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We must, therefore, (but without being supposed to express any opinion as to the relevancy of the second issue which has been asked for by both the pleaders), send the case down for the Subordinate Judge with appellate powers to find on the following issues:—

1. Whether Pátkar purchased in good faith and for value from Fadke?

2. Whether the respondent purchased in good faith and for value from Pátkar?

And if either of these issues be found in the negative, then to find

3. What is still due on the mortgage to Abáji?

And to send the findings to this Court within three months. Both parties to be allowed to give fresh evidence on the above issues.

Issues sent back for trial.

APPELLATE CRIMINAL.

Before Mr. Justice Nánábhái Haridás and Sir W. Wedderburn, Bart., Justice

1885. *June* 18.

THE GOVERNMENT OF BOMBAY, APPELLANT, v. DODYA'MA BIN BASA'PA', RESPONDENT.*

Arms—Possession of arms—Bádámi Táluka—Indian Arms Act No. XI of 1878, *Secs.* 15 *and* 19—*Act XXXI of* 1860, *Sec.* 32, *Cls.* 1 *and* 2.

Clause 2, section 32 of Act XXXI of 1860, relating to the manufacture, importation, and sale of arms, did not apply to the Bádámi Táluka of the Kaládgi Collectorate at the time when the Indian Arms Act No. XI of 1878 came into force; and the notification of the Government of Bombay, No. 1112, of the 19th February 1878, which declares that the provisions of Act XXXI of 1860 as modified by Act VI of 1866 are in force in Bádámi amongst other places, is not an order of disarmament under clause 1, section 32 of Act XXXI of 1860. In the absence, therefore, of a notification, under section 15 of Act XI of 1878, extending, with the previous sanction of the Governor General in Council, the provisions of the section to Bádámi, the possession of arms without a license in that táluka is not punishable under section 19.

THIS was an appeal by the Government of Bombay, under section 417 of the Code of Criminal Procedure, Act X of 1882,

* Criminal Appeal, No. 2 of 1885.

against the order of E. MacCallum, First Class Magistrate of Kaládgi, acquitting Dodyáma bin Basápa of the charge of being in possession of arms without a license, under section 19 of the Indian Arms Act XI of 1878, in the táluka of Bádámi.

The reasons given by Mr. MacCallum for acquitting the accused were thus stated by him :—

"Government notification No. 1112 of 19th February, 1878, at page 178 of the *Bombay Government Gazette*, does not appear to me to bring the possession of swords or daggers under section 15 of Act XI of 1878. Section 15 of Act XI of 1878 applies only to places to which section 32, clause 2, of Act XXXI of 1860 was in force, or to which Government specially extended this section ; the words "this section" seem to me to apply to section 15, and I cannot find that it has ever been specially extended to any tálukás in this district.

"If it has not been so extended, then it only applies to places in which section 32, clause 2, of Act XXXI of 1860 was in force when Act XI of 1878 came into force ; and section 32, clause 2, of Act XXXI of 1860 was only in force in places in which an order for a general search for arms had been issued under Act XXVIII of 1857.

"Before taking up a case under section 15 of Act XI of 1878 I must, I think, satisfy myself either that section 15 has been specially extended to the place in which the sword was found, or else that section 32, clause 2, of Act XXXI of 1860 was in force on the 1st October, 1878, on which date Act XI of 1878 came into force; and as that clause and section only applied to places in which an order for a general search for arms had been made, I must be satisfied that such an order had been issued before Act XXXI of 1860 came into force. Government notification No. 1112, dated 19th February, 1878, notifies that Act XXXI of 1860 was in force on that date, but I do not think such a notification proves that a general search for arms had been made previous to the date of Act XXXI of 1860 coming into force. It seems to me that, before taking up a case under section 15, I must either have the notification specially extending the sec-

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tion to the tálukás before me, or else the order or a certified copy of it for a general search for arms in the tálukás.

"The legal maxim is that penal enactments are to be strictly construed; and I do not think I am justified in assuming, because Government assert that Act XXXI of 1860 was in force in 1878, that a general search for arms had been issued before that Act came into force."

