CRIMINAL REFERENCE.

Before Mr. Justice Russell and Mr. Justice Aston.

1906. *January 17.*

EMPEROR *v.* DWARKADAS DHARAMSEY.*

City of Bombay Municipal Act (Bom. Act III of 1888), section 249†—Place of public resort—Theatre.

A theatre is a place of public resort and as such falls within the purview of section 249 of the City of Bombay Municipal Act (Bom. Act III of 1888).

THIS case came before the High Court on a reference made by Karsondas Chhabildas, Esquire, Acting Second Presidency Magistrate, which runs as follows:—

"I have the honour to refer under section 432, Criminal Procedure Code, the following question of law which has arisen in the hearing of a complaint by the Municipal Commissioner for the City of Bombay against defendant Dwarkadas Dharamsey of an offence punishable under section 471 of the Bombay Municipal Act III of 1888, in failing to comply with the requisition of Notice No. 4 of 1905 issued under section 249 of the Bombay Municipal Act III of 1888. The question of law is whether a theatre falls within the purview of section 249 of the Municipal Act, which runs as follows":—

[The learned Magistrate here set out the section and continued:—]

"The defendant Dwarkadas Dharamsey is called upon as owner of the Elphinstone theatre to provide privy accommodation on the said theatre and it is urged on his behalf that under section 249 of the Municipal Act, the Municipal Commissioner is not empowered to call upon the owner or occupier of a theatre to provide privy accommodation and that the issue of such a notice is illegal. It is further urged that the definition of 'other place of public resort' in the said section must be construed *ejusdem generis* with the words preceding. Counsel for the defendant has also quoted Maxwell on the Interpretation of Statutes, page 461, 3rd edition, which says when two or more words susceptible of analogous meaning are coupled together, *noscuntur a sociis*, they are understood to be used in their cognate sense. They take as it were their

* Criminal Reference No. 82 of 1905.

† Section 249 of Bombay Act III of 1888 runs as follows:

"Where it appears to the Commissioner that any premises are, or are intended to be used, as a market, railway station, dock, wharf or other place of public resort, or as a place in which persons exceeding twenty in number are employed in any manufacture, trade or business or as workmen or labourers, the Commissioner may, by written notice, require the owner or occupier of the said premises to construct a sufficient number of water-closets or latrines or privies and urinals for the separate use of each sex."

colour from each other; that is, the more general is restricted to a sense analogous to the less general. The Honourable Mr. Crawford on behalf of the Municipality has on the other hand drawn the attention of the Court to page 475 of the same book which says; 'Of course the restricted meaning which primarily attaches to the general word in such circumstances is rejected when there are adequate grounds to show that it was not used in the limited order of ideas to which its predecessors belong. If it can be seen from a wider inspection of the scope of the legislature that the general words, notwithstanding that they follow particular words, are nevertheless to be construed generally, effect must be given to the intention of the legislature as gathered from the larger survey.' Under these circumstances the question for consideration is whether 'other places of public resort' should be construed as meaning a place of public resort of any kind or a place of the same kind, as a market, railway station, dock or wharf. In my opinion the words 'other place of public resort' must be construed generally, *i. e.*, as meaning a place of public resort of any kind and not as *ejusdem generis* with the words market, railway station, dock or wharf. In the first place, the words market, railway station, dock or wharf are not *ejusdem generis* and I fail to conceive any place analogous to market, railway station, dock or wharf. In my opinion, therefore, the principles laid down by Maxwell on Interpretation of Statutes on page 461, *viz.*, when two or more words susceptible of analogous meaning are coupled together *noscuntur a sociis* they are understood to be used in their cognate sense, do not apply in this case. If 'other place of public resort' in section 249 is to be construed as a place of public resort *ejusdem generis* with market, railway station, dock or wharf, then those words should be rejected altogether as it is difficult to suggest any places of public resort analogous to market, railway station, dock or wharf. The words 'other place of public resort' being present in that section, the legislature must have intended to have some meaning attached to them. The only reasonable construction that could be placed on those words after taking into consideration the intention of the legislature is that 'other place of public resort' means other place of public resort of any kind. A theatre being a place of public resort falls in my opinion within the provisions of section 249 of the Municipal Act."

The reference was heard by a Bench composed of Russell and Aston, JJ.

