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Before Mr. Justice Scott and Mr. Justice Jardine.

QUEEN-EMPRESS *v.* HARILAL.* [30th July, 1889.]

14 B 180.

Bombay District Municipal Act (VI of 1873), s. 73—Power of the Municipality to suppress caste-feasts on the outbreak of cholera—Meaning of the words "take such measures as may be deemed necessary"—Construction of statutes.

The city of Ahmedabad being threatened with an outbreak of cholera, the president of the local Municipality, acting under s. 73 of Bombay Act VI of 1873, issued an order, in the form of a proclamation, prohibiting the holding of caste-feasts when over thirty persons were to assemble.

After the promulgation of this order the accused gave a feast in a private house to upwards of thirty people of his caste. He was thereupon convicted, under s. 188 of the Indian Penal Code (Act XLV of 1860), for disobedience of an order duly promulgated by a public servant, and sentenced to pay a fine of Rs. 35.

Held, reversing the conviction and sentence, that s. 73 of the Bombay District Municipal Act (VI of 1873) did not empower the Municipality to place an interdict on people meeting together to eat and drink in their own houses. The words in the section, "take such measures as may be deemed necessary to prevent, meet, or suppress the outbreak," imply in themselves something actively to be done by the Municipality, rather any limitation to be imposed on the private rights of the citizens in their relations of daily life. Special measures for the health of the town—such as sulphur fumigation, daily flushing of sewers, insistence on good house sanitation, isolation of infected districts, and other [181] similar steps to be taken by the authorities themselves—fall naturally within the meaning of the terms of the section.

The Court ought not to strain an Act in favour of an interference with private rights which is not justified by the primary sense of the language.

THIS was a reference, under s. 438 of the Code of Criminal Procedure (Act X of 1882), by H. E. M. James, District Magistrate of Ahmedabad.

The reference was made under the following circumstances :—

In March, 1889, the city of Ahmedabad being threatened with an outbreak of cholera, the president of the local Muncipality, in exercise of the powers conferred by s. 73 of Bombay Act VI of 1873, issued a proclamation forbidding the giving of caste-dinners within municipal limits when more than thirty persons were to assemble. Printed copies of the proclamation were posted on the walls in different quarters of the city.

On the 28th April, 1889, the accused gave a feast to upwards of thirty members of his caste in honour of the Ram-Navmi festival.

The accused was thereupon tried and convicted by the Honorary Third Class Magistrate of Ahmedabad, under s. 188 of the Indian Penal Code, for disobedience of an order duly promulgated by a public servant. He was sentenced to pay a fine of Rs. 35.

This conviction and sentence were upheld, on appeal, by the District Magistrate, who, however, referred the case to the High Court, as he entertained doubts, in his mind, on the question whether the Muncipality had authority, under s. 73 of Bombay Act VI of 1873, to prohibit caste-dinners at all.

The reference was argued before SCOTT and JARDINE, JJ.

Manekshah Jahangirshah, for the accused :—The words of s. 73 of the District Municipal Act are vague and general. They ought to receive

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a construction rather in favour than in derogation of the common law rights of the subject. The Municipality has no power, under this section, to interfere with feasts in private houses. If the Legislature had intended to confer such power, it would have done so in express terms. You cannot strain the language of the section in favour of such an unusual [182] interference with the rights of private individuals. Even assuming that the Municipality had such power, still the Act does not provide any penalty for breach of the rules made under s. 73. See s. 74. The accused has, therefore, committed no offence.

JUDGMENT.

