

Present: Shaw J.

1919.

WIJESURIYA v. ABEYESEKERA.

47—P.C. Kalutara, 49,209.

Circus — Public place — Person drunk — Misconduct in public place — Penal Code, s. 488 — Order to give security to keep the peace — Criminal Procedure Code, s. 80—“ Involving a breach of the peace.”

Accused, who paid for his admission to a circus, was drunk, and conducted himself in such a manner as to cause annoyance to certain persons, and was convicted under section 488 of the Penal Code, and ordered to be bound over to keep the peace.

Held, that, as a circus was not a public place the conviction was wrong.

As an offence under section 488 does not involve a breach of the peace, the order to give security to keep the peace was irregular.

THE facts appear from the judgment.

Bawa, K.C. (with him *Zoysa*), for appellant.

Amarasekera, for respondent.

February 19, 1919. SHAW J.—

In this case the accused has been convicted, under section 488 of the Penal Code, with having been drunk in a public place, and conducting himself in such a manner as to cause annoyance to certain

1919.

SHAW J.

Wijesuriya
v.
Abeyasekera

persons. He was fined Rs. 100, and bound over to keep the peace for six months. It appears from the evidence that the accused attended a performance at a circus, and upon the entrance of another member of the audience, who was the Police Magistrate for Kalutara, the accused, who was the worse for liquor, cried out " Three cheers for the almighty Wickramasinghe, " and commenced to clap his hands. This is the offence in respect of which he has been convicted. There are two grounds of appeal. The first is, that the Magistrate has no jurisdiction to order the accused to be bound over to keep the peace. This appears to be a good point. The power of a Police Magistrate, which the Magistrate here purported to exercise, is contained in section 80 of the Criminal Procedure Code. That gives the Magistrate the power, whenever any person is convicted of any offence which involves a breach of the peace or of committing criminal intimidation, to bind the accused over to keep the peace, in addition to other punishment. The offence under section 488 of the Penal Code does not involve a breach of the peace, nor do the facts of the present case show that any breach of the peace was committed by the appellant. It has already been held by this Court in *Arlinahamy v. Johannes*¹ that the offence of insult is not one which involves a breach of the peace, so as to give the Magistrate jurisdiction to order security to keep the peace. The other objection to the conviction is an even more fatal one. It is, that the evidence does not show that the place where the accused misconducted himself was a public place. Section 488 provides that the misconduct shall be in a public place, or in any place which it is a trespass for the accused to enter. There is no definition of a " public place " in the Penal Code or in any general Interpretation Ordinance. It is usual to provide in similar legislation that a " public place " shall include any place where the public are admitted on payment. But that provision is omitted in our Code. A circus is not a public place. It is within the power of the proprietor to prevent any one entering without payment, and, indeed, to prevent any one entering whom he deems undesirable as a member of the audience. Therefore, a circus is not, in my opinion, a " public place " within the meaning of the section of the Penal Code. Neither is it shown to be a place which it was a trespass for the accused to enter, because the accused had apparently paid for admission to the performance. It has already been decided in *Peitersz v. Wiggin*² that a police station is not a public place, within the meaning of this section of the Penal Code, and Withers J. in that case expressed an opinion as to the meaning of a " public place, " which certainly excludes such places as a circus which people may enter on payment.

The conviction is set aside, and the accused acquitted.

Set aside.

¹ 4 W. Rep. 118.

² (1892) 2. C. L. R 111.