CRIMINAL REFERENCE.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

1907. *April* 19.

EMPEROR *v.* ATMARAM GOVIND.*

Bombay City Police Act (Bombay Act IV of 1902), sections 12, 16, 18†— Commissioner of Police—Orders issued by the Commissioner forbidding meetings by the members of the Police force to discuss matters concerned with the force—Orders relating to discipline and general government of the force—Construction of statutes.

The Commissioner of Police in Bombay, under the powers vested in him by section 12 of the Bombay City Police Act (Bombay Act IV of 1902), issued the following notification :—

"The Commissioner of Police under the provisions of section 12 of Bombay Act IV of 1902 hereby prohibits any member of the Police force from calling or attending a meeting to discuss any subject connected with the Police force, without his permission."

This notification was read over to the members of the Police force at a muster parade at which the accused was present. Notwithstanding this, the accused

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* Criminal Reference No. 23 of 1907.
Criminal Appeal No. 116 of 1907.

† The Bombay City Police Act (Bom. Act IV of 1902), sections 12, 16 and 18, run as follows :—

12. Subject to the control of the Governor in Council, the Commissioner of Police may issue such orders as he may deem expedient—

(*a*) relating to the recruitment, organization, instruction, classification, discipline and general government of the force ;

(*b*) determining the description and quantity of the arms, accoutrements and other necessaries to be furnished to the Police ; and

(*c*) providing for the institution, management, and regulation of any Police fund.

16. Every Police officer not on leave or under suspension shall for all the purposes of this Act be deemed to be always on duty throughout the City of Bombay.

18. Any Police officer who—

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(*d*) is guilty of any wilful breach or neglect of any provision of law or of any rule or order which it is his duty as such Police officer to observe or obey,

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shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.

attended a meeting of the members of the Police force convened to discuss subjects connected with the force. For this disobedience, the accused was proceeded against under section 18 of the Bombay City Police Act (Bombay Act IV of 1902).

Held, that the Commissioner of Police was authorized to issue the notification under section 12 of the Act, for the object of the notification was not to deprive the policemen of their private right but to regulate their conduct in their police capacity; that, therefore, the accused in disobeying the order had committed an offence punishable under section 18 of the Act.

The order which the Commissioner of Police is competent to issue under the head of discipline and general government, under section 12 of the Bombay City Police Act (Bombay Act IV of 1902), must be one having reference to the conduct of the Police officers in their capacity as such officers. Over their conduct in other relations of life, his disciplinary power does not extend, so long as no element or question of their police duty enters into those relations. If it does enter, the controlling authority of the Commissioner comes into play and it becomes a matter of police discipline.

The meaning of section 16 of the Act is that even when a Police officer is not actually at his post discharging the duty assigned to him, he is for the purposes of the Act to be regarded as being at that post, with all the rights and obligations of his office attaching to him.

In construing an expression of doubtful import occurring in a statute, the Court may well have regard to considerations outside the language of the Act.

THESE cases came up before the High Court by way of reference and appeal.

The reference was made by A. H. S. Aston, Chief Presidency Magistrate of Bombay, to the High Court, under the following circumstances:—

On the 1st April 1907, the Commissioner of Police for the City of Bombay issued a notification, in virtue of powers vested in him by section 12 of the Bombay City Police Act. The notification ran as follows:—

"The Commissioner of Police under the provisions of section 12, Bombay Act IV of 1902, hereby prohibits any member of the Police force from calling or attending a meeting to discuss any subject connected with the Police force, without his permission."

This order was read over to the members of the Police force at a parade on the 2nd April 1907, at which the accused, a member of the force, was present.

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Notwithstanding this order the accused attended on the 4th April 1907 a meeting of the members of the Police force held in the gardens at Charni Road, to discuss subjects connected with the Police force. The meeting was convened without the permission of the Commissioner of Police.

The accused was on these facts placed before the Chief Presidency Magistrate of Bombay for trial. The learned Magistrate, during the course of the trial, referred, under section 432 of the Criminal Procedure Code (Act V of 1898), to the High Court for its decision, the following questions of law arising in the case :—

(1) Whether the order of the Commissioner of Police, dated April 1st, was an order within the meaning of section 12 of the Bombay Police Act IV of 1902?

