
(1871) 06 CAL CK 0005

Calcutta High Court

Case No: None

The Municipal
Commissioners of The
Suburbs of Calcutta

APPELLANT

Vs

Mahomed Ali and
Another

RESPONDENT

Date of Decision: June 13, 1871

Judgement

Norman, J.

On the 15th of May, Mr. Graham, the Magistrate of the 24-Pergunnas, visited a slaughter-house, in the possession of Mahomed Ali and Munshi Abbas Ali, at Narkuldanga. He records that he found the place in a most filthy condition; that no arrangements appeared to exist for the removal of the offal and blood; that the stench was abominable, and the ground saturated with blood and filth; that he was of opinion that the occupation of slaughtering cattle and sheep carried on in the slaughter-house at Narkuldanga was injurious to the health and comfort of the community, and that it should therefore be suppressed. He therefore ordered Mahomed Ali and Munshi Abbas Ali, within seven days from the receipt of his order, to suppress the occupation, or within that time to show cause why the said order should not be enforced. On the 23rd of May, the defendants having been duly summoned, Mahomed Ali and Munshi Abbas Ali by their pleaders appeared to show cause why the slaughter-house should not be suppressed.

2. Dr. Tonnerre, being examined as a witness, deposed that, on entering the premises, he found a place about 20 feet square made of masonry, with a hole in the middle in which a gumla was sunk. On the masonry and inside the gumla was a large quantity of coagulated blood and dung mixed together. Several sheep and goats were lying on the ground with their throats cut. Near these were butchers skinning other sheep and goats. Going a little eastwards, he came to a shed, the road to which he describes as a mere compost of mud, offal, blood, and cow-dung. He entered the shed, and found it full of freshly slaughtered cattle. The floor of the shed was of broken concrete, full of holes. On both sides of the concrete was mud. Two-thirds of the breadth of the shed was concrete,

and the remaining one-third mud, consisting of offal and blood. Down the middle of the shed was a drain. In the drain was a quantity of stagnant blood. Parallel to the shed was a cut cha drain, which received the sewage of the village south of the shambles, and the blood and offal out of the gumla above mentioned. The drain was exceedingly filthy, and there were large quantities of night-soil in it. In the shed twenty-eight carcasses of cows were suspended. The greater part of these cows were thoroughly diseased. North of the first shed was another shed about the same size. In it about thirty-six carcasses of cattle were suspended, more or less diseased. The floor was tiled, but in bad repair. On the margin of the shed on each side and under was a mass of mud, offal, and blood. The sewage drain above mentioned runs parallel to this shed. Dr. Tonnerre says the smell arising from the whole premises, the sheds, and the drain was the most offensive and sickening smell he ever experienced. Between the canal and the sheds there is a large pond about four yards from the sheds. The drainage of the premises falls into this pond. The water of the pond was simply filthy sewage, emitting a most sickening and offensive smell. On the northwest of the pond is a place where blood, offal, and cow-dung are thrown. The slaughter-house is surrounded on all sides by human habitations. Dr. Tonnerre says, I consider the slaughter-house a most dangerous nuisance to the neighbourhood, and liable to spread disease. I consider the slaughter-house to have a tendency to spread small-pox and cholera among people who live in its vicinity." Dr. Tonnerre on cross-examination said he had known the slaughter-house for upwards of ten years; he visited it ten years ago. It was in a worse state then than it is now.

3. Mr. Hallan, a veterinary surgeon, the President of the Cattle Plague Commission, described the state of the slaughter-house and the accumulation of filth and offal. He speaks of the sickening stench, and says it is likely to affect human life and health. He saw the livers and lungs of diseased animals which had been slaughtered, and says that the consumption of the meat of these animals would be dangerous to human life; that the place could not be used as a slaughter-house without being injurious to the health of the neighbourhood, as there were no means to keep the premises in a clean state. There was no supply of clean water on the premises, and no attempt at proper drainage.

4. Mr. James Blackburn, the engineer of the Gas Company, said that he and others were frequently annoyed by most disgusting smells from the slaughter-house; that he had suffered in health, but could not swear that the smells from the slaughterhouse were the cause of it. The effect produced by the smell is a sickening sensation, which is worst in passing the place, but he had frequently felt it in his own house, which is 400 yards to the south of the slaughter-house.

