(1931) 04 AHC CK 0022

Allahabad High Court

Case No: None

Janki Prasad and Others		APPELLANT
	Vs	
Karamat Husain and Others		RESPONDENT

Date of Decision: April 9, 1931

Hon'ble Judges: Mukerji, J; Bennet, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Bennet, J.

This is a second appeal by certain Hindu plaintiffs against a decree of the learned District Judge of Bareilly. The circumstances are that in the town of Senthal in the Bareilly District there is a mosque which has been established for a long time, and at a very short distance from the mosque, apparently within a dozen yards according to the map on the record, there has been more recently a Hindu temple established. The plaintiffs are representative Hindus, who brought a suit for a declaration as follows:

(a) It may be declared that the plaintiffs and the other Hindus are competent to perform the pujapath (worship) of Sri Thakurji Maharaj and the other deities installed in the thakurdwara situate in qasba Senthal, pargana and tahsil Nawabganj, bounded as below, by ringing ghantaa, gharyal, by blowing sankh, and by ringing other religious musical instruments without restrictions of time and to perform kirtan, gayan, ras lila on Monday and Ekadashi (11th day) day according to the rite, custom and belief observed by Sanathan Dharam Hindus and to do utshab on Janam Asthami, and the other festivals according to the old practice and rite mentioned in para. 2 of this plaint and that no person has any right to throw obstacles.

(b) A perpetual injunction may be issued to the defendants restraining them from interfering at any time with the plaintiffs'' prayer made in relief (a).

2. It is to be noted'' that there are two matters in this declaration: one the right to perform music in the temple during worship and the other the right to conduct certain established processions. The District Judge has granted declarations as follows:

Firstly the Hindus are allowed to blow music in their temple, whether it is a private or public place of worship, at any time except during the five recognized periods, of Mahomedan prayer.

3. In regard to processions the Munsif had passed this order:

The plaintiffs should preferably take their processions to the Samdatalab by a route avoiding the mosques and imambaras, but if they pass before them there will be a suspension of the band, music and everything of the like. If Janam Asthami and Dad Kandon coincide with Muharram, there shall be absolutely no music or anything of the like in the first ten days and on the 40th day (chehulum). Parties under circumstances shall bear their own costs. The declaration so granted is subject to the discretion of the executive authorities.

4. In regard to processions the District Judge passed the following order:

I uphold the order of the lower Court about processions with the alteration that music should not be played before mosque and Imambaras during Mahomdan prayer times, and I agree with the lower Court that it should not be played at all during the first ten days of the Muharram, or on the 40th day.

5. Now the validity of both the orders of the District Judge has been challenged by the plaintiffs on appeal, and the claim that they should get a declaration of their rights without any restrictions whatever. The learned Counsel for the appellants relied on a ruling of their Lordships of the Privy Council reported in AIR 1925 36 (Privy Council) In that case there was a dispute between Shias and Sunnis, and the Shias claimed to have the right to take out a procession in the streets and perform a ceremony called matam which consisted of stopping and wailing for a short time. The Sunnis objected to this procession passing near a mosque, and the Magistrate had passed orders that there should be no performance of matam within a short distance of the mosque. The Shias claimed a declaration of their right to go in procession without any restrictions. The District Judge granted a declaration of the right of the Shias to go in procession subject to any order that from time to time the Magistrates might make. The High Court in appeal dismissed the suit of the Shias, and their Lordships of the Privy Council granted the declaration in favour of the Shias given by the District Judge, but added that it should be subject "to the Magistrate''s" directions and the rights "of the public." On p. 180 their Lordships stated:

The case seems to their Lordships to raise for authoritative decision the question as to the right of religious processions to proceed along the roads in India, practising

their religious observances; and the decided authorities in India are certainly conflicting. The first question is : Is there a right to conduct a religious procession with its appropriate observances along a highway? Their Lordships think the answer is in the affirmative.

6. Following this ruling we consider that the District Judge is not correct in imposing the restrictions which he did on the right of the plaintiffs to take out a procession. Accordingly I would allow the appeal in regard to the procession and grant the plaintiffs a declaration that they have a right to take a procession on the highway subject to the orders of the Magistrate and of the police authorities and the rights of the public.

7. Now in regard to the other question as to the right of the plaintiffs to play music in their temple, the learned Counsel argued that the ruling of their Lordships of the Privy Council which we have quoted should be an authority, and accordingly he argued that it was not legal for the civil Courts to impose any restrictions other than that the right of the plaintiffs should be subject to the directions of the Magistrate and of the police authorities and of the right of the public. But the Magistrate and the police authorities have certain powers under the Police Act (Act 5 of 1861) to regulate processions and music on public streets. u/s 30, Sub-section (4), the police authorities may regulate the extent to which music may be used in the streets on the occasion of festivals and ceremonies. No such authority is given by the Police Act to either the District Magistrate or the police to regulate the use of music in a temple, whether it is a private building or a public temple. It is true that certain powers exist in the Criminal Procedure Code under which the Magistrate may take action if a breach of the peace were apprehended; but it is obvious that these powers under the Criminal Procedure Code are only to be used for the prevention of a breach of the peace, and that it is not intended under that section that a Magistrate should pass orders to remedy a nuisance which might be caused to private individuals. And Ch. 11, Criminal P. C, is only intended for temporary orders about nuisances.

8. I consider in a suit like the present, where the plaintiffs have asked for a declaration from the civil Court in regard to their rights to play music in a temple that it is within the jurisdiction of the civil Court to state to what extent the exercise of those rights would prove a nuisance to other persons who have rights in the neighbourhood. For that reason I consider that the appellants are not correct in stating that the lower Court acted illegally in restricting the play of music by the Hindus in the temple. The only question is whether the restriction laid down by the lower Court was a correct restriction in the circumstances or not. That restriction was that the Hindus were not to play music in their temple during the five recognized periods of Muhammadan prayers. Bach case must be decided on its merits, and in the present case the particular factors which are apparent are, firstly, that the mosque is within a dozen yards of the temple, or, as stated by the Munsif,

the mosque is actually three-quarters of a yard away from the Thakurdwara. Secondly the plaintiffs asked in their plaint for a declaration in regard to the ringing of bells and the sounding of kans and the blowing of conches and the ringing of other religious musical instruments. The kind of music which is mentioned in the plaint is of such a loud nature that in my opinion it would undoubtedly cause an undue interference with the rights of the Mahomedans to say their prayers in the adjoining mosque. Such an interference would, in my opinion, constitute a nuisance at the time of saying prayers by ,the Mahomedans, and accordingly I consider that the restriction imposed by the District Judge in this particular case is a restriction which is correct, that is, I consider that the plaintiffs cannot make the particular music mentioned in the plaint during the five recognized periods of Mahomedan prayers, as in my opinion this would amount to undue interference with the rights of the Mahomedans to say their prayers at those times. But I consider that it will be open to the Hindus to conduct their worship during those live recognized periods of Mahomedan prayers if they conduct their worship in such a way that they do not make music so loud as to unduly interfere with the prayers of the Mahomedans. Now as regards music in the thakurdwara, there are two points to be considered:
(1) Should the plaintiff''s receive a declaration of an absolute and unlimited right to conduct their religious services in the thakurdwara with ringing of bells, sounding of kans, blowing of conches, and ringing of other musical instruments, and that no person has any right to object; or should the declaration state that the right is limited by the law of nuisance?

