

1887 sentimental grievance, which could be felt only by persons holding certain  
 DEC. 1. views as to the killing of animals.  
 ——— In the case of *Mutumira v. Queen-Empress* (1) it was held that s. 268  
 REVI- of the Penal Code was not intended to apply to acts and omissions  
 SIONAL calculated to offend the sentiments of a class, and that the placing of a  
 CRIMINAL. Mahomedan symbol in the neighbourhood of a Hindu temple is not a  
 12 B. 437. public nuisance, though likely to cause serious annoyance to the Hindu  
 public. In the present case, we are also of opinion that the act of the  
 applicant does [440] not constitute an offence punishable under s. 290 of  
 the Indian Penal Code. We reverse the conviction and sentence, and direct  
 that the fine be returned.

*Conviction and sentence reversed.*

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APPELLATE CRIMINAL.

*Before Mr. Bayley (Acting Chief Justice), Mr. Justice Birdwood and  
 Mr. Justice Parsons.*

QUEEN-EMPRESS v. GANU SONBA AND ANOTHER.\*  
 [2nd February, 1888.]

*Evidence Act (I of 1872). s. 132—Protection given to answers which a witness is compelled to give—“Compelled to give”—Meaning of the words—Indian Oaths’ Act (X of 1873), s. 14.*

Section 132 of the Evidence Act (I of 1872) makes a distinction between those cases in which a witness voluntarily answers a question and those in which he is compelled to answer, and gives him a protection in the latter of these cases only. Protection is afforded only to answers which a witness has objected to give or which he has asked to be excused from giving, and which then he has been compelled by the Court to give.

*The Queen v. Gopal Doss* (2) followed.

*Per BIRDWOOD, J.* (dissenting).—Section 132 of the Evidence Act (I of 1872) read with s. 14 of the Indian Oaths’ Act (X of 1873) compels a witness to answer criminal questions, and he is protected by the proviso to s. 132 from a criminal prosecution for any offence of which he crimines himself directly or indirectly by his answer, except a prosecution for giving false evidence by such answer. It is not only when a witness asks to be excused from answering a criminal question, and his request is refused, that he is “compelled to give” the answer within the meaning of the proviso. The compulsion is operative whether he asks to be excused or gives the answer without so asking.

[F., 21 C. 392 (399); R., 13 B. 376 (381); 13 B. 600 (608); Rat. Unr. Cr. Cas. 776 (778); 2 S.L.R. Cr. 25 (26).]

APPEALS against the convictions and sentences recorded by Shripat B. Thakur, Acting Sessions Judge at Ratnagiri, in the case of *Queen Empress v. Sarasvatibai and others*.

The facts of this case, so far as they are material for this report, are as follows:—

One Sabaji Baji obtained a decree against Kesu Ram Laka for possession of three *thikans*, and in execution obtained possession of one of the *thikans* on the 27th June, 1887. Thereupon Kesu’s sister, Sarasvatibai, applied under s. 332 of the Code of Civil Procedure (Act XIV of 1882),

\* Criminal Appeals Nos. 174 and 180 of 1887.

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alleging that the *thikan* in question [441] belonged to her, that she had purchased it from her father Ram Bhagvan under a sale-deed dated 2nd November, 1875, that she had since been in possession, and that she had been illegally dispossessed in execution of Sabaji's decree.

The Subordinate Judge made an enquiry into the matter. In the course of the enquiry the accused Ganu Sonba and Bhikaji Hari were examined as witnesses for Sarasvatibai. They deposed that the sale-deed of the 2nd November, 1875, had been executed by Ram Bhagvan in their presence, and that they had both attested it. The Subordinate Judge, however, disbelieved this evidence, found the sale-deed to be a fabrication, and committed Sarasvatibai and her accomplices—Kesu Ganu, Bhikaji and Tukia—to the Court of Session to take their trial, the first two on a charge of forgery and the others for abetment of forgery.

All the accused were tried together. They pleaded not guilty. The Acting Sessions Judge found the sale-deed in question to be a forgery, and convicted Sarasvatibai and Kesu under ss. 467 and 471 of the Indian Penal Code. As regards the accused Ganu and Bhikaji, he admitted in evidence their depositions recorded by the Subordinate Judge in the summary inquiry, and solely on the strength of these depositions convicted both of abetment of forgery under ss. 109 and 467 of the Indian Penal Code, and sentenced them each to one year's rigorous imprisonment.

Against this conviction and sentence both Ganu and Bhikaji appealed to the High Court.

There was no appearance either for the accused or for the Crown.

