

REVISIONAL CRIMINAL.

1896.
May 26.

*Before Mr. Justice Knox.*QUEEN-EMPRESS *v.* SUBHAN AND ANOTHER.*Act No. XLV of 1866 (Indian Penal Code) section 297—Trespass on burial place—Acts complained of done by permission of owner.*

Held that persons who entered upon a burial-place and ploughed up the graves were liable to be convicted of the offence defined by section 297 of the Indian Penal Code, notwithstanding that their entry on the land was by the consent of the owner thereof.

THE facts of this case sufficiently appear from the judgment of KNOX, J.

Mr. C. R. Alston for the applicants.

The Government Pleader (Munshi Ram Prasad) for the Crown.

KNOX, J.—In this case two persons were found guilty of an offence falling either under section 297 or section 297 read with section 107 of the Indian Penal Code. It was established against the two persons that they had ploughed up land which up to within a short period of the act had been used as a graveyard. It is not denied by Subhan that he did plough up the land, and Sabir admits that, knowing that Subhan was going to do so, he lent him bullocks for the purpose.

I am asked to revise the conviction and sentence on the ground that there was no proof that trespass was committed or contemplated, and that there was no intention of wounding the feelings of any one. Section 297 does not make an act committed in defiance of it an offence when that act is committed with the intention of wounding the feelings of any person; it is equally an offence if committed with the knowledge that the feelings of any person are likely to be wounded or the religion of any person is likely to be insulted thereby. The real question on which this contention was raised in the present case is whether the acts of the accused can be considered to amount to trespass or abetment of trespass.

The persons who were convicted went upon the property with the knowledge of the owner, and further, apparently with his wish

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that the graveyard should be ploughed up and turned into agricultural land. My attention was directed by the learned counsel who conducted the case to the precedent—*In the matter of the petition of Khaja Mahomed Hamim Khan and another* (1). That case differs from the present in that no proof had been given of actual disturbance of a grave, and no proof had been given that any specific portion of the plot entered upon was set apart as a place of sepulture. No difficulty touching these points arises in the present case. The ground ploughed up was used as a burial-ground and graves were as a fact disturbed. It is still, however, contended that as Subhan entered on the property with the permission of the owner, therefore he could not be said to have committed trespass. The point is not free from difficulty, and, although I have taken time to consider my judgment and to consult reports, I can find no case in point, nor have I been referred to any. At the same time I am not prepared to construe the word “trespass” in the present section as it is defined in the case of criminal trespass under the Penal Code. In a section of this kind I see no reason for restricting the original meaning of the word, which covered any injury or offence done, and to couple it with entry upon property. The act of the petitioners was an act of injury to the place of sepulture, and it was an act which they must have known would have been likely to wound the feelings of others.

I do not consider it a case in which I should interfere. Let the record be returned.

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APPELLATE CIVIL.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Knox and Mr Justice Banerji.

RAJIT RAM AND OTHERS (DEFENDANTS) v. KATESAR NATH AND OTHERS
(PLAINTIFFS).

Civil Procedure Code, sections 52, 53, 578—Plaint—Verification of plaint—Result of defective verification—Amendment—Procedure.

If the verification of a plaint is discovered to be defective at any time whilst the suit is before the Court of first instance the plaint may be amended by the Court.

(1) I. L. R., 3 Mad., 178.