

1887
June 22.

Before Mr. Justice Brodhurst.

QUEEN-EMPRESS *v.* ZAKIUDDIN AND ANOTHER.

Public nuisance—Slaughter of kine by Muhammadans on their own property
—Act XLV of 1860 (*Penal Code*), ss. 268, 290.

A person wilfully slaughtering cattle in a public street, so that the slaughter could be heard and seen by the passers-by, would commit an offence punishable under s. 290 of Penal Code.

But where certain Muhammadans, for a religious purpose, killed and cut up two cows before sunrise in a private compound, partly visible from a public road, and the killing of one of the cows only was witnessed by one Hindu—held that the circumstances proved did not amount to the commission of a public nuisance as defined in s. 268 of the Code.

Muttumira v. Queen-Emress (1) referred to.

THE facts of this case are sufficiently stated in the judgment of Brodhurst, J.

Mr. *Amiruddin*, for the petitioners.

Babu *Jogindro Nath* and *Munshi Ram Prasad*, for the complainants.

The *Public Prosecutor* (Mr. *G. E. A. Ross*) for the Crown.

BRODHURST, J.—The two applicants have applied for revision of an order of the officiating Magistrate of Pilibhit, by which he convicted them under s. 290 of the Indian Penal Code, and sentenced them each to pay a fine of Rs. 2.

The Magistrate found that the applicants had killed two cows in their compound, and had there cut up and disposed of the carcasses, and had thus committed a public nuisance punishable under s. 290 of the Indian Penal Code.

The Magistrate observes :—“ The place in which the slaughter occurred was a compound by the house of the defendants. The wall of the compound has fallen into ruin, and the compound is visible from a high road which passes it. Only one person for the prosecution says he saw the actual slaughter, and he professes to have been on a visit to the defendants. His evidence, at least, is of no use to prove a public nuisance. The case against the accused can only be based on more general grounds, namely, that the slaughter was committed, and that such an event would neces-

sarily cause annoyance to Hindu passers-by. If this were the result, the case would arise under s. 290 of the Indian Penal Code. I assume that the carcasses were cut up at the place indicated by the defendants, and that if they were about a foot high, they would not be visible from the road. At such a place they would not, when merely laid out, annoy passers-by. At the same time the previous felling for slaughter, if there were any passers-by at the time, would be visible; and the stir and moving about of the persons cutting up the carcasses would, in the ordinary course of things, be noticed by persons on the road, even if they could not see the carcasses or cut-up meat. I do not understand it to be pleaded that these occurrences could be hidden from the road."

The Magistrate finds that the slaughter took place "at quite early morning," and remarks, "as to the witnesses, I have already expressed my doubts about them and their way of representing the occurrences and their recourse to the spot. The accused pleaded that they killed only two cows; that they killed them on the 11th September, 1886, merely with a religious object and without any intention of annoying the Hindus; that they killed them in their own compound, where they had on former occasions sacrificed kine, and that a similar charge, preferred by the Hindus in 1865, was dismissed."

The Magistrate observes:—"The defence which seems to me to deserve most consideration is this, that there must be taken to have been a refusal to interfere in this matter in 1865, and a certain measure of uncertainty about the matter since."

It appears that, on the 11th September, 1886, two cows were killed with a religious object in the compound of the accused; that they were killed before sunrise; that at the most, the killing of one cow was witnessed by merely one Hindu, and by him only because he unfortunately chose that day and an unusually early hour to pay a visit to his Muhammadan acquaintances. No one else is found to have seen the killing of the cows or the carcasses or the cut-up meat. If a few Hindus passing by a private compound can have the occupants of that compound punished for a public nuisance merely because they have seen the occupants moving about in their compound, and imagine that they are engaged

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in cutting up the carcasses of cows, much more could the butchers, who, in the exercise of their trade, carry beef for sale through the streets of almost every station in British India, be punished for a public nuisance.