(2) Whether such order was an order within the meaning of section 18 which it was the duty of the accused as a Police officer to obey?

The learned Magistrate, in the course of his letter of reference, remarked as follows :—

"The only question for determination is whether the order (Exhibit A) was an order relating to the discipline and general government of the force within the meaning of section 12. It is a well-known principle of English Constitutional law that meetings for the purpose of eliciting or altering public opinion on any matter are perfectly legal and if further it is the intention of the promoters to get up a petition to Government the meeting will have the additional sanction of the Bill of Rights (1 Will. and Mary, c. 2, s. 2; see Starling, 8th Edn. p. 183). But this right of public meeting is a right which citizens enjoy in their civil capacity only. When once they assume the responsibility of public service the State has a right to modify their liberties in accordance with public expediency and it frequently exercises that right. It is to the members of the Police force that the public looks for its sense of security and peace, and meetings held by members to discuss matters connected with that force may under certain circumstances be detrimental to that sense of security. Discipline I take it means the measures adopted to render a person or persons orderly and subject to control. It is well known that while meetings are often held in an orderly manner there is a danger owing to the absence of rules of procedure and of a central governing authority, that the persons taking part in them may become less liable to control. Section 16 of the Bombay Police Act provides that every Police officer is to be deemed to be always on duty unless he is on leave or under suspension and I am of opinion that the order of the Commissioner, although it prohibited an act which as private citizens the officers concerned would have had every right to perform, was an order relating to discipline and general government within the meaning of

section 12 of the Bombay Police Act and that the question of the expediency of issuing such order rested with him."

THE appeal was preferred by the Government of Bombay against an order of acquittal recorded by P. H. Dastur, Second Presidency Magistrate of Bombay.

In this case the accused, a member of the Police force, was present at a meeting convened to consider proposals to demand an increment in pay. The meeting was held without the permission of the Commissioner of Police.

The order forbidding the meeting was communicated to the accused at a parade.

The accused was therefore proceeded against under section 18 of the Bombay City Police Act (Bombay Act IV of 1902), in that he wilfully disobeyed the order of the Commissioner of Police.

The learned Magistrate held that the offence charged was not made out against the accused and acquitted him. The grounds of his judgment were as follows:—

The question that the Court has to consider is whether the order Exhibit A is a valid and proper order under section 12 of the Police Act or is *ultra vires*. The order reads thus:—

> "The Commissioner of Police under the provisions of section 12 of Bombay Act IV of 1902 hereby prohibits any member of the Police force from calling or attending a meeting to discuss any subject connected with the Police force without his permission."

Now in the first place this order is very vague, and does not limit the subject or subjects to be discussed at a meeting of these policemen. If carried to its logical conclusion it would in my opinion interfere with the rights of these policemen to hold meeting for any purpose, directly or indirectly connected with their existence as Police officers. For instance, if the policemen had met together to discuss or decide upon a plan of improving their education or their training in order to become better policemen, this order of the Police Commissioner, Exhibit A, would have been equally applicable and those who attended the meeting would have rendered themselves liable to a penalty. I say, therefore, that the order being too vague and too large must be considered as unreasonable and if so the Court is not bound to enforce it. But I hold that the order in question could not be said to have been made under section 12 of the Police Act though it purports to have been so made. Section 12 gives the Police Commissioner power to issue an order relating to,

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amongst other things, discipline and general government of the force. If so, the order must be one which concerns Police officers as such Police officers and not one which affects their private liberty. This section contemplates orders of a general nature for the guidance of the men in respect to their discipline or to the control and efficiency of the force. Holding a meeting or not or attending one, when off duty, has nothing to do with either the discipline and general government of the force. The words used are "discipline and general government of the force" and they together cannot be said to refer to the acts of individual Police officers when they act in their capacity as private citizens.