5. Jonathan Rist, an engine driver, who lives about 500 yards from the slaughter-house, speaks of the sickening smell which had compelled him to leave his food. He speaks of having often felt the sickening smell in the train when coming home.

6. Sheikh Hadu, a sirdar of coolies, who lives close to the slaughterhouse, says that his children and wife are often made ill by the stink which comes from the slaughter-house.

He himself is sometimes made ill. His son and brother died of cholera. Many of his neighbours are made ill. They cannot eat; they vomit. On cross-examination, he said that he was one of 500 or 600 persons who lived near who complained of the nuisance about a year ago; but the Deputy Magistrate at Sealdah, Kumar Harendra Krishna, dismissed the case. Kedarnath Ghose, a contractor, lives about three hundred yards from the shambles. He says an awful stink comes from the slaughter-house after 4 o'clock. Sometimes myself and family are sick from it. We get vomiting sickness, headaches, and fever. There is a great deal of sickness among the people who live "near it. Many are leaving the place altogether." On cross-examination, he said he also complained of the nuisance last year, with all the inhabitants, Hindu and Mahomedan, of the place.

7. Miran Khan, a khansama, gave similar evidence.

8. The Joint Magistrate, Mr. Barton, says:--The evidence of Drs. Tonnerre and Hallan, of Mr. Blackburn and the others who speak of the present state of the slaughter-house, is clear and decisive. It shows beyond a doubt that the nuisance is a public one, and of a most dangerous character, highly injurious to the health and comfort of the community." He adds: "I visited the place last Saturday, and the abominations "of it exceeded everything I had seen in all my life. The Joint Magistrate found the slaughter-house at Narkuldanga to be injurious to the health and comfort of the community.

9. The defendants declined to apply for an order that a jury should be appointed to try whether the order was reasonable and proper.

10. The Joint Magistrate then ordered that the slaughter-house should be closed on or before the 27th of May.

11. The Judge of the 24-Pergunnas, being of opinion that the Magistrate's order was contrary to law, has referred the proceedings to this Court under the provisions of section 434 of the Criminal Procedure Code.

12. Mr. Montriou and Baboo Ashutosh Dhur contended that the order was illegal, and should be quashed.

13. They contended that this slaughter-house had been established in 1844, with the sanction of Mr. Mytton, the Magistrate of the 24-Pergunnas. It seems that this order was passed after a careful enquiry whether the business of a slaughterhouse could be carried on at the place in question without inconvenience to any one, and that the Magistrate, after personal inspection, was satisfied with the arrangements then made. They referred to Act XXI of 1857, and contended that section 45, which provided that no place which was not used as a slaughter-house at the time of the passing of that Act, should be so used without a license from the Magistrate, must be treated as having impliedly sanctioned the continued use of then existing slaughter-houses. They contended that a slaughterhouse is not in itself a public nuisance, and they contended that the Municipal Commissioners, u/s 3 of Act VII of 1865 of the Bengal Council, ought to have compelled

the defendants to remedy the defects in the slaughter-house by paving it, draining it, and causing a proper supply of water to be provided; that the Commissioners ought to have proceeded under that Act, and they could not treat the trade itself as a nuisance, merely because it had been carried on without due precautions to avoid creating annoyance; that the carrying on of a trade which had been legalized and sanctioned by public authority, and carried on in the same place for so many years, could not be treated as a nuisance in a neighbourhood where other offensive matters, such as public tatties, pigsties, and bone heaps, which the evidence shows to have existed in the neighbourhood of the slaughter-house in question, had long been borne with; and on this point they referred to Russell on Crimes, Volume I, page 319, 3rd edition.

14. The Advocate-General appeared in support of the order of the Magistrate.

15. On reading through the evidence, we think that there can be no question that the Joint Magistrate was abundantly justified in finding that the trade, as carried on in the slaughter-house in question, was most injurious to the health and comfort of the community. It was no answer whatever to say that the business was one which, if proper precautions had been taken by the defendants, might have been carried on without danger to the public health. The permission by Mr. Mytton shows no more than that, with reference to the state of the locality at the time when such license was granted, and the arrangements then made, the business could then have been carried on without causing any nuisance to the persons residing in the vicinity. As observed by Lord Tenterden, in a case somewhat similar to the present, *Rex v. Cross* 2 C., & P., 484, the license would not entitle the defendant to continue the business one hour after it became a public nuisance to the neighbourhood. Although the Commissioners had taken no steps under Act VII of 1865 against the defendants, the defendants had ample warning to set their house in order by the prosecution instituted against them by many hundreds of their neighbours in the course of last year.

