and that, this irregularity being such as effected the merits of the case, the convictions should be quashed. He cited Mayne's Penal Code, p. 313 (3rd ed.), and *The Queen v. Khoab Lall and others* (a).

(a) 9 Calc. W. Rep., Cr. R. 66.