

1887
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CIVIL.12 B. 431=
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to do so, nor is the whole estate liable when he explicitly or impliedly binds only his own portion.

The question as to the litigation having only affected the father's interests not having been raised and decided in favour of the present appellants in such a way as to liberate them from the responsibility of the decree against the father; we must confirm the decree of the lower Court with costs.

Decree confirmed.

12 B. 437.

[437] REVISIONAL CRIMINAL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

QUEEN-EMPRESS v. BYRAMJI EDALJI.* [1st December, 1887.]

Public nuisance—Penal Code (Act XLV of 1860), ss. 268 and 290—Annoyance to a particular religious sect—Private nuisance.

The accused cut up, on his verandah, meat that was to be cooked for a dinner party, exposing it to the sight of persons passing along the road, among whom were some Jains, whose temple was close by. The Jains complained to the Magistrate that the accused had made the air offensive, and caused annoyance. The Magistrate found that the meat was not in an offensive state, but convicted the accused of committing a public nuisance, under s. 268 of the Indian Penal Code, on the ground that he had done an act by which several persons being Jains were much annoyed, it being a well-known fact that they had great repugnance to the killing of animals of every sort.

Held, reversing the conviction and sentence, that in this case no real damage or injury was caused to the public or to the people in general dwelling in the vicinity, and that it was a case of private rather than of public nuisance, and, therefore, not one falling within the purview of the criminal law. The applicant's act was an annoyance merely by reason of its hurting the feelings of the Jains, who have a repugnance to killing of animals, and did not constitute an offence under s. 290 of the Indian Penal Code.

Muttumira v. Queen-Empress (1) referred to.

[F., Rat. Unr. Cr. Cas. 903 (904); R., 30 A. 181 (185)=5 A.L.J. 147=28 A.W.N. 64.]

THIS was an application under s. 435 of the Code of Criminal Procedure (Act X of 1882). The applicant had been convicted, under s. 268 of the Indian Penal Code, of the offence of causing a public nuisance, on the complaint of Raichand Sobhaji. The complainant was a Jain by religion, and he alleged that on the 5th July, 1887, the accused engaged four butchers to chop meat on the verandah of his house situated on a high road and close to a Jain temple. The complainant and several other persons, while going along the road to the temple, were much annoyed by the sight and smell of flesh exposed within a few yards of the sacred place. They remonstrated with the accused, but without effect. The complainant thereupon charged him with causing a public nuisance under s. 268 of the Indian Penal Code.

[438] The accused pleaded not guilty. He stated that it was a great holiday, and that he had invited guests to a dinner-party, in preparation for which he had meat cut up on the verandah of his house early in the morning, not knowing that he would thereby cause or was likely to cause any annoyance to the public.

* Application for Revision No. 223 of 1887.
(1) 7 M. 590.

The First Class Magistrate, who tried the case summarily, under the provisions of chap. XXII of the Code of Criminal Procedure (Act X of 1882), convicted the accused of committing a public nuisance under s. 268 of the Indian Penal Code, and sentenced him to pay a fine of Rs. 2. He recorded the following reasons for the conviction:—

"It is in evidence that several persons, being Jains, were much annoyed at what was done by the accused, it being a well-known fact that they have great repugnance to the killing of animals of every sort. They have a right to use the way to their temple, as well as the temple itself, without let or hindrance. On the other hand, the accused has a right to use his *otla*, or platform, as he likes, but he certainly has no right to expose a heap of meat on a high way in the way he did. The complainant and his witnesses aver that the bad smell about the spot made it necessary for them to apply a cloth to their nose; but the municipal inspector, who went there presently afterwards, did not notice the smell, owing probably to the place having been cleaned after the removal of the meat. I hold, therefore, that the accused did cause annoyance in regard to the exercise of the public right on the part of a portion of the community, and convict him accordingly."

Against this conviction the accused applied to the High Court under its Criminal Revisional Jurisdiction.

Manekshah Jehangirshah, for the applicant.

Ganpat Sadashiv Rav, for the opponent.

OPINION.

PER CURIAM:—In this case, the applicant has been found guilty of committing public nuisance, as defined in s. 268 of the Indian Penal Code, and has been punished under s. 290.

On the occasion of his giving a dinner-party, he cut up the meat that was to be cooked for the dinner in the verandah (*otla*) of [439] his house, and, so exposed it to the sight of persons passing along the road, among whom were some Jains, whose temple is near the house. They complained to the Magistrate that by this act the applicant "had made the air offensive, and created an annoying sight." The Magistrate has not found that the meat was in an offensive state, but he has convicted the applicant of committing a public nuisance, on the ground that he had done an act by which several persons, being Jains, were much annoyed, it being a well-known fact, that they (the Jains) have great repugnance to the killing of animals of every sort.

Now it has been held that, in order to constitute a nuisance, there must be "not merely a nominal, but such a sensible and real damage as a sensible person, * * * would find injurious"—*Scott v. Firth* (1). In the present case, no real damage or injury is alleged to have been caused to the public or to the people in general dwelling in the vicinity, but merely an annoyance to those Jains alone who happened to pass along the road in front of the applicant's house at the time when the meat was being cut up or exposed there. If that was so, it was a case of private rather than of public nuisance, and, therefore, not one falling within the purview of the criminal law—*The King v. Lloyd* (2). The annoyance, moreover, such as it was, neither did nor could cause any sensible or real damage. It was an annoyance merely by reason of its hurting the feelings of the Jains, who have a repugnance to the killing of animals. It was thus of the nature of a

(1) 4 F. & F. 349.

(2) 4 Esp. 199.

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.

12 B. 440.

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.

(1) 7 M. 590.

(2) 3 M. 271.