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TILLAINATHER v. VADIVELU.

P. C., Jaffna, 36,411.

*Tom-toms—Unlicensed beating thereof—Breach of s. 90 of Ordinance No. 16 of 1865—Proclamation under s. 12 thereof—Meaning of the phrase "throughout the Island" in s. 12—Interpretation of the word "town" in s. 6—Grammatical structure of the interpretation clause—Meaning of "town and limits" in s. 90.*

Where the accused were charged with having beaten tom-toms in the village of Batticotta without a license, and with having thereby committed an offence punishable under section 90 of Ordinance No. 16 of 1865, which it was alleged was brought into operation in the said village by virtue of the Proclamation made under section 12 of the said Ordinance, and contained in the *Gazette* of December 2, 1898; and where it was contended that the term "throughout the Island" in section 12 referred only to proclaimed limits throughout the Island and not to every part of the Island, and that Batticotta not having been proclaimed did not come under the Ordinance, and that the interpretation of the word "town" in section 6 of the Ordinance included only villages set out for the purposes of the Ordinance and not every village, and that, therefore, even after giving this wider meaning to "town" in section 90, Batticotta, not having been set out for the purposes of the Ordinance, could not be brought thereunder—

*Held, per MONCREIFF, J. and GRENIER, A.J. (LAYARD, C.J., dissenting) that "town and limits" in section 90 mean "town and gravets," which in terms of section 6, would read "village and limits," i.e., village and gravets or village up to their well-known and well-defined boundaries, and that there was no need of setting out the limits of a village.*

"Set out for the purposes of the Ordinance" in section 6 refers only to "limits" and not to "village."

"Throughout the Island" in section 12 means "throughout the inhabited parts of the Island," and not also throughout the uninhabited parts.

Batticotta, being a village, would therefore be affected by the Police Ordinance up to its limits, i.e., its well-known and well-defined boundaries.

THE accused in this case were charged under section 90 of the Ordinance No. 16 of 1865 with disturbing the repose of the inhabitants at Vattukottai (Batticotta), a village about six miles from Jaffna, by beating drums at a performance of a comedy on the night of 23rd July, 1904, without having first obtained a license.

By section 12 of the Ordinance the Governor has power by Proclamation in the *Government Gazette* to declare that such of the provisions of the Ordinance as to him may seem meet shall come into operation throughout the Island, or in any Province, district, town, or place as shall appear to him to require the same, though there be no police force established therein.

In the *Government Gazette* of 2nd December, 1898, Governor Ridgeway proclaimed that certain sections of the Ordinance No. 16 of 1865, including section 90 thereof, "shall come into operation throughout the Island."

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It was contended for the prosecution that, as Vattukottai was a village within the Island, the accused, who had disturbed the repose of the inhabitants there, were liable under section 90. But the accused urged that the Proclamation in the *Gazette* would be *ultra vires*, if its intention were to apply to any other place but "towns" as defined in section 6 of the Ordinance.

This section provides as follows: "The word 'town' shall include any village or limits set out for the purpose of this Ordinance."

The Police Magistrate (Mr. B. J. Dutton) held that the place where the offence was alleged to have been committed was a village not included in the town of Jaffna, and that a village could not become a "town" without its name and boundaries being specially set out in the Governor's Proclamation. He acquitted the accused.

The Attorney-General appealed.

The case was first argued before Middleton, J., on 28th November, 1904; then before Moncreiff, J., and Middleton, J., on 14th December, 1904; and lastly before a Full Bench consisting of Layard, C.J., Moncreiff, J., and Grenier, A.J., on 10th March, 1905.

*Rāmanāthan, S.-G.*, for appellant.

*Savundranayagam*, for respondent.

*Cur. adv. vult.*

3rd April, 1905. MONCREIFF, J.—

Section 12 of the Police Ordinance of 1865 (as amended) empowered the Governor, with the consent of the Executive Council, to proclaim such of its provisions as he might think fit "throughout the Island", or in limited portions of the Island (provinces, districts, towns, and places). Such Proclamations might be made, although "there were no police force established therein," and there was no necessity for defining the limits of the place proclaimed. There is no established police force at Vattukottai, but the provisions of the Ordinance were proclaimed there because it is part of the Island, and the Ordinance was proclaimed throughout the Island.

