

he possessed as an occupier of the soil. The house was sold as a house to be inhabited on the spot with the same right of occupation as the seller had enjoyed.

The text on which the appellant relies applies to the sale of the materials of a house or a house capable of and intended to be removed from its site. It is then equally moveable property as goods, boats, or trees, cut or sold to be cut and carried away, but it does not apply to a house sold with the right of occupation of the soil. The appeal fails and is dismissed with costs.

Appeal dismissed.

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CRIMINAL JURISDICTION.

Before Mr. Justice Turner.

EMPRESS OF INDIA *v.* BUDH SINGH.

Act XLV of 1860 (*Penal Code*), ss. 425, 441—Act X of 1872 (*Criminal Procedure Code*), s. 454—*Criminal Trespass—Mischief.*

If a person enters on land in the possession of another in the exercise of a *bond fide* claim of right, and without any intention to intimidate, insult, or annoy such other person, or to commit an offence, then, although he may have no right to the land, he cannot be convicted of criminal trespass(1).

So also, if a person deals injuriously with property in the *bond fide* belief that it is his own, he cannot be convicted of mischief(2).

The mere assertion, however, in such cases of a claim of right is not in itself a sufficient answer to charges of criminal trespass and mischief. It is the duty of the Criminal Court to determine what was the intention of the alleged offender, and if it arrives at the conclusion that he was not acting in the exercise of a *bond fide* claim of right, then it cannot refuse to convict the offender, assuming that the other facts are established which constitute the offence.

Where a person committed a trespass with the intention of committing mischief, thereby committing criminal trespass, and at the same time committed mischief, held that such person could not, under cl. iii of s. 454 of Act X of 1872, receive a punishment more severe than might have been awarded for either of such offences. The provisions of that law do not in such a case prohibit the Court from passing sentence in respect of each offence established.

(1) See also *In the Matter of Shistidhur Parui*, 9 B. L. R., Ap. 19; S. C., 18 W. R. Cr. 25, where it was held that a person exercising a supposed right of fishery in a *bond fide* manner, without any intent to intimidate, insult, or annoy, or to commit an offence, could not

be convicted of criminal trespass; and see also the observations of Markby, J., in *The Queen v. Surwan Singh*, 11 W. R. Cr. 11.

(2) See also *Bakar Halsana v. Dinobhandu Biswas*, 3 B. L. R., A. Cr. 17.

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THE PRESS OF
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THIS was an application to the High Court for the exercise of its powers of revision under s. 297 of Act X of 1872. The petitioner was convicted on the 12th June, 1878, by Mr. H. B. Joyce, Magistrate of the first class, of committing criminal trespass and mischief. On appeal by the petitioner to the Sessions Judge, Mr. W. C. Turner, this conviction was affirmed on the 17th August, 1878. The facts of the case and the grounds on which the petitioner applied for revision are sufficiently stated, for the purposes of this report, in the judgment of the High Court.

Mr. L. Dillon, for the petitioner.

The *Junior Government Pleader* (Babu Dwarka Nath Banarji);
for the Crown.

TURNER, J.—It is found that the petitioner, in order to appropriate the wall of his neighbour, the complainant, to which he knew he had no right whatever, caused workmen to cut niches in the wall, to lay rafters on the wall, and to put water-spouts in the wall; and that he also caused workmen to remove bricks belonging to the complainant from the yard of the complainant and to place them on the wall, in order to form a parapet for buildings he was erecting on the other side of the wall; and that he threatened the complainant with violence when he attempted to interfere to protect his property. The Magistrate on these findings convicted the petitioner of criminal trespass and of mischief, and sentenced him in respect of each offence to pay a fine of Rs. 100, and in default to undergo simple imprisonment for fifteen days. In appeal the Sessions Judge affirmed the convictions and sentences.

Revision of the orders of the Courts below is now sought on the following grounds: It is argued that the offence of criminal trespass has not been established because the petitioner did not enter on the premises of the complainant with the intent of insulting, intimidating, or annoying the complainant, nor with the intent to commit an offence, but with the intent of benefiting himself. It is also argued that the offence of mischief is not established because the petitioner did not cause the destruction of any property nor any change in such property, or in the situation thereof, as destroyed or diminished its value or utility, and that, if

he did so, he did not do so with the intent of causing wrongful loss or damage to the complainant but of benefiting himself. It is argued in respect of both charges that the complainant should have been referred to the Civil Court, and that the Criminal Court should not have entertained them ; and lastly it is contended that, inasmuch as it has been found it was the object of the criminal trespass to commit the offence of mischief, the petitioner could not legally receive a double punishment.

The objection that the Criminal Courts ought to have declined jurisdiction because the petitioner set up a claim to the wall and to the bricks cannot be sustained on the findings of the Magistrate.

If a person enters on land in the possession of another in the exercise of a *bonâ fide* claim of right, but without any intention to intimidate, insult, or annoy the person in possession, or to commit an offence, then although he may have no right to the land he cannot be convicted of criminal trespass, because the entry was not made with any such intent as constitutes the offence. So also if a person deals injuriously with property in the *bonâ fide* belief that it is his own he cannot be convicted of the offence of mischief, because his act was not committed with intent to cause *wrongful* loss or damage to any person. But the mere assertion of a claim of right is not in itself a sufficient answer to such charges. It is the duty of the Criminal Court to determine what was the intention of the alleged offender, and if it arrives at the conclusion that he was not acting in the exercise of a *bonâ fide* claim of right, then it cannot refuse to convict the offender, assuming of course that the other facts are established which constitute the offence.

