

exposure, the transaction would have resumed its character under s. 317. For the preceding reasons I therefore think it safer to quash the conviction and sentence upon s. 317, but agreeing as I do in the view taken as to the proper punishment for the conduct of the accused by the experienced Sessions Judge, I order that so far as the appeal against the conviction on s. 304 is concerned it be dismissed, and that the sentence in respect of the conviction on that section be increased to one of four years rigorous imprisonment.

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 EMPRESS OF  
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 v.  
 BANNI.

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 CRIMINAL JURISDICTION.

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*Before Mr. Justice Straight.*

 EMPRESS OF INDIA *v.* RAGHUBAR AND OTHERS.

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 August 9
 

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*Act X of 1872 (Criminal Procedure Code), s. 489—Security for keeping the peace—Act XLV of 1860 (Penal Code), ss. 503, 506—Criminal intimidation.*

The words in s. 489 of the Criminal Procedure Code, "taking other unlawful measures with the evident intention of committing a breach of the peace," do not include the offence of intimidation by threatening to bring false charges.

Where therefore a person was convicted under ss. 503 and 506 of the Indian Penal Code of such offence, *held* that the Magistrate by whom such person was convicted could not, under s. 489 of the Criminal Procedure Code, require him to give a personal recognizance for keeping the peace.

THIS was a case referred to the High Court for orders under s. 296 of Act X of 1872 by Mr. R. G. Currie, Sessions Judge of Gorakhpur.

STRAIGHT, J.—The point here is whether upon a conviction under ss. 503 and 506 of the Penal Code, the accused person can be called upon, under s. 489 of the Criminal Procedure Code, to find recognizances with or without sureties to keep the peace. The defendants in the present case were convicted by the Magistrate of intimidating the complainant by threatening to bring false charges against him, and the question seems to be whether the words "taking other unlawful measures with the evident intention of committing a breach of the peace" can be said to include an offence of this kind. I do not think that the operation of s. 489 is limited to riot, assault, actual breach of the peace, or abetting the same, or unlawful assembly, but that it is intended to comprehend a wider range of offences, and it must be for the Magistrate or Court to decide in each case whether, from the nature of the charge upon

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which conviction takes place, there has been direct force or violence to the person, or conduct inducing an apprehension of force or violence, or a direct threat of force or violence, or a provocation to the commission of force or violence. Intimidation, for example, as in the present case, may have none of these elements about it. The threats used here are "to make charges" against the complainant, and involve no suggestion of personal physical injury, but one can readily understand the possibility of a case of intimidation arising in which there might be the strongest indication of an evident intention to commit a breach of the peace. As far as I have been able to ascertain there are only three cases bearing upon the point, two of these decided by the Calcutta High Court (1) upholding the taking of recognizances on conviction for criminal trespass, and a decision of the Full Bench of this Court in the matter of *Chamru*, decided 8th December, 1876 (2). These bear out the view I have expressed, and though I think in the present instance that the Magistrate was wrong in requiring recognizances, because there is nothing about the conduct of the accused threatening the peace, the mistake he has fallen into is perfectly excusable. The recognizances of the defendants must therefore be discharged.

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## APPELLATE CIVIL.

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1879  
August 11.

*Before Mr. Justice Spankie and Mr. Justice Straight.*

GOPAL SINGH (AUCTION-PURCHASER) *v.* DULAR KUAR (JUDGMENT-DEBTOR).\*

*Execution of Decree—Application to set aside sale of immoveable property—Auction-purchaser—Appeal—Act X of 1877 (Civil Procedure Code), ss. 32, 311, 312, 588 (m), 647.*

Where after a judgment-debtor has applied, under s. 311 of Act X of 1877, to have a sale set aside, the auction-purchaser is made a party to the proceedings, and the sale is set aside, the auction-purchaser can appeal against the order setting aside the sale. *Kanthi Ram v. Bankey Lal* (3) followed.

THE judgment-debtor in this case applied to the Court executing the decree under the provisions of s. 311 of Act X of 1877 to

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\* First Appeal, No. 47 of 1879, from an order of Babu Aubinash Chandar Banarji, Officiating Subordinate Judge of Farukhabad, dated the 12th March, 1879.

(1) 7 W. R. Cr. 14, and 20 W. R. 1875, p. 328, and *Queen v. Kunhiya*, H. C. R., N.-W. P., 1872, p. 154.

(2) Unreported. See two other cases, *Queen v. Bachu*, H. C. R., N.-W. P., (3) Unreported.