

1893

THE
QUEEN-
EMPRESS
v.
KISHUNWA.

arms shall always be on the person of the particular man. If, on being required to show his license, the bearer of arms is prepared to produce it on being given a reasonable opportunity to get it, and such license exists, he should not be prosecuted. The production of the license at the trial is a sufficient answer to the charge of infringing the Arms' Act and to show that the prosecution was without proper consideration.

It has also been said in support of the order that because the license was given for one retainer to carry arms, the arms could not be carried except in the presence of the master, the actual licensee. This is a very narrow construction of the terms of the license which cannot be reasonably placed upon it. The reasonable construction is that any retainer can carry the particular arms with the permission of his master. We further observe that the award of a portion of the fine to the Police officer who arrested the accused was injudicious as encouraging interference without sufficient cause. When the Police officer required the accused to produce the license for the sword he was carrying, and was told that he had one, not on his person but at home, the Police officer, if he had any doubt on the subject, should have accompanied the accused to his house to satisfy himself by seeing it.

The conviction and sentence must be set aside, and the fine, if paid, refunded.

H. T. H.

Conviction quashed.

APPELLATE CIVIL.

Before Mr. Justice Norris and Mr. Justice Macpherson.

1892
December 16.

RAM GOPAL BYSAOK AND OTHERS (PLAINTIFFS) v. NURUMUDDIN
alias NOOR MAHAMED MUNDUL (DEFENDANT).*

Fishery, right of—Jalkar—Immoveable property—General Clauses Consolidation Act (I of 1868), s. 3—Transfer of Property Act (IV of 1882), s. 106.

A *jalkar*, or right of fishery, as being a benefit arising out of land covered by water, comes within the definition of "immoveable property" set out in

* Appeal from Appellate Decree No. 39 of 1892, against the decree of Baboo Krishto Chunder Dass, Subordinate Judge of Pubna and Bogra, dated the 25th of August 1891, reversing the decree of Baboo Lal Behary Bhaduri, Munsiff of Nowabgunge, dated the 30th of November 1889.

the General Clauses Act (I of 1868), and is therefore immoveable property under section 106 of the Transfer of Property Act (IV of 1882).

1892

RAM GOPAL
BYSACK
v.
NURUMUD-
DIN.

THIS was a suit to recover possession of a *jalkar* or right of fishery. The plaintiffs, the *patnidars* under one Radha Mohun of a certain *mahal*, alleged that the defendant held the *jalkar* by virtue of a lease from Radha Mohun for a certain period which had expired, and that, as he refused to give up possession, they brought the suit to eject him. The defendant pleaded that he had held possession of the *jalkar*, not under a temporary lease, but as *kaimi ijaradar*, and that he was entitled to notice to quit.

The Munsif held that the defendant was a mere tenant-at-will, holding at the pleasure of the landlord, and that notice to quit was not necessary, and gave the plaintiff a decree for possession.

The Subordinate Judge held that the defendant had no permanent interest in the *jalkar*, but that he had such a holding as made a notice to quit necessary before he could be ejected. He observed:—

“It has been contended by the plaintiffs that *jalkar* is not ‘immoveable property.’ I think the contention is not valid. The pleader for the plaintiffs contended that it is an incorporeal right, and that the latter portion of section 106 of the Transfer of Property Act does not apply. In the case of *Parbutty Nath Roy Chowdhry v. Mudho Paroe* (1) it was held that *jalkar* right is not an easement, but an interest in immoveable property: the defendant’s *jalkar* right, therefore, falls within the scope of the latter portion of section 106 of the Transfer of Property Act. Moreover, in a Full Bench case, *Rajendronath Moolhopadhyaya v. Bassidar Ruhman Khondkar* (2), the High Court have held that a ryot whose tenancy is determinable at the will of the landlord cannot be ejected without notice. Following the broad principle laid down in that case, I think a notice is necessary, though the tenure is a *jalkar* one. As no notice has been served on the defendant, the plaintiffs’ case must fail.”

The Subordinate Judge accordingly dismissed the suit.

The plaintiffs appealed to the High Court.

Baboo Jassoda Nandan Paramanick for the appellants.

Baboo Kishory Lal Sarkar for the respondent.

(1) I. L. R., 3 Calc., 276; 1 C. L. R., 592.

(2) I. L. R., 2 Calc., 146.

1892 The judgment of the Court (NORRIS and MACPHERSON, JJ.) was
 as follows :—
 RAM GOPAL
 BYSACK
 v.
 NURUMUD-
 DIN.

The only question argued in this second appeal by the learned pleader for the appellant is that the Lower Appellate Court has erroneously held that the *jalkar* right in dispute between the parties in this suit was immoveable property within the meaning of section 106 of the Transfer of Property Act.

We think that the decision is a correct one. We are of opinion that this *jalkar* right is immoveable property within the definition of immoveable property as set out in the General Clauses Act ; that it is a benefit to arise out of land covered by water ; and this conclusion we think is justified by the expression of opinion of at least three of the learned Judges who were parties to the Full Bench decision of *Fudu Jhala v. Gour Mohun Jhala* (1).

The appeal therefore fails and must be dismissed with costs.

Appeal dismissed.

J. V. W.

CRIMINAL REVISION.

Before Mr. Justice Prinsep and Mr. Justice Ameer Ali.

1893 KHERODA PROSAD PAUL (PETITIONER) v. THE CHAIRMAN OF
 January 27. THE HOWRAH MUNICIPALITY (OPPOSITE PARTY).*

*Bengal Municipal Act (Bengal Act III of 1884), ss. 44, 45 and 353—
 Powers of Chairman, delegation of—Prosecution for obstructing drain.*

The proviso to section 45 of the Bengal Municipal Act, 1884, cannot be considered as altogether overriding the body of the section, and relates only to specific acts in which an express or implied consent may have been given or held to have been given. It cannot be held to apply to a general authority, verbally given by a Chairman to a Vice-Chairman, to institute prosecutions under the Act, as such power can only, under the body of the section, be delegated by a written order.

* Criminal revision, No. 574 of 1892, against the order passed by G. A. Grierson, Esq., District Magistrate of Howrah, dated the 17th of September 1892, affirming the order passed by the Bench of Honorary Magistrates of Howrah, dated the 10th of August 1892.

(1) I. L. R., 19 Calc., 544.