In my opinion, therefore, the order Exhibit A is *ultra vires* and cannot be said to have been made under section 12 of the Act. If not so made, then the prosecution ought to have shown to us what other section of the Act entitled the Police Commissioner to issue such an order and they have failed to do so. The learned Public Prosecutor argued that as the words in section 12 are that the Police Commissioner may issue orders as he may deem expedient, the Court has got absolutely no power to consider whether the order is properly within the section or not. His argument is, that the fact of his promulgating the order as one under section 12 is sufficient to show that it was passed under that section and that the Court had no power to go behind that order. With great respect for his opinion I must say that the words "as he may deem expedient" relate not to the subject-matter of the order but to the nature of the order and if the order does not relate to any of the three heads (*a*), (*b*), (*c*) of the section, then it cannot be assumed that it does relate to one of these heads. But even if the order is one which the Police Commissioner had the power to issue under section 12 of the Police Act, there is a further issue to be met, namely, whether this Court has jurisdiction. The section that gives this Court power to punish disobedience of orders of policemen is section 18 of the Act and clause (*d*) says "any Police officer who is guilty of any wilful breach or neglect of any provision of law or of any rule or order which it is his duty as such Police officer to observe or obey." Now the words on which I lay great stress are "as such Police officers." What do they mean? Do they mean when discharging his functions as a Police officer or do they mean when enrolled as a Police officer?

Mr. Nicholson has argued that under section 16 of this Act a Police officer is to be deemed always on duty and if so, when a policeman disobeys an order given by his superior he does so in violation of the duty which section 32 (*a*) casts upon him. But this interpretation could be put on the section if you read instead of the words "as such Police officer" in section 18, the words "as a member of the Police force" as suggested by Mr. Nicholson. These words are not there, and in my opinion section 18 therefore applies only to disobedience of orders by policemen when they are discharging their public functions. In this case, the men went when off duty and in their private capacity, and I don't think that this Court has jurisdiction in the matter. I think the legisla-

ture has made ample provisions under section 7 of this Act for the punishment of disobedience and insubordination in the force, and it cannot therefore be said that it would be subversive of all discipline and good government of the force to say that certain breaches of the order cannot be punished under section 18.

Both the reference and the appeal were heard together.

Scott, Advocate General, with the Public Prosecutor, for the Crown:—The notification issued by the Commissioner of Police was authorised by section 12 of the Bombay City Police Act (Bombay Act IV of 1902), as it related to the discipline and general government of the force. The order forbidding a meeting by policemen to discuss matters connected with the Police force, was plainly a matter of discipline. Such an act would be tantamount to mutiny.

The term "discipline" is not defined in the Act. Reference may therefore be made to the Naval Discipline Act, 29 and 30 Vic., c. 109, s. 37: Army Regulations, Vol. IX, Art. 36.

Meeting on the part of persons subject to military law has always been strictly dealt with. The Military Codes of 1639 and 1642 constrained the soldier to implicit obedience to his commanding officer and contained an explicit prohibition against seditious and mutinous meetings. Such a meeting "to demand their pay" was, by the Code of 1642, punishable with death. See Clode on Military and Martial Law, p. 11. A similar duty is expected from the policemen. See the Police Code by Sir H. Vincent, p. 122.

The order in the present case prohibited policemen from attending any meeting to discuss any subject connected with the Police force. The accused wilfully disobeyed the order. He is therefore guilty of disobedience, and the mere fact that he was not then on duty could make no difference: see section 16 of the Act.

The provision against meetings by policemen is to be found in many Police Codes, see, *e. g.*, the Liverpool Police Force Rules, p. 12; the Metropolitan Police Force, Art. 26.

F. S. Talyarkhan (instructed by *Dikshit, Dhanjishaw and Soonderdas*), for the accused in the reference:—The order in

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question forbids any meeting by policemen for discussing questions connected with the Police force. The object of the meeting at which the accused attended was to discuss the question as to the increase in pay. This is not a matter connected with the Police force. The expression "discipline and general government," in section 12, clause (*a*) of the Bombay City Police Act (Bombay Act IV of 1902), must be interpreted *ejusdem generis*. The order refers to the policemen in their capacity as private citizens. The Commissioner of Police has no power to regulate their conduct when they are not on duty. The order is *ultra vires*. It is very wide and unreasonable. There are no direct cases on the subject, but in *Johnson* v. *Mayor, &c., of Croydon* (1), a bye-law forbidding a military man from sounding or playing upon any musical instrument in any street in the borough on Sunday was held unreasonable and *ultra vires* and therefore void.