Ráv Sáheb *V. N. Mandlik*, Government Pleader, for the appellant.—The question is, whether section 15 of the Indian Arms Act XI of 1878 is in force in Bádámi. No Government notification under this section seems to have been issued, nor am I able to find any specific orders of Government disarming the táluka, or directing a search for arms. To show that Bádámi Táluka is a place to which section 32, clause 2, of Act XXXI of 1860 applied at the time when Act XI of 1878 came into force, I rely on the declaration made in notification No. 1112 of 19th February, 1878, in which Bádámi is mentioned. By a Government circular order of 2nd August, 1857, the Magistrate of the District of Belgaum, in which Bádámi was then situated, was given discretionary powers to disarm his district. It does not appear whether the district, or any portion of it, was ever actually disarmed.

There was no appearance on behalf of the accused person.

Cur. adv. vult.

June 18. WEDDERBURN, J.—In this case the Government of Bombay appeals against an order of acquittal passed by Mr. Mac Callum, First Class Magistrate of Kaládgi, in the case of Dodyáma bin Basápa charged, under section 19 of Act XI of 1878, with having in his possession a sword, in contravention of the provisions of section 15 of the Act. The possession of the sword by the accused is not denied. But it appears that, in the opinion of Mr. MacCallum, such possession is not an offence within the Bádámi Táluka, where the accused resides, and where the alleged offence was committed.

The prohibition to possess arms is applicable under section 15 to—

(1) Any place to which section 32, clause 2, of Act XXXI of 1860 applied at the time Act XI of 1878 came into force; and,—

(2) Any place to which the local Government, with the previous sanction of the Governor General in Council, may by notification in the local official gazette specially extend the section.

It is not alleged that a notification under the second alternative has been issued. The point, therefore, for determination is, whether section 32, clause 2, applied to the Bádámi Táluka at the time when Act XI of 1878 came into force?

On referring to section 32, clause 2, it appears that the possession of arms is therein made unlawful—

(*a*) In any place which the Executive Government of the Presidency has, under clause 1, ordered to be disarmed, such order to be published (*vide* clause 5) in the official gazette; and—

(*b*) In any place in which an order for a general search for arms has been issued, and is still in operation under Act XXVIII of 1857. Such a search is authorized by section 24 of Act XXVIII of 1857, which provides that the Executive Government of a Presidency may order a general search for arms to be made by any officer or persons named in such order in any district or place specified therein.

Reading these sections together it seems clear that section 32, clause 2, can be said to apply, in any specific sense, to the Bádámi Táluka only if one or other of these conditions has been fulfilled, that is, if either—(*a*) an order of disarmament has been duly published, or (*b*) a general search for arms has been ordered, such order in either case making specific mention of the Bádámi Táluka. Does any such order exist? With reference to this point, we have been referred by the learned Government Pleader to a notification in the *Government Gazette*, No. 1112 of 19th February, 1878. This notification declares that the provisions of Act XXXI of 1860 (relating to the manufacture, importation, and sale of arms and ammunition, and for regulating the right to keep and use the same, and to give the power of disarming

in certain cases), as modified by Act VI of 1866, are in force in certain specified places and districts, among which the Bádámi Táluka is mentioned. There is nothing to show under what section and for what purpose this notification was issued about three weeks before the new Arms Act (XI of 1878) was passed. The learned Government Pleader is not able to enlighten us on this point; and the notification, so far as the paragraph above quoted from it is concerned, appears to us to be without effect, because under sections 54 and 55 of Act XXXI of 1860 that Act came into force from 1860 throughout British India, and was (with trifling modifications) continued in force by Act VI of 1866 until repealed by section 3 of Act XI of 1878. It was, therefore, surplusage to declare the Act to be in force in certain specified localities. Whatever its object or intention may have been, the notification cannot be construed as an order of disarmament under section 32, clause 1, of Act XXXI of 1860. It, no doubt, refers, in the way of recital, to the power of disarming "in certain cases", but it does not purport to issue the specific order without which the disarmament cannot be effected. We have further been referred to a circular, dated 2nd August, 1857, addressed by the Chief Secretary to Government to the Magistrate of Belgaum, within which district the Bádámi Táluka was then included, conveying certain discretionary powers to disarm. But this circular cannot be regarded as an order for a general search for arms under section 24 of Act XXVIII of 1857, as this Act was not passed until the 11th of September, *i. e.*, more than a month after the circular was issued. It appears, therefore, that section 32, clause 2, of Act XXXI of 1860 did not apply to the Bádámi Táluka at the time when Act XI of 1878 came into force.

The Honourable Ráv Sáheb has taken time to search for specific orders of the kind above referred to, but has not been able to point them out to us. We are, therefore, of opinion that the appellant has not shown that the view taken by the First Class Magistrate is incorrect; and we reject this appeal.

Appeal dismissed.