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by implication on a severance as an apparent and continuous easement.

We are not prepared to hold that in this case, in which the plaintiffs who had to make out their title to a way over the defendant's property, and who could have produced, but refused to produce, their title deed, any right of way whatever over the property which now belongs to the defendant passed to them by implication or as incidental on the transfer to them of the Charleville property in 1886.

In conclusion, we may say that in these provinces in which strict rules of conveyancing based on cases decided in England are little understood, and are consequently seldom followed, the principle of justice, equity, and good conscience embodied in sub-ss. (2), (4), and (5), read together, of s. 6 of 44 and 45 Vict., Chap. 41, should be applied by us in this case, and that we should hold, as we do, that the plaintiffs have failed to make out a right to use any way whatever over the defendant's land. If the plaintiffs' title deeds would show that we might in justice, equity, and good conscience hold that a way over the defendant's land passed by implication or as incidental on the transfer to them in 1886 of the Charleville property, they have only themselves and their legal adviser to blame for the result of this litigation.

We allow the appeal and dismiss the suit with costs in all Courts.

*Appeal decreed.*

## REVISIONAL CRIMINAL.

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*July* 14.

*Before Sir John Edge, Kt., Chief Justice, Mr. Justice Burkitt, and Mr. Justice Aikman.*

QUEEN-EMPRESS *v.* RAM BARAN AND OTHERS.

*Act XLV of* 1860, *s.* 395—*Dacoity—Forcible removal of cows by Hindus from the possession of Muhammadans.*

Where a large body of Hindus acting in concert and apparently under the influence of religious feeling attacked certain Muhammadans who were driving cattle along a public road and forcibly deprived them of the possession of such cattle under circumstances which did not indicate any intention of subsequently restoring such

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cattle to their lawful owners. *Held* that the offence of which the Hindus were guilty was dacoity under s. 395 of the Indian Penal Code, and not merely riot.

THE facts of this case are fully stated in the judgment of the Court.

Mr. *J. E. Howard*, for the applicants.

The Public Prosecutor (for whom Mr. *A. H. S. Reid*), for the Crown.

EDGE, C.J., BURKITT and AIKMAN, JJ.—Rambaran Rai, Durga Rai, son of Ram Baran Rai, Bhajan Rai, Durga Rai, son of Lappan Rai, Aggia Rai, Billar Rai, Khedu Rai, and Abhai Rai were convicted by a Magistrate of the first class of offences under ss. 147, 325 read with 149 and 353 of the Indian Penal Code. For the offence under s. 147 they were severally sentenced to six months' rigorous imprisonment; for the offence under s. 325 each was sentenced to three months' rigorous imprisonment, and for the offence under s. 353 they each received a sentence of three months' rigorous imprisonment. They appealed to the Sessions Judge of Azamgarh and he dismissed their appeals. They then presented an application for revision to this Court. That application was rejected, but the Judge before whom it came directed that these men should have notice to show cause why their sentences should not be enhanced. The legality of the convictions cannot now be questioned; the only question is as to what sentences the convicts ought to receive. In order to come to a conclusion as to whether the sentences passed on these men were adequate or inadequate, it is necessary for us to see what were the facts which were found and upon which the convictions were had. The facts were shortly these :—

On the 9th of January in the present year one Pir Bakhsh and some others were driving forty-two head of cattle along a public road known as the Ghosi-Ghazipur road. The cattle were being driven to be sold to some Commissariat contractors, no doubt with the intention that they should ultimately be slaughtered for Commissariat purposes. When these men arrived near the village of

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Bhadisa a large number of people came up, drove the men in charge of the cattle away and seized and carried away the cattle. Information was given at the thana, and on the following day the Sub-Inspector accompanied by some constables and chaukidars and others went in search of the stolen cattle and found them being driven towards the jungle by three Ahirs. The Sub-Inspector and his men took possession of the cattle, and shortly after they had taken possession of them, these eight men who have been convicted, and a considerable crowd of others, who have not been convicted or arrested, came upon the scene armed with *láthis*. They attacked the Sub-Inspector and his assistants and succeeded in beating them off. They broke the wrist of one of them and cut open the head of another. We may mention that one of those who were injured was one of the men from whom the cattle had been taken on the 9th of January. The persons who rescued the cattle from the custody of the police drove them away, and, so far as appears, the cattle have never yet been restored to the possession of their lawful owners. It has been argued by Mr. *Howard*, not that the offences of which these men have been convicted were not committed by them, but that we should take into account that the persons who attacked the police and took from their custody the stolen cattle were actuated by a religious motive which made them take away the cattle to prevent their being slaughtered.

