

1896.

MANOCKJI
v.
BOMBAY
TRAMWAY
COMPANY.

Company to make rules for the regulation of travelling, included a power to frame rules for the conduct of the Company's servants. I am unable to accept the correctness of this view. The words used in section 24 are similar to those used in the Railway Company's Act, section 47, clause (g) of Act IX of 1890, which section, however, contains a separate clause (e), empowering the Company to make rules for regulating the conduct of its own servants. It is quite clear from this that the words used in section 24 do not imply the power to make rules for the regulation of the conduct of the Company's servants. This becomes still more clear from the fact that section 8 in the old Railways Act IV of 1879 contained a clause (e) similar in its import to the words used in section 24 of the Tramways Act, and that the Legislature deemed it necessary to pass a new Act IV of 1883 by which for the first time power was conferred on railway administration to make rules for regulating the conduct of railway servants. It accordingly appears clear that the words used in section 24, on which the Advocate General relies, cannot be understood as conferring a power on the Tramway Company to frame rules for regulating the conduct of its servants in a way to make the negligent omission of the conductor to issue tickets to passengers an offence under the Tramways Act. The Company has the power to dismiss its servants for neglect of duty, but the negligence or omission cannot be dealt with as an offence criminally punishable. The rule is obviously *ultra vires*, and we must reverse the conviction and sentence passed in this case.

CRIMINAL REVISION.

Before Mr. Justice Parsons and Mr. Justice Ranade.

IN RE NAHALCHAND MOTIRAM.*

1896.

November 19.

Police—Bombay District Police Act (Bom. Act VII of 1867), Sec. 33—"Booth"
—Meaning of the word—Structure contemplated by the section must be constructed on a public road and must cause nuisance to the public—Construction.

The accused had a house on each side of a public road. On the occasion of a wedding he put bamboos across the street from the top windows of one

*Criminal Revision, No. 206 of 1896.

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house into the top windows of the other house, and laid a covering of cloth over the bamboos, thus making a canopy, or awning, over the street. It was at such a height that no obstruction or inconvenience whatever was caused to persons or animals passing along the street. The accused erected the structure without the permission of a Magistrate or Municipal Commission. For this act the accused was convicted by a Magistrate under section 33 of the Bombay District Police Act (Bom. Act VII of 1867)⁽¹⁾ and sentenced to pay a fine of Rs. 5.

Held, reversing the conviction and sentence, that the structure erected by the accused was not a "booth" within the meaning of section 33 of Bombay Act VII of 1867. The structure contemplated by the section must be on the road itself and cause some nuisance to the public. As no part of the structure in question touched the road, it could not be said to have been constructed on the road.

APPLICATION for revision under section 435 of the Code of Criminal Procedure (Act X of 1882).

The accused had a house on each side of a public street.

In December, 1895, he erected a *mündap*, or pendal, for the purpose of a wedding, by putting bamboos across the street from the top windows of one house into the top windows of the other house. He laid a covering of cloth over the bamboos so as to form a canopy or roof over the street. No part of the structure touched the road, and no obstruction or inconvenience was caused to any person or animal crossing or passing along the street.

The accused put up this structure without obtaining the permission of a Magistrate or Municipal Commission.

The accused was, therefore, convicted before a Magistrate under section 33 of the Bombay District Police Act (Bom. Act VII of 1867), and sentenced to pay a fine of Rs. 5.

The District Magistrate of Sholapur upheld this conviction and sentence, in appeal.

The accused thereupon moved the High Court under its revisional jurisdiction.

G. S. Mulgavkar for accused.

(1) Section 33 of Bombay Act VII of 1867 provides as follows :—Any person who on any public thoroughfare without the permission of a Magistrate or Municipal Commission constructs any booth, shed, stable, or the like . . . shall be punishable . . . on conviction before a Magistrate, to the extent of fifty rupees' fine, &c."

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Ráo Sáheb V. J. Kirtikar, Government Pleader, for the Crown.

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NARALCHAND

PER CURIAM:—Section 33 of the Bombay District Police Act, 1867, says: “ Any person who on any public thoroughfare constructs any booth, shed, stable, or the like, &c. shall be punishable, &c ” The accused in this case owned a house on each side of the street and he put bamboos across the street from the top windows of one into the top windows of the other house, and laid a covering of cloth over the bamboos, thus making a canopy, roof or awning over the street. The structure was at such a height that no obstruction or inconvenience whatever was caused to persons or animals passing along the street. It may be that the accused trespassed over the road and did an act to which the owners of the street might object—*Nagar Valab Narsi v. The Municipality of Dhandkuka*⁽¹⁾; but the point is, whether what the appellant erected was a booth, shed, stable or the like constructed on a public thoroughfare. In *Goldstraw v. Duckworth*⁽²⁾ the words “ over or upon the pavement ” in section 67 of the 5 Viet., C. 44, S. 2, were construed to mean “ over or upon the pavement so as to obstruct the passage along it. ” It is remarkable that the word “ on ” only is used in section 33, and its use in this section, which deals with “ public nuisances, ” would seem to imply that the structure complained of must be on the road itself and cause some nuisance. Since no part of the present structure touched the road, it is difficult to see how it can be said to have been constructed on that road. It was, in fact, supported by, and constructed on, the accused’s own houses. As to its being a booth, for which only the Government Pleader has contended, we have to see what a booth really is. In Webster’s Dictionary the word is said to mean “ a house, or shed built of boards, boughs of trees or other light materials for temporary occupation. ” In Latham’s Dictionary it is said to mean “ a temporary house constructed with boards or boughs or canvas. ” The structure raised by the appellant does not fall within either of these definitions, and we do not think that it can be held to be a booth. The lower Courts

⁽¹⁾ I. L. R., 12 Bom., 490.

⁽²⁾ 5 Q. B. D., 275.

have not dealt with this point. The Magistrate calls the construction a *māndap*. The District Magistrate calls it a *pendal*.

We think that the conviction cannot be supported, and we reverse it and the sentence.

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CRIMINAL REVISION.

Before Mr. Justice Parsons and Mr. Justice Ranade.

QUEEN-EMPRESS *v.* BAI VAJU AND OTHERS.*

1896.

November 26.

Gaming—Prevention of Gambling Act (Bombay Act IV of 1887), Secs. 4, 5 and 7—Proof of keeping or of gaming in a common gaming house—Presumption—Evidence.

A number of persons were found by the police in a closed room in the upper story of a house, gambling with dice, and having cowries and money before them. They were convicted under Bombay Act IV of 1887.

Held, confirming the conviction, that under section 7 of the Act the facts found were evidence (until the contrary was shown) that the room was used as a common gaming house, and that the persons found therein were there present for the purpose of gaming.

APPLICATION under section 435 of the Code of Criminal Procedure (Act X of 1882).

The accused, who were fourteen in number, were charged under sections 4 and 5 of Bombay Act IV of 1887,—accused No. 1 with keeping a common gaming house, and accused Nos. 2 to 14 with gaming in a common gaming house.

On the night of the 31st August, 1896, all the accused except No. 1 were found by the police in a closed room on the upper story of a house, sitting in a circle with dice and *cowries* (shells), and money before them.

The house was attached to a Hindu temple, of which accused No. 1 was the *pujari* or ministrant.

Accused No. 1 was not in the house when the police appeared on the scene and arrested the other accused.

The accused were tried summarily under Chapter XXII of the Code of Criminal Procedure (Act X of 1882) by the First Class

* Criminal Revision, No. 260 of 1896.