attachment and sale was in suspense will not, in our opinion, have the effect of preventing the decree-holders from exercising their right, now that the suit instituted by the objectors has been decided in their favour, to ask the Court to go on with the application for attachment and sale, which must be deemed to have been in suspense pending the decision of the suit. The order under appeal, however, cannot successfully be assailed, and we dismiss this appeal. Under the circumstances we make no order as to costs.

Appeal dismissed.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkitt.

SHAHBAZ KHAN AND OTHERS (PLAINTIFFS) *v.* UMRAO PURI AND OTHERS (DEFENDANTS).*

Public nuisance—Killing of cows by Muhammadans—Custom.

Under certain limitations the slaughtering of kine by Muhammadans is not illegal. It is the legal right of every person to make such use of his own property as he may think fit, provided that in so doing he does not cause real injury to others or offend against the law, even though he may thereby hurt the susceptibilities of others. The right of Muhammadans to slaughter kine is one to which they are legally entitled irrespective of custom, and it is only when they abuse the right that its exercise can be interfered with. *Muttumira* v. *Queen-Empress* (1), *Queen-Empress* v. *Byramji Edalji* (2), *Queen-Empress* v. *Zaki-ud-din* (3), *Queen-Empress* v. *Imam Ali* (4), *Romesh Chunder Sunnyal* v. *Hiru Mondal* (5) and *Hadjee Muzhur Ali* v. *Gundowree Sahoo* (6) referred to.

THIS was a suit brought by certain Muhammadan inhabitants of the village of Behta Goshain in the district of Budaun asking for a declaration of their right to slaughter cows within their own premises in the village for the purpose of daily food as well as for sacrifice under any limitation or otherwise. The circumstances which led to the institution of the suit are detailed in the judgment of the Court, but, briefly, the suit was instituted in consequence of certain Hindus having procured from the District Magistrate of Budaun an order prohibiting the slaughter of cattle altogether in the village of Behta Goshain. The defendants denied the right claimed by the plaintiffs and put forward

* First Appeal No. 247 of 1905 from a decree of L. H. Turner, District Judge of Shahjahanpur, dated the 22nd of July 1905.

(1) (1884) I. L. R., 7 Mad., 590.
(2) (1887) I. L. R., 12 Bom., 437.
(3) (1887) I. L. R., 10 All., 44.
(4) (1887) I. L. R., 10 All., 150.
(5) (1890) I. L. R., 17 Calc., 852.
(6) (1876) 25 W. R., Cr. R., 72.

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the case that there was no custom of slaughtering or sacrificing cows in their village, and that the plaintiffs were not competent to do anywhere in the village, any act which might be injurious or annoying to the defendants or repugnant to their religious feelings. They also denied that a suit of the kind was cognizable by a Civil Court. The suit was tried by the District Judge of Shahjahanpur, who found that the suit was cognizable by a Civil Court, but dismissed it upon the ground that the plaintiffs had failed to prove the existence of any such custom of slaughtering cows, either for food or sacrifice, as would entitle them to the decree they asked for. He further found that the plaintiffs could in no case be entitled to a declaration as against the world of their right to slaughter cattle. The plaintiffs appealed against the dismissal of their suit to the High Court.

Maulvi *Ghulam Mujtaba* and Maulvi *Muhammad Ishaq*, for the appellants.

Dr. *Tej Bahadur Sapru*, for the respondents.

