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been argued. In the present case the plaintiff is asking for a declaration to safeguard his own rights as a reversioner to Dana. His right is a subsisting present one. The test is the present capacity of the plaintiff to take possession if the possession were to become vacant by the death of Dana and he certainly would be entitled to immediate possession of his share.

For the above reasons I accept the appeal, set aside the decree of the lower Appellate Court and grant the appellant the relief claimed with costs throughout.

Appeal accepted.

APPELLATE CIVIL.

Before Mr. Justice Bevan-Petman.

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June 7.

JAWAND SINGH AND OTHERS (DEFENDANTS) *Appellants,*

versus

MUHAMMAD DIN AND OTHERS (PLAINTIFFS) *Respondents.*

Civil Appeal No. 2936 of 1918.

Specific Relief Act, I of 1877, section 55,—injunction—suit by Muhammadans to prevent the Hindu defendants from interfering with the calling of the azan at a mosque by blowing conches, &c.—Nuisance, explained.

In a village occupied by about 600 Hindus and a little over 100 Muhammadans there are 2 mosques—One just outside the *abadi* unconnected with the present case and one inside the *abadi* erected about 200 years ago. This had fallen out of repair and was repaired within recent years and was then used as a school and for other semi-religious purposes, but more recently was used for prayers. The Hindus objected to the calling out of the *azan*, and when it was called out and at the time of subsequent prayer the Hindus blew conches, beat drums and created noises and disturbances. The Muhammadans then brought the present suit for an injunction to restrain the Hindus from interfering with the calling out of the *azan* and praying in the mosque. It was found as a fact that the object of the defendants in blowing conches was to stop the calling of the *azan*.

Held, that the Muhammadans had an inherent right to call out the *azan* from the mosque.

Held also, that the noises made by the defendants collectively and continuously at the time of calling out the *azan*, for the sole purpose of frustrating the object of the call, constituted a nuisance, and it was no answer to the suit that the little noise made by each of the defendants personally did not amount to a nuisance.

Lambton v. *Mellish* (*1*), referred to, also Kerr on Injunctions, 5th edition, pages 156 and 213.

Held further, that plaintiffs were entitled to the injunction prayed for because the nuisance caused by the defendants was not a reasonable exercise of their rights and was an infringement of the rule of "give and take; live and let live."

Broder v. *Saillard* (2) and *Christie* v. *Davey* (3), referred to.

Second appeal from the decree of A. H. Brasher, Esquire, District Judge, Amritsar, dated the 31st May 1918, affirming that of A. Seymour, Esquire, dated the 28th February 1918, decreeing the claim.

BALWANT RAI, for Appellants.

SHUJA-UD-DIN, for Respondents.

BEVAN-PETMAN, J.—Several questions of interest and possibly of importance to the Muhammadan community arise in this second appeal, and although the facts found are such that it is reasonable to suppose that, owing to religious antagonism between Hindus and Muhammadans, similar occurrences have taken place in the past, there are apparently no published Indian decisions directly in point.

The facts necessary to be stated are that in a village occupied by about 600 Hindus and a little over 100 Muhammadans there are two mosques. One, unconnected with the present case, is situate just outside the *aladi*, and the other, with which this case is concerned, is an ancient building erected about 200 years ago inside the village. It appears that the ancient mosque fell out of repair and in recent years has been repaired and was used as a school and for other semi-religious purposes but more recently it was used for prayers. The Hindus objected to the calling out of the *azan*, a serious riot took place between the Hindus and Muhammadans and criminal proceedings were instituted but, on the intervention of the District Magistrate,

(1) (1894) 3 Ch. 163. (2) (1876) 2 Ch. D. 692.
(3) (1893) L. R. 1 Ch. 316.