Section 13 requires that a Proclamation establishing a police force in a town should specify and define its limits, which may be altered from time to time. Vattukottai, although only a village,

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is a town in this Ordinance, and therefore this section relates to it; but the section does not concern us here, because there is no question of proclaiming the establishment of a police force at Vattukottai. The Ordinance also mentions other cases, which do not arise here, in which definition by Proclamation is required.

It is obvious that such sections of the Ordinance as are not locally limited in their operation would apply, where possible, to every part of the Island, Vattukottai included. There are, however, about twelve sections the operation of which is confined to "any town and limits." Section 90, that in question, is one of those sections. The question is what the expression "town and limits" means.

Regulation 7 of 1813 was a police regulation which related to the forfeiture of animals found straying "within the Fort, town, or gravets" of Colombo. The same expression occurs in the early police regulations of the last century relating to other towns.

In the Police Ordinance, No. 3 of 1834, which was passed in reference to offences committed within "the town, Fort, and four gravets (and the port) of Colombo," the operation of twenty-six of the thirty-one sections of the Ordinance is limited to the town, Fort, and four gravets (and port) of Colombo.

Ordinance No. 13 of 1843 for establishing police in certain towns repealed the Police Ordinances and regulations affecting Colombo, Jaffna, Galle, Kandy, Trincomalee, Mannar, Matara, Negombo, and Kurunegala; and section I gave the Governor "power to establish a police force within such towns and limits as appear to him to require the same, and as shall be specified and defined in any Proclamation to be by him for that purpose issued." I find that many of the sections of that Ordinance (thirty-five) are specially confined to "any such town and limits as aforesaid;" and that the expression "town and limits" refers to a particular locality appears, I think, from section 10, in which a form of oath is prescribed for "the Superintendent of Police for the town and limits of....."

Among the local regulations which were repealed and replaced by this Ordinance were (section 8) Rules and Regulations for the Police for the Bazaar, Village, and Cantonments of Kurunegala of September, 1819. Thus the expression "town and limits" takes the place of the "town, Fort, and gravets," or "bazaar, village, and cantonments" where they occur in the old regulations. Apparently the bazaar, village, and cantonments of Kurunegala are treated as a town and limits to be specified and set out. It is true that the first section does not contemplate proclamation throughout the Island; it relates only to the establishment of a

police force in certain towns and limits. The preamble speaks of the establishment of a police force "in certain towns and their neighbourhood."

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This Ordinance was repealed by No. 17 of 1844, the second section of which is practically the first section of the Ordinance of 1843, and is followed by at least thirty-four sections which are applicable "within any such town and limits." The towns and limits referred to in the sections of these two Ordinances are towns and limits required by the Ordinances to be specified and defined in the Proclamation; and the section which applies to the beating of tom-toms is, of course, confined in its operation to towns and limits specified and defined. But it is evident that before any definition by Proclamation took place the Governor was to form an opinion that certain towns and limits required a police force; and I agree with my brother Grenier that such towns and limits were places such as were described as towns and gravets in the beginning of last century, when each such place had a police regulation of its own.

These Ordinances were replaced in 1865 by the Ordinance now under consideration, which in section 12 provided for the Proclamation of the Ordinance throughout the Island and in certain other places in which a police force might not have been established. Now, it is to be observed that in Ordinance No. 10 of 1843 the Legislature considered that the provisions of Ordinance No. 17 of 1844 should be made operative in certain places "notwithstanding that a police force might not have been established therein;" and it gave power to proclaim the Ordinance in such "towns, villages, and limits" as should be specified and defined by the Proclamation. In the corresponding section (12) of the Ordinance of 1865 it is not required that the places should be defined, and the places enumerated are "province, district, town, or place," as well of course as throughout the Island. Why was "village" omitted? Was it for the exclusion of villages, or was it not because a village was a town?

As I have said, ten or twelve sections of the Ordinance contain the phrase "town and limits." Section 80, the first of the "general provisions," refers to "any town and limits." Section 90—also one of the "general provisions"—is applicable within "any town and limits." These are general provisions, and there is nothing in them or in the Ordinance to suggest that they are not to apply to places proclaimed but not defined. The mere fact that the definition of such places, which was required by Ordinance No. 10 of 1843, is not required by this Ordinance indicated an intention on the part of the Legislature which these sections have carried out. I think the draftsman had no deep design in the use of the phrase.