STANLEY, C.J., and BURKITT, J.—The litigation which has led to this appeal might, we think, have been avoided by the exercise of some common sense and toleration. The question before us is whether the members of the Muhammadan community in the village of Behta Goshain in the district of Budaun have a right to slaughter cows within their own premises in the village for the purpose of daily food as well as for sacrifice under any limitation or otherwise. The village in question has a population of about 3,000, of whom less than a thousand are Muhammadans and the remainder Hindus. The defendants on the 16th of November 1903 applied to the District Magistrate of Budaun for an order that the Muhammadans in the village might be forbidden to slaughter kine in the village. A charge was thereupon preferred against the plaintiff Shabhaz Khan and others, purporting to be under section 107 of the Code of Criminal Procedure. On the 6th of December 1903, the District Magistrate passed an order prohibiting the slaughter of any cattle in the village. In his order he states as follows :—"It appears that the Hindus far outnumber the Muhammadans. I find there are other villages in this thana circle where slaughter never takes place and where it would be strongly objected to, at Bilsi itself,

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for instance. There is in fact a general understanding that it should only be allowed in places where it has been customary. For these reasons I forbid it in Behta Goshain." The following also appears in the order:—"As there is some ill-feeling over the matter, a copy of this order is to go to the Sub-Divisional Magistrate with a view to proceedings under section 107 of the Code of Criminal Procedure. If any action is taken the leaders of both sides should be bound over, but as the Muhammadans are in the wrong no security more than is absolutely necessary should be taken from the Hindus." Although this order purports to have been passed under section 107 it is clear that it was not an order under that section. Whether indeed it is anything more than mere *brutum fulmen* it is difficult to say, but, whatever it be, it is clear that the members of the Muhammadan community in the village of Behta Goshain cannot slaughter kine except at the risk of criminal proceedings. This order of the Magistrate was confirmed by the Commissioner on the 18th of February 1904.

The plaintiffs, feeling aggrieved at the prohibition of the exercise of what they conceived to be their legal rights, instituted the suit out of which this appeal has arisen.

The defendants took defence and denied the right claimed by the plaintiffs and put forward the case that there was no custom of slaughtering or sacrificing cows in their village, and that the plaintiffs were not competent to do anywhere in the village any act which might be injurious or annoying to the defendants or repugnant to their religious feelings. They also denied that a suit of the kind was cognizable in the Civil Court. The learned District Judge decided this last issue in favour of the plaintiffs, and we think rightly. The right denied was, as he said, a right of a substantial and valuable nature and not of the nature of a right to a mere dignity or privilege unconnected with fees or emoluments, such as were dealt with in the cases to which he referred. He, however, dismissed the plaintiffs' claim on the ground that they had failed to prove that they had continuously slaughtered kine for consumption at the slaughter-house in the village, or had continuously in observance of the sacrifice of kurbani killed kine on the Id-ul-Zuha in the slaughter-house or in their houses. The

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burden of proving such custom be laid upon the plaintiffs and dismissed the suit. He further found that the plaintiffs could in no case be entitled to a declaration as against the world of a right to slaughter cattle.

The appeal before us was then preferred, and the main contention advanced on behalf of the appellants is that the Court below was wrong in holding that the suit was based on custom alone; that independently of any custom every Muhammadan has a right to do all lawful acts with and upon his own property, and if any one interfere with the exercise of his legal rights to obtain from the Court a declaration of such rights; that the killing of cows on their own land not being an unlawful act, the plaintiffs were entitled to a decree irrespective of any custom; and further that the Court below was wrong in holding that the relief sought was claimed against the whole world and could not be granted as against the defendants alone.

Now upon the main question we should in the first place premise that the slaughter of cattle under certain circumstances would be a public nuisance, and it might also be obnoxious to rules and regulations lawfully promulgated for observance in a town or village, and further that kine must not be slaughtered in such places or manner as to be a nuisance or in contravention of any such rules and regulations. We may also say that it is in the highest degree desirable that the members of the different religious persuasions who are to be found in this country should, in the observance of their religious ceremonies as well as in the exercise of their lawful rights, show respect for the feelings and sentiments of those belonging to different persuasions, and avoid anything calculated to irritate the religious susceptibilities of any class of the community. But when a question in which the ordinary rights of property are involved comes before us, we must, before we can allow those rights to be infringed, endeavour to find the existence of some principle or rule of law justifying a ruling that the wishes or susceptibilities of individuals can be allowed to override such rights. Acts calculated to offend the sentiments of a class do not necessarily amount to a public nuisance. *Lex non favet votis delicatorum*—The law makes no allowance for the susceptibilities of the hyper-sensitive. In our judgment, then, we shall

