

## APPELLATE CRIMINAL.

Before the Honourable Mr. E. T. Candy, Acting Chief Justice, and  
Mr. Justice Chandavarkar.

EMPEROR v. JAMSETJI CAWASJI CAMA.\*

1903.

June 16.

*A'bkári Act (Bombay Act V of 1878), sections 3 (9), 62—Medicated  
article—Intoxicating drug—Cocaine.*

The term "medicated article" as used in section 62 of the Bombay A'bkári Act (Bombay Act V of 1878), applies to something which is manufactured and by that manufacture is imbued with certain medicinal properties. It does not therefore include cocaine, which is a medicine *per se*.

The word "intoxicating" as used in section 3, clause 9 of the Bombay A'bkári Act (Bombay Act V of 1878), cannot be confined to its derivative meaning, namely, poisonous: the word must be taken to be used in its popular sense, which would include the effects produced by cocaine.

APPEAL under section 417 of the Criminal Procedure Code (Act V of 1898), made by the Government of Bombay, from an order of acquittal recorded by J. Sanders Slater, Chief Presidency Magistrate of Bombay.

The accused, a chemist, was charged with having sold on or about the 27th January, 1903,  $\frac{1}{2}$  a dram of cocaine without a license from the Collector of Abkári, in contravention of the provisions of the Abkári Act (Bombay Act V of 1878), an offence punishable under section 43, clause (g) of the Act.

On the 6th February, 1903, the accused was acquitted under section 245 of the Code of Criminal Procedure (V of 1898). The Magistrate in the course of his judgment said:—

From the evidence before the Court it appears that cocaine—as it is commonly called—is a drug of an extremely deleterious character when placed in the hands of inexperienced persons, and one the sale of which with public advantage be placed under stringent restrictive rules. Its effects, when administered in other than medical doses, are highly obnoxious to human life, and when administered in medical doses for a more or less prolonged period create a craving for the drug in increasing doses. The immediate effect of the drug is to stimulate the spinal cerebral nerve centres—the stimulation being followed by corresponding depression and ultimately, in the event of continued administration of the drug in increasing doses, by paralysis of these centres and death.

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There can be no doubt upon the evidence that cocaine is a poison, though not so virulent a poison as aconite, digitalis, belladonna, and other vegetable poisons. It is used medicinally, chiefly by subcutaneous injection, for producing local anaesthesia, in solution, and occasionally by external application, though its effect on unbroken skin is perfectly *nil*. But in Bombay it appears to be swallowed wrapped up in a *pan* leaf, and that without medical advice, or for any other purpose than that of enjoying the exhilarating effect which it temporarily produces. It is to check the consumption of the drug in this manner, and not with the object of interfering with its administration by medical men, that this prosecution has been instituted. If cocaine is an intoxicating drug within the meaning of the A'bkári Act, vendors of the drug must be held to be amenable to the provisions of that Act, and therefore the main question which I have to decide is whether cocaine falls within the definition of "intoxicating drug" as laid down in section 3 (9) of the Act, which runs as follows:—

"Intoxicating drug" includes ganja, bháng, charas and every preparation and admixture of the same and every intoxicating drink or substance prepared from hemp, grain or other materials not included in the term "liquor," but does not include opium or anything included within the meaning of that word, as defined in the Indian Opium Act, 1878. It will be noticed that this definition is not an exhaustive one, but includes intoxicating drinks or substance prepared from hemp, grain or other material. In interpreting this enactment, which is a highly penal one, a strict construction must be placed upon the words used, and in case the meaning of any word in this definition is doubtful it must be construed in the manner most favourable to the liberties of the subject. This is a well-known maxim of the law, but I may cite as an authority for its application in Bombay *Reg. v. Bhistá bin Madana* (I. L. R. 1 Bom. 308). What then is the meaning to be attached to the word "intoxicating"? The first meaning of the word "intoxicate," as given in the Century Dictionary, is "to poison"; the second meaning is "to make drunk as with spirituous liquor; inebriate," and a third meaning—a figurative one—is "to excite to a very high pitch of feeling." Which of these meanings is to be attributed to the word as used in the A'bkári Act? I think I am bound to look to the words of the definition to ascertain whether they give any clue to the answer to this question, and on looking to those words I find a distinct clue—the intoxication must be intoxication such as caused by ganja, bháng, charas and other preparations of hemp—that is to say, that "any other material" must, in my opinion, be material "*ejusdem generis*" as hemp or must produce similar effects. Major Cellis-Barry in his evidence states that cocaine is in no way prepared from hemp or grain, and that it does not in any way resemble ganja or bháng. He says it is not *ejusdem generis* with them. Many references were made to treatises on the subject, *inter alia*, of cocaine, but in none of them does it appear, so far as they have been brought to the notice of the Court, that the properties or effects of cocaine resemble the properties or effects of ganja, bháng or any other preparations of hemp. The Public Prosecutor argued that opium does not resemble hemp or grain, and that therefore the mention of opium in the section indicated that the material referred

to need not be material *ejusdem generis* as those mentioned. This however is entirely of a negative character, as the definition entirely excludes opium and its preparations. It is quite possible, though on that point there is no evidence before the Court, that the intoxication produced by the use of opium may resemble that produced by ganja, etc. Stated shortly, the theory of the prosecution is that "intoxicating" is synonymous with "poisonous" and that therefore cocaine is an intoxicating drug. I cannot however place that technical interpretation upon that word as used here and I hold that the word "intoxicating" must be construed to mean making drunk as with ganja or bhanga. The prosecution having failed to show that cocaine is a drug which has such an effect as an ordinary consequence of its consumption, the case fails.