SCOTT, J.—This reference turns on the construction of s. 73 of the Municipal Act (Bombay Act VI of 1873), applicable to this Presidency. That section empowers any Municipality "threatened or visited with an outbreak of any epidemic disease," "to take such measures as may be deemed necessary to prevent, meet, mitigate or suppress any such outbreak." In order apparently to prevent any abuse of this wide discretion, it is further provided that measures under this section must be first sanctioned by the Governor in Council, or an officer authorized by him. It appears that the Municipality of Ahmedabad received a report from their medical officer that the city was threatened with cholera and that the suppression of caste-feasts was a necessary measure. The sanction of the Governor in Council was obtained, and under the powers conferred by s. 73 an order was promulgated in the city by posters on the walls prohibiting the holding of caste-feasts when over thirty persons were to assemble. The defendant in this case infringed this rule, and was fined under s. 188 of the Indian Penal Code, twenty-five rupees for disobeying the order of a public servant empowered to promulgate such order. The District Magistrate, whilst he held the order within the powers of the section, still felt a doubt on the subject, and referred the question of its legality to the High Court. That question turns on the construction of the words "take such measures as may be deemed necessary to prevent, meet, mitigate or suppress the outbreak." The words are, no doubt, of a wide and general character, whilst the powers they confer are to be exercised for the safety of the public and only at an exceptional time of public danger. But can they be taken to cover an order interfering with the right of every citizen to the control of his private life and the use of his own house, and placing an interdict on people meeting together to eat and drink in their own houses? Special measures for the health of the town—such as sulphur fumigation, daily flushing of sewers, insistence on good house sanitation, [183] isolation of infected districts and other similar steps to be taken by the authorities themselves—come more naturally within the meaning of the terms of the section. Indeed the words "to take such measures" imply in themselves something actively to be done by the Municipality, rather than any limitation to be imposed on the private rights of the citizens in their relations of daily life. If stringent rules as to the conduct of private life generally, and as to the consumption of food in private houses in particular, were contemplated, the Legislature would have found apt words to express their meaning. Terms of command and prohibition would have been used such as occur in s. 144 of the Criminal Procedure Code. Moreover, the Legislature would have provided a special penalty for the infringement of the rules thus made, as was done in other sections of the Act. Section 74 enumerates the sections of the Act intended to have penal effect, and this section is

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not in the list. The absence of penalty and the primary sense of the words "to take measures" are both in favour of the section being construed to mean acts of the Municipality itself rather than any unusual restriction of private rights. The section may, however, be construed in two ways. Firstly, the words "take measures" may be limited to acts on the part of the Municipality to be done by them, such as those we have described. This interpretation need not necessarily involve any infringement of the common law rights of the subject, and is also the more natural meaning of the words used. But, secondly, the words "take measures" are so vague and general that they may be extended so as to cover commands to do acts, and prohibitions to abstain from acts, which would otherwise be within the common law rights of the subject.

This second construction is the one that must be applied to this case to justify the order in question. Yet such a construction of general words is contrary to the rules which govern the interpretation of all statutes. The rule applicable to this case is clearly expressed as follows:—"The general rule in exposition of all Acts of Parliament is this, that in all doubtful matters and where the expression is in general terms, they are to receive such a construction as may be agreeable to the rules of common law in cases of that nature; for statutes are not presumed to [184] make any alteration in the common law, farther or otherwise than the Act does expressly declare; therefore in all general matters the law presumes the Act did not intend to make any alteration; for if the Parliament had had that design, they would have expressed it in the Act"—(Viner's Abridgement, Tit. Statute). As the second construction is contrary to this rule of interpretation and against the primary meaning of the words, we are unable to accept it. The Court ought not to strain an Act in favour of an interference with private rights which is not justified by the primary sense of the language. If caste feasts in private houses are to be prohibited, the intention of the Legislature to that effect must be shown either by express words or by necessary implication. That intention cannot, in our opinion, be read in the words before us. We think, therefore, the Municipality has exceeded its powers in issuing this order. The conviction and sentence must be reversed, and fine returned.

JARDINE, J.—I concur. I am of opinion that this was a very proper case for the District Magistrate to refer, and that his full discussion of the facts and law have helped us, along with Mr. Manekshah's argument, to an understanding of the matter. The conviction is under s 188 of the Indian Penal Code: the question is whether the wide terms of s. 73 of the Bombay Act VI of 1873 empower the Municipality on the outbreak of an epidemic disease—in this case, cholera—to prohibit by proclamation the giving of caste-feasts within the limits of a Municipality. For the purposes of this reference I assume that the the result of such caste-feasts is to increase the mortality. The District Magistrate rightly notices the wide language of s. 73 "to take such measures as may be deemed necessary to prevent, meet, mitigate or suppress any such outbreak." We notice also, as a precaution in favour of the subject, that the sanction of the Governor in Council or his delegate is required before the emergent measure can be taken. The District Magistrate suggests that the Legislature intended to leave to the Municipality under these provisions and safeguard the power of judging whether the emergency was to be met by proclamation,—that is, whether the proclamation can be upheld under the maxim *salus populi suprema lex*. [185] This view of the municipal power and duty requires