16. We now come to the point adverted to by the Judge in sending up the case, viz., that the evidence did not show that the slaughter-house is now in a worse condition than at any time since its establishment; but on the contrary, that some improvement has been effected during the last few years, and that a person coming to reside in the vicinity of an offensive trade, cannot set up his own right to untainted air if the owner of the trade has acquired a prescriptive right to carry it on. The notion of the existence of a species of right to corrupt the air of a particular locality by the exercise of a noxious trade, provided that, at the commencement of the nuisance, no person was in a position to be injured by it, has been exploded. It seems convenient that we should refer to two recent decisions on the subject of trades carried on so as to create serious nuisances. In *The St. Helen's Smelting Company v. Tipping* 35 L.J., Q.B., 67, in the House of Lords, extensive operations for the smelting of copper were carried on in the neighbourhood of the plaintiff's property. The vapours exhalant from the works did great injury to the trees and shrubs on the plaintiff's estate. It was shown that the whole neighbourhood where the copper smelting works were carried on was more or less devoted to manufacturing

purposes, and it was argued that, inasmuch as the copper smelting was carried on in a fit place, it might be carried on with impunity. The Judge at Nisi Prius had told the jury that, if a man by the erection of a lime-kiln or copper works, or any works of that description, sends over his neighbour's land that which is noxious and hurtful to an extent which sensibly diminishes the value of the property or the comfort of existence on the property, it is an actionable injury. The House of Lords considered this direction substantially right. The Lord Chancellor pointed out the distinction between cases where the thing alleged to be a nuisance is productive of mere personal discomfort, and those where the nuisance produces material injury to property. He pointed out that in the latter case the submission required from persons living in society to that amount of personal discomfort, which may be necessary for the legitimate and free exercise of the trade of their neighbours, would not apply to circumstances the immediate result of which is a sensible injury to the value of property. It was argued that sensible discomfort for carrying on a necessary trade in a suitable locality is not an actionable injury. Lord Westbury pointed out that the law, as laid down on that subject, unquestionably does not carry with it the consequence that a trade might be carried on so as to cause injury and destruction to neighbouring property. The case is stronger where the nuisance is one not merely injurious to property, but dangerous to health. In *The Stockport Water-works Company v. Potter* 7 H. & N., 160, the nuisance consisted in the discharge into a brook of dye stuff, containing arsenic, the effect of which was that, in the reservoir of the Stockport "Water-works, eleven miles below the defendant's works, arsenic was found in the proportion of nearly five grains to one pound weight of mud. It was contended that the defendant's trade was carried on in a proper place and in a proper manner. The Chief Baron, in the course of the argument, observed that his impression was that, if a person carries on a noxious trade in a particular place to which the exigencies of society cause a town to extend, the assent of the growing population to the nuisance must not be presumed. Baron Martin, in giving judgment, observed.

--"The defendants carried on the trade for their own profit, and the public are benefited by the carrying on of all trades, but what answer is that to persons whose water for drinking is affected by arsenic poured into it by persons carrying on such a trade." As to the claim of a prescriptive right alluded to by the learned Judge, we may observe that no prescriptive right to maintain the slaughter-house in its present condition was set up before the Joint Magistrate, nor could any such right have been effectually asserted: first, because it appears on the evidence that the slaughter-house has existed in its present position only for about six, or at most ten years; secondly, there is no evidence that, even during the whole of that time, the place was used in the same manner, and the stench emitted to the same extent as at present; thirdly, in our opinion it is clear that no length of enjoyment can legalize a public nuisance See *Weld v. Hornby*, 7 East, 199; *Rex v. Cross*, 3 Camp., 224, per Norman, J. involving actual danger to the health of the community.

17. The Judge is wrong in supposing that it was incumbent on the prosecution to show that the slaughter-house was in a worse condition than formerly. The prosecution proved

that the slaughter-house was in such a condition as to make it a nuisance dangerous to health, and if there was or could be any justification for its maintenance in such a condition, it was for the defendants to show that by way of answer. We are of opinion that the order of the Joint Magistrate was a legal and proper order.