(2) Can this limitation be expressed where the written statements did not specifically plead nuisance?

9. I shall first state what I believe to be the general law of the right to worship, and I shall then refer to various rulings and lastly I shall deal with this particular case and the pleadings. I consider that the following five propositions sum up the general law in India of religious worship:

(1) Every person has a right to worship. (2) The right is independent of custom. (3) The right is not absolute but is limited by the rights of others. (4) The exercise of the right may be limited by order of the public authorities. Such orders may be passed u/s 144, Criminal P. C, to prevent urgent nuisance or breach of the peace, or u/s 133, Criminal P.C. to prevent a nuisance in a public place, or u/s 30, Act 5, 1861, the Police Act, in the case of public assemblies and processions. (5) The exercise of the right may be limited by the civil Courts on the ground of nuisance, public or private. The last proposition is the one of importance in the present case and the question is whether the ringing of bells, etc., as an accompaniment of worship can constitute a nuisance. In England it has been held that it may amount to a nuisance. In Soltau v. De Held 3 Sim N.S 133, the plaintiffs stated their case thus:

We, the occupiers of dwelling houses in the vicinity (of the Roman Catholic Church) desire to represent that we are subjected to a great inconvenience and annoyance from the loud and frequent ringing (often at unseasonable hours) of the large and harsh-sounding bell some time since erected upon an open frame on the roof of the said house. The practice we complain of is offensive alike to our ears and feelings; disturbs the quiet and comfort of our houses, molests us in our engagements whether of business, amusement, or devotion.

10. On p. 143 the Court held that

a peal of bells may be, and no doubt is an extreme nuisance, and, perhaps, an intolerable nuisance, to a person who lives within a very few feet or yards of them.

11. On p. 159 the passage on which my learned brother relies on his p. 18 is quoted from Walter v. Selfe and the Court comes to the conclusion that the ringing of the bells was a nuisance in the terms of this passage:

The important point next for decision may properly, I conceive, be thus put: Ought this inconvenience to be considered, in fact, as more than fanciful, or as one of mere delicacy and fastidiousness; as an inconvenience materially interfering with the ordinary comfort, physically, of human existence, not merely according to elegant or dainty modes and habits of living; but according to plain, sober and simple notions among the English people?

12. That, I think, enunciates distinctly the question which is to be tried upon such an occasion as this; and I must add, in the very words of Vice-Chancellor Knight Bruce, that I am of opinion that this point is against the defendant; that this is such an inconvenience, and such an invasion of the domestic comfort and enjoyment of a man''s home, that he is entitled to come and ask this Court to intervene. The form of the injunction should be noted. At p. 161 it is stated:

The bill asks for an injunction to restrain the ringing of these bells altogether; or in the alternative, to restrain the ringing of them so as to cause or occasion any nuisance or annoyance to the plaintiff or any of the members of his family residing in his house; and it appears to me that the latter is very nearly the form in which the injunction ought to be granted. Therefore I shall order an injunction to issue to restrain the defendant and all persons acting under his direction or by his authority, from tolling or ringing the bells in the plaintiffs bill, or any of them, so as to occasion any nuisance, disturbance and annoyance to the plaintiff and his family residing in the dwellinghouse.

13. I have quoted this passage because I consider that the declaration to be granted to the plaintiffs should be in similar terms, that is, that the plaintiffs have a right to worship with music in the Thakurdwara, but they must not occasion any nuisance, disturbance or annoyance to the defendants during the five recognized periods of Mahomedan prayer. The ruling of Soltau v. De Held, was quoted with approval by

Lord Selborne in Gaunt v. Finney [1872] 8 Ch. A. 8.:

There may of course be such a thing as a legal nuisance from noise in a manufacturing or other populous town, of which the case of Soltau. v. De Held is in example....A nuisance by noise, supposing malice to be out of the question, is emphatically a question of degree...such things, to offend against the law must be done in a manner which, beyond fair controversy, ought to be regarded as exceptional and unreasonable.

14. In Webb v. Barker [1881] W.N. 158, Hall, V. C. granted an injunction to prevent building operations being proceeded with during the night to the annoyance and discomfort of an adjoining occupier, and limited the working hours to between 6 a. m. and 8 p. m. In Motion v. Mills [1897] 13 T.L.R. 427 Kekewich, J., granted an injunction against the giving of singing lessons in a house adjoining business premises in such a manner as to cause injury and annoyance to the plaintiff in the conduct of his business. Halsbury Laws of England, Vol. 21, p. 531 says:

Every person is entitled, as against his neighbour, to the comfortable and healthful enjoyment of the premises owned or occupied by him whether for pleasure or business. In deciding whether in any particular case this right has been invaded and a nuisance thereby caused, it is necessary to determine whether the act complained of is an inconvenience materially interfering with the ordinary material comfort of human existence, not merely according to elegant or dainty modes and habits of living, but according to plain and sober and simple notions obtaining among the English people.

The making or causing to be made such a noise or vibration as materially interferes with the comfort of the neighbouring inhabitants, when judged by the standard above stated, is an actionable nuisance, and one for which an injunction will be granted, and it is no excuse to affirm that.... the Cause of the nuisance is the exercise of a trade in a reasonable and proper manner and in a reasonable place. The question of nuisance or no nuisance is one of degree, and depends upon the circumstances of the case.

15. A case which is of importance in the present case is Heath v. Mayor of Brighton [1908] 93 L.T. 718, as in that case the persons who complained of a nuisance were the incumbent and trustees of a church, and they complained that certain plant for generating electricity made a humming noise such:

as to cause nuisance and annoyance to the plaintiffs and to other persons using or worshiping in their church, or meeting in or using any of the buildings on the plaintiffs land.

