

he required them to re-consider their first verdict, as has been held to be a legal course in England—*Reg. v. Meany*⁽¹⁾, or that he gave them any fresh directions or explained to them that a finding that the woman consented was tantamount to acquittal. The jury again retired and brought in a verdict of guilty with a recommendation to mercy; whereupon the Sessions Judge convicted and sentenced the prisoner. There are no express words on the record, nor anything except the formal verdict implying that the jury had changed their mind, nor any suggestion that the consent being induced by fear or fraud, the special verdict was incomplete.

We are of opinion under these circumstances, and especially the absence of any fresh directions to the jury, that the second verdict cannot be allowed to stand. The statements made by the woman to the Magistrate have in two important particulars been abandoned by her as a witness at the trial: and we are not disposed to infer on the evidence that the first verdict of the jury was wrong. The Government Pleader does not press for a new trial. The Court, therefore, acquits and discharges the prisoner.

Conviction quashed.

(1) 9 Cox. C. C., 231.

CRIMINAL REVISION.

Before Mr. Justice Jardine and Mr. Justice Ránade.

*IN RE JAMNA'DA'S BHUKHANDA'S.**

Nuisance — Noise — Music in neighbouring house — Bombay District Police Act (Bombay Act IV of 1890), Sec. 48, Cl. (b) — "Near a street" — Meaning of the words — Power of the police to regulate the playing of music in private houses — Construction.

(1) Section 48, clause (b) of Bombay Act IV of 1890 does not empower the District Superintendent or Assistant Superintendent of Police to stop music in private houses.

* Criminal Application for Revision, No. 292 of 1894.

(1) Section 48, clause (b) of Bombay Act IV of 1890 provides as follows:—"The District Superintendent or an Assistant Superintendent may regulate and control, by the grant of licenses or otherwise, the playing of music, the beating of drums, tom-toms or other instruments and the blowing or sounding of horns or other noisy instruments in or near a street."

1894.

QUEEN-
EMPRESS
v.
MADHAVRAO.

1894.

December 13.

1894.

IN RE
JAMNÁDÁS
BHUKHAN-
DÁS.

The words in the clause "near a street" are intended to mean open spaces by the sides or at the ends of streets.

THIS was an application for the exercise of the High Court's Revisional Jurisdiction under section 439 of the Code of Criminal Procedure (Act X of 1882).

The accused was prosecuted for disobedience of an order issued by the District Superintendent of Police under section 48, clause (b), of the Bombay District Police Act (IV of 1890).

On the 26th January, 1893, a proclamation was issued by the District Superintendent of Police with the sanction of the District Magistrate to the effect that no person should beat or sound noisy instruments within the municipal limits of the town of Broach between 10 P. M. and 6 A. M. without a permit from the city police inspector, and that, if anybody disobeyed the order, he would be liable to a fine of Rs. 200 under section 68 of Bombay Act IV of 1890.

On the night of the 28th July, 1894, the accused had a *bhajan* (or religious service) at his house, which was situated in a street near a public road. A number of persons assembled in a room on the upper story of his house, who kept up singing hymns and beating noisy instruments till 2 A. M.

As the accused had not obtained a permit from the police inspector to play music in his house on this occasion, the second class police constable prosecuted him under section 62 of Bombay Act IV of 1890 for disobeying the proclamation issued by the District Superintendent of Police.

The accused contended, on the authority of *Regina v. Lakhma Chango*⁽¹⁾, that the police had no power to stop music in a private house.

The First Class Magistrate who tried the case convicted the accused and sentenced him to pay a fine of Rs. 5, or in default to suffer one day's simple imprisonment.

The following extract from his judgment gives his reasons for the conviction :—

"It is contended by the accused's pleader that the law is not applicable to the beating of such instruments in a house, and my attention has been drawn to the

(1) 9 Bom. H. C. Rep., 153.

Bombay High Court ruling in *Reg. v. Lakhma Chango* printed at page 153, Volume IX, 1872. This ruling is laid down on section 27 of Bombay Act VII of 1867, and does not empower the police to prohibit the use of music in a private house.

“The question then for consideration is whether this ruling would be applicable to the present offence under section 48 of Bombay Act IV of 1890. Section 27 of Bombay Act VII of 1867 runs to the effect that the District Superintendent and Assistant District Superintendent of Police may also regulate the use of music in the streets of towns on occasion of festivals and ceremonies. While section 48, clause (b) of Act IV of 1890, which is substituted for the above section, runs to the effect that the District Superintendent or an Assistant Superintendent may regulate and control, by the grant of licenses or otherwise, the playing of music, the beating of drums, tom-toms and other instruments and the blowing or sounding of horns and other noisy instruments in or near a street.

“This clause is framed subsequent to the above quoted ruling of the High Court, and I think the phrase ‘near a street’ embodied in the clause is intended by the Legislature to include all places and even a house in or near a street. Had that not been the intention of the Legislature, the phrase ‘near a street’ would not have been inserted, because the phrase ‘in a street’ can safely be contemplated to include roadways and open space in a street.

“I am fortified in the above conclusion by the wording of the proclamation dated 26th January, 1893, issued by the District Superintendent of Police under the sanction of the District Magistrate. The proclamation is to the effect that no person should beat or sound noisy instruments within municipal limits at night from 10 o'clock to 6 in morning without a permit from the city police inspector, and that if any one would disobey the order he would be liable to a fine of Rs. 200 under section 68.

