1896.

QUEEN-EMPRESS v. BAI VAJU.

Magistrate of Dhandhuka. He held that the house in question was a common gaming house, and that all the accused except two were guilty of the offences charged, and he sentenced them to pay fines varying from Rs. 10 to 40.

Against these convictions and sentences, the twelve accused applied to the High Court under its revisional jurisdiction.

Nagindas Tulsidas (with *Ganpat S. Rao*) for accused.

Ráo Sáheb *Vasudev J. Kirtikar*, Government Pleader, for the Crown.

PER CURIAM:—No doubt, as held in Criminal Ruling No. 9 of 1896, in the absence of evidence that a house is used for profit or gain, it cannot be held to be a common gaming house as defined in the Bombay Prevention of Gambling Act, 1887, section 3. In the present case, thirteen persons were found in a room in the upper story of the house in question, sitting in a circle, gambling with dice, and having a quantity of *cowries* and money before them. Section 7 of the above quoted Act enacts that this shall be evidence, until the contrary is made to appear, that the room is used as a common gaming house, and that the persons found therein were there present for the purpose of gaming. The criminal ruling, therefore, has no application to the facts of the present case, and we see no reason to interfere with the conviction of the applicants 2 to 12. Applicant 1 is convicted under section 4 of the Act. But she was not in the room, and the Magistrate does not record any finding that she is the owner or occupier of the house or room, but merely that her daughter was sitting outside the door, which was chained. In her case we reverse the conviction and sentence.

APPELLATE CRIMINAL.

Before Mr. Justice Parsons and Justice Ranade.

1896.

December 3.

QUEEN-EMPRESS *v.* ROSS.*

Police—Bombay District Police Act (IV of 1890), Sec. 47—Right of the police to have free access to a place of public amusement or resort—Race-course enclosure.

Races were held in a certain enclosed ground at Poona which belonged to the Military authorities, and was lent for the purpose to the Western India Turf

* Criminal Appeal, No. 352 of 1896.

Club. The part of the ground to which the public were admitted, was fenced in by ropes, and soldiers were stationed at intervals to prevent any persons entering or leaving the enclosure otherwise than through the passages provided for the purpose. The inspector of police, who was present on duty in that capacity, contrary to the regulations prescribed by the stewards of the races crossed over the fencing ropes into the enclosure instead of going in by the regular entrance. This was reported to the honorary secretary of the club, who had general charge of the arrangements. He sent for the inspector, and after an interview with him ordered two soldiers, who were in attendance to keep order, to put him out of the enclosure. They accordingly did so, laying hands on him in the first instance, but immediately, at his request, letting him go and merely escorting him outside. He thereupon under section 353 of the Penal Code (Act XLV of 1860) charged the secretary of the club with using criminal force to a public servant in the exercise of his duty.

Held, that the offence had been committed. Under section 47 of the Police Act (Bom. Act IV of 1890) the police had a right of free access to the race-course.

APPEAL from the order of A. R. Bonus, Divisional Magistrate, First Class, Poona.

The accused (Captain Ross) was the honorary secretary of the Western India Turf Club. At a race meeting held at Poona in August, 1897, under the auspices of the club, on enclosed ground lent for the purpose by the Military authorities, Captain Ross caused Inspector Fleming, a police officer who had (as was alleged) infringed the regulations, to be removed from the racing enclosure.

Inspector Fleming thereupon charged Captain Ross with using criminal force to a public servant in the execution of his duty.

The Magistrate found him guilty and under section 353 of the Penal Code (Act XLV of 1860) sentenced him to a fine of Rs. 51.

The facts of the case, and the points raised in defence, appear from the following extract from the judgment of the Magistrate: —

"This case has arisen out of an incident which occurred at the last Poona sky races meeting. There were four days' racing, the last day being August 11th. Police Inspector Fleming was the police officer on duty in immediate charge of the Civil Police, and on August 11th he came into the first enclosure over the ropes which were used to fence the enclosure, passing through the picket of soldiers who were stationed along the ropes to prevent people from entering, and (as some witnesses add) leaving the enclosure otherwise than by one of the regular entrances provided. This entry being reported to Captain Ross, who at that time was the honorary secretary of Western India Turf Club, under the

1896.

QUEEN-EMPRESS v. ROSS.

auspices of which club the race meeting was held, he sent for Inspector Fleming, and the interview between them ended in Captain Ross directing two soldiers of the Royal Irish Rifles to put Inspector Fleming outside the enclosure. The men took hold of Inspector Fleming, then let him go at his request, and escorted him outside the enclosure. These are the undisputed facts of the case, and on these facts a charge of using criminal force to a public servant in the execution of his duty has been framed against Captain Ross.

