FULL BENCH.

1885
May 12.

Before Sir W. Comer Petheram, Kt, Chief Justice, Mr. Justice Straight, Mr. Justice Brodhurst, and Mr. Justice Tyrrell.

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

Offence made up of several offences—Rioting—Grievous hurt—Criminal Procedure Code, s. 235—*Act XLV of* 1860 (*Penal Code*), *ss.* 146, 147, 149, 325.

Three persons who were convicted (i) of riot under s. 147 of the Penal Code, (ii) of causing grievous hurt in the course of such riot, were respectively sentenced to six months' rigorous imprisonment under s. 147, and three months' rigorous imprisonment under s. 325.

Held by PETHERAM, C. J., and STRAIGHT and TYRRELL, JJ., that inasmuch as the evidence upon the record showed that the three prisoners had committed individual acts of violence with their own hands, which constituted distinct offences of causing grievous hurt or hurt separate from and independent of the offence of riot, which was already completed, and the fact of the riot was not an essential portion of the evidence necessary to establish their legal responsibility under s. 325 of the Penal Code, the separate sentences passed under ss. 147 and 325 were not illegal. *Queen-Empress* v. *Ram Partab* (1) distinguished.

Per BRODHURST, J., that the evidence showed that only one of the three prisoners had caused grievous hurt with his own hands, and that the others could only be properly convicted of that offence under the provisions of s. 149 of the Penal Code; but that the separate sentences passed under ss. 147 and 325 were not illegal. *Queen-Empress* v. *Dungar Singh* (2) followed.

Also *per* BRODHURST, J.— Illustration (*g*) of s. 235 of the Criminal Procedure Code does not apply merely to the case of persons who, in addition to the offence of rioting, have with their own hands committed the further offences of voluntarily causing grievous hurt, and of assaulting a public servant when engaged in suppressing a riot; and the convictions referred to in the illustration relate especially to convictions obtained under the provisions of s. 149 of the Penal Code.

THIS was a reference to the Full Bench by STRAIGHT, J. The point of law referred and the facts out of which it arose are stated in the referring order, which was as follows :—

STRAIGHT, J.—Ram Sarup and Narain Das were convicted—(i) of riot under s. 147 of the Penal Code; (ii), of causing grievous hurt in the course of such riot to a person of the name of Daya Ram, and they were respectively sentenced to six months' rigorous imprisonment under s. 147, and three months under s. 325. It is objected on their behalf by the petition for revision that these separate sentences were illegal. I think they were, and I have

(1) I. L. R., 6 All. 121. (2) *Ante*, p. 29.

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already stated the views I entertain upon the matter in *Queen-Empress* v. *Ram Partab* (1). My brother Brodhurst, however, has expressed a contrary opinion in *Queen-Empress* v. *Dungar Singh* (2), and as this conflict may lead to confusion in the lower Courts, I refer the question raised in the first ground of the petition for revision to the Full Bench.

Mr. *C. Dillon* and Mr. *N. L. Paliologus*, for the petitioners.

The *Public Prosecutor* (Mr. *C. H. Hill*), for the Crown.

The following judgments were delivered by the Full Bench :—

PETHERAM, C. J., and STRAIGHT and TYRRELL, JJ.—We find, upon looking into the evidence in this case, that Ram Sarup, Narain Das, and Mahbub Shah are shown to have committed individual acts of violence with their own hands, which constituted distinct offences of causing grievous hurt or hurt, separate from and independent of the offence of riot, which was already completed. The fact of the riot was not an essential portion of the evidence necessary to establish their legal responsibility under s. 325 of the Penal Code, and it is in this respect that this case is clearly distinguishable from *Queen-Empress* v. *Ram Partab* (1). In holding that Ram Sarup, Narain Singh, and Mahbub Shah were liable to separate punishments under ss. 325 and 147 of the Penal Code, we in no way disturb that ruling. Let the referring Bench be answered accordingly.

BRODHURST, J.—The question referred to the Full Bench is whether separate sentences, under ss. 147 and 325 of the Indian Penal Code, are illegal.

Mr. Justice Straight, who made the reference, was of opinion that, in the case before him, the separate sentences passed under the two sections above-mentioned were illegal, and he referred the question as different views on the subject had been expressed in two judgments of this Court, one in *Queen-Empress* v. *Ram Partab* (1), and the other in *Queen-Empress* v. *Dungar Singh* (2), as it was not improbable that these conflicting judgments might lead to confusion in the lower Courts.

The same question was one of four questions referred to the Full Bench by a Division Bench—Mahmood and Duthoit, JJ.—

(1) I. L. R., 6 All. 121. (2) *Ante*, p. 29.

in the case of *Queen-Empress* v. *Pershad* (1). The case was argued on the 17th January last before the Full Bench, which then consisted of five Judges; but unfortunately the majority of the Judges were of opinion that it was unnecessary to consider this particular question.

At the hearing of the present case before the Full Bench, the learned counsel were informed from the Bench that we were unanimously of opinion that the applicants had, under the circumstances of the case, been properly convicted and sentenced, both under ss. 147 and 325 of the Indian Penal Code, and that nothing further would, on this occasion, be decided, and consequently the points of law referred to in the two judgments abovementioned, and regarding which there appeared to be a difference of opinion, were not fully argued.

A judgment has now been written in this case by my brother Straight, and I am informed that our other learned colleagues have concurred in it. I agree in holding that Ram Sarup, Narain Das, