

1870.

REG.

v.

WELLS.

Upon a review of the Magistrate's monthly criminal return, A. A. Borradaile, Magistrate of the district of Ahmedábád, referred the case for the orders of the High Court, under Sec. 434 of the Code of Criminal Procedure, with the remark that a Justice of the Peace had no jurisdiction to try a European British subject under the Penal Code, and that the sentence appeared, therefore, illegal.

The case was considered this day by WARDEN and LLOYD, JJ.

PER CURIAM :—The Court annuls the conviction and sentence. The accused must be committed to take his trial before the High Court, unless the complainant withdraw the charge, under Sec. 271 of the Criminal Procedure Code.

Conviction and sentence annulled.

REG. V. BA'PUJI GANGA'RA'M.

April 27.

Act VII. (Bombay) of 1867, Secs. 27, 28, and 29—Written Order—Power of the Police to keep order in Temples.

An order issued under Sec. 28 of the Bombay District Police Act (VII. of 1867) need not be in writing—disobedience of a verbal order given under that section is punishable, under Sec. 29.

The words of Sec. 28 of the District Police Act, which authorise the Police "to keep order in the neighbourhood of places of worship during the time of public worship," confer upon the police a power of regulating traffic, and putting a stop to noises, in the neighbourhood of places of worship during the time of worship, but do not limit their general powers of keeping order at and within all places of public resort, temples, *jatras*, or the like, when necessary.

THIS was an application to the High Court, in the exercise of its extraordinary criminal jurisdiction, to set aside an order of G. W. Elliot, Magistrate of Kheḍá, confirming the sentence passed against the accused by the Subordinate Magistrate, First Class, at Thásrá.

The application was heard by GIBBS and LLOYD, JJ.

Nánábháí Haridás for the appellant.

Dhirajlál Mathurádás (Government Prosecutor), for the Crown.

The facts appear from the following judgment :—

GIBBS, J. :—In this case the accused is charged with opposing and disobeying an order lawfully issued under Sec. 28 of Act VII. of 1869 (Bombay District Police Act), and having been convicted by the First Class Subordinate Magistrate at Thásrá, was fined three rupees, or seven days' simple imprisonment.

1870.
REG.
v.
BA'PUJI
GANGA'RAM.

On appeal to the District Magistrate of Khedá, the conviction and sentence were confirmed. On an application made to this court the record and proceedings were called for, in order to determine whether the conviction was legal or not.

The circumstances of the case are as follow :—

The accused is a priest of the temple of Dákor in the Khedá district, at which temple on certain festivals very large numbers of people congregate ; and the police authorities, in order to prevent accidents from too great crowding, placed constables at different parts of the building to regulate the ingress and egress of the worshippers. It appears that the complainant in this case was placed at a doorway leading into the *shaiyá mandir*, or bedroom of the god, with orders to prevent persons from going in by that entrance, which was only to be used as a means of egress. The accused came up and endeavoured to enter, when the constable stopped him and told him that he must not enter by that door, but must go round to another entrance, whereupon the accused disobeyed the order, pushed past the constable, and entered by the forbidden door. Under these circumstances he has been convicted and sentenced.

It has been argued before us that, under the 28th section of the District Police Act, the police had no power to act in any way within the precincts of the temple, as the words of that section are "in the neighbourhood of places of worship during the time of public worship." It has been further argued that the words of the 29th section, "orders issued under the last two preceding sections," viz., 27 and 28,

1870.
REG.
v.
BA'PUJI
GANGA'RAM.

must be in writing; and on these grounds the conviction is illegal.

I will deal with the second objection first. The words of the 27th and 28th sections are as follow :—

“XXVII. The District Superintendent of Police may, as occasion requires, direct the conduct of all assemblies and processions on the public roads, or in the public streets or thoroughfares, and prescribe the routes by which, and the times at which, such processions may pass. They may also regulate the use of music in the streets of towns on occasions of festivals and ceremonies.

“XXVIII. It shall be the duty of the police to keep order on the public roads, and in public streets, thoroughfares, bathing, washing, and landing places, and at all other places of public resort, or in the neighbourhood of places of worship during the time of public worship, to prevent obstructions on public roads and in public streets, thoroughfares, bathing, washing, and landing places, and to prevent overcrowding in public ferry-boats.”

Now it is to be observed that there is nothing in the Act or in the wording of these sections which requires that these orders should be in writing, and we must interpret them in accordance with common sense; and I think that, as regards the orders mentioned in Sec. 27, it might perhaps be fairly argued that directions “for the conduct of assemblies and processions on the public roads,” and “the times at which, and the routes by which,” such processions should pass, should be in writing, as also any general regulations which may be made for the use of country music in towns; but when we come to the 28th section it would simply be absurd to suppose that a policeman on duty in a public thoroughfare, or at a place of public resort, should not be able to give a verbal order to people to “move on” or to abstain from some nuisance they might be about to commit. If a written order in every such case was necessary

the police would be powerless, and the Police Act a nonentity. I have, therefore, no hesitation in holding that it is not necessary to have a written order under Sec. 28, but that the disobedience of a verbal order by a policeman is an offence within the meaning of the Act. The order in this case was given under instructions from his superior officer (Sec. 21).

As regards the first objection, the argument of the accused's pleader goes too far, and in reality answers itself. It amounts to this, that because the police are expressly authorised "to keep order *in the neighbourhood* of places of worship during the time of public worship," they cannot in any other way keep order, much less can they keep order *within* the precincts of the temple, or regulate the throng of worshippers moving from one part of the temple to another; but the whole section must be taken together, and then I think it will appear clear that the police have full power to keep order in "all places of public resort," under which category a temple and its enclosure must be included; and that the words above quoted simply confer upon the police a power which they would not otherwise have had of regulating the traffic, or putting a stop to other noises, in the neighbourhood of places of worship during the time of worship, so that the worshippers may not be disturbed in their devotions. Their general powers are in no way interfered with: they may keep order at all places of public resort—temples, *jatras*, or the like—when necessary, and they also may prevent others from disturbing the worshippers, by noise or otherwise, while their devotions are proceeding.

With every desire to prevent interference with the religious prejudices of the people, this court must uphold all fair and legitimate means adopted by the executive to prevent injury to persons, especially women and children, when flocking in large numbers at *melas* or *jatras* to some favourite shrine. This principle was fully carried out in the case of *Reg. v. Ramchandra Eknath (a)*, and it is now high time that the custodians of such shrines should learn that in protecting the helpless and preserving order on such occasions there is

1870. REG. v. BA'PUJI GANGA'BA'M. no interference in any way with the orthodox worship of their deities.

From the reports sent up with reference to this case, it would appear that the custodians of this temple have steadily set their face against any such necessary rules and regulations. The duty of the police in such a case is doubtless a very difficult one to carry out, but so long as those duties are performed in a proper manner—and there is nothing to the contrary shown in this case—they have a right to look for the support of their superiors.

I consider no ground has been shown for interference with the conviction in this case. I would, therefore, reject this application.

LLOYD, J., concurred.

Petition rejected.

REG. v. EDWARD REAY.

May 21.

Bombay Legislative Council—Criminal Legislation in India—British-born Subject in the Mofussil—Police Act—Act VII. of 1867 (Bombay).

Although the old East India Company had power, under the Charters of Charles II., to make laws affecting British-born subjects, yet this power ceased in A.D. 1709, when its Charters were surrendered to Queen Anne. From that date down to the passing of the 3rd & 4th Wm. IV., c. 123 (with the exception of a limited power of legislating as regarded the local limits of the Presidency Town), no authority expressly granting power to the East India Company or the Indian Government to legislate for British-born subjects can be found.

Semle that neither the East India Company nor any Indian Government (with the like exception) possessed such power from the year 1709 till the passing of the 3rd & 4th Wm. IV., c. 123.

With the exception of offences made punishable, by the 53rd Geo. III., c. 155, s. 105, by Justices of the Peace, the Recorder's Court had, by virtue of the 37th Geo. III., c. 142, s. 10, *exclusive* criminal jurisdiction over British-born subjects throughout the Bombay Presidency; and the same *exclusive* jurisdiction was continued to the late Supreme Court, and is now exercised by the High Court, with the like exception, and some further exceptions introduced by subsequent Acts of the Government of India.

The Bombay District Police Act (No. VII. of 1867), passed by the Governor of Bombay in Council for making Laws and Regulations, is *ultra vires* in so far as it confers criminal jurisdiction upon Magistrates in the Mofussil, being also Justices of the Peace, over British-born subjects, as