

1876

KONWAR
DOORGANATH
ROY
v.
RAM CHUNDER
SEN.

reimburse the *bonâ fide* purchasers so much of the money as had been legitimately advanced.

Their Lordships, in making these last observations, do not wish it to be understood that this is the case which appears upon the facts; they make these observations with reference only to the pleadings, and to indicate that, supposing that technical objection could have been made to the pleadings, it still would not have availed the appellant in the present appeal, because even so his suit in the present form could not have been sustained.

On the whole, therefore, their Lordships will humbly advise Her Majesty to affirm the judgment of the High Court, and to dismiss this appeal with costs.

Appeal dismissed.

Agents for the Appellant: Messrs. *Watkins* and *Lattey*.

Agents for the Respondents: Messrs. *Rogers* and *Judge*.

APPELLATE CRIMINAL.

Before Mr. Justice Markby and Mr. Justice Prinsep.

1877
May 4.

THE EMPRESS *v.* CHARU NAYIAH.*

Criminal Trespass—Infringement of exclusive right of fishery in public river—Penal Code, s. 447.

The unlawful infringement of a right of exclusive fishery in a part of a public river is not an offence which can be brought within the definition of criminal trespass in the Indian Penal Code.

THIS case was referred to the High Court by the Civil and Sessions Judge of Backergunge, under s. 296 of the Criminal Procedure Code.

The accused Charu Nayiah, together with several other fishermen, were charged with having thrown their nets and fished in a certain river in which the complainant claimed an exclusive

* Criminal Reference, No. 31 of 1877.

right of fishery. The case was tried in the first instance by the Deputy Magistrate who convicted the prisoner Charu Nayiah under s. 447 of the Indian Penal Code of criminal trespass, and sentenced him to pay a fine of Rs. 50, or in default to suffer simple imprisonment for one month. The Magistrate of the district upheld the order of the Deputy Magistrate.

The Civil and Sessions Judge referred the case to the High Court, on the ground that the offence alleged to have been committed by the prisoner did not fall within the definition of criminal trespass in the Penal Code. The Sessions Judge, in his letter of reference, called the attention of the High Court to the following cases: *Khetter Nath Dutt v. Indro Jalia* (1), *Sristeedhur Paroe v. Indrobhoosun Chuckerbutty* (2), *Kashi Chunder Dass v. Hurkishore Dass* (3), *Bhusun Parui v. Denonath Banerjee* (4).

The judgment of the Court was delivered by

MARKBY, J.—We agree with the Sessions Judge in thinking that the prisoner was wrongly committed. It was proved that the prisoner fished in a public river at a place where the prosecutor had the exclusive right of fishery. The Deputy Magistrate held that this constituted criminal trespass; but we do not think so. The law provides that whosoever enters into or upon property in the possession of another with a certain intent, is guilty of criminal trespass. But though a fishery is property, we do not think that a man who fishes in a public river enters upon property in the possession of another, though he may have no right to fish there. The river upon which the prisoner entered being a public one was not in the exclusive possession of any one, and a right of fishery is not property of such a nature as that a man who unlawfully infringes that right can be said to enter upon property in the possession of another within the meaning of the section.

Conviction quashed.

(1) 16 W. R., Cr., 78.

(3) 19 W. R., Cr., 47.

(2) 18 W. R., Cr., 25.

(4) 20 W. R., Cr., 15.