

MARSHALL v. GUNARATNE UNNANSE *et al.*

*Municipal Court, Colombo, 2,062.*

1895.  
July 22 and  
August 9.

*Ordinance No. 16 of 1865, s. 90—Beating of drums at night without a license—  
Public nuisance by religious body.*

A religious body is not entitled to commit a public nuisance by the beating of drums and tolling of bells, and no license under section 90 of Ordinance No. 16 of 1865 will be a protection against proceedings under the Penal Code, though it may be a protection against proceedings under the Ordinance.

*Holland v. Kapugama Terunnanse (P. C. Mátara, No. 80,576, 1 S. C. C. 90) and Janes v. Endoris (P. C. Galle, No. 1,582, 9 S. C. C. 204) commented upon.*

THIS was a prosecution under section 90 of Ordinance No. 16 of 1865 against the chief monk and the principal trustee of the Buddhist Viharé at Hunupitiya, who were charged with beating drums or tom-toms, and otherwise creating a noise in the night, whereby the repose of the inhabitants in the neighbourhood was disturbed, without a license.

The Police Magistrate acquitted the second accused (trustee) and found the first accused guilty "of having tom-toms beaten "without a license," and sentenced him to pay a fine of Rs. 10, or in default to undergo simple imprisonment for one week.

He appealed.

*Pereira* appeared for him at the argument in appeal, on July 22, 1895.

*Cur. adv. vult.*

9th August, 1895. BONSER, C.J.—

The appellant was charged under the 90th section of the Police Ordinance, 1865, "that he did on the 6th and 12th days of June, 1895, in the pansala at Hunupitiya, beat tom-tom between 6 and 12 P.M. without a license from the Police Magistrate or the Superintendent of Police of the district."

This section is drawn in such a way as to be almost unintelligible, and has consequently given rise to some diversity of judicial opinion (see *1 S. C. C. 90* and *9 S. C. C. 204*). In the former case PHEAR, C.J., held that the words "except under "military regulation, or unless they shall have obtained a license "from the Police Magistrate or from the Superintendent of Police, "who are hereby authorized to grant the same, when it shall to

1895. "them appear expedient," referred only to the clause, "or who  
*July 29 and* "shall at any time discharge firearms, crackers, or fireworks."  
*August 9.* But the Full Court in the latter case held that the words referred  
also to the previous clause, "who shall ..... beat drums or  
"tom-toms, or have, or use any other music calculated to frighten  
"horses, or who shall make any noise in the night so as to  
"disturb the repose of the inhabitants."

This construction leads to the curious result that a Police Magistrate is authorized to license persons to make a noise in the night so as to disturb the repose of the inhabitants, but I am bound by it.

It was proved that the appellant is the clergyman in residence at the clergy-house or pansala of a Buddhist temple ; that during the month of June there were some special services held at the temple, which lasted for above a fortnight, and that to stimulate devotion a great noise was made by beating of tom-toms and tolling of bells, which went on almost without intermission day and night, to the great annoyance of the neighbourhood.

There was no evidence that the appellant had anything to do with the management of the special services, or was present at them.

The Police Magistrate convicted the appellant of "having tom-tom beaten without a license."

It will be seen that the appellant was charged with one offence and convicted of another, but if the evidence would support the conviction and the appellant was not prejudiced by the irregularity, it could be set right by amendment.

PHEAR, C.J., in the case above referred to, doubted whether any but the actual beater of the tom-tom could be convicted under this section. But whether this be so or not, there is no evidence in this case to support the conviction.

At the same time, the idea must not be entertained that a noise, which is an annoyance to the neighbourhood, is protected if it is made in the course of a religious ceremony.

No religious body, whether Buddhist, or Protestant, or Catholic, is entitled to commit a public nuisance, and no license under section 90 of "The Police Ordinance, 1865," will be a protection against proceedings under the Penal Code, though it may protect them from proceedings under the Police Ordinance.