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and this appears from the fact that in section 63 the phrase is "within any town," and in the following section (64) it is "within such town and limits."

By section 6 of the Ordinance (of 1865) the word "town" includes any village or limits set out for the purposes of the Ordinance. I see no reason for thinking that the words "set out for the purposes of this Ordinance" are attached to the word "village." Villages had their limits, as towns had their gravets. We must not make the Legislature illiterate without reason. If we adopt the Magistrate's interpretation, a town in which no police force is established may be brought within the Ordinance by Proclamation under section 12, although its limits are not defined for the purpose. A village, says the Magistrate, is not a town, and not in that sense within section 12, if its limits are not defined by Proclamation. I can see no purpose underlying this distinction, which is wrung out by a slipshod rendering of the interpretation clause; and I can see a good deal of embarrassment in some parts of the Ordinance if the Magistrate's view were put in force. Why should the village proclaimed under section 12 not have the advantage of sections 53, 80, 81, 82, 84, 87, and 95?

The Ordinance appears to me to have put villages on the same footing as towns, and in reading section 90 I should take the words (for the purpose of this case) as "any village and limits." I think, therefore, that section 90 applies to the village of Vattukottai, and that the order suggested by my brother Grenier is right.

GRENIER, A.J.—

The accused in this case were charged under section 90 of Ordinance No. 16 of 1865 with disturbing the repose of the inhabitants in the neighbourhood at Vattukottai by beating drums on the night of the 23rd July, 1904, without having first obtained a license as required by the said section. The Magistrate acquitted the accused on the ground that the place where the offence was committed was a village not included in Jaffna town, and that the provisions of section 90 of Ordinance No. 16 of 1865 did not apply to villages, as the expression "include" in the definition clause meant a place proclaimed as a town in the *Gazette*—that is, any village or place of certain limits proclaimed as a town in the *Gazette*.

It was argued by the Solicitor-General for the complainant that when sections 6, 12, and 20 of the Ordinance are read together the words "all persons who shall at any time within any town..... beat drums" must be interpreted to mean all persons who shall at any time within any town or village or other place beat drums, &c. The reason he assigned was that in the definition clause the word

" town " includes any village or limits set out for the purposes of this Ordinance, and that as the accused beat drums in the village called Vattukottai without a licence they had rendered themselves liable under section 90.

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There was much discussion as to the meaning of the words " limits set out for the purposes of this Ordinance." The term " limits " occurs in several sections of the Ordinance—for instance, in sections 80, 81, 82, and other sections where it is used in connection with the word " town "; and although the term is rather loosely employed and is therefore not easy of interpretation readily, I think that the connection in which it is used in the context leaves little or no room for doubt that it was intended to refer to the gravets, as the term is popularly understood, or the boundaries of a town; and therefore when in the definition clause the word " town " is defined to " include any village or limits set out for the purposes of this Ordinance " the definition must be taken to refer to the limits of the town, or in other words to the gravets or boundaries of the town. The word " gravets " is a Sinhalese word which means boundaries in the usual acceptation of the term. A village may be included or lie within the limits of a town, and I believe that as a matter of fact there are villages which are situated within the gravets or boundaries of a town. But there are other villages which are not so situated, and lie outside the limits or boundaries of a town; and the word " town " was, I think, so defined in section 6 as to be synonymous with the word " village," and to include any village situated within the limits or boundaries of a town as well as any village outside its limits or boundaries. It is manifest that the contention for the accused, that the words " set out for the purposes of this Ordinance " should be read after the word " village," is ill-founded, whether we regard the grammatical construction of the words or their plain meaning as ordinary words in the English language to which an ordinary meaning should be assigned. One does not speak of setting out a village, but of setting out the limits of a town or village. I would therefore reject without hesitation the construction sought to be placed upon the words in question by the counsel for the respondents and take the word to mean, reading it in connection with sections 12 and 90, as referring to the limits or boundaries of a town.