16. Joyce, J., on p. 720, laid down what were the rights of members of a congregation in regard to nuisance from noise:

It is not a question of the ordinary comfort and enjoyment of a dwelling house being unreasonably disturbed; no one resides in the church, but still the people who do attend the church come to listen, I suppose, and freedom from external noises is certainly desirable and, I think, I might say, more or less necessary. The plaintiffs however are not because the premises are used as a place of worship entitled to anything more than the ordinary amount of quiet in a town; they have no special rights because of the purposes for which the premises are used.

17. In this particular case the Court held that the works was about 100 feet from the nearest point of the church, and that the low humming sound was not a loud noise and:

cannot be heard during the singing or playing of the organ or when anything is going on; in other words when there is any other sound in the church. An ordinary person would not, I think, be really disturbed by it in hearing the sermon or the reading of the lessons, or such parts of the church service as are not choral. In certain parts of the church it cannot be detected by listening, even when there is otherwise perfect silence, and sometimes it cannot be heard at all anywhere in the building....Most ordinary people may, I think, attend this church without experiencing real annoyance from the sound from the works; many would care nothing about it even if they heard it at all.

18. And as the noise did not amount to a nuisance an injunction was refused.

19. Coming now to Indian cases, I am not able to find any casein which it has been laid down that the above principles which have been established in England would not apply. In Jaffar Husain Khan Sahib and Others Vs. Krishnan Servai and Others, it is stated:

So far as the right of Mahomedans to stop the playing of music inside a Hindu temple is concerned, I find no direct authority in point; but it appears to me that that can only be decided not as a proposition of law, but on the stated circumstances in each case. The plaintiffs rely strongly on a sentence from Muthialu Chetti v. Bapun Sail [1880] 2 Mad. 140:''It is on the one hand a right recognized by law that an assembly lawfully engaged in the performance of religious worship or religious ceremonies shall not he disturbed." That, no doubt, is a general right, but, obviously, it can be modified by circumstances, so that the exercise by each party of its legal rights shall be reasonable and with due regard to the rights of others: see Sundram v. The Queen [1883] C Mad. 203. If, for example, two places of worship of different sects have been existing side by side from time immemorial, then each, no doubt, must exercise its rights of worship with due regard to the rights of the other and submit to curtail its own rights in consideration of the other party also curtailing its rights. The modus vivendi is a compromise of competing rights and the Courts will enforce, as the real civil rights of each party, the mutual compromise, instead of putting both parties in an impossible position by declaring the formal civil rights of

both.

20. This exposition of law appears to me to be sound, and its value does not become less because in dealing with the particular facts of the case before it the Court held that:

But where, for example, a now sect or body of worshippers invades a locality already occupied by another religious body, it is not reasonable that it should, in the name of ensuring quietness for its own worship, claim to; curtail the service or worship which had been customary long before it invaded the locality.

21. I think however that the fact that one party has newly come to the locality and is starting religious worship in close proximity to an existing religious institution, so close as to disturb it, is a matter to be taken into consideration along with other matters. The Madras High Court was dealing with the converse case of the plaintiff coming to the nuisance, and as Underbill, Law of Torts, 1914, p. 268 states on the authority of Bliss v. Hall [1838] 4 Bing N.C. 183:

It is no answer to an action for nuisance, that the plaintiff knew that there was a nuisance, and yet went and lived near it.

22. The case before the Madras High Court might have been decided in the manner in which it was decided on a different principle. As Underhill says at p. 270, the right to commit a private nuisance may be acquired by grant or prescription., and at p. 271:

It must be noted that the period of twenty years only begins to run from the time when the acts complained of begin to he a nuisance. So when the defendant had for more than twenty years made a noise which did not amount to an actionable nuisance to his neighbour, because the neighbour''s land was not built on, he acquired no easement by so doing; and accordingly when the plaintiff built a consultation room on the land affected by the noise, and the noise then began to be a nuisance, it was held that the defendant had not acquired a right under the Prescription Act: Sturges v. Bridgman [1879] 11 Ch. D. 852.

23. On this principle of easement a temple which had been established in a village, as in the Madras case, for the period of prescription would acquire the right to make any degree of noise, and persons who established a mosque in close proximity to the temple after the right had been acquired would have no status to complain of nuisance. But the facts in the present case as found by the lower appellate Court, in agreement with the Court of first instance, are that the use of music in this building by the Hindus was an "innovation." That is a finding of fact and I do not consider that it is open to this Court to reverse it on second-appeal on the ground that the lower appellate Court was wrong in stating:

there seems to be no doubt that in a private place of Hindu worship music is not required by the Hindu scriptures.

24. But before going further into the findings in this case, I shall refer to one other Indian ruling on the subject of noise, Jawand Singh v. Muhammad'' Din [1920] 1 Lah. 140. This was a single Judge case, and an injunction was granted to certain Mahomedans restraining certain Hindus from interfering with the calling out of the azan and praying in a mosque. It was found that the conches had not been blown in connexion with any religious ceremony of the Hindus, but solely to stop the call of the azan. But in the Lahore case there was no question of a mosque adjoining a Thakurdwara, and I do not think that the passage in the injunction referring to religous ceremonies was intended to refer to religious ceremonies in a thakurdwara. For one thing the injunction refers to "religious ceremonies, social events or other necessary temporary causes" and the use of the word "other" shows that temporary must apply to the preceding words "religious ceremonies." It was therefore temporary religious ceremonies which the learned Judge had in contemplation or temporary social events, such as weddings, which are celebrated with music. What he meant was that the injunction was not to restrain Hindus from having music at wedding processions or at wedding parties in their houses. But when we come to deal with a thakurdwara adjoining a mosque we come to a situation which is not temporary but permanent and of daily recurrence. The Judge also probably meant that his injunction was not intended to prevent a religious procession from making music as it passed by the mosque. Such processions would be temporary ones and the interruption would be as the injunction say3 in the last clause "on occasions." For these reasons I do not think that the fact that the injunction was limited in and was not to apply to music at religious ceremonies, social events or other necessary temporary occasions is any reason why an injunction should not be granted if music in a thakurdwara does amount to a nuisance.