Section 16 of the Bombay City Police Act (Bombay Act IV of 1902) must be strictly interpreted and in a qualified sense. All it means is that the policemen are to be taken on duty for certain purposes, *e.g.*, for arresting a man committing a cognizable offence in his presence.

Inverarity (with *Dikshit, Dhanjishaw and Soonderdas*), for the accused in the appeal:—The fallacy in the argument of the Advocate General is that it is erroneous to say that the rule issued by the Commissioner of Police is a rule which relates to matters of discipline, within the meaning of section 12 of the Bombay City Police Act (Bombay Act IV of 1902). The rule refers to matters which are not matters of discipline at all. It is much wider than would be permissible under the section and it is therefore necessarily void. See *Stiles* v. *Galinski* (2).

It is very unreasonable to prohibit all meetings by policemen. There are many objects which it is desirable the policemen should meet to discuss and which would obviously be not within the meaning of the section. For example, the policemen may meet together to consider the advisability of establishing a provident fund, or of forming a social club or of setting on foot a night school for the uneducated policemen.

(1) (1886) 16 Q. B. D. 708.

(2) [1904] 1 K. B. 615 at p. 621.

Scott in reply:—The case of *Johnson* v. *Mayor, &c., of Croydon* (1) was discussed in *Kruse* v. *Johnson* (2), where it was held that in determining the validity of bye-laws made by public representative bodies, the Court ought to be slow to hold that a bye-law is void for unreasonableness.

The Commissioner of Police has in the present case passed an order for preventing collective insubordination. The only object of the order seems to be to keep the policemen always under discipline; and the order, therefore, is well within the purview of section 12 of the Bombay City Police Act (Bombay Act IV of 1902).

CHANDAVARKAR, J.—Section 12, clause (*a*) of the Bombay City Police Act, under which the order in dispute purports to have been issued, invests the Commissioner of Police with authority to issue "such orders as he may deem expedient", relating, among other objects, to the "discipline and general government" of the Bombay Police Force. The words "as he may deem expedient" give the Commissioner a wide discretion, which is in express words limited by but two restrictions. First, any order he issues is "subject to the control of the Governor in Council"; and, secondly, the order must relate to "discipline and general government of the force". If it so relates, it is a lawful order, and the only authority who can in that case interfere with the Commissioner's discretion is the Governor in Council. Whether an order of the kind now in question relates to "discipline and general government of the force" must be determined with reference to the language of the section itself, and, where that language is ambiguous, with reference to the scheme and policy of the Act apparent from its other sections and the relation in which every member of the Police force subordinate to the Commissioner stands towards him, so far as that relation is constituted by the Act itself. The first thing to bear in mind with reference to that is that the direction and supervision of the Police force is vested in the Commissioner (section 5). He is the controlling or commanding authority of the force. Next, the object for which the force is

(1) (1886) 16 Q. B. D. 703. (2) [1898] 2 Q.B. 91.

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maintained is obviously "the protection of the inhabitants and the security of property" (section 10). Having regard to this object, the legislature has enacted in section 12, in which the words which we have to construe occur, that the Commissioner is competent to issue such orders as he may deem expedient relating to "the discipline and general government of the force." These words, standing by themselves, may be understood to apply to the regulation of the general conduct of the men subjected to the discipline. They may be construed to embrace the regulation of their private conduct, religious attitude, moral disposition, and so forth. But as the words occur in clause (*a*), they do not stand alone. They are associated with other words, and "one of the safest guides to the construction of sweeping general words, which it is difficult to apply in their full literal sense, is to examine other words of like import in the same instrument, and to see what limitations must be imposed on them. If it is found that a number of such expressions have to be subjected to limitations or qualifications, and that such limitations or qualifications are of the same nature, that forms a strong argument for subjecting the expression in dispute to a like limitation or qualification" (*Blackwood* v. *The Queen* [1]). Clause (*a*) of section 12 requires that the order contemplated by the section should relate to "the recruitment, organisation, instruction, classification" of the Police force; and then follow the words "discipline and general government of the force." Recruitment means the admission of men into the force in the capacity of Police officers. When admitted, they have to be organised, instructed, and classified, for police work. All these are objects appertaining to the capacity of the men as Police officers. If, then, these words have to be limited to that capacity, the words "discipline and general government" must be likewise limited.