Now, the Proclamation by the Governor dated 2nd December, 1898, made certain sections of the Ordinance, amongst them section 90, operative throughout the Island or in any province, district, town, or place, irrespective of the establishment of a police force therein. It seems to me that the Magistrate has given this Proclamation a rather fanciful and extravagant meaning in the illustrations

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to be found in his judgment of the extent to which the Proclamation may be made to apply. We must try to put a reasonable construction upon words which occur in any Proclamation or Ordinance with a due regard to the obvious intention of the framers, and not strain the meaning of words so as to render them ambiguous or unintelligible, and thus obtain materials to subtilize upon, as the Magistrate appears to have done. The Proclamation read as a whole is clear enough in my opinion, and applies to provinces, districts, towns, and places throughout the Island which are inhabited, and cannot be made to apply to places which are not inhabited, such as forests and jungles where there is no population. To hold otherwise would be to do violence to the language of the Proclamation and to give the words " throughout the Island " such a comprehensive meaning as to render the Proclamation itself a document of a rather grotesque character.

I hold, therefore, that it was an offence under the Ordinance to beat drums in the village of Vattukottai, as charged in the information. The acquittal must be set aside and the case sent back for trial and adjudication on the merits.

LAYARD, C.J.—

The question to be decided in this appeal is as to whether the Proclamation of the 29th day of November, 1898, had the effect of bringing section 90 of " The Police Ordinance, 1865," into operation in every village of the Island.

There is no doubt that section 12 of that Ordinance, as amended by section 2 of Ordinance No. 4 of 1897, gives the Governor power, acting with the advice and consent of his Executive Council, by Proclamation, to bring any provisions of " The Police Ordinance, 1865," into operation throughout the Island. That is to say, provisions which related to towns and villages can be by this means brought into operation into such towns and villages as the Ordinance originally contemplated, and provisions which are applicable to places and rural districts outside such towns and villages come into force in such places and districts.

Section 90 absolutely prohibits any person from beating tom-toms within any town and limits without having obtained a license from the officers mentioned in the section. It is argued by the appellants that the words " any town and limit " include any village whatsoever, and by the respondents merely any town or village the limits of which may have been defined for the purposes of the Ordinance.

Section 90 of the Ordinance appears to have been adapted from section 37 of the Ordinance No. 17 of 1844, which Ordinance No. 16 of 1865 repealed. I find that the operation of the latter

section was also limited in operation to " towns and limits." During the argument of the appeal I thought that possibly "limits" was used in the Ordinance of 1865 for gravets. A reference, however, to the Ordinance of 1844 shows that the term "limits" is not used by the Legislature synonymously with the term "gravets." By the 2nd section of the Ordinance No. 17 of 1844 it is clear what the Legislature intended by the words " towns and limits " in that Ordinance, viz., such towns and limits as have been specified and defined in any Proclamation issued and published in the *Government Gazette* under that section, whilst " gravets " in that Ordinance, I gather from section 3, referred to recognized and well-defined areas outside certain towns in the Colony the limits of which were well-established and did not require defining. Section 37 only operated in such towns and limits as had been specified and defined by Proclamation issued under the Ordinance of 1844.

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In 1865 the Legislature thought it desirable to repeal the Ordinance of 1844 and to make further provision with regard to the regulation of a police force in the Island. In legislating, I gather from the Ordinance No. 16 of 1865, the Legislature recognized that there were large towns in the Island within some of which a police force had been already established, in respect of which it enacted that no fresh Proclamation was necessary to bring the Ordinance of 1865 into force, whilst there were other similar towns in respect of which it is provided by section 7 of the Ordinance might by Proclamation be brought into operation, and by section 13 directed that when proclaimed the limits of the town should be defined and specified by the Proclamation.

With reference to other than large towns it enacted that a police force might be established by Proclamation (section 8), declaring not that the Ordinance itself should come into operation, but certain provisions thereof to be specified in the Proclamation itself, which Proclamation should also set out the limits of such town.