#### JUDGMENT.

BIRDWOOD, J.—The conviction of the appellants rests upon the depositions made by them in an execution proceeding, in which they admitted their attestations of the deed of sale, which is proved by the evidence in the present case to be a forgery. In their examinations in the present case they deny their attestations; and if their depositions in the former case are excluded from consideration, there is nothing to show that [442] they attested the deed of sale. The Sessions Judge, relying on the decision of the majority of the Judges who composed the Full Bench in the case of *The Queen v. Gopal Doss* (1), decided by the Madras High Court on the 4th February, 1881, has admitted the depositions. I concur, however, in the opinion of the two Judges (Kernan and Muttusami Ayyar, JJ.) who dissented from that decision. I think that s. 132 of the Evidence Act, read with s. 14 of Act X of 1873, compels a witness to answer criminating questions, and that he is protected by the proviso to s. 132 from a criminal prosecution for any offence of which he criminales himself directly or indirectly by his answer, except a prosecution for giving false evidence by such answer. It is not only when a witness asks to be excused from answering a criminating question, and his request is refused, that he is, in my opinion, "compelled to give" the answer, within the meaning of the proviso. The compulsion is operative whether he asks to be excused or gives the answer without so asking. I would, therefore, acquit the appellants. But as Mr. Justice Parsons does not concur in this opinion, the case must be laid before another Judge under s. 429 of the Code of Criminal Procedure (Act X of 1882).

PARSONS, J.—I agree with the opinion expressed by the majority of the Judges in the case of *The Queen v. Gopal Doss* (1) and would admit the

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evidence. Reading s. 132 of the Evidence Act as a whole I can come to no other conclusion than that the Legislature has by it made a clear distinction between those cases in which a witness voluntarily answers a question and those in which he is compelled to answer, and has given him a protection in the latter of those cases only. If protection was to be allowed in every case in which a witness gives an answer, the words "be compelled to" in the proviso are quite superfluous. The insertion of those words clearly shows, to my mind, that protection is afforded only to answers which a witness has objected to give or which he has asked to be excused from giving, and which then he has been compelled by the Court to give: (see Field's Law of Evidence, p. 646, 4th ed.). In the [443] present case both the accused were examined in the Court of the Subordinate Judge on behalf of Sarasvati and Kesu, and they freely and voluntarily there gave evidence to the effect that they had attested the deed on which Sarasvati and Kesu relied. This deed was held to be a forgery. Sarasvati and Kesu were prosecuted and convicted of the forgery; and the accused were tried along with them and convicted on a charge of abetment of that forgery, and their answers in the Court of the Subordinate Judge were admitted in evidence against them. I am of opinion that these answers being purely voluntary answers, and not answers which they were in any way compelled to give, can be proved against them in the present trial. And as they are proved, I would dismiss these appeals.

The case was accordingly referred to the Acting Chief Justice Mr. Bayley, who gave the following judgment:—

"For the reasons given by Sir Charles Turner, C. J., in the case of *The Queen v. Gopal Doss* (1) I think that the evidence is admissible, and I concur with Mr. Justice Parsons in dismissing the appeals."

*Appeals dismissed.*

12 B. 443.

### APPELLATE CIVIL.

*Before Mr. Justice Nanabhai Haridas, Mr. Justice Birdwood  
and Mr. Justice Jardine.*

DAMODAR JAGANNATH, (*Plaintiff*) v. ATMARAM BABAJI  
(*Defendant*).<sup>\*</sup> [6th February, 1888.]

*Stamp Act, I of 1879, s. 34, Prov. I—Suit on an unstamped promissory note—Evidence Act, I of 1872, ss. 65, cl. (b), and 91.*

The plaintiff sued to recover from the defendant the balance of a debt due on an unstamped note passed to him by the defendant for consideration of Rs. 38. The note recited that the defendant had received the amount, and would repay it after three months from the date of its execution. The defendant admitted, by his written statement, execution of the note and the receipt of Rs. 37 in the shape of paddy, but alleged that he had paid off the debt. He also contended that the note being unstamped could not be admitted in evidence. The plaintiff contended that the note was a bond, and could be admitted on payment of the [444] stamp duty and the penalty, under s. 34 of the Stamp Act I of 1879, which he offered to pay. The Subordinate Judge was of opinion that the note in question was a promissory note, but that the defendant's admission of the consideration enabled the plaintiff to sue, although the note itself was inadmissible. On reference to the High Court,

<sup>\*</sup> Civil Reference No. 41 of 1887.

(1) 3 M. 271.