In the case before the Court the Magistrate in effect finds not only that the petitioner had no right, but that he could not have been ignorant that he had no right. The facts found by the Magistrate show that the petitioner caused a change in the property of the complainant which affected it injuriously, nor is it any answer to the charges on which the petitioner has been convicted that the petitioner's intention was to benefit himself. That benefit was to be acquired as he must have known by causing wrongful loss to the complainant. The objections taken by the petitioner's pleader to the propriety of the convictions cannot be sustained. I may,

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however, observe that, inasmuch as the acts of trespass and mischief were committed not by the petitioner himself but his workmen at his instigation, he would more properly have been convicted of the abetment of the offences, but there being no difference in the punishment to which he would be liable it is unnecessary to interfere with the convictions on this ground.

It remains for me to deal with the objection to the punishment. It must be admitted that the object of the trespass was to commit the "mischief" imputed to the petitioner, and consequently under the third clause of s. 454 of the Code of Criminal Procedure, as explained by the illustrations, the petitioner must not receive a punishment more severe than might have been awarded for either of those offences. This provision of the law does not, as the petitioner's pleader suggests, prohibit the Court from passing sentence in respect of each offence established, but it declares that the offender must not receive for such offences collectively a punishment more severe than might have been awarded for any one of them, or for the offence formed by their combination. Where an offence is constituted by the combination of other offences or includes another offence, sentence should ordinarily be passed on the charge relating to that offence only, but the law does not prohibit several sentences, so that collectively they do not exceed the prescribed limit. For the offence of criminal trespass the maximum punishment sanctioned by the Penal Code is imprisonment for a term of three months and fine to the extent of Rs. 500. The imprisonment in default of payment of fine must therefore be limited to one-third of three months. The maximum punishment for the offence of mischief is imprisonment for three months and fine without limit, but the imprisonment in default of payment of fine is limited to one-third of the term of imprisonment. The Magistrate has sentenced the petitioner to pay two fines each of Rs. 100, or collectively less than the amount of fine which might be imposed for either offence, and in default of the payment of each fine to undergo imprisonment for the term of fifteen days. The Magistrate has not declared that the terms of imprisonment are to be undergone the one on the expiry of the other, and if default were made in the payment of both fines the sentences would run concurrently, so that in the whole the punishment would not exceed the punishment allowed by the law for either of

the offences of which the petitioner has been convicted. I therefore see no reason to interfere.

Application dismissed.

Before Mr. Justice Turner.

EMPRESS OF INDIA v. MULA.

Attempt—Fabricating False Evidence—Act XLV of 1860 (Penal Code), ss. 193, 511.

M instigated *Z* to personate *C* and to purchase in *C*'s name certain stamped paper, in consequence of which the vendor of the stamped paper endorsed *C*'s name on such paper as the purchaser of it. *M* acted with the intention that such endorsement might be used against *C* in a judicial proceeding. *Held* that the offence of fabricating false evidence had been actually committed, and that *M* was properly convicted of abetting the commission of such offence. *Queen v. Ramsaran Chowbey* (1) distinguished and observed on.

THIS was an application to the High Court for the exercise of its powers of revision under s. 297 of Act X of 1872. On the 24th August, 1878, the petitioner was convicted by Mr. J. Kennedy, Officiating Magistrate of the district of Sháhjahánpur, of attempting to fabricate false evidence. On appeal by the petitioner to the Officiating Sessions Judge, Mr. W. Duthoit, that officer, on the 18th September, 1878, being of opinion that the offence of fabricating false evidence had been actually committed, and that the petitioner had abetted such offence, altered the conviction accordingly. The facts of the case are sufficiently stated for the purposes of this report in the judgment of the High Court.

Mr. *L. Dillon*, for the petitioner, contended that the offence of fabricating false evidence had not been completed. He referred to *Queen v. Ramsaran Chowbey* (1).

The *Junior Government Pleader* (Babu *Dwarka Nath Banarji*), for the Crown.

TURNER, J.—The petitioner Mula is a money-lender in Sháhjahánpur, with whom Chattar Singh, *thakur*, had had dealings, but prior to the date of the occurrence which led to the present charge Chattar had discharged his debt to the petitioner. In a suit instituted by Mula against Netha and Dhaunkal, Chattar gave evidence on behalf of the defendants, and thereupon Mula threatened him he

(1) H. C. R., N.-W. P., 1872, p. 46. As to other facts which it was held would justify a conviction for an attempt to fabricate false evidence, see *Queen v. Nunda*, H. C. R., N.-W. P., 1872, p. 133.

As to an attempt to commit bigamy, see *Queen v. Peterson*, I. L. R., 1 All. 316. As to an attempt to commit mischief by fire, see *Queen v. Dayal Bawri*, 3 B. L. R., A. Cr. 55.

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