There were also other provisions as to establishment of police in rural districts, to which I need not refer, and section 12 enabled the Governor to bring into operation such of the provisions of the Ordinance as he might think desirable into any place, though a police force had not been established there. That section was amended in 1897, and the Governor was given power, as mentioned above, to bring such provisions of the Ordinance as he thought desirable into operation throughout the whole Island. Now, the Governor has been pleased to bring section 90 into operation throughout the Island, and certainly by that Proclamation it has come into force in every town (other than a large town)



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*April 3.* 8, even if section 90 was not specified in the original Proclamation  
 LAYARD, C.J. issued under section 8. Did the Proclamation, however, bring it  
 into force in every little remote village and hamlet in the  
 Island—villages situated perhaps on the confines of a large  
 forest or jungle and far away from other human habitations,  
 or villages inhabited perhaps by village or forest Veddahs?  
 However unreasonable it may be to extend such a provision  
 to such villages, still, if the Legislature intended that they might  
 by Proclamation be brought into operation within such villages, all  
 that the Court can do is to declare the law to be as the Legislature  
 intended.

Looking back to the Ordinance of 1844, it is clear that the  
 provisions of section 37 could only have operated, as mentioned  
 above, within such towns and limits as had been specified and  
 defined by Proclamation issued under the Ordinance of 1844.  
 Did the Legislature in 1865 intend to go further?

By section 6 it enacted that "the word 'town' shall include any  
 village or limits set out for the purposes of this Ordinance." As  
 my brother Moncreiff properly pointed out in the course of the  
 argument, it is not good English to speak of a village set out for  
 the purposes of the Ordinance.

At the same time there is no integral part of the Island, or of  
 any division or district thereof which is defined as "limits," and  
 what did the Legislature mean to refer to distinct from a village  
 or town by the words "limits set out for the purposes of this  
 Ordinance"?

No doubt the word "town" has been slovenly defined by the  
 Ordinance; however we must do our best to interpret what the  
 Legislature intended to enact, and bearing in mind the provisions  
 of the Ordinance of 1844, for which this Ordinance is substituted,  
 and the unreasonableness in providing in 1865 that the provisions  
 of section 90 should extend into every little village of the Island,  
 I am constrained to come to the conclusion that the Legislature  
 intended to limit the definition of town to include any village  
 whose limits had been set out for the purposes of the Ordinance.  
 I find the words "town and limits" used in several sections  
 brought into force throughout the Island by the strength of the  
 Proclamation. If I am justified by reading for the word "town"  
 in these sections the word "village," I am still confronted with  
 the words "village and limits" to interpret. I must assign a  
 meaning to the word "limits" in these sections. "Limits" are  
 no integral part of the Island, as I said before. "Limits of a village,"  
 unless such means those defined for the purposes of the Ordinance,  
 would ordinarily include paddy lands, chena lands, and forests.

some of which might be a very long way from all human habitations. The Legislature has not very clearly expressed its meaning, but I think it could have only one intention, and that was to refer to such towns, including villages, the limits of which had been set out by some Proclamation or other for the purposes of the Ordinance.

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The Solicitor-General tried to impress us, or some of us, by saying that if we upheld the Police Magistrate's judgment we should be rendering inoperative a Proclamation issued by the Governor, with the advice of the Executive Council. I told him at once that if the Proclamation was *ultra vires*, whatever might be the result, we must so declare. A little further consideration of the Proclamation would have shown the Solicitor-General how fallacious his suggestion was. Some of the sections brought into operation by the Proclamation are applicable to the whole Island, and are not restricted to towns and their limits, and those sections which refer to "towns and limits" are by the force of this Proclamation brought into force in every town or village in the Island whose limits have been defined for the purposes of the Ordinance; not only those towns proclaimed under sections 7 and 13, but all those towns proclaimed under section 8, in some of which it may be that section 90 and some of the other sections of the Ordinance applicable to "towns and limits" have not been brought into operation by the Proclamation issued under that section.

I would further add that I do not believe it could have been the intention of the Governor or of the Executive Council by the Proclamation now under consideration to bring into force in every little village in the Island provisions such as those contained in section 90, which are inapplicable to the circumstances and surroundings of the villagers themselves, and would almost deprive them of the harmless amusement of beating tom-toms, for it would require them in every case to go many miles to obtain a license from one or other of the officers specified in section 90, who, when they receive the application for the license, would be quite incapable of forming an opinion as to whether there was or was not any good reason for refusing to grant a license.

The order of the Police Magistrate ought, in my opinion, to be affirmed.