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the dispute was ended for the time being, by a compromise, to which two of the present plaintiffs were parties, whereby it was agreed that the Muhammadans should pray in the ancient mosque but that there should be no calling out of the *azan*. This agreement, whether for good reasons or not, has not been observed by the Muhammadans with the result that the defendant-appellants and other Hindus blew conches, beat drums and generally created noises and disturbances at the time of the calling out of the *azan* and at the time of the subsequent prayers. Three of the Muhammadans instituted a suit for an injunction against the defendants restraining them from interfering with the calling out of the *azan* and praying in the ancient mosque. The Hindus denied that the building was a mosque and that the plaintiffs had any right to pray there, and it was also denied that they had interfered with the exercise of religious ceremonies by the plaintiffs. The first Court granted the injunction and the lower Appellate Court held that the building continued to retain its character as a mosque, that the defendants had taken part in preventing the use of the building as a mosque and more particularly as regards the calling out of the *azan*, that the conches had not been blown in connection with any religious ceremony of the Hindus, that the acts complained of had been committed solely for the purpose of stopping the call of the *azan* and that the defendants were not entitled to create a disturbance while the *azan* was being called out by acts of the nature complained of and therefore dismissed the appeal.

On behalf of the appellants it is contended that the compromise made by the Muhammadans bars the present suit, but it is unnecessary to discuss the effect of that compromise because Muhammad Bakhsh, one of the plaintiffs, was no party to the compromise and it is not shown, or argued, that such an arrangement has any binding legal effect. The next contention is that the plaintiffs have no inherent right to have the *azan* called out and that the exercise of that right for two years only is not sufficient to create the right. It was suggested that 20 years might be considered sufficient to create the right by way of an easement and it was pointed out that the Hindu defendants had

brought no suit to restrain the calling out of the *azan*. I do not think this argument can be taken seriously. It must be conceded that there is an inherent right to call out the *azan* from a mosque. It has nothing to do with the subject of easements. It has not been claimed, or urged, that the calling is itself a nuisance, and it is obvious that the objection of the Hindus is not to the noise of the call but to its subject matter. Apart from a mosque any person has the right to call out from his property provided that the noise he makes does not become a nuisance by reason of its continuity and that the subject matter of the call does not constitute an offence.

It is clear that the conches were not blown at a temple, or *gurdwara*, in pursuance of any religious ceremony, and that the noises were maliciously made at the times of calling out of the *azan* for the sole purpose of frustrating the object of the call, as found by the lower Appellate Court, and the real point for consideration is whether the acts mentioned constitute a nuisance and, if so, whether the plaintiffs are entitled to the injunction prayed for.

Counsel have cited no authority on the subject. As pointed out in Kerr on Injunctions, 5th Edition, page 203, the proposition that mere noise alone will, on a proper case of nuisance being made out, be a sufficient ground for an injunction, is well established. The inconvenience caused is not one of a trifling nature of which no reasonable man should complain, nor is the nuisance one of a temporary or occasional character. Though it may be said that the blowing of conches, or beating of drums, on isolated occasions of the calling out of the *azan* would not amount to such a nuisance as would necessitate the interference of a Court by injunction, yet, by their continuance and constant repetition, a sufficiently substantial case for such interference would be made out. There is every likelihood of their continuance. Again, as pointed out in Kerr on Injunctions, page 156, when a man, who is entitled to a limited right, exercises it in excess so as to produce a nuisance and the nuisance cannot be abated without obstructing the enjoyment of the right altogether the exercise of the right may be entirely stopped until

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means have been taken to reduce it altogether within its proper limits. The Hindu defendants have not an unlimited right to blow conches and beat drums as claimed by them in this Court, nor can each of them plead that the little noise made by him personally at only one time of the day, or even at intervals of days, but at the time of the calling out of the *azan*, does not amount to a nuisance. The defendants had a common intention and *Lambton* v. *Mellish* (1) is an authority for holding that the acts of two or more persons may, taken together, constitute such a nuisance that the Court will restrain all from doing acts constituting the nuisance although the annoyance occasioned by the act of any one of them, if taken alone, would not amount to a nuisance. That case related to the nuisance caused by a number of barrel organs.

It has been established by a current of the highest English authorities "that what makes life less comfortable and causes sensible discomfort and annoyance is a proper subject for injunction," whilst certain decisions show that an injunction may be issued even where the defendant had acted reasonably. Such a case is *Broder* v. *Saillard* (2) where it is explained that it is no answer to say that the defendant is only making a reasonable use of his own property and the law is stated as follows:—"I take it the law is this that a man is entitled to the comfortable enjoyment of his dwelling house. If his neighbour makes such a noise as to interfere with the ordinary use and enjoyment of his dwelling house so as to cause serious annoyance and disturbance the occupier of the dwelling house is entitled to be protected from it." The present case is a much stronger one for the issue of an injunction because the nuisance caused by the Hindu defendants is not a reasonable exercise of their rights. Their actions break what Lord Bramwell has called "the rule of give and take; live and let live."