"The facts stated being admitted, or at any rate not disputed, the burden of proof that he is exculpated rests on Captain Ross; and to establish that exculpation the solicitor for the defence has raised several issues which it is the duty of the Court to consider and adjudicate upon. These issues are partly issues of law and partly issues of fact. They may be stated as follows:—

"(1) The race-course enclosure was not a place to which under section 47 of the Bombay District Police Act of 1890 the police had right of free access.

" (2) If it was, Inspector Fleming was bound to observe the rules and orders made by the stewards of the Western India Turf Club through their secretary and agent Captain Ross, one of which rules and orders was that no one was to be admitted to the enclosure over the ropes.

"(3) The race-course enclosure was not a place of public resort which, under section 51 of the Act mentioned, the police might enter without a warrant.

"(4) If it was, Inspector Fleming was bound by the rules and orders made by a person lawfully authorised—in this case Captain Ross as honorary secretary of the Western India Turf Club—one of which was the order already referred to . . . . . As regards the first issue, Mr. Burder has stated that he is not prepared to admit that the enclosure is a public place for the purposes of section 47 of Act IV of 1890 (Bombay). I do not see that on race days it can possibly be held not to be such a place as is contemplated by the section. It is a place to which, in this case, the public were invited by advertisement in a newspaper; it is, I hold, a place of public amusement. It may be the case, as stated by Mr. Burder, that the enclosure is a part of the ground under the control of the Military authorities, and by them handed over to the Western India Turf Club on certain conditions. That does not, I consider, exclude the enclosure from the operation of section 47 of Bombay Act IV of 1890 when the public are admitted thereto on payment of entrance money or otherwise. Lords' cricket ground in London is, I believe, the property of Marylebone Cricket Club; the Empire Theatre in London is the property of a limited company; Goodwood race-course is the private property of an individual as far as I know; but when these places are respectively used for cricket matches, theatrical performances or race meetings, they become places of public amusements, and if they were situated in the Bombay Presidency, I should consider them within the purview of section 47 of Act IV of 1890 (Bombay). That is my view as regards the race-course ground stand and enclosures managed by the Western India Turf Club.

"The question of free access to the enclosure may conveniently be considered in connection with the second issue. It is stated by Captain Ross that he informed Inspector Fleming that the whole of the side of enclosure where the ropes were, would be guarded by military picket, that he (Captain Ross) directed the picket to let no one pass except through the gates, that Inspector Fleming was distinctly told that there would be no ingress or egress except through the gates (Exhibit 11). Inspector Fleming states that Captain Ross said that he was going to have soldiers to prevent people entering over the ropes and that Captain Ross may have said that no persons would be allowed to enter except by the gates (Exhibit 4). Several of the men who were on picket duty depose to having received orders not to allow any one to enter the enclosure over the ropes. That such orders were issued is, I think, proved; and it remains to be considered whether they were rules by which Inspector Fleming was bound, and whether they contravened the statutory right of Inspector Fleming to free access to the enclosure. I hold that Inspector Fleming was not bound by those rules and that they did contravene the right referred to. Section 47 of Act IV of 1890 speaks of rules and orders lawfully made. The District Superintendent of Police in his evidence states that he considers these rules and orders to be in this case the rules and orders made by the Western India Turf Club authorities for the regulation of the 'internal economy' of the enclosure. He considers that the orders as regards the non-entry of the public over the ropes were 'not legal;' and in answer to questions gives several other opinions about rules which either were or might be promulgated by the authority of the stewards of the Western India Turf Club. These views of Mr. Kennedy are hardly relevant, it being the Court's duty to decide on the matter. Mr. Little, Solicitor for the Crown, has urged that (a) Mr. Kennedy by the word 'legal' meant 'having the force of law'; (b) that the rules and orders referred to in section 47 refer to rules and orders made under section 39 of the Act,—leaving it to be inferred that as no rules and orders were issued by the District Magistrate in this instance, the police remained unfettered by any such rules or orders. I do not consider it necessary to discuss point (a), and I am not prepared to restrict the rules and orders mentioned in section 47 to those mentioned in section 39. I hold that 'rules and orders lawfully made' means rules and orders made under some express authorisation of law. I know of no law so authorising the stewards of the Western India Turf Club, and if it were intended that such a body when admitting the public to the premises controlled by them should be empowered to restrict the right of entry of the police to such premises, I consider that the Act would have said so in definite terms. If such a power be now conceded, the whole of section 51 of the Act is nullified. Suppose for instance that the inspector from outside the ropes had seen a man inside the enclosure pick a pocket and then try to sneak quietly away on the far side of the enclosure, would it be seriously contended that the inspector was by the stewards' rule precluded from crossing the ropes and taking the shortest way to the offender to effect his arrest. Hardly I imagine. But if the inspector

1896.

