

months' rigorous imprisonment, we don't think it necessary to exercise the discretion which is given to us by that section ; and we think it is proper to say that on the evidence which appears on the record, the prisoner ought to be acquitted. He will, therefore, be discharged from custody so far as this conviction is concerned.

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QUEEN
v.
FATK
BISWAS.

Before Sir Barnes Peacock, Kt., Chief Justice, and Mr. Justice Mitter.

D. ABRAHAM v. THE QUEEN.*

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Sept. 12.

British Burmah—Lord's Day Act—Abkari Rules.

The Lord's Day Act does not extend to criminal cases in British Burmah. A was convicted and fined for the breach of an Abkari Rule. *Held*, the conviction could not be supported, on the ground that the Abkari Rule had not the force of law.

THE following case was submitted for the opinion of the High Court, by the Recorder of Rangoon :

The appellant, D. Abraham, a Jew, has been convicted by the Town Magistrate, of a breach of Abkari Rules, a copy of which Rules is attached to this reference. The 28th Rule is the one under which the charge was laid, and the fine inflicted was 400 rupees, the offence being a second offence.

The first question upon which I would ask the opinion of their Lordships is, whether the proceedings ought to be quashed, the appellant, having been arrested on a Sunday.

The Advocate for the appellant cites the Lord's Day Act of 29 Car. 2, c 7, and the case of *Taylor v. Phillips* (1) It is contended that this Act applies to the case, because section 21 of Act XXI. of 1863 declares that, in all suits cognizable by the Recorder's Court, all questions, as well as of fact as of law or equity, shall be dealt with and determined according to the law administered by the High Court of Judicature at Fort William in Bengal in the exercise of its Ordinary Original Civil Jurisdiction. Assuming that the Lord's Day Act was in 1863 a part of the law administered in the High Court at Fort William in its Ordinary Original Civil Jurisdiction, I do not think that

* Reference from the Recorder of Rangoon.

(1) 3 East, 155.

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it applies, therefore, in a Criminal appeal in the Recorder's Court in Burmah. Section 21 refers, in my opinion, to civil suits alone; and as the Criminal Procedure Code, which I think is the law which must guide me, is silent upon the point, I see no reason why the proceedings should be quashed, because the appellant was arrested on a Sunday.

The second question is, whether the Abkari Rules, under which the appellant has been convicted and fined 400 rupees, have the force of law; and if not, whether the conviction can be supported.

Upon this point I have very considerable doubt, and when it arose in the case, I desired the Government Advocate, who did not, in the first instance, appear for the crown, to ascertain under what authority those Abkari Rules were passed. The case was adjourned for the purpose of ascertaining this, and on its coming on for hearing again, the Government Advocate informed me that he could point to no authority under which the Chief Commissioner of British Burmah, who appears to have issued the Rules in question, had power to do so.

The Abkari revenue is collected in the Bengal Presidency under Act XXI. of 1856, amended by Act XXIII. of 1860; and by Act XX. of 1864, power is given to the Governor General in Council to extend those Acts to places under their immediate administration. I conceive that British Burmah is a place under the immediate administration of the Governor General in Council. I find, however, that the Abkari Acts have not been extended to British Burmah; but that the Rules, which I enclose, are quite independent of the Acts of the Governor General in Council relating to Abkari, and are entirely different in principle to the rules applying in Bengal. They are modified to a certain extent every year, but similar Rules have been in force in the province for about fifteen years.

It appears to me that if these Rules have any legal effect, it must be by virtue of some power vested in the Chief Commissioner as representing, in British Burmah, the Board of Revenue. The powers of the Chief Commissioner are defined in a Resolution printed in the Gazette of India Extraordinary, January 31st, 1862. But it appears to me that the powers of the Chief

Commissioner as a Board of Revenue cannot extend so far as to enable him to pass Rules containing penal clauses, such as are contained in the Rules in question.

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The subject appeared to me to be of so much importance, that I requested the Chief Commissioner to cause a search to be made for any document which might give him any power in the matter; and as I am now informed by the Government Advocate that no such document can be found, I beg to refer the matter to your Lordships.

It seems to me that there is no power at present vested in any one but in the British Parliament, or the Legislative Council of the Governor General, to make laws for this province, and that laws can only be extended to the provinces by the Local Government, that is, the Governor General in Council, or by the Chief Commissioner exercising the powers of a Local Government under Act XXXI. of 1867.

These Abkari Rules have not been made or extended by any of these authorities; and I would, therefore, express my opinion that they have not the force of law, and consequently that the conviction, in this case, cannot be supported.

The opinion of the High Court was delivered by

PEACOCK, C. J.—We are of opinion that the Lord's Day Act does not extend to criminal cases in British Burmah, and that the conviction is not bad because the defendant was arrested on Sunday.

We are of opinion that, upon the facts stated, the Akbari Rules passed by the Chief Commissioner have not the force of law, and that the conviction cannot be supported.