Weldon for the Municipality.

H. C. Coyaji for Dwarkadas:—The expression "other place of public resort" in section 249 of the City of Bombay Municipal Act (Bom. Act III of 1888) does not include a theatre. This is apparent from the wording of the section itself. The places specified therein are (1) market; (2) railway station; (3) dock; (4) wharf; (5) a place in which persons exceeding twenty in number are employed in any manufacture, trade or business or

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as workmen or labourers. These are all places where we expect to find tradesmen or labourers or workmen at work for the greater part of the day, and where, therefore, the necessity contemplated by the section is most likely to arise. We do not find in the section any mention of a place where people meet for two or three hours amusement or entertainment, *e. g.*, a music hall or a theatre. This contention is borne out by the marginal note to the section, which mentions "factories, &c."; and we are entitled to have recourse to it, since "the headings prefixed to sections or set of sections in some modern statutes are regarded as preambles to those sections." (Maxwell on the Interpretation of Statutes, 2nd edition, page 65.) The word "theatre" is not used in the section. The omission is significant and shows it must have been a designed omission. See also *Regina* v. *Cleworth*[1].

RUSSELL, J.—In this case the point raised is whether a theatre comes within section 249, Bombay Municipal Act (Bom. Act III of 1888), as premises used or intended to be used as a market, railway station, dock, wharf or other place of public resort or as a place in which persons exceeding twenty in number are employed, etc. The section gives, in such cases, power to the Municipal Commissioner to require the construction of a sufficient number of latrines or water closets or privies and urinals for the separate use of each sex.

Now the construction of the words "place of public resort" or "public place" where they occur in an Act of Parliament must depend on the context and scope and object of the Statute. (*Vide* Encyclopædia of English Law, Vol. 10, p. 97, title "place.")

What is then the scope and object of section 249? It is to provide proper and decent accommodation for persons of both sexes in the way of latrines, urinals, &c., in regard to the places specified in the section. It is, we think, clear that the words "other places of public resort" cover the case of a theatre which is *ejusdem generis* with a railway station; it is impossible to say, and it has not been argued, that the public do not resort to the theatre. Why then should not persons resorting to the theatre be provided with the same accommodation as persons

(1) (1864) 4 B. & S. 927.

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resorting to a railway station. No evidence as to the number of persons employed at the theatre was given, so no point arises as to the second branch of the section.

For these reasons we answer the question sent to us in the "affirmative."

With regard to *Regina* v. *Cleworth*(1) relied on by Mr. Coyaji, the object of that Statute was to prevent certain classes of workmen from working on Sunday.

ASTON, J.—I concur that the answer must be in the affirmative. The places of public resort specified in the sentence preceding the words "or other place of public resort" do not differ *inter se* less than a theatre differs from them. There is nothing therefore in the "*ejusdem generis*" argument. It is therefore unnecessary for the purpose of answering this reference to ascertain whether the theatre in question comes under any other category in section 249.

Attorneys for the Municipality:—*Messrs. Crawford, Brown and Co.*

R. R.

(1) (1864) 4 B. & S. 927.

APPELLATE CIVIL.

Before Mr. Justice Aston and Mr. Justice Scott.

APPEAL No. 735 OF 1904.

1906. *January* 19.

MINALAL SHADIRAM BY HIS MUKHTYAR RAMLOTANSING BUDHANSING (ORIGINAL PLAINTIFF), APPELLANT, *v.* KHARSETJI JIVAJI (ORIGINAL DEFENDANT), RESPONDENT.

APPEAL No. 771 OF 1904.

KHARSETJI JIVAJI (ORIGINAL DEFENDANT), APPELLANT, *v.* MINALAL SHADIRAM BY HIS MUKHTYAR RAMLOTANSING BUDHANSING (ORIGINAL PLAINTIFF), RESPONDENT.*

Res judicata—Civil Procedure Code (Act XIV of 1882), section 13—Consent-decree—Fraud—Defence—Limitation.

On the 4th June 1893, the defendant signed an acknowledgment (Ruzu) for Rs. 11,534-15-0 in favour of the shop of Bakhatram Nanuram, represented in the suit by the plaintiff.

* Cross-Appeals Nos. 735 of 1904 and 771 of 1904.