25. We now come to the second point, as to whether the limitation in regard to nuisance can be made in a declaration whore the written statements did not specifically plead nuisance. In para. 2 the plaint stated that the thakurdwara and dharamshala had been in existence in the enclosure of Lala Gendan Lal for a long time as a public place of worship with the blowing of conches, ringing gongs, (sankh and gharyal) but the ghantas and other religious musical instruments are not mentioned as having been in use. This para. 2 was denied in the two written statements of contesting defendants, who further pleaded:

The place which the plaintiffs allege as the public place of worship of the Hindus and regarding which they state the practice, etc., neither was ever nor is a public place of worship. It is the house of plaintiff 1 and the other plaintiffs have nothing to do with it. Regard being had to this also the suit is not entertainable.

26. The pleading was not therefore that the bells and conches, etc, had been a nuisance, but that such noises had not been made and that the plaintiffs wanted a new thing. The Munsif states on p. 18'' of the paper book:

The plaintiffs come into Court on the allegation that the Thakurdwara is of a very old age. They are confronted by the defendants saying that up till now there has been nothing of the like. It is practically admitted by the plaintiffs that Ghanta, Gharyal and Sukh are the requisites only in ease the Thakurdwara is a public institution, and nothing of the like is necessary in a private Thakurdwara.... Now the point is to see whether this Thakurdwara is a public-institution of some long standing or only a recent conversion of a private dwelling house into a Thakurdwara.

27. On p. 21 the Munsif stated:

In my opinion it is a perfectly private residential enclosure, with a residential house, now turned to the Thakurdwara

and that sankh had not been sounded in the abadi, and that the relief of sounding bells, conches, gongs, etc., could not be granted. The finding was that these noises had not been made hitherto. The appeal raised various points about the temple and Thakurdwara being public and that bells etc. are sounded in private Thakurdwaras, but it was not definitely stated in the grounds of appeal that as a fact the bells, etc., had been sounded for a period of time, though it was stated in argument. The District. Judge found:

I agree with the lower Court that it is not proved that this temple was used by the general public, at any rate until very recently, and there seems to be no doubt that in a private place of Hindu worship music is not required by the Hindu scriptures. On the other hand I do not see how the Mahomedans can object to the Hindus turning a private place of worship into a public place, and if this is done the Hindus will naturally want to carry on their religious observances with the accompaniment of music. It is admitted that the temple is within a few yards of the mosque and that the music accompaniment will make a great noise, and as the Mahomedans in every country object to music as part of their religious observances, it is only reasonable that the Hindus should not play music in this temple at the time of Mahomedan prayers.

28. The learned District Judge is not correct in referring to dislike of music during prayers as a reason. But the quotations above show that the question of whether the music had been a nuisance did not arise because the case for the defence, which was accepted by the lower Courts, was that there had hitherto been no music. It is also to be noted that the plaintiffs do not come to Court for a declaration in regard to their right to music because of interference by the defendants in the making of music by the plaintiffs, but the case is based on an order of a Subdivisional Magistrate. Now when the plaintiffs ask for a declaration of their right to sound musical instruments and bells etc. is it correct that they should get an absolute declaration or that there should be a reference to the rights of the defendants against whom the plaintiffs ask for the declaration? There is no doubt that the declaration of the right of the plaintiffs to sound bells etc. cannot deprive the

defendants of their legal remedy of injunction if those noises when made do amount to a nuisance. Then why not refer to the rights of the defendants in the declaration? Otherwise the declaration will be misleading. I consider it all the more necessary to make a clear declaration of the limitations on the right of the plaintiffs because they ask in their relief that the declaration should state "no person has any right to throw obstacles". If this expression means that no person has a right to object no matter how great a nuisance is caused by the plaintiffs then in my opinion a declaration in those terms would be contrary to law. The District Judge has come to a finding of fact that the music in question will make a great noise, and that the temple is within a few yards of the mosque, and the result naturally follows that the Mahomedans will be disturbed in their prayers. In my opinion this amounts to a finding that there would be a nuisance caused to the Mahomedans.

29. Finally I would refer to a decision of a Bench of this Court in Mohammad Jalil Khan and Others Vs. Ram Nath Katua and Others decided by Sulaiman and Young, JJ., in which the Hindu plaintiffs sued for a declaration of their rights to take out processions with music past mosque''s. The learned Judges have carefully interpreted the ruling of their Lordships of the Privy Council in Mansur Hasan v. Muhammad Zamman and state:

It may be noted that in that case there was no question as to the right to play music, nor was there any suggestion that such music amounted to a nuisance. When such a question arises it would obviously be covered by the reservation subject to the rights of the public.

30. As to nuisance it was stated:

There is no right to commit a nuisance on a highway, nor is there any absolute right to-commit a private nuisance against a particular defendant. But all music however bad, cannot amount either to a public nuisance or a private nuisance, even though it may annoy occupiers of a dwelling house situated on the road. But a noise may become a nuisance, public or private. There is no definite legal measure for a noise becoming a nuisance. It is purely a question depending on the facts of each ease, including the degree of its intensity, its place, the time, the mode of committing it,, its duration and all the surrounding circumstances.

31. I do not think that the plaintiffs should receive relief (b), that is an injunction to restrain the defendants from interfering with the exercise by the plaintiffs of their rights, because the defendants have a right to claim that the plaintiffs should not commit a nuisance. And I note that in F. A. No. 245 of 1927 the plaint asked for a declaration that defendants had no right to offer obstruction, etc., but this was not embodied in the declaration granted. I would adopt the form of declaration granted in that case, introducing words relating to the thakurdwara as follows:

That the plaintiffs both in their individual capacities and as members of the Hindu community have (a) a right to take out religious and social processions accompanied

by music along public roads even while passing mosques, and (b) a right to perform worship in the thakurdwara in Senthal accompanied by music, subject in both (a) and (b) to any orders or directions issued by the Magistrate or the police for preventing breaches of the peace or obstruction of the thoroughfares or for other matters mentioned in Section 144, Criminal P. 0., or under other statutory provisions or for regulation of traffic, provided that the exercise of such rights (a) or (b) do not amount to a nuisance recognized by law.

Mukerji, J.