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our full consideration. I think, however, that the whole Act and certainly s. 73 shows that in enacting it, the Legislature had this important maxim in its mind at the time. It makes many particular acts, offences, they being dangerous to the public health. It empowers the Municipality to proceed by written notice to require persons to abate nuisances, as under ss. 58, 59, 62 and on disobedience in some cases to abate the nuisance itself; in others the disobedient person is liable to a penalty on conviction. Section 82 empowers it to prosecute for public nuisances. It may, therefore, rightly be supposed that if the Legislature had intended to confer a power of prohibiting, by general proclamation, acts which are not public nuisances or otherwise offences against the Municipal Act or other laws, it would have used clearer language than is found in s. 73. This view is supported by the careful language used in regard to the interdicts which may be issued by Magistrates under Reg. XII of 1872, s. 19, and ss. 133 and 144 of the Criminal Procedure Code. Again, the words of s. 73 allow scope for the application of the maxim *salus populi suprema lex* in other ways. The words point to an exertion of the ordinary lawful powers of a municipal body in regard to the active measures which in time of outbreak of an epidemic disease they would naturally take, but which may possibly be restricted by the want of funds, the need of sanction of a distant authority, the operation of a rule about contracts, the delay caused by a budget not being prepared, or by the usual observance of forms. It may be that the Legislature intended that difficulties and delays of this kind should in presence of emergency be surmounted, the sanction of the Governor in Council or his delegate being assumed as a safeguard justifying the setting aside of forms and preliminaries requisite and proper in ordinary times and circumstances. Thus they may set to work to clean their own property. I mean the public places, streams, sewers, wells, &c., mentioned in s. 17. Among the measures which the Municipality might lawfully take, I would be inclined to include such as are distinctly specified in the Public Health Acts in England, or such as the Local Government Boards there may take when formidable epidemic, endemic [186] and infectious disease appears in any part of England, *viz.*, regarding the speedy interment of the dead, house to house visitation, provision of medical aid and accomodation, cleaning, ventilation and disinfection and for guarding against the spread of disease. The Local Government Board may frame regulations for these purposes, after which the local authority has to carry them out by appointment of medical and other officers and by other necessary and proper means. It seems to me that s. 73 of the Act we have to interpret has been framed for similar purposes and may be so construed. The section not only empowers, but directs the Municipality with the requisite sanction to take such measures as may be deemed necessary. A later Act, Bombay Act II of 1884, has so amended s. 24 as to make some of these measures which were formerly optional, now obligatory on municipalities. The safeguard of gubernatorial sanction may have been devised to authorize acts in abatement of dangerous nuisances such as the pulling down of infected houses or filthy buildings; I mean cases analogous to some to which the Courts have applied the salutary maxim in question, *e. g.*, the pulling down of a house, to stop a conflagration, the setting up of a bulwark on private land against the enemy where instead of a single house a great many were to be pulled down, where the interference was to be on a large scale. It may well be that the Legislature thought greater security would be given by requiring authority from the Governor in Council. But even the King's Proclamation cannot change the law, or

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create any offence which was not an offence before. See Bacon's Abridgment, Tit. Prerogative, D. 8; the case of Proclamations, 12 Coke 297; the remarks thereon by Cockburn, C. J., in his charge in *Reg* v. *Nelson and Brand*, p. 39; Hallam's Constitutional History, Chap. 1, p. 4. The meaning of s. 73 can, therefore, be fully satisfied withought giving it a construction which would allow a sudden and general interference with private persons in doing Acts not wrong in themselves, nor prohibited by law, nor rule having the force of law. It is a well-settled rule or law that every charge upon the subject must be imposed by clear and unambiguous language—*Denn* v. *Diamond* (1), and, as pointed [187] out in Broome's Legal Maxims, no pecuniary burden can be imposed without distinct legal authority—*Gosling* v. *Veley* (2), the maxim about *salus populi* not being sufficient authority. The present case is one of general interference, not with the purses, but, as the District Magistrate points out, with the stomachs of the subjects, *viz.*, with dinner-parties in the city of Ahmedabad. I do not think it consistent with legal principles that any such authority shall be implied when not expressed. The proclamation before us is an edict purporting to have the effect of legislation. But there was no legal obligation on the Municipality to publish it, or notify it in any way; and, as Mr. Manekshah points out, there is no provision in the section providing a penalty for any disobedience of the Municpalitiy taking the measures. It is against principle that the subject shall be bound by bye-laws which need not be notified. In relation to the matters before us, no rule nor bye-law has been made. I do not think the present case falls within the principle of *Nagar Valab Narsi* v. *Municipality of Dhandhuka* (3), where particular powers having been vested in the Muncipality by s. 33 of the Act, the question was whether the Court should interfere on the ground of a wrong exercise of discretion, on which see *Duke of Bedford* v. *Dawson* (4), *Gard* v. *Commissioners of Sewers of City of London* (5), *Gallowya* v. *Mayor and Commonalty of London*(6), *Attorney-General* v. *Great Western Railway Co.*(7). Neither does the question come before us, as in *Heap* v. *Burnley Union* (8), where the Court had to determine whether a bye-law was reasonable. The points seem to me more like that in *Foster* v. *Dodd*(9), where the extent of the authority of the Queen in Council under a statute was determined, or like the first stated in the judgment in *Earl Derby* v. *Bury Improvement Commissioners* (10), whether the Act conferred the paticular power. The words "to take such measures" are of the vaguest, but the metaphor does not appear to include the power of legislating, which had already been provided for by [188] means of rules under s. 14 having the force of law. Section 73 is intended to make the duty of the Municipality clear, so as to preclude any defence which an ignorant or indolent or parsimonious Municipality might raise if the words used by the Legislature left them any option. See Dwarris on Statute. 2nd. ed., 604; *Reg.* v. *Commissioners of Flockwood Inclosure* (11). The Municipality is not to evade its own duty by issuing proclamations prohibiting other people, a means cheap enough, but evidently not at all a substitute, in conceivable cases of epidemic, for the provision of a hospital or a sufficient number of medical and sanitary officers. Section 73 is a new enactment empowering and requiring the Municipality to do certain things for which the older law, re-enacted in s. 91,