The order, therefore, which the Commissioner is competent to issue under the head of "discipline and general government" must be one having reference to the conduct of the Police officers in their capacity as such officers. Over their conduct

(1) (1882) 8 App Cas. 82 at p. 94.

in other relations of life his disciplinary power does not extend, so long as no element or question of their police capacity enters into those relations. If it does enter, the controlling authority of the Commissioner comes into play and it becomes a matter of police discipline. For instance, every subject of His Majesty has a right to do as he likes so long as he does not thereby violate the laws of the land. That right every Police officer has in common with other subjects. But if the doing of a lawful thing, which he has a right to do, brings his right as a private citizen into conflict with his duty as a policeman, the question becomes one of police discipline.

These are the considerations by means of which the validity of the order now in dispute must be tested. What led to that order was that a large number of Police officers contemplated holding a meeting to discuss the question of the adequacy of their salaries. It is true that if they had so met and discussed, they would have in one sense been exercising their right lawfully as private citizens; but all the same, the question, to discuss which the meeting would have been called, would have been one into which, appertaining, as it did, to their capacity as Police officers, the element of their relation to the Police Department and to the Commissioner of Police as their head and controlling authority would have entered. Accordingly, the Commissioner prohibited them from "calling or attending a meeting to discuss any subject connected with the Police force" without his permission. The order did not prohibit them from holding or attending any or every meeting, whatever its purpose. It did not interfere or purport to interfere with any of their private rights, pure and simple; no civic relations of theirs *as such* were directly affected by it. The object was not to deprive them of their private right but regulate their conduct in their police capacity. Such regulation would not be illegal merely because of its effect on their private right. It was only an accident that a private right was hit at by the order; but its immediate purpose was the control of the men as Police officers. The discussion of a subject connected with the Police force may not, it is true, necessarily mean sitting in judgment on the merits of the police administra-

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tion; there may be no spirit of defiance to the authority of the Commissioner in it; it may be discussion of a perfectly peaceful and friendly character; but if, for all police purposes and in all police matters, the law says that they are subject to the control of the Commissioner, it is impossible to dissociate the police capacity of such officers from their private capacity and hold that they are in a body meeting for such discussion in the latter capacity alone. If anything relating to the Police enters as an element into the discussion, it becomes a matter connected with their police capacity and it is none the less so because they can hold the discussion in another capacity. And once that capacity enters as an element into the action of a Police officer, he becomes subject to the disciplinary jurisdiction of the Commissioner, albeit the officer occupies another which is a private capacity, also.

But it is contended for the accused that they, having attended the meeting when they were not *on duty*, must be held to have attended it in their private, not their police, capacity. The answer to that is that, according to section 16 of the Act, "every Police officer not on leave or under suspension shall for all the purposes of this Act be deemed to be always on duty throughout the City of Bombay." This section, it must be borne in mind, introduces a statutory fiction. When one thing is not the same as another thing, but the Legislature says that it "shall be deemed to be" the same thing, it creates a legal fiction, and in that case "the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to" (per James, L. J., in *Ex parte Walton* (1)). And fictions created by law shall never be contradicted so as to defeat the ends for which they are invented, though for every other purpose they may be contradicted (*Mostyn* v. *Fabrigas* (2)). When the Legislature says in section 16 of the Bombay Police Act that a Police officer is to be deemed to be *always* on duty throughout the City of Bombay, the meaning is, even when he is not actually at his post discharging the duty assigned to him, he is for the purposes of the Act to be regarded as being at that post, with all the rights and obligations of his office attaching to him. In

(1) (1881) 17 Ch. D. 746 at p. 756.

(2) (1774) Cowp. 177.

other words, he does not cease to be a Police officer, with all the rights and obligations suspended for the time being, and become a private citizen, pure and simple, because he doffs his uniform and is not engaged in the actual performance of his police duties. While he is so engaged, the Act says that he has authority to do certain things and it imposes on him certain obligations. The Act also says that he is then subject to the disciplinary power of the Commissioner. For the purposes of his police duty the Act constitutes a certain kind of relation between him and the Commissioner while he is in that situation. And the statutory fiction is created for the purpose of extending the same authority, the same obligations, and the same relationship to the time and occasion when the Police officer is not in fact on duty.