The Government of Bombay appealed to the High Court.

*The Advocate General*, with the *Public Prosecutor*, for the appellant.

*S. B. Spencer* for the accused.

CANDY, ACTING C. J.—It is necessary to put forth the facts which have led to the present prosecution. The case is admittedly a test one, and the main question for our consideration is whether the cocaine which is the subject-matter of the present case comes within the definition of "intoxicating drug" as set forth in section 3, clause (9) of Bombay Act V of 1878.

There were two lines of defence. One is under section 62 which provides:—"Nothing in the foregoing provisions of this Act applies to the manufacture, sale or supply of any *bona fide* medicated article for medicinal purposes by medical practitioners, chemists, druggists, apothecaries or keepers of dispensaries; but it shall be lawful for Government at any time, by notification in the *Bombay Government Gazette*, to prohibit the sale of any such article within any defined local area, or place except under a license from the Collector, which shall be granted on payment of such fees and subject to such conditions as Government may deem fit to prescribe." We are clearly of opinion that the bottle of cocaine which was the subject of this prosecution is not a medicated article within the terms of that section. It appears to us that it is a medicine *per se* and that the term medicated article must apply to something which is manufactured and by that manufacture is imbued with certain medicinal properties. This appears to us to be a salt of the base cocaine.

Now we turn to the second line of defence, *i.e.*, the ground upon which the learned Chief Presidency Magistrate considered that

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the accused had not committed the offence within the terms of the Act.

Clause (9) of section 3 runs:—"Intoxicating drug includes ganja, bhang, charas and every preparation and an admixture of the same and every intoxicating drink or substance prepared from hemp, grain, or other materials not included in the term liquor but does not include opium."

The learned Chief Presidency Magistrate was of opinion that cocaine did not come within these terms, because he held that the intoxication which must be caused by any intoxicating drug falling within the terms of the section must be such an intoxication as is caused by ganja, bhang, etc., and also that the other material referred to in this section must be *ejusdem generis* with hemp, etc.

We are unable to concur with that opinion. The learned Chief Presidency Magistrate quoted a case in which it was held in accordance with well-known rulings that in construing a penal clause the Court must be very strict. The clause which we are considering is not a penal clause; it is an interpretation clause, and what we have to look at is whether the inclusion of cocaine within the term "intoxicating drug" is within the mischief contemplated by the Act and within the four corners of the definition.

A perusal of the previous legislation on this subject in the Bombay Presidency would seem to show that the mischief aimed at was the vicious use of intoxicating drugs of any description. A reference to the preamble to Regulation XXI of 1827 and to section 10 of Act III of 1852 will show that there was apparently no intention in the mind of the Legislature to limit the provisions of the law to any particular kind of intoxicating drugs. With reference to the inclusion of charas made by Bombay Act V of 1891, it is evident from the perusal of that Act that the object of that legislation was not simply to include charas as an intoxicating drug, but to make the most stringent provisions with regard to both the manufacture and the sale of charas as suggested by the Hemp Drugs Commission. The inclusion, therefore, of charas within the interpretation clause by recent legislation does not assist us.

Coming now to the words of the clause we find that there is some difficulty in ascertaining whether the words "not included

in the term liquor " apply to the words " drink or substance " or to the words " other material." If it is permissible for us to refer to the words of the corresponding Act in the Madras Presidency in which the word " and " is found before the words " not included in the term liquor," the presumption would be that those words were intended to apply to " drink or substance." In whichever way we regard the clause, we think it is clear that the Legislature did not intend the definition to apply solely to hemp, grain, or other material of the same kind as hemp. It is noticeable that liquor as defined in clause (7) of the same section and opium as defined in the Opium Act are both purposely excluded from the definition of " intoxicating drug." This exclusion would hardly have been necessary had the meaning of the Legislature been that the term in question should apply only to hemp or materials of that nature. In connection with this point it may be well to refer to the judgment of Mr. Justice Quain in the *Queen v. Midland Railway Co.*,<sup>(1)</sup> where he says:—" I start with this proposition that it is a mistake to apply the rule of *ejusdem generis* at all to the construction of the statute. If the words had been ' houses, buildings and property,' and had stopped there, I agree that the rule would be applicable; but the words are ' houses, buildings and property other than land.'"

In the same way here, had the words stopped at ' hemp, grain or other material ' it is possible that the argument used for the defence would have some force.

In our opinion the word " intoxicating " used in the interpretation clause cannot be confined to its derivative meaning, namely, " poisonous." We think that the word must be taken in its popular sense. That cocaine can have " intoxicating " effects has been amply proved in this case. It is unnecessary to refer to the evidence at any length. It will suffice to mention the paper by a well-known acknowledged authority, Dr. Bose, in which he describes all those intoxicating effects at great length.

For these reasons we think that the cocaine, the subject of this prosecution, is an " intoxicating drug " within the meaning of the Act. We reverse the acquittal recorded by the Magistrate; and we record a conviction under section 43, clause (g) of the A'bkári Act (Bom. Act V of 1878); and as this is a test case we impose merely a nominal fine of Rupee one (1).

(1) (1875) L. R. 10 Q. B. 389 at p. 393.