QUEEN-EMPRESS v. ROSS.

might cross the ropes in this particular instance in the exercise of his duty, he might also cross them for the purpose of exercising supervision and keeping order. No distinction in urgency can be recognised. I hold that Inspector Fleming had an absolute right to enter the enclosure by crossing the ropes, and that any rule or order to the contrary made by the stewards of the Western India Turf Club or their secretary was an illegal infringement of the right of free entry conferred by section 47 of the Act. The question which has been suggested, whether the erection of a high fence round the enclosure would obstruct the police, is beside the point; as a fence is not a rule or order, and if the police saw reason to climb over it in the execution of their duty, they would, I hold, be justified in doing so.

"Issue (3) can be disposed of at once for the reasons stated in connection with issue (1). I hold that on race days the enclosure is a place of public resort within the meaning of section 51. If it was not, it would be unnecessary to post a picket to prevent the public from entering without tickets.

"Issue (4) can also be briefly dismissed. I hold that a person 'lawfully authorised' means a person authorised by some express provision of law; and does not include the stewards or honorary secretary to the Western India Turf Club. My reasons for this opinion are set forth in the discussion of issue (2) . . . . . I find Captain Ross guilty of the charge framed against him. The question of sentence can be briefly disposed of. The offence was a very trifling one; in fact, almost technical. As between man and man, it would be sufficiently punished with a simple fine. But the question really at issue is the right of the stewards of the Western India Turf Club to place restrictions on the powers claimed for the police on the authority of Act IV of 1890 (Bombay). That question is one to which I understand both sides desire a definite answer from a higher Court; and I, therefore, pass the lightest sentence which will allow of an appeal.

"The order of the Court is that Captain Ross do pay a fine of Rs. 51 (fifty-one) or, in default, suffer simple imprisonment for seven days."

From this decision Captain Ross appealed to the High Court.

Macpherson with Messrs. *Crawford, Burder & Co.* for the appellant.

Ráo Bahádur *V. J. Kirtikar*, Government Pleader, for the Crown.

PARSONS, J.:—This appeal has been very properly confined to, and argued upon, the purely legal question, namely, whether the police had a right to free access to the enclosed ground on which the Western India Turf Club held a race meeting on the 11th August last.

The facts as set out by the Magistrate in his judgment are that the public were invited by advertisements in the newspapers, &c., to the race meeting, and that the public generally were admitted to the enclosure on payment of varying amounts, and it is conceded that the meeting falls within the definition contained in section 47, Bombay Act IV of 1890.

The argument on behalf of the appellant is directed to show that under no section of the said Act was a right of free access given to the police to such a meeting under the circumstances of the present case. Sections 39 (*m*), 47, 51 and 53 of the Act were referred to as the only sections in the Act affording a possible justification of the claim for free access.

On the other side, sections 47 and 53 were relied on as giving that right. It is sufficient for the purposes of this decision to consider section 47. Sub-section 2 of that section gives the police free access to every public place of amusement, or to any assembly or meeting to which the public are invited, or which is open to the public for the purpose of giving effect to the provisions of sub-section (1) and to any direction made thereunder. In the present case, no directions were made. The Superintendent of Police says that he left the police arrangements to be made by Inspector Fleming. We must take it, therefore, that Inspector Fleming was in charge of the police arrangements, and that the duty which is clearly imposed on the police by this section, was entrusted to him. That duty, as expressed in the section itself, is "preventing serious disorder or breach of the law, or manifest and eminent danger to the persons assembled." It was argued for the appellant that until there was an apprehension of these things happening, the police would have no right of access, and that at a respectable race meeting there could be no such apprehension, and that, therefore, until the things happened there would be no right of access, but this argument loses sight of the use of the word "prevention". There is always a possibility, even among the most respectable persons at a race meeting, of some such thing happening, and where on payment of a fixed sum the public are admitted there is still more chance of such a possibility. If, in order to prevent such a possibility becoming a certainty,—in other words, if, in order to prevent these things hap-

1896.

QUEEN-EMPRESS v. ROSS.

pening,—the policeman in charge of the police arrangements should think it right to place police in various parts of the ground and himself go through these grounds to see that everything was going on satisfactorily, and that as far as he was concerned he had done his duty of prevention, he would clearly be acting within the powers given by this section. It is certainly not for this Court or for any Court to dictate to the police the precise amount of authority they shall exercise within the discretionary power given them by the law, or the precise time at which they shall commence to exercise that authority. The prevention of the things specified in the section under discussion is left to them, and they are given the right of free access in order to effect that purpose. If the arguments for the appellant were correct, the Turf Club authorities could have ordered every policeman off the ground on the excuse that their services were not required at such a respectable and well-conducted meeting where there was no apprehension of any disorder or breach of the peace, or danger. It is, however, for the police authorities to determine the point, and having determined it in one way it was not within the power of the Turf Club to ignore the decision and to treat the police as trespassers. We think the conviction right, and we dismiss the appeal.