We have so far discussed the question, having regard to the scheme and policy of the Bombay Police Act, as they are apparent from, or at least consistent with, the language used by the Legislature in the sections having a material bearing and throwing light upon the question. In construing an expression of doubtful import occurring in a statute, (assuming the words "discipline and general government" to fall within that category), we may well have regard also to considerations outside the language of the Act. The Police force is maintained for the well-being of His Majesty's subjects. It is intended to fulfil towards His Majesty's subjects within His Majesty's kingdom the same purpose which the army is intended to fulfil outside it. The soldier protects the subjects against enemies outside the kingdom; the Police against enemies inside it. In either case the purpose is in nature the same. They are maintained for the public. In either case the object is security of life and property. All laws relating whether to the army or the police are based upon the principle that the army and the police are for the public, not the public for them. And where there is a doubtful question of construction as regards any of such laws, words or expressions at all ambiguous should be construed so as to subordinate all considerations of private to the public interest. That is the principle of construction to be observed with regard to statutes intended for the public benefit (see the observations of

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Lord Selborne in *Dixon's case*)[1]. If it is true of soldiers that obedience to their commanding officer is their first law, that, as pointed out by Adam Smith in his Lectures on Law and Police, all military laws and rules are framed upon the principle that "it is the fear of their officers and of the rigid penalties of the martial law which is the cause of their good behaviour" and it is to this principle that we owe their valiant actions, the same considerations must, at least to a substantial, if not full, extent, apply to the Police force as well. In the case of soldiers, whether they may meet or not in a body to discuss subjects connected with military affairs is treated as a matter of military discipline, and they cannot so meet without the permission of their commanding officer. That was not disputed before us at the Bar. So also as to volunteers. In their case "deliberations or discussions on any matter connected with the discipline of a corps or with the object of conveying praise to or censure on a superior are prohibited. No meetings of volunteers will be held except under the authority of the officer commanding" (Army Regulations, India, Vol. IX, page 6, under the heading of "Discipline"). In the "Instructions for the Liverpool City Police Force" published in 1896 by Mr. J. W. Nott Bower, Head Constable, by order of the Watch Committee, we find among the Regulations one which directs that no member of the force shall call or attend any meeting "to discuss any subject connected with the force without the sanction of the Head Constable." In "the Police Code and General Manual of the Criminal Law for the British Empire," edited by Sir Howard Vincent, is given the following regulation at page 122:—"Meetings: 1.—Police must not, on any account, meet together for any purpose whatever, except by permission of their superiors." And in the address to Police Constables which was delivered by Lord Brampton (who presided in the High Court of England as one of the Judges and distinguished himself by his familiarity with the criminal law in particular), and which is printed at the beginning of the Code, he says:—"First of all, let me impress upon you the necessity of absolute obedience to all who are placed in authority over you,

(1) (1880) 5 App. Cas. 820 at p. 827.

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and rigid observance of every regulation made for your general conduct. Such obedience and observance I regard as essential to the existence of a Police force."

Judging by all these considerations, arising from the language of the Bombay Police Act and from foreign circumstances material to the purpose for which a Police force is maintained, we come to the conclusion that the order issued by the Commissioner of Police, which the accused in both the cases before us are found to have wilfully disobeyed, related to the "discipline and general government" of the force and that it is therefore a lawful order which every member of the force was and is bound to obey. It was contended before us that it was a vague order and therefore unreasonable. *Vague* means something indefinite or uncertain; but here the order is perfectly definite, so far as it goes, because it prohibits meetings to discuss any subject connected with the Police force. There is no uncertainty as to the identification of the kind of meetings prohibited. All that can be said of the order is that, even so far as it is confined to subjects connected with the Police force, it is too wide and comprehensive—that it embraces objects which, according to the argument, it should not embrace. But that is not vagueness. And as to unreasonableness, if the Legislature has considered it necessary on grounds of public policy and the well-being of the State that every Police officer should be subject to the disciplinary jurisdiction of the Commissioner, and has constituted him the authority to decide the question of expediency in passing orders for the purposes of that jurisdiction, subject only to the control of the Governor in Council, a Court of law will not go into the question of reasonableness except in a very strong case —unless, in fact, it is satisfied that the Commissioner issued his order in a mere spirit of humour and caprice. It was said that upon that view the Commissioner might prohibit members of the force from meeting together for the purpose of presenting a testimonial to one of their officers. He might no doubt, and if he did on grounds which commended themselves to him as necessary in the interest of discipline, why should the order be held to be unreasonable unless the Court is satisfied most clearly that he has exercised his discretion in a spirit of perversity? The