32. This appeal raises a. difficult point of law and it is a pity that nobody appeared on behalf of the respondent in support of the decree of the lower Court. The plaintiffs who claim to represent the Hindus of a village Senthal in the district of Bareilly instituted a suit out of which this appeal has arisen for a declaration and a perpetual injunction in the following terms:

(a) It may be declared that the plaintiffs and the other Hindus are competent to perform the pujapath (worship) of Sri Thakurju Maharaj and the other deities installed in the thakurdwara situate in qasba Senthal, pargana, and tahsil Nawabganj, bounded as below, by ringing ghantas, gharyal, by blowing sankh and by ringing other religious musical instruments without restrictions of time and to perform kirtan, gayan, ras lila on Monday and Ekadashi (11th day) day according to the rite, custom and belief observed by Sanatandharm Hindus and to do Utshab on Janam Asthami, and the other festivals according to the old practice and rite, mentioned in para. 2 of this plaint, and that no person has any right to throw obstacles. Laid at Rs. 500.

(b) A perpetual injunction may be issued to the defendants restraining them from interfering, at any time, with the plaintiffs'' prayer made in relief (a). Laid at Rs. 10.

33. The plaintiffs'' case is that there is a temple (and attached to it a dharamshala or rest house) which is a public place of worship for the Hindus of the town of Senthal and the neighbouring places and that the worship is performed in the orthodox method of blowing of conch shells and by ringing of gongs and by reciting and singing the praises of the idols and the deities represented by the idols. In the year in which the suit was instituted certain Mahommedans in collusion with one another made an application, on 3rd March 1926, in the name of defendant 3 Naqsh Ali, to the criminal authorities against the performance of the worship in the way mentioned. On the said application, after summary inquiry the authorities arbitrarily fixed the times of worship by the Hindus and thus interfered with their right to perform the worship in their own way. The plaintiffs accordingly asked for a declaration of their right and a perpetual injunction restraining the defendants from interfering with the plaintiffs'' prayer.

34. Originally there were six defendants, but three more were added at their own request.

35. Defendants 5 and 6 admitted the claim and said that they never contested the plaintiffs'' right to worship in their own fashion and said that the Shiahs of the town were quarrelsome people and they, through defendant 3 Naqsh Ali, put in the application complained of and that, as a matter of fact, the mosque, which is near to the temple and on account of the worship in which the Shiahs want to interfere with the plaintiffs'' rights, is a mosque in which Shiahs have no right to say their prayers.

36. Defendants 1 and 4 filed one written statement and defendants 3 and 7 to 10 filed another written statement. They are virtually the real defendants in the case and we have to consider the pleas raised by them.

37. Defendants 1 and 4 generally denied the allegations made in the plaint and then said that in former days the village of Senthal was owned by a Mahomedan and after him by his descendants, and for a long time there were no Hindu zamindars; that all the lands in the village, including the paths and ways belonged to the Mahomedan zamindar, and neither the British Government nor the Hindus had any interest in those ways; that accordingly the Hindus had never any right to take any procession through these routes and village paths; that the temple in question was the private property of plaintiff 1 only; that the suit was not maintainable; that there was an agreement between the Hindus and Mahomedans once that the Mahomedans would sacrifice cows only in their houses and not in the public ways and the Hindus would not take out any processions; that the routes were narrow and on either side of them there were mosques and residential houses of Mussalmans and therefore the plaintiffs could not be allowed to have the reliefs claimed by them without fixation of time and without certain restrictions mentioned in the written statement, including abstention from taking processions before mosques at the five usual hours of prayer, in a way which was likely to disturb the Mussalmans. congregating for saying their prayers. It will be noticed that defendants 1 and 4 do not say anything in their written statement as to why the plaintiffs should not perform their worship with music at the temple. All the objections of defendants 1 to 4 are directed against the taking out of a procession.

38. In their joint written statement defendants 3 and 7 to 10, in a general way, do not admit the statements made in the plaint and repeat the allegations of defendants 1 and 4 that the village was in the olden days owned by a Mahomedan zamindar; and say that the temple is the private property of only one of the plaintiffs, that the plaintiffs were not suing in a representative capacity, that the suit was not maintainable; and that the plaintiffs'' suit could not be decreed without some restrictions being placed on the rights claimed by them.

39. The learned Munsif framed 11 issues and they are as follows:

1. Whether Senthal was even (sic. ever?) a village owned by zamindars.

2. Whether the streets in Senthal are public ones or only private owned streets with limited dedication to public user. To what extent?

3. What has been the custom in Senthal with regard to public processions, and what effect it has on the present suit.

4. Is the present suit maintainable without proving special damage?

5. Is the Thakurdwara, alleged in the plaint, a public institution; and if not, is the suit maintainable?

6. Whether, by virtue of a custom or otherwise, the plaintiffs have a right to carry through their processions without any restriction, as prayed for in the plaint.

7. Whether in view of the alleged surrender of rights by the Mahomedans, the plaintiffs can still maintain the present suit.

8. Whether any and what conditions and restrictions should be imposed on the declaration sought by the plaintiffs.

9. Is the court-fee insufficient?

10. Whether there is an old custom of holding the mela at the talab. If not, how does it affect the case?

11. To what relief, if any, are the plaintiffs entitled?

40. It will be noticed that none of the issues involve a denial of the right of the plaintiffs to worship in the temple with an accompaniment of music. The learned Munsif found on issue 1 that the residential area of the village Senthal had acquired the character of a town. On issue 2 he found that the streets were no longer the exclusive pro-party of the zamindars, but belonged to the Government; and all the inhabitants of the town Senthal, Hindu and Mahomedan alike, could use them. On issues 3 and 6 the learned Munsif held that the plaintiffs had not been taking out processions for a long time, that they had no claim to pass by specific routes, that the plaintiffs were taking out processions for not more than 12 years, and that mosques and tombs of saints have existed for a much longer time. ''The learned Judge came to the conclusion that:

The plaintiffs may therefore take out their procession. . . . and perform all their religious functions. . . . but they are to avoid the front of the mosques and the imambaras standing on this route and elsewhere.

41. He further held that if the plaintiffs were keen on going over the particular route by which they wanted to proceed, they must stop all music within a radius of one furlong in front of the imambara and mosque. The learned Munsif remarked:

The plaintiffs fail to give a valid reason why they of 50 years standing or more in this village should be allowed to disturb the defendants of 200 years standing.

That is why I suggest to the plaintiffs to enjoy their processions in all its details with band and music and so forth, if they only avoid the front of the imambaras and ,the

mosques. If not, they shall have to suspend the music generally as said above which in the first 10 days of Muharram and on the 40th day there will be absolutely no music at all.

42. On issue 4 the learned Munsif held that the suit was maintainable without proving any special damage. On issue 5 the Munsif held that the thakurdwara was strictly a private place of worship of plaintiff 1

and therefore the relief of sounding ghanta, ghariwal, bijay ghant and sankh, etc., cannot be granted.

