In my opinion, there is ample evidence to corroborate the story of the approver and there can be no doubt that the appellant has been rightly convicted of the murder of Said Wali.

I would accordingly dismiss this appeal and confirm the sentence of death.

SCOTT-SMITH J.—I concur in the proposed order and in the interpretation of section 288 of the Code of Criminal Procedure.

A. N. C.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Mr. Justice LeRossignol and Mr. Justice Fforde.

THE CROWN—Appellant,

versus

NISAR MUHAMMAD KHAN—Respondent.

1925

Feb. 5.

Criminal Appeal No. 980 of 1924.

Indian Penal Code, 1860, sections 268, 290—Public nuisance—Encroachment upon a public road, however small.

The respondent was prosecuted for an offence under section 290, Indian Penal Code, on the ground that he had committed a public nuisance by constructing a *verandah* upon a strip of a public road. The trial Magistrate acquitted the respondent on the ground that, inasmuch as the width of the road in front of the respondent's building was still greater, in spite of the encroachment, than its width at other points, it could not be said that the encroachment caused any obstruction, etc., to the public.

Held, that section 268 of the Indian Penal Code defines a public nuisance not merely as any act or illegal omission which causes any common injury, obstruction, etc. to the public, but also an act or illegal omission which must necessarily cause injury, obstruction, etc. to persons who may have occasion to use any public right. And, therefore, if any portion, however small, of a public street is encroached upon,

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the inevitable result must be to cause obstruction to persons who may have occasion to use the highway, for the public is entitled to use every inch of a road that has been dedicated to the public.

Held consequently, that the accused was guilty of an offence punishable under section 290 of the Code.

Jugal Das v. *Queen-Empress* (1), dissented from. *Queen-Empress* v. *Virappa Chetti* (2), and *In the matter of the petition of Umesh Chandra Kar* (3), followed.

Appeal from the order of Pandit *Devi Dayal Joshi, Magistrate, 1st Class, Rohtak, dated the 6th September 1924, acquitting the respondent.*

DES RAJ SAWHNEY, Public Prosecutor, for Appellant.

SHAMAIR CHAND, for Respondent.

JUDGMENT.

LEROSSIGNOL J.—The respondent in this case was prosecuted for an offence under section 290, Indian Penal Code, on the ground that he had committed a public nuisance by encroaching upon the public road in the town of Bahadargarh by the construction of a *verandah* upon a strip of it 27 feet long by 4 feet broad.

The respondent set up three defences, namely, (1) that the building belonged to his daughter's son and not to him; (2) that the *verandah* constituted no encroachment on the public road; and (3) that, even if there was an encroachment, such an encroachment, inasmuch as no danger, injury, annoyance or obstruction to the public was caused by it, did not constitute an offence under section 290 of the Code.

The learned Magistrate rejected, and quite rightly as it appears, the first two defences, but has acquitted the respondent on the ground that, inasmuch as the

(1) (1893) I. L. R. 20 Cal. 665. (2) (1896) I. L. R. 20 Mad. 433.
(3) (1887) I. L. R. 14 Cal. 656.

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width of the road in front of the respondent's building is still greater in spite of the encroachment than its width at other points, it cannot be said that the encroachment must necessarily cause obstruction.

From the acquittal this appeal has been preferred by the Crown.

The Magistrate supports his finding on the decision in *Jugal Das* v. *Queen-Empress* (1) where it was held that there must be some evidence that such encroachment causes one of the results specified in section 268. With all respect I venture to dissent from that view. Section 268 defines a public nuisance not merely as any act or illegal omission which causes any common injury, etc., to the public, but also an act or illegal omission which must necessarily cause injury, obstruction, etc., to persons who may have occasion to use any public right.

It follows from this definition that, if any portion, however small, of a public street is encroached upon, the inevitable result must be to cause obstruction to persons who may have occasion to use the highway, for the public is entitled to use every inch of a road that has been dedicated to the public. The encroachment, therefore, upon any portion of a public highway must necessarily obstruct the public from using the area encroached upon; and it seems to me that in the Calcutta ruling the second part of the definition of what constitutes a public nuisance has been overlooked.

In my opinion, the ruling published as *Queen-Empress* v. *Virappa Chetti* (2) and that published as *In the matter of the petition of Umesh Chandra Kar* (3) lay down the correct law on the subject and,

(1) (1893) I. L. R. 20 Cal. 665. (2) (1896) I. L. R. 20 Mad. 433.
(3) (1887) I. L. R. 14 Cal. 656.

agreeing with the views expressed in those decisions, I hold that the offence under section 290, Indian Penal Code, has been established against the respondent.

I would accept the appeal, set aside the order of acquittal and, convicting the respondent under section 290, Indian Penal Code, sentence him to pay a fine of Rs. 100. In default he shall undergo one month's simple imprisonment.

FFORDE J.—I agree.

Per Curiam—The appeal is accepted, and the respondent is convicted and sentenced as above set forth.

A. N. C.

Appeal accepted.

LETTERS PATENT APPEAL.

1925

Feb. 6.

Before Sir Shadi Lal, Chief Justice and Mr. Justice LeRossignol.

KAURA AND ANOTHER (PLAINTIFFS), Appellants,

versus

RAM CHAND ETC. (DEFENDANTS), Respondents.

Letters Patent Appeal No. 217 of 1923.

Indian Limitation Act, IX of 1908, article 14—Suit for redemption of a mortgage brought more than one year after the Collector's order under the Redemption of Mortgages (Punjab) Act, II of 1913, adverse to plaintiffs—Limitation.

A Single Bench of the High Court held that the present suit for redemption of a mortgage of 1878 was barred under article 14 of the Limitation Act, as no suit had been brought within one year to set aside the order of the Collector under Punjab Act II of 1913, holding that the mortgage had ceased to exist and redemption was barred.

Held, that what has to be regarded is the true effect of the suit, not its formal or verbal description, and applying this principle, the suit referred to in section 12 of Punjab Act II of 1913, as " a suit to establish his rights in respect of the