(1) 4 B. & C. 245.
(2) 4 H.L.C. 727.
(3) 12 B. 490.
(4) L.R. 20 Eq. 358.
(5) L.R. 28 Ch. D. 486.
(6) L.R. 1 H.L. 34.
(7) L.R. 4 Ch. D. 743.
(8) L.R. 12 Q.B. D. 617.
(9) L.R. 3 Q B. 67.
(10) L.R. 4 Ex. 244.
(11) 2 Chitty, 251.

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cl. 1, makes another sort of provision by allowing the Governor in Council, after ascertaining that the Municipality "have neglected any work or duty falling within the scope of this Act which is in the opinion of the Governor in Council emergently necessary for public health or safety, to issue an order to the Municipality to execute such work or perform such duty." In case of disobedience the Governor in Council may direct the District Magistrate to do this. I think the figure of speech used by the draftsman "take measures" was probably meant for the beginning of some sort of action such as is expressed by the words "execute" and "perform"; and that the real intent of the Legislature is not satisfied by mere prohibitions contained in a proclamation. Section 73 acts remedially in so far as it makes it the duty of the Municipality, after the Governor in Council has intimated his sanction, to set to work itself, in case of epidemic, to do the same work or duty which for exactly the same reasons of public safety the Governor in Council may order the Municipality to do, and in case of disobedience may order to be done by the District Magistrate at the expense of the Municipality. The Legislature has in the Act of 1884 amended s. 24, as already pointed out, and made new sanitary action compulsory and given the executive establishment and the Collector of the district powers of compulsion by supersession of the Municipality. We must even in dealing with a law conferring benefits construe it strictly as penal and not liberally as remedial, [189] where the consequences become penal—Dwarris on Statutes, s. 640; *Hubbard* v. *Johnstone* (1). We may say with the learned Judge in that case, "though this statute be remedial, yet it is very penal if all its requisitions be not complied with," and, again, "the same rule ought to obtain here as in the construction of clauses inflicting pains and penalties in the revenue laws, if they be ambiguously and obscurely worded, the interpretation is ever in favour of the subject; for this plain reason, that the Legislature is ever at hand to explain its own meaning, and to express more clearly what has been obscurely expressed." I would, therefore, quash the conviction and the order confirming it.

Conviction and sentence reversed.

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INSOLVENCY.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Scott.

IN THE MATTER OF HAROON MAHOMED, INSOLVENT.
[27th and 28th February, 1890.]

Insolvency—Practice—Appeal from order of adjudication—Respondent on record withdrawing from appeal—Other creditors allowed to appear in appeal as respondents although not named on the record—Hindu law—Cutchi Memons—Family firm—Question of partnership in family firm—Burden of proof.

An order was made by the Insolvent Court adjudging H. an insolvent on the petition of certain of his creditors. H. appealed against the order, the petitioning creditors being the respondents named on the record. When the appeal came on for hearing, the said respondents did not appear, and it was alleged that the appellant had settled with them, in order to induce them to withdraw from the appeal. Another creditor, whose name was in the insolvent's schedule,

(1) 3 Taunt. *per* Heath, J. 220, (221).