The Indian Penal Code is a statute of the Legislature applicable to Muhammadans, Hindus, Christians and all other sects alike. It is necessary in every civilized state that in order to protect the lives and property of the members of the community penal laws should exist and be enforced, and should be enforced no matter whether the person who commits an offence against them is a Christian, or a Muhammadan, or a Hindu or member of any other religious denomination. Penal laws are made for the protection of all classes alike, and they do not recognise any exception in the case of any particular denomination. A theft or a dacoity would not be any the less a theft or a dacoity if committed by members of one denomination upon the members of another; for example, no Christian or

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Muhammadan could plead in a Court of justice that he was not liable to be punished for theft because he acted under the incentive of some religious motive, if the facts showed that theft had in reality been committed. There must in all states in which law and order are to abide, be penal laws equally enforceable against every denomination; and it is further necessary, unless we are to return to barbarous times, that persons who choose to wage a species of civil war on their neighbours should be adequately punished, not only as a punishment to themselves, but as a warning to deter others from committing similar offences. A cow is an animal which in this country a Muhammadan is entitled to hold as his property and over which he is entitled to exercise all the lawful rights of an owner, and so long as that Muhammadan in dealing with his own property does not, in the exercise of his rights of ownership, commit an offence against the Indian Penal Code, the law must and will protect him in the exercise of his rights. Similarly the law will protect a Hindu or a member of any other denomination in the exercise of his rights of property. If a Muhammadan, a Hindu or a Christian or a member of any other denomination commits an offence against the Penal Code, the law can be put in force against him by the process of the Criminal Court and by that process only. If he does not commit an offence in exercising his rights of property the law does not allow any one to interfere with him in the exercise of those rights, and people who take upon themselves either to take the law into their own hands, or to override or exceed the law, must expect the punishment which the law awards for criminal acts.

We have not the slightest doubt that the persons who took from Pir Bakhsh and his companions by force on the 9th of January those forty-two head of cattle committed the offence of dacoity under s. 395 of the Indian Penal Code. We have the authority of Mr. Justice Tyrrell for saying that his judgment in the *Queen-Empress* v. *Raghunath Rai* (1) was a judgment based solely on the facts found in that case. We have also his authority for saying

(1) Weekly Notes, 1892, page 120.

that he never ruled that it is not theft to deprive a man of his property under the influence of religious prejudices and that in his opinion such a deprivation is theft, and might according to circumstances be dacoity. Mr. Justice Tyrrell informs us that in that case he was dealing with the facts found by the Court below and his judgment must be so read.

As to what happened on the 10th of January we have not the slightest doubt that these men were properly convicted of offences under ss. 147, 325 and 353 of the Indian Penal Code, and further we are satisfied that on the facts found these men did commit the offence of dacoity under s. 395 of the Indian Penal Code on the 10th of January, and that they could each and all of them have been legally sentenced for that offence to transportation for life. On the 10th of January they took out of the custody of the police, who were holding them for the benefit of the lawful owners, the cattle which had been the subject of a dacoity committed on the 9th of January. The offences which these men committed on the 10th of January were offences of a most serious description. They were offences, the repetition of which must be prevented by the strong arm of the law. On the 10th of January these men were in fact waging a kind of civil war; they were taking by force from lawful custody cattle which did not belong to them, and they were resisting the civil power in the execution of the duty of that civil power.

The jurisdiction of the Magistrate who decided this case was, by reason of ss. 32 and 34 of Act No. X of 1882, a limited jurisdiction so far as the awarding of punishment was concerned, and we sitting here in revision are limited in our jurisdiction by the jurisdiction which the Magistrate could himself have exercised. We wish it to be understood that the sentences which we shall pass in revision here do not in our opinion adequately represent our sense of the gravity of the offences of which these men have been convicted. People must be made to know that the Criminal Courts or the Civil Courts can be applied to for protection or vindication of

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their rights and that they must not take the law into their own hands.

In this case we enhance the sentence for the offence under s. 353 of the Indian Penal Code to one of two years' rigorous imprisonment; we enhance the sentence for the offence under s. 147 of the Indian Penal Code to one of one year and nine months' rigorous imprisonment, and we do not interfere with the sentence of three months' rigorous imprisonment passed under s. 325 of the Indian Penal Code. We direct that these sentences shall apply to each of these eight men, and shall not run concurrently, but shall be consecutive.

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# PRIVY COUNCIL.

P. C. 1890 *November 20th.*

1893 *February 11th.*

BHAGWATI PRASAD (PLAINTIFF), *v.* RADHA KISHEN SEWAK PANDE AND ANOTHER (DEFENDANTS).

On appeal from the High Court at Allahabad.

*Equitable charge on property purchased — A charge created in favour of the lender of the purchase-money.*

By the acts of the parties, and their relations to one another, money borrowed by an agent for a principal for the purchase of property was rendered a charge upon the latter in the principal's hands, he being the real purchaser.

The lender of money, which he advanced to the nominal purchaser of property, who was the agent of the real purchaser, made the advance with the knowledge that it was for the principal's purposes, the latter only using the agent's name in the purchase. The nominal purchaser then executed a deed purporting to hypothecate the property as security for the loan. The lender, not having been paid, obtained a money-decree against the nominal purchaser, and, bringing the property to a Court sale, bought it himself. He could not, however, obtain entry of his name in the collectorate books, on the opposition of the real purchaser, and a suit brought by him for a declaration of his title, and his right to possession, against the nominal purchaser, was dismissed.

Afterwards, in the present suit, which the lender brought against both the real and the nominal purchasers, it was *held* that although, in regard to the previous

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*Present*: on the hearing of the appeal: LORDS HOBHOUSE and MACNAGHTEN, SIR B. PEACOCK, SIR R. COUCH and MR. SHAND, (LORD SHAND.)

*Present*: on the delivery of the judgment: LORDS WATSON, HOBHOUSE, MACNAGHTEN and MORRIS and SIR R. COUCH.