43. On issue 7 the learned Munsif found that

the defendants'' evidence on the point...is not impressive to me.

44. On issue 3 the learned Judge held that as the result of his observations on issue 5, the plaintiffs were not entitled to relief No. 1, namely, carrying on worship with music at the temple and as to the procession he held that it could be taken out subject to the restrictions already mentioned by him. The objection as to the court-fee was not pressed before the Munsif and issue 9 was decided in plaintiffs'' favour. Issue 10 was decided in favour of the plaintiffs, although it was observed that the fair held at the tank had been held for 14 or 15 years, the tank being plaintiffs'' property, the Hindus could hold their fair on their own land so long as they did not trespass on the land belonging to Mahommedans. On issue 11, the learned Munsif repeated the results of his finding.

45. There was an appeal to the District Judge and the learned Judge found that although the temple might be a private one, it was open to plaintiff 1 to let other Hindus congregate in the temple and worship there, and he held that the Mahomedans could not object to a private Hindu place of worship being turned into a public place of worship. The learned Judge was also of opinion that, in a private temple, music was not required, under the Hindu scriptures, at the time of worship but it was required in a public place of worship. Having expressed the opinion that the Mahomedans could not object to the sounding of music in the temple except when the music is sounded at the time of prayers in the mosque which stood clo3e to the temple, he held that

it is only reasonable that Hindus should not play music in the temple during the time of Mahomedan prayers. The mosque is an old building and the temple is comparatively a new one. Therefore, in my opinion, the Hindus should respect the rights of the Mahomedans regarding music during the time of prayers, but I do not consider that the Mahomedans have a right to prevent the Hindus from their musical observances at all times of the day.

46. The learned Judge therefore modified the decree of the Court of first instance by allowing the Hindu to play music in their temple whether it be a private or public place of worship at any time " except during the five recognized periods of

Mahomedan prayer." The Judge did not define what these "periods" were.

47. Coming to the question of processions, the learned Judge, upheld the order of the Court of first instance on the ground that

this town was originally built and inhabited by Mahomedans and therefore the Hindus should not play music in front of mosques and imambaras during Mahomedan prayers and if Tana Mashtmi and Dadkabdan coincide with Muharrum, it is only reasonable that they should, as new comers, respect the religious susceptibilities of Mahomedans and not play music on the first ten days of Muhurram or on the 40th day.

48. The plaintiffs being dissatisfied with the judgment of the lower appellate Court have come in second appeal.

49. I have already expressed my regret that in a case like this the respondents wore not represented by counsel. I have however given the case my best consideration and have tried to find out, if possible, the principles on which a suit like this ought to be decided. I am clearly of opinion that the judgment of the two learned Judges of the Courts below are based more or less on what they consider to be " expedient " and "fair play." These may be good grounds for a compromise or for an executive order but they can certainly not be the basis of a judicial order, based on a clear recognition of the civil rights of the parties.

50. As regards the procession, the matter is really simple, in view of the Privy Council decision, in the case of Manzur-Hasan v. Mohammad Zaman. That was a dispute between the Shiahs and the Sunnis. The Shiahs claimed a right. to take out a procession with music and recital of "matam." The Sunnis, whose-mosque stood on the route, claimed a right to stop the music and the recitation of '' matam '' when the procession approached the mosque. Their Lordships of the Privy Council held that Shiahs had a right to take out "their procession in their own method and the Sunnis had no right to demand a stoppage of music and other accompaniments. Their Lordships say:

The first question is, is there a right to conduct a religious procession with its appropriate observances along a highway? Their Lordships think the answer is in the affirmative.

51. Their Lordships approved of the Madras case of Sundaram Chetty v. The Queen, which held that the right to. take out processions existed in a community and that

the worship in a mosque or temple which abutted on a high road could not compel the processionists to interrupt their worship while passing near the mosque or temple on the ground that there was continuous worship there.

52. Their Lordships put certain restrictions over and above what had been imposed by the first Court on the processions by saying that the processions were to be

subject to the Magistrate''s directions and the rights of the public, besides being subject to orders of local authorities regulating the traffic; (the last mentioned restriction had been imposed by the first Court).

53. Applying this decision of the Privy Council to the case before me, the plaintiffs are entitled to take out their procession subject to the orders of the Magistrate regulating the traffic and making such lawful orders as he as a Magistrate may consider it fit to pass, in view of maintenance of peace, and order, and other similar matters. In passing the orders however it goes without saying, the Magistrate will be guided by the civil rights of the citizens and will interfere with it as little as may be possible.

54. The question of performing worship at the temple with the accompaniment of loud music presents a little more difficult problem in view of the fact that there are no clearly decided cases bearing exactly on the point. The case of Manzur Hasan (1) referred to above however seems to be based on the principle that every subject of the Crown has an equal right of worship, and people of another persuasion cannot interfere with his method of worship on the ground that it clashes with his own ideas of religious proprieties.

55. We have to remember that the temple is within a few yards of the mosque and at the mosque, we may take it, Mahomedans congregate in order to say their prayer five times in the course of the day and night, though the exact hours of prayers are not defined. No issue was framed as to whether the mosque belonged to Sunnis alone and whether Shiahs had or not any right to say prayers there. I will therefore take it that all Mahomedans, Shiahs or Sunnis were entitled to congregate in the mosque to say their prayers. We may also take it that in their prayer time, the Mahomedans do not like that any music, especially the one used in the temple, where worship of an idol is carried on, should be sounded. On the other hand, we have the fact that Hindu worship is carried on in accompaniment of music and sometimes in accompaniment of loud music, whether the worship be in a private temple or in a public temple. The learned District Judge is certainly wrong when he says that worship in a private Hindu temple is never required to be performed with accompaniment of music. Ho quotes no authority for this statement. This therefore is a ease of conflicting sentiments and religious convictions and the question is what should be the basis of the judgment of a civil Court. Is the suit to be decided on the ground of sentiment and rules of religious observances or whether on the ground of civil rights as they subsist in the subjects of the Grown in general? Religious sentiments and religious observances are very often (as in this particular case) conflicting and unless the parties are reasonable and agree to settle their disputes themselves, it is not possible that both could be pleased and satisfied. The basis of the decision in a Court of law must be the civil rights and civil rights alone and no account can be taken of mere sentiments of a certain section of the subjects of the Crown. The civil right of every subject of the Crown is that he would be entitled to

carry on his worship in any method he likes, but only so long as he does not by his performances affect others injuriously. In this view both Hindus and Mahomedans have the right to carry on their worship the Mahomedans in their mosque and the Hindus in their temple, unrestricted each by the other so long as the civil rights of the parties are not encroached upon.