deal simply with the broad question whether the right to slaughter kine on their own premises by Muhammadans in the village of Behta Gosbain is illegal. Turner, C.J., in the case of *Muttumira* v. *Queen-Empress* (1) observed :—"A public nuisance is defined by 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." In the case of *Queen-Empress* v. *Byramji Edalji* (2) an accused appealed against his conviction of an offence under section 268 of the Indian Penal Code in having cut up in his verandah meat which was to be cooked for a dinner party, exposing it to the sight of persons passing along the road, among whom were some Jains, whose temple was close by. The Magistrate had found the accused guilty of committing a public nuisance, on the ground that he had done an act by which several persons who were Jains were much annoyed, they having a great repugnance to the taking of life under any circumstances. The conviction was set aside by Birdwood and Parsons, JJ., who in the course of their judgment observed that the annoyance complained of " neither did nor could cause any sensible or real damage. It was an annoyance merely by reason of its hurting the feelings of the Jains, who have a repugnance to the killing of animals. It was thus of the nature of a sentimental grievance which could be felt only by persons holding certain views as to the killing of animals." In the case of *Queen-Empress* v. *Zaki-ud-din* (3) certain Muhammadans had been convicted on a charge of having for a religious purpose killed and cut up two cows before sunrise in a private compound partly visible from a public road, the killing of one cow being witnessed by a Hindu. It was held by Brodhurst, J., on an application for

(1) (1884) I. L. R., 7 Mad., 530. (2) (1887) I. L. R., 12 Bom., 437.
(3) (1887) I. L. R., 10 All., 44.

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revision of the order of conviction passed by the Magistrate under section 290 of the Indian Penal Code, that the circumstances proved did not amount to the commission of a public nuisance as defined in section 268 of the Code. Further, in the case of *Queen-Empress* v. *Imam Ali* (1) it was held by a Full Bench of this High Court that a cow was not "an object within the meaning of section 295 of the Indian Penal Code," and that the slaughter of a cow was not an offence under that section. The decision in *Romesh Chunder Sannyal* v. *Hiru Mondal* (2) is to the same effect.

In an earlier case in the Calcutta High Court, namely, *Hadjee Mazhur Ali* v. *Gundowree Sahoo* (3) the legality of an order passed by a Deputy Magistrate in a prosecution under section 521 of the Criminal Procedure Code then in force, in which he treated the slaughter of cattle as a nuisance and ordered its discontinuance within a private enclosure belonging to some Muhammadans, was considered. Kemp and Glover, JJ., held that, although the act complained of might be shocking to the prejudices of Hindus, it could not properly be regarded as a nuisance, and that at any rate, the act being done in a private place and not on a thoroughfare, it could not be dealt with under section 521. In the course of their judgment the learned judges say "that Hindus should object with all their strength to the killing of cows in an enclosure within a few yards of their dwelling is natural enough, but this would not make such killing a nuisance in the legal sense of the term. The animals were sacrificed within a walled enclosure; no one could see the process from the outside, and it is not alleged that the sacrifices were made occasion for noisy or riotous demonstration which could affect the comfort of the neighbours. It was simply and solely a matter of religious feeling. The complainant had no objection to other animals being sacrificed within the enclosure in question; he even suggested that the petitioners might kill sheep or camels there if they liked—what he objected to was the slaughter of the sacred cow."

(1) (1887) I. L. R., 10 All., 150. (2) (1890) I. L. R., 17 Calc., 852.
(3) (1876) 25 W. R., Cr. R. 72.