RANADE, J. :—I concur. Though the appeal was preferred under section 408, clause (*b*), the counsel for the appellant took no exception to the statement of facts as set forth in the judgment of the trying Magistrate, and the only point argued before us related to the question of law, whether or not the enclosure from which Inspector Fleming, the complainant, was removed forcibly by the orders of Captain Ross, was or was not a place where the inspector had a right to remain in the performance of his duty as a police officer.

It was contended by Mr. Macpherson that the same general law applied to policemen as to private individuals, except so far as any express statute conferred on a police officer a particular authority to enter upon or remain on private property in the discharge of his duties. Only four sections (sections 39, 47, 51 and 53) of the Bombay Police Act, IV of 1890, were referred to in the course of the argument as conferring such special autho-

rity, but the counsel for the accused contended that Mr. Fleming was not protected by any of these sections in asserting his right to remain within the enclosure, when asked to go out. Section 39 (1), clause *m*, did not, it was urged, apply, because it presupposes the existence of rules and regulations made in that behalf by the District Magistrate, which was not the case here. Section 47 empowers police officers above a certain rank to give directions in the matter of the admission of the public to places of public amusement, but it was urged that these directions have in view the prevention of disorder or breach of the law, or of imminent danger to the persons assembled, which occasions did not exist or arise in the present case. Further, section 51, clause 2, also permits a police officer to enter places of public resort; but this, it was urged, he could only do for the purposes specified in sub-section (1), which purposes are not alleged as justifications in the present case. Lastly, section 53 imposes a duty on police officers to keep order in places of public resort: but it was urged that the enclosure was not a place of public resort in the same sense in which the places specially mentioned in the section are places of public resort, and, therefore, the section did not apply.

The contentions on behalf of the appellant were thus either that the enclosure was not a place of public resort, or that there was no occasion for Inspector Fleming, as police officer, to remain within the place in the discharge of his duties, and that, therefore, his assertion of a right to stay within the enclosure when told to go out was unjustifiable, and his forcible expulsion was not an offence under section 353 of the Indian Penal Code. It appears to me, however, that the inspector had a full right, under sections 47 and 53, to be present within the enclosure, which must be held to be, for the purposes of the present inquiry, a place of public amusement or resort. It is admitted that the public were invited to the place by newspaper advertisements, and every one who had obtained a ticket could go to the place. The levying of ticket fees could not make any difference. Wherever a large crowd of people assembles, and it becomes necessary to make arrangements for their entry and exit and proper accommodation, the police have a duty to perform which they cannot forego. Though people going to a public theatre pay,

QUEEN-EMPRESS v. ROSS.

for the time being, for the seats they occupy, the theatre is none the less a place of public amusement and resort. In the present case, the services of the police were specially indented for by the appellant as secretary of the club, and the club had no power to limit their functions to the place outside the enclosure. It is true special arrangements were made by the club to provide for the services of soldiers who are called military police in the correspondence, but that circumstance did not lessen the responsibility of the civil police authorities to keep order and prevent breaches of the law. It was admitted that, if an occasion had arisen for the services of the civil police, they would have had a right to enter within the enclosure itself. If they could do so after disorder had broken out, it follows as a corollary that they had a right to remain within the enclosure to prevent such disorder or breach of law in anticipation. The fact appears to be that the stewards of the Turf Club admitted in the previous correspondence between the Secretary and the District Police Superintendent that Captain Ross had to a certain extent exceeded his authority in expelling the complainant from the enclosure in the way he did. The dispute would never have come before the Courts had Captain Ross expressed his regret more fully. There was a technical offence committed, and the Magistrate's decision of the point of law involved appears to me to be correct.

Appeal dismissed.

ORIGINAL CIVIL.

Before Mr. Justice Fulton.

1898. *March* 22.

BHOJABHAI ALLARAKHIA AND ANOTHER, PLAINTIFFS, *v.* HAYEM SAMUEL, DEFENDANT.*

Principal and agent—Liability of agent for rent—Honorary secretary to a school maintained by a foreign society—Contract Act (IX of 1872), *Sec.* 230—*Ejectment—Notice to quit—Service of notice—Transfer of Property Act* (*IV of* 1882), *Sec.* 106.

The plaintiff sued the defendant to recover possession of a certain house in Bombay and for arrears of rent. The defendant pleaded that the house in

* Suit No. 69 of 1898.