

*Privy Council Appeal No. 60 of 1942*  
*Allahabad Appeals Nos. 11 and 21 of 1939*

Martin and Company and another - - - - *Appellants*

*v.*

Syed Faiyaz Husain and others - - - - *Respondents*

The Secretary of State - - - - *Appellant*

*v.*

Syed Saadat Husain and others - - - - *Respondents*

*Consolidated Appeals*

FROM

**THE HIGH COURT OF JUDICATURE AT ALLAHABAD**

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE 13TH DECEMBER, 1943

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*Present at the Hearing :*

VISCOUNT SANKEY  
LORD ATKIN  
LORD PORTER  
LORD CLAUSON  
SIR GEORGE RANKIN

[*Delivered by* LORD ATKIN]

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These are consolidated appeals from a judgment of the High Court at Allahabad reversing a judgment of the Munsif at Amroha in the district of Moradabad. Their Lordships have not had the advantage of hearing counsel for the respondents: but they have been able to consider the careful judgments in the respondents' favour given in the High Court. The plaintiffs are Shiah Mohammedans of the township of Amroha, and like other Shiahs on the tenth day of the Mohammedan month of Moharram they commemorate the death of Husain, a son of Fatimah, the daughter of Mohammed, by passing in a procession along the streets of Amroha. In the procession are carried "tazias" reproductions of the mausoleum of Husain, constructed of wood, paper and tinsil, borne on the shoulders of carriers. They are of various heights and have in some instances reached the height of 27, 30, or more feet from the ground. In 1929 Martin and Co., defendants No. 3, obtained from the local government, pursuant to the Indian Electricity Act IX of 1910, a licence to supply electricity to the Municipality of Amroha. The licence was soon after transferred to the Upper Ganges Valley Electric Supply Co. Ltd., of which company Martin and Co. became managing agents. The scheme for the supply of electricity involved placing electric wires across the streets in Amroha, a matter which is dealt with by S. 13 of the Electricity Act. It is only necessary to say that all the provisions of the Act were complied with, due notices were given as required by the Act, the approval of the municipality and the local government was obtained, and in due course the company became authorised under the Act to place their wires across the streets at a height not less than 20 feet. The respondents had full notice throughout of the proposals, and exercised their rights to object, but their objections after being considered were put aside by the authorities acting no doubt on their

view of the general interests of the public. In June, 1930, representatives of the present plaintiffs brought a suit against the Municipal Board and Martin and Co. to restrain them from permitting the wires to interfere with the free passage of their tazias. At this time the wires had not been energised, and for the procession of that year a compromise was arranged by which the wires were either lifted or taken down. Immediately after the procession in June, 1930, the wires were replaced, and in October, 1930, the local government by its proper officer authorised them to be energised. In November, 1930, the plaintiffs instituted the present suit claiming a declaration that by old custom they had a right to take out in procession tazias to the height of 27 feet, and an injunction ordering the defendants to raise the electric wires to such a height as not to obstruct the passage of the tazias in procession. The case in the Court of the Munsif appears to have been fought on the issue of custom. The learned judge settled issues as to the existence of the alleged custom, and also as to whether, as alleged, according to the Shia religion the taking out of tazias in procession is a necessity, and whether under the Shia religion the reduction of the height of a tazia is not permissible. He found that the evidence was insufficient to establish the alleged custom, and founding himself upon authoritative evidence produced by the plaintiffs themselves he answered both the questions mentioned above in the negative. Finding, therefore, that the custom on which the plaintiffs based their case was not proved, he dismissed the suit.

On appeal Iqbal Ahmad J., as he then was, considered that the case did not depend upon custom, though apparently he was of opinion that the alleged custom was proved. But founding himself upon a decision of this Board in *Manzur Hasan v. Muhammed Zaman* (1924) 52 I.A. 61, that in India there was a right to conduct a religious procession "with its appropriate observances" through the public streets, and being of opinion that to carry tazias of the height claimed was an appropriate observance he came to the conclusion that the plaintiffs had established their right. It remained, however, to consider the defence that the acts complained of had been done under statutory authority, a defence which seems to have been seriously argued for the first time on appeal. The learned Judge was of opinion that S. 19 of the Indian Electricity Act applied to the plaintiffs' case "(1) A licensee shall in exercise of any of the powers conferred by or under this Act cause as little damage detriment and inconvenience as may be, and shall make full compensation for any damage detriment or inconvenience caused by him or by anyone employed by him." The effect of this section was to make the exercise of the powers of the Company conditional on their not interfering with the rights of others; and as the plaintiffs had the right to carry tazias of the height claimed, they were entitled to the declaration and injunction asked for, subject to the rights of the magistrate to give orders under S. 144 of the Code of Criminal Procedure. Bajpai J. in substance agreed.

Their Lordships are unable to accept the reasons given by the learned judges. They agree that it is unnecessary to consider the question of custom. The plaintiffs have the right as members of the public to take part in religious processions in the streets: subject of course to the rights of other members of the public to pass and repass along the same streets and subject to the powers of the appropriate authorities of controlling traffic and preventing disturbance. This right as a normal user of the highway does not originate in custom. Whether a highway could be dedicated subject to such a custom need not be considered. It is not alleged in the present case, and it is difficult to see how such a situation could arise. The rights of the plaintiffs therefore are no more and no less than the rights of any member of the public, and subject to questions of danger or disorder there seems no reason why a member of the public should not convey along an open street as part of a normal use of the street articles of any height. But as the plaintiffs' rights are those of the public, so where public rights may lawfully be abridged, so may the plaintiffs'. It is unnecessary in this case to discuss the effect of the United Provinces Municipalities Act, 1916, which

by s. 116 (g) vests the streets in the Municipal Board. For in the present case the company derive their rights to place the wires at a height of 20 feet under the statutory authority of the Electricity Act: and clearly therefore are given the power to abridge the public right to carry through the streets objects of a greater height. The plaintiffs therefore have had their rights modified in favour of other rights which the authorities acting under the authority of the statute have considered to be to the greater advantage of the public. In their Lordships' judgment s. 19 of the Electricity Act has no bearing on the plaintiffs' claim. That section requires the licensee to exercise the powers given to him (in this case the power to place wires 20 feet above the street) causing as little damage as may be: it would give no right to have the lawful exercise of the power restrained even if it necessarily caused inconvenience: the remaining part of the section appears to be an ordinary provision for compensation for injurious affection. But in no case has it any reference to compensation for damage detriment or inconvenience to public rights such as the plaintiffs'. If any such claim could be made, it would have to conform to the provisions of s. 91 of the Code of Civil Procedure and be made with the consent of the Advocate-General. In the present case for the reasons given no such claim could be made.

Their Lordships in leaving the case wish to emphasize that no question arises of ignoring or depreciating the respect due to the well established religious beliefs and observances of the plaintiffs. Like any other religious or secular body or any other member of the public their rights over the streets are subject to the present law which may abridge them. In the particular case their objections were obviously carefully considered and were overruled. The legal rights which flow from the decision of the authorities to grant the licence in question are indisputable. For the reasons given their Lordships will humbly advise His Majesty that the appeal be allowed and the decree of the learned Munsif restored. The plaintiff-respondents must pay the separate costs of the appellants in both appeals before the Board and in the High Court.

In the Privy Council

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MARTIN AND COMPANY AND ANOTHER

v.

SYED FAIYAZ HUSAIN AND OTHERS

THE SECRETARY OF STATE

v.

SYED SAADAT HUSAIN AND OTHERS

*Consolidated Appeals*

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DELIVERED BY LORD ATKIN

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