

The Queen Vs. Anthony Udayan

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Court : Chennai

Decided On : Feb-22-1883

Reported in : (1883)ILR6Mad280

Judge : Innes and ;Kernan, JJ.

Appellant : The Queen

Respondent : Anthony Udayan

Judgement :

Innes, JJ.

1. In England a man is bound by statute to fence wells in his premises within twenty-five yards of, and open to, the highway. There is no such statutory obligation in India.

2. There is no doubt that the existence of an unfenced well at a distance of only eight yards from the highway, and open to it, must cause danger to the public, and the omission to fence the well thus possesses some of the elements which constitute a public nuisance; but unless the omission is an illegal omission, the definition of a public nuisance is not satisfied. In Section 43t of the Indian Penal Code the word 'illegal' is defined to be applicable to everything which is an offence, or which is prohibited by law, or which furnishes ground for a civil action. The two first conditions do not exist, and the omission to fence a well in one's own

premises does not, per se, furnish ground for a civil action; and it seems very doubtful whether damage caused by the fall into the unfenced well of a person who had strayed from the road would furnish ground for a civil action. There would be contributory negligence, for the person so falling into the well would be bound to keep to the public road, and his fall would be the consequence of his neglect of this duty.

3. Acting upon this view, we set aside the conviction and sentence and direct the return of the fine.

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