“This proclamation includes and contemplates all places within municipal limits; it does not distinguish houses from roadways or open space.

“The accused’s house is situate within municipal limits; and under the above circumstances I think that the above ruling of the High Court cannot be applied in accused’s favour.

“The Court, therefore, finds that accused Jamnadás Bhukhandás is guilty under section 68, clause (b), of Bombay Act IV of 1890, and directs that he do pay a fine of Rs. 5. In default to suffer simple imprisonment for one day. Fine should be levied according to law.”

∴ Against this conviction and sentence the accused applied to the High Court under its Revisional Jurisdiction.

∴ *Nagindás Tulsidás* for accused:—The place where the music was played was a room on the upper story of a private house belonging to the accused. No permit was necessary under section 48 (b) of Bombay Act IV of 1890. That section empowers the police to regulate music “in or near a street”. These words do not apply to a private house in or near a public street. The

1894.

IN RE
JAMNA'DAS
BHUKHAN-
DAS.

1894.

IN RE
JAMNÁDÁS
BHUKHAN-
DÁS.

words "near a street" would include by-ways, lanes, or open spaces near a street, but not private houses. In a large town most houses are situate in or near a street, and if the Magistrate's construction of the Act were adopted, the police would have intolerable powers of interference with the right of every subject to enjoy music in his private dwelling-house. The Magistrate relies on the proclamation issued by the District Superintendent of Police on 26th January, 1893. That proclamation forbids music within municipal limits. Municipal limits mean streets and other public places, but not private houses. The proclamation is, moreover, issued under section 48 of the District Police Act. So far as it goes beyond the scope of the Act, it is *ultra vires*. If the Act does not stop music in private houses, neither does the proclamation, which is based on the Act.

The case of *Reg. v. Lakhma Chango* is in point⁽¹⁾.

There was no appearance for the Crown.

JARDINE, J.:—The words about music "in the streets of towns on the occasion of festivals and ceremonies" in Bombay Act VII of 1867, section 27, were interpreted by this Court as not including a private house. The trying Magistrate is of opinion that the change of language enacted in Bombay Act IV of 1890, section 48 (b), indicates an intention on the part of the Legislature, by the words "in or near a street," to enable a District Superintendent or Assistant Superintendent of Police to regulate the playing of music in private houses. The District Superintendent had by written orders prohibited noisy music within municipal limits between 10 P.M. and 6 A.M., unless a permit had been obtained. The accused had music one night in an upstairs room. The orders make no mention of houses. The constable prosecuted and the Magistrate convicted as if houses were included both in section 48 (b) and the orders.

The real and important question is whether, to use the words of Lord Blackburn in *Skinner v. Usher*⁽²⁾, the Legislature meant by a side wind to stop music in houses. Such great domiciliary interference is not suggested by the context in section 48, or by the use of similar words in section 53 and section 61. The

(1) 9 Bom. H. C. Rep., 153.

(2) L. R., 7 Q. B., 423.

words "near a street" are no doubt large, but not larger than the words "in any street or place" in the Act of Parliament interpreted in *Case v. Storey*⁽¹⁾, where "place" was taken to mean only a place *ejusdem generis* with a street. The words "near a street" can be construed as meaning open spaces by the sides or at the ends of streets, and thus a plain and sufficient meaning can be given to the section we have to interpret, without the Court resorting to the supposition that while knowing that the older law had been held not to include houses, the Legislature meant to include them here by inference from the word "near." The only possible view is that, if it had meant to interfere to such an enormous extent, it would have used the word house. We reverse the conviction and sentence for the above reasons.

Conviction and sentence reversed.

(1) L. R., 4 Ex., 319.

APPELLATE CRIMINAL.

Before Mr. Justice Jardine and Mr. Justice Ránade.

QUEEN-EMPRESS v. REGO MONTOPOULO.*

Zanzibár—Jurisdiction—Local allegiance—English Consular Court—Greek residents at Zanzibár—Jurisdiction of the British Consular Court at Zanzibár over foreign subjects enjoying British protection—Order in Council dated 29th November, 1884, Sec. 6.

The Greek residents at Zanzibár having been by international action placed under British protection are liable to the British criminal law in force at Zanzibár.

The accused, who was a Greek under British protection at Zanzibár, was convicted by the British Consular Court at Zanzibár of culpable homicide not amounting to murder and sentenced to ten years' rigorous imprisonment under section 304 of the Indian Penal Code (Act XLV of 1860). He appealed to the High Court of Bombay, contending (*inter alia*) that he was a Greek subject, and as such not liable to be tried by the Consular Court.

Held that it was competent to Her Majesty to exercise jurisdiction in one foreign State over the subjects of another foreign State; that under section 6, clause (b) of Her Majesty's Order in Council dated 29th November, 1884⁽¹⁾, the provisions referring to British subjects were applicable to foreigners enjoying British protection in so far as by treaty, capitulation, grant, usage, sufferance, or other lawful means, Her Majesty had jurisdiction at Zanzibár in relation to such persons; and that the prisoner, being a British protected person within the meaning of section 4, clause (b), of the Order, was amenable to the jurisdiction of the Consular Court.

*Criminal Appeal, No. 1 of 1895.

(1) See *Bom. Govt. Gazette* for 1885, p. 533.

1894.

IN RE
JAMNA'DA'S
BHUKHAN
DA'S.

1895.

January 21.