56. The question therefore is: What are the civil rights of the parties? There can be no doubt that in India there is an absolute freedom of worship for every person living under the protection of the British Crown. A worship of the deity by a single individual or group of individuals according to their own rites can be interfered with only if the act or acts of the aforesaid persons should amount to an infringement of the rights of the public in general or of the private rights of individuals, which in this case would be of the defendants. In order that the act or acts or worship may be interfered with, they must amount either to a public nuisance or to a private nuisance. The difficulty in this case arises from the fact that, as already pointed out, the defendants have not anywhere pointed out by what right or on what principle they propose to interfere with the undoubted right of worship the Hindus may possess in the temple. I have assumed therefore the best case that the defendants could possibly raise and that case can only be one of nuisance.

57. If the plaintiffs'' acts or proposed acts should amount to a public nuisance it is clear that the plaintiffs cannot have the declaration and the injunction they ask for.

58. "Public nuisance" is defined in Section 268, I. P.C. as:

A person is guilty of a public nuisance who does any act or its guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity or which must necessarily cause injury, obstruction, danger for annoyance to persons who may have occasion to enjoy any public rights.

59. The plaintiffs'' act is not likely to cause any common injury or danger to the public or to the people who dwell or occupy property in the vicinity. The utmost that can be said is that the plaintiffs'' act or acts may amount to an annoyance to the people who occupy the mosque in the vicinity, during the hours of Mahomedan prayer. But if we look to the whole section and read it carefully we shall see that the sort of annoyance which the section aims at is not the kind of annoyance which the religious ideas of a class of people may suffer on account of an otherwise innocent act of another section of the public. If we examine decided cases on this point, we shall see that this is the interpretation which has been put on the section.

60. In the case of Queen-Empress v. Zakhiuddin [1887] 10 All. 44 the facts were these. The applicants in revision had killed two cows in another compound and cut up and disposed of the carcasses, The wall of the compound had fallen into ruin and the compound was visible from a high road which passed it. Only one person saw the actual slaughter. A learned Judge of this Court made the following remarks:

If a few Hindus passing by a private compound can have the occupants of that compound punished for a public nuisance merely because they have seen the occupants moving about in their compound and imagine that they are engaged in cutting up the carcasses of cows much more could be butchers who in the exercise of their trade carry beef for sale through the streets of almost every station in British India be punished for a public nuisance.

61. The learned Judge quotes with approval from the cases of Mubtumira v. Queen-Empress [1884] 7 Mad. 590 the following remarks:

...It is obvious from the language of the Act that it was not intended to apply to acts or omissions calculated to offend the sentiments of a class. In this country it must often happen that acts are done by the followers of a creed which must be offensive to the sentiments of those who follow other creeds. The scope of the provision we are considering is to protect the public or people in general, as distinguished from the members of a sect from injury, danger, or annoyance in the neighbourhood of places where they dwell or occupy property or when they have occasion to use a public right.

62. In the result the convictions were set aside. The remarks of Sir Charles Turner, J., which were approved by Broadhurst, J., of this Court, clearly lay down that the mere fact that the sentiments of a section of the public was likely to be hurt by an act will not turn an act, otherwise innocent, into a public nuisance.

63. In the case of Queen-Empress v. Byramji [1888] 12 Bom. 437, the accused cut up on his verandah meat that was to be cooked for a dinner party, and exposed it to the sight of passers by, among whom were some Jainas, whose temple was close by.. The Jainas complained to the Magistrate that the accused had made the air offensive and caused nuisance. The Magistrate convicted the accused of committing public nuisance on the ground that he had done an act by which several persons, being Jainas, were much annoyed, it being a well-known fact that they had great repugnance to the killing of animals of every sort. Birdwood and; Pearson, JJ., setting aside the conviction and the sentence cited an English case: Scott v. Firth [1864] 4 F. & V. 349 and remarked:

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....

64. 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 Jainas 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 and exposed there. If that was so it was a private rather than a public nuisance and therefore would not fall under the criminal law. The nuisance, moreover, such as it was, neither caused any sensible nor real damage. It was a nuisance merely by reason of

its hurting the feelings of the Jainas who have a repugnance to the killing of animals.

65. It was thus of the nature of a sentimental grievance which could be felt only by persons of certain views as to the killing of animals. Then the learned Judges referred with approval to the case of Muttumira v. Queen-Empress, already mentioned and set aside the conviction and the sentence. This case again lays down that the annoyance to a section of the public based on sentimental grounds cannot be annoyance within the meaning of Section 268, I. P.C.

66. In the case of Shahbaz Khan v. Umrao Puri [1908] 30 All. 181 the head-note runs as follows:

Under certain limitations, the slaughter of kine by Mahomedans is not illegal. It is the legal right of every person to make such use of his own property as he may think fit, provided that in so doing he does not cause real injury to others or offend against the law, even though he may thereby hurt the susceptibilities of others. The right of Mahomedans to slaughter kine is one to which they are legally entitled irrespective of custom and it is only when they abuse the rights that its exercise can be interfered with.

67. This summary of the decision of two learned Judges of this Court (Sir John Stanley, C. J., and Sir William Burkitt) really lays down the principle on which the rights of the inhabitants of the country are based. So long as a person exercises his private rights in a proper way, nobody has a right to object to his exercise of his right, simply because it does not suit the objector, according to his own light and training and religious belief, that an act should be done in that way. Every Mahomedan has a right to slaughter kine or other animals for meat or for worship. The Hindu may dislike the idea of killing a cow or a Jain or a Vaishnav may dislike the idea of an animal, whether a cow or not, being at all killed, yet if the man who kills the animal does it in a decent way, in a way which would not appear offensive to a man who does not hold particular beliefs and ideas about the slaughter of cows or other animals, he has every right to exercise his own civil rights. Applying the rule laid down in the case of Shabaz Khan v. Umrao Puri we find that the Hindus have every right to carry on their worship in their own way, in accompaniment of music and singing and nobody, who holds that this sort of practice is improper, has a right to interfere with it, so long as the exercise of the rights of worship by the Hindus does not come within the provisions of Section 268, I. P. C, by causing common injury or common danger or common nuisance to the public or to the people in general who may occupy property in the vicinity, namely, the mosque near by.