The same question came before a Bench of this Court in Second Appeal No. 1023 of 1881 in the case of *Raghubar Dayal* v. *Ameeran Jahan* (unreported). In that case the respondent Ameeran Jahan brought a suit for a declaration of her right to offer a cow in sacrifice annually on certain days within the enclosure of her house, and, notwithstanding an order of the Deputy Magistrate forbidding the sacrifice, a decree was passed in her favour whereby the defendants were restrained from interfering with the sacrifice of an Id-ul-zuha victim of any kind on the premises of the plaintiff during the 10th, 11th and 12th days of the month of *Zilhig*, provided that the sacrifice should be completed within the inner quadrangle of the house and that from the commencement to the completion of the sacrifice the outer doors of the house should be kept closed, and provided also that the decree should have no effect as against any rule or regulation of the Municipality of Shahjahanpur, the town in which the parties resided, which might thereafter be promulgated regarding Id-ul-Zuha sacrifices in general. The decision of the learned officiating Judge was affirmed by Brodhurst and Tyrrell, JJ., on the 4th of May 1882.

In view of these authorities it appears to us indisputable that under certain limitations the slaughtering of kine by Muhammadans is not illegal. It is the legal right of every person to make such use of his own property as he may think fit, provided that in doing so he does not cause real injury to others or offend against the law, even though he may thereby hurt the susceptibilities of others. The learned District Judge was wrong in our judgment in holding that the *onus* lay upon the plaintiff appellants of proving the existence of a custom allowing the slaughter of kine in their village. The right claimed is one to which they are legally entitled irrespective of custom, and it is only when they abuse the right that its exercise can be interfered with.

We therefore allow the appeal, set aside the decree of the Court below and give a decree to the plaintiffs declaring that they have the right which they claim, namely, to slaughter cows in the *mazbah* belonging to them in Behta Goshain for daily consumption as also for consumption at festivals, and in their

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houses for the purpose of sacrifice, provided that in the exercise of such right they do not commit a nuisance or offend any rule or regulation lawfully promulgated and applicable to that village. We also grant an injunction restraining the defendants from interfering with the rights of the plaintiffs appellants as above declared. The defendants respondents must pay the costs of this appeal as also the costs in the Court below.

Appeal decreed.

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February 26.

Before Mr. Justice Banerji and Mr. Justice Richards.

THAKUR PRASAD AND ANOTHER (PLAINTIFFS) *v.* GAURIPAT RAI AND ANOTHER (DEFENDANTS).*

Act No. VIII of 1890 *(Guardians and Wards Act), sections* 29 *and* 31*—Guardian and minor—Mortgage of minor's property to secure a loan sanctioned by the Court—Interest.*

In all cases where sanction is given for the raising of loans on the security of the property of minors, it is the duty of the Judge granting sanction to specify in his order of sanction not only the amount to be raised and the property to be mortgaged, but also the rate of interest, or at least the maximum rate of interest, at which the loans are to be raised. If nothing is said in the order as to the rate of interest, the lenders are entitled only to a reasonable rate of interest on the moneys advanced. *Ganga Pershad Sahu* v. *Maharani Bibi* (1) followed.

THE facts which gave rise to this appeal were as follows:—

The suit was one for sale upon two mortgages, dated respectively the 14th and the 18th of June 1897. The mortgages were executed by one Sripat Rai as the guardian of the defendants respondents Gauripat Rai and Kamlapat Rai with the sanction of the District Judge. The amount of the first mortgage was Rs. 1,400 and that of the other Rs. 1,800 and they carried interest at the rate of Re. 1-8 per cent. per mensem, that is, Rs. 18 per cent. per annum. The learned judge in granting sanction for the raising of the loans permitted the guardian Sripat Rai to raise as much as he could by hypothecating a one anna share, though he directed the guardian not to spend more than Rs. 1,100 on the marriage of Gauripat Rai, the first respondent for the expenses of which the loan was to be raised.

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*First Appeal No. 129 of 1906 from a decree of Achal Bihari, Subordinate Judge of Gorakhpur, dated the 8th of February 1906.

(1) (1884) I. L. R., 11 Calc., 379.