Sir Charles Turner, in his judgment in *Muttumira v. Queen-Emress* (1), observed :—“ A public nuisance is defined in the Penal Code as an act or omission which causes any common injury, danger, or annoyance to the public or people in general, who dwell or occupy property in the vicinity, or which must necessarily cause obstruction, danger, or annoyance to persons who may have occasion to use any public right. It is obvious from the language of the Act that it was not intended to apply to acts or omissions calculated to offend the sentiments of a class. In this country it must often happen that acts are done by the followers of a creed which must be offensive to the sentiments of those who follow other creeds. The scope of the provision we are considering is to protect the public or people in general, as distinguished from the members of a sect, from injury, danger, or annoyance in the neighbourhood of places where they dwell or occupy property, or when they have occasion to use a public right.”

I am by no means prepared to hold that a slaughterer of cattle could under no circumstances be convicted of a public nuisance as defined in s. 268 of the Indian Penal Code ; for, if a person wilfully slaughtered cattle in a public street so that the groans and blood of the poor beasts were heard and seen by the passers-by, he would commit acts that would necessarily cause annoyance to every one of them, Hindu, European, Muhammadan or other, who was not utterly devoid, not merely of refinement, but also of all proper feeling : and he undoubtedly would, in my opinion, be punishable under s. 290 of the Indian Penal Code.

As regards the petitioners, however, I consider that, under the circumstances I have above mentioned, they have been wrongly convicted. I therefore set aside their convictions and direct that the fines, if realized, be refunded.

In conclusion, I may add that I think the Muhammadans of Pilibhit are entitled to know whether or not they may on special

(1) I. L. R., 7 Mad. 590.

occasions, for religious purposes and under certain restrictions, be permitted, as Muhammadans are, I believe, in many other places in British India permitted, to sacrifice kine on their own premises. If they are allowed to do so, a clear municipal rule should be framed so as to ensure that cattle killed under such circumstances should be slaughtered, and the carcasses disposed of, in such a way as to cause the least possible annoyance to Hindus and other persons.

** Convictions set aside.*

APPELLATE CIVIL.

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 v.
 ZAKIUDDIN.

1887
 August 5.

Before Mr. Justice Broadhurst and Mr. Justice Tyrrell.

GANESH SINGH (PLAINTIFF) v. SUJHARI KUAR (DEFENDANT).*

Mortgage—Mortgagee of non-transferable property—Right to sue for mortgage-money—Act IV of 1882 (Transfer of Property Act), s. 68 (b), (c).

Where a decree was obtained by a landholder for cancelment of a deed whereby an occupancy-holding was mortgaged with possession, and the mortgagee consequently failed to obtain possession, and brought a suit against the mortgagor to recover the mortgage money, —*held* that inasmuch as the mortgagor must have known that he was mortgaging an estate not legally transferable, while the mortgagee might have believed that the estate was transferable, the act of the former was a default depriving the latter of his security, within the meaning of s. 68 (b) of the Transfer of Property Act (IV of 1882), and the mortgagee was, therefore, entitled to succeed.

THE facts of this case were as follows:—On the 16th February, 1885, the defendant, Musammat Sujhari Kuar, executed in favour of the plaintiff, Ganesh Singh, a deed whereby she mortgaged a cultivatory holding of 26 bighas 19 biswas 4 dhurs in consideration of Rs. 599. Under this deed the plaintiff was entitled to possession of the mortgaged property. Shortly after execution of the deed, however, a suit was brought by Madho Prasad, one of the zamindars of the village, for cancelment of the deed, on the ground that the defendant was his occupancy tenant of the mortgaged property, and that the mortgage was, therefore, contrary to the provisions of s. 9 of the N.-W. P. Rent Act (XII of 1881). On the 8th June, 1885, the zamindar obtained a decree in that suit. Being unable,

* Second Appeal, No. 1101 of 1886, from a decree of J. M. C. Steinbelt, Esq., District Judge of Azamgarh, dated the 11th March, 1886, confirming a decree of Babu Nihal Chandra, Munsif of Azamgarh, dated the 9th November, 1885.