68. From the cases quoted, it will be noticed that the acts which the plaintiffs claim to have a right to perform cannot be condemned on the ground that they are forbidden by law : Section 268, I. P. 0.:

69. Now the next question is whether the acts of the Hindus come within the definition of "private nuisance" and therefore should be forbidden or restricted at

the defendant''s instance, and if they are to be restricted, in what way are they to be restricted; Private nuisance is defined in Underbill''s Law of Torts (2nd Indian Edition, 1924) as:

(1) A private nuisance is some unauthorized user of a man''s own property causing damage to the property of another or some unauthorized interference with the property of another causing damage. (2) A private nuisance whereby sensible injury is caused to the property of another or whereby the ordinary physical comfort of human existence in such property is materially interfered with is actionable. (3) Liability for nuisance is independent of negligence. (4) No use of property which would be legal if due to a proper motive can be a nuisance merely because it is prompted by a motive which is improper or even malicious.

70. The definition shows that a private nuisance to be actionable must either effect another man''s property or must affect another man''s comfort to a material extent. There is no question here that the property of the defendants is likely to be affected adversely. There is no question here that the physical comfort of the defendants'' coming to the mosque is likely to be affected by the acts about which the plaintiffs want a declaration. There is no rule of law ever laid down that mere hurting the sentiments of a neighbour would be a matter of private nuisance.

71. I have looked for authorities on the point but I have not been able to discover any which may establish that interference with religious observances according to the notions of a particular class of individuals can amount to private nuisance. If the religious observances by the Hindus be carried on with so much annoyance (that can be the only ground for objection) that the neighbours or the people frequenting the mosque find the act to be a cause of physical discomfort to them, the plaintiffs cannot have the declaration they seek for. But it is nowhere said in the written statement that the music that is performed in the temple causes any such physical discomfort. Then, the physical discomfort should be of a nature of sensible inconvenience and not mere small inconvenience. Lord Wensleydale, in St. Helens Smelting Co. v. Tipping [1865] 11 H.L.C. 642, at p. 653, said, in effect:

Everything must be looked at from a reasonable point of view; therefore the law does not regard trivial and small inconveniences but only regards sensible inconveniences, injuries which sensibly diminish the comfort, enjoyment or value of the property which is affected : Quoted at p 415 in Batan Lal''s Law of Torts, Edn. 10.

72. At p. 416 the same learned author quotes the following from an English case:

Both on principle and authority the important point for decision may be thus put : Ought inconvenience to be considered in fact as more than fanciful, more than one of mere . delicacy or fastidiousness, as an inconvenience materially interfering with the ordinary comfort physically of human existence, not merely according to the elegant or dainty modes and habits of living, but according to plain and sober and simple notions among the English people.

73. In considering the rights of the parties, it is immaterial whether the persons whose actions are objected to have come recently, to the neighbourhood or have been occupying the place for a long time. If the man whose acts are objected to is there in a rightful and lawful manner, and if he exercises his rights as a subject . of the Crown in a rightful way, and does not infringe the performance of the rights of the others, the infringement being such as would be regarded objectionable under the ordinary law of the land and not according to the particular tenets or religious beliefs held by the person''s objection, nobody has a right to interfere with the acts. Again if a person is lawfully engaged in certain acts, nobody else has a right to disturb him, simply because the latter does not like those acts. In the case of Jawand Singh v. Mohamed Din, the Hindus objected to the Mahomedans calling out the azan and when it was called out and at the time of subsequent prayer, the Hindus made noise by blowing conches and beating drums with the sole object of creating a disturbance. It was held that the Mahomedans were entitled to an injunction restraining the Hindus from infringing the exercise of their rights. The last paragraph of the head-note runs as follows:

Held further that the plaintiffs were entitled to the injunctions 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.

74. It will be noted that, as pointed out in the head-note, the defendants made the noise for the sole purpose of frustrating the object of the call." The learned Judge (Bevan Petman) passed the following order:

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 . playing 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 Mahomedan usage or custom including the calling of the azan. But this injunction shall not restrain the defendants from such acts when done in connexion 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.

75. The order that was passed, in appeal, in this case appears to me to contain the whole law on the subject of worship by different communities.

76. In the case of Jaffar Hussain v. Krishnan Servai the decision of the case was based on a principle which would probably not be approved. It appears that certain representative Mahomedans sued for a declaration that they were entitled to carry on public worship in a mosque at hours stated by them undisturbed by Hindu processions of music or playing of music in the adjoining temple and they asked for

an injunction against certain representative Hindus. The suit was dismissed by the Court of first instance and the decree was upheld by the High Court. The ground on which the suit was dismissed was this. The Hindus were performing their religious ceremonies for a long time. The Mahomedans deliberately built their mosque cheek by jowl with the Hindu temple and in such a case the new comer must respect the religious ceremonies and services of the older inhabitant. It was found that the services in the temple did not amount to a public nuisance and no such case has been put forward. In my opinion the principle of expediency was hardly sufficient. By exercising their worship for a long time the Hindus did not acquire any prescriptive right and therefore there was no question of the Mahomedan being "newcomers." At p. 765 of the report there are certain remarks which would go to suggest that the civil rights of parties like Hindus and Mahomedans might be curtailed where their places of worship were close by so that both might be accommodated. But this can be done only by mutual consent or not at all. If the result of each party exercising its rights leads to breaking of heads or riot, the authorities responsible for the peace of the land may bind the parties down till they are brought to their senses and either they stop all the exercise of their rights or come to reasonable terms with one another. That would be a matter with which a civil Court has no concern: but where parties insist on the full exercise of their rights and they are prepared to act within their rights, a civil Court has no alternative but to declare those rights and stop an interference if (there be any, with the exercise of those rights. In this view of the case I would allow the appeal, modify the decrees of the Courts below and give the plaintiffs a declaration in the terms proposed by my learned brother.

77. The appeal is allowed, the decrees of the Courts below are modified and the plaintiffs are given the following declaration:

78. That the plaintiffs both in their individual capacities and as members of the Hindu community have (a) a right to take out religious and social processions accompanied by music along public roads even while passing mosques and (b) a right to perform worship in the Thakurdwara in Senthal accompanied by music subject to in both (a) and (b) to any orders or directions issued by the Magistrate or the police for preventing breaches of the peace or obstruction of the thoroughfares or for other matters mentioned in Section 144, Criminal P.C. or under other statutory provisions or for regulation of traffic, provided that the exercise of such rights (a) or (b) do not amount to a nuisance recognized by law.