The judgment in *Christie* v. *Davey* (3) is, I think, very pertinent to the present case. In that case teacher of music, living in a house, gave lessons in

(1) (1894) 3 Ch 163. (2) (1876) 2 Ch. D. 692 (701).
(3) (1893) L R. 1 Ch. 316.

music extending over seventeen hours in a week, there was, also in the same house, practising on the piano and violin and singing and musical entertainments sometimes extended to eleven at night. These facts were held not to constitute a legal nuisance of which the occupier of the adjoining house was entitled to complain, but an injunction was granted to restrain the occupier of the adjoining house, who had asserted, as the defendants assert here, that he had a perfect right to make the noises complained of, from causing any sounds or noises in his house to vex or annoy the occupier of the first house, the Court being satisfied that he had been making noises on musical instruments and otherwise maliciously for the purpose of annoying the occupier of the first house. A similar state of things exists in the present case. The acts of the Muhammadans objected to by the Hindus do not constitute a legal nuisance of which they can rightly complain, whilst the acts of the Hindus are maliciously done for the sole purpose of annoying and obstructing the Muhammadans in their religious observances and ceremonies.

The powers of the Courts in India under the Specific Relief Act are no less than the powers of the Courts in England, whilst in some respects such powers are wider. I hold, therefore, that the plaintiffs-respondents are entitled to an injunction to restrain the defendants-appellants from committing the nuisance complained of. I am, however, not satisfied with the form of the injunction granted by the lower Courts, which is that the defendants do not henceforth prevent the plaintiffs from using the building in suit as a mosque and from praying therein and from calling out of the *azan* therein and I will amend the same.

For the above reasons I dismiss the appeal on the merits with costs, but technically accept the same and amend the decree of the lower Appellate Court by granting the plaintiffs an injunction restraining the defendants from blowing conches, beating drums and otherwise making noises which interfere with, or interrupt, the use of the mosque by the plaintiffs as a place of worship according to Muhammadan usage or custom, including the calling out of the *azan*, but this injunction shall not restrain the defendants from such acts

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when done in connection with their own religious ceremonies, social events or other necessary temporary causes and when the time is *not* maliciously and intentionally selected to clash with the religious observances and worship of the plaintiffs at the said mosque, though in fact such acts may, on occasions, interrupt, or interfere, with such observances and worship.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Dundas,

1919.

June 11.

MUSSAMMAT INDI AND ANOTHER (DEFENDANTS) *Appellants,*

versus

(1) GHANIA (PLAINTIFF)
(2) GANDU (DEFENDANT) } *Respondents.*

Civil Appeal No. 481 of 1919.

Guardianship—to minor girl—mother or grandmother—right of selecting bridegroom—Hindu Law.

Held, that under Hindu Law the mother is, after the father, the natural and legal guardian of her minor daughter and she does not lose her right by remarriage where such remarriage is recognised as valid by custom.

Mussammat Nur Bibi v. *Mussammat Mehran* (1) and *Ganga Pershad* v. *Jhalo* (2), referred to—also Mayne's Hindu Law, 8th edition, page 276, and Ram Krishna Hindu Law, volume II, pages 406-407.

Held also, that the mother or a maternal grandmother has a preferential title to the guardianship of a girl to a paternal grandfather.

Mussammat Ambo v. *Ganga Sahai* (3), *Mussammat Fatima* v. *Mussammat Rani* (4), and *Bindo* v. *Sham Lal* (5), referred to.

Held further, that Hindu Law does not confer on the grandfather a right to dispose of his granddaughter in marriage in opposition to the wishes of the mother, but gives the latter a preferential right to select a bridegroom.

(1) 44 P. R. 1887.
(2) (1911) I. L. R. 38 Cal. 862.
(3) (1913) 18 Indian Cases 141.
(4) (1915) 28 Indian Cases 507.
(5) (1906) I. L. R. 29 All. 210.