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case of a social club was at the Bar put forward as an illustration of the unreasonableness of such an order as we have now before us. It was said that under it members of the force could not meet together for the purpose of starting a social club. An extreme illustration of that kind assumes that the authority empowered by the Legislature to issue such orders is so perverse as to be bereft of all sense of propriety and wisdom. We are not entitled to make any such assumption. The Legislature makes laws having regard to the ordinary course of human nature, reposing trust in the officers selected to carry out its laws, and acting upon the presumption that they are capable of acting sensibly. If they abuse the trust the Government is there to control them. No Commissioner of Police is likely to issue an order under section 12 unless he *bonâ fide* thinks that the exigencies of the case and the maintenance of discipline in the Police force render it necessary. There may be occasions when even so innocuous a thing as the holding of a meeting for a social club of Police officers may be inexpedient. Under the guise of an innocent club an institution might be started having for its object the undermining of or calculated to undermine all sense of subordination and discipline in the force. Of all such matters the Legislature has constituted the Commissioner the competent authority to judge. The discretion is vested in him and no Court of law has jurisdiction to declare his order *ultra vires*, unless it is clear beyond all doubt that he has used his authority not for the purposes of discipline but for some ulterior purpose.

The question of interference with the private rights, which every Police officer has as a citizen in common with other classes of His Majesty's subjects, has already been discussed by us. In considering that question as having a bearing upon the legality or otherwise of the order now in dispute, it must be borne in mind that the object of the Bombay Police Act in giving to the Commissioner the power to issue orders of the description mentioned in section 12 is to establish regulations for the common organization and efficiency of the persons who take service as Police officers in a great number of matters affecting their capacity as such officers; and that cannot be done except to

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some extent and on some occasions interfering with their freedom of action as private citizens.

On these grounds, in reference No. 23 of 1907, we answer both the questions referred by the Chief Presidency Magistrate in the affirmative. The Magistrate in sentencing the accused will, we have no doubt, take into account the fact that these are test cases, and that, as for the first time our judgment settles the law, a very light sentence of fine will be sufficient to meet the ends of justice. In Appeal No. 116 of 1907, we reverse the order of acquittal, convict the accused of the offence charged, and sentence him to pay a fine of rupee one; in default seven (7) days' rigorous imprisonment.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Beaman.

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TARA, FATHER HARI SHINDE (ORIGINAL PLAINTIFF), APPELLANT, *v.* KRISHNA KOM BANDU AND OTHERS (ORIGINAL DEFENDANT 2 AND TWO OTHERS), RESPONDENTS.*

Hindu Law—Murali—*Married sisters*—*Exclusive right claimed by* Murali *as unmarried daughter to inherit her father's property*—Kanya—*Maiden*—*Mitakshara*—*Vyavaharmayukh*—*Act XXI of 1850.*

A *Vaghya* (male dedicated to the god Khandoba) had three daughters, one of whom was a *Murali* (female dedicated to the god Khandoba) and two married. After the *Vaghya's* death his *Murali* daughter, who lived by prostitution and had children by promiscuous intercourse, claimed her father's property as heir to the exclusion of her sisters under the rule of Hindu Law that an unmarried daughter inherits to her father before his married daughter. The first Court allowed the claim.

On appeal by one of the defendants (married daughters) the Judge varied the decree by allowing the plaintiff a third share in the property.

On second appeal by the plaintiff the appellate decree was confirmed there being no appeal or cross-objection by the defendants against that portion of the decree whereby the plaintiff was allowed to share her father's property equally with her married sisters.

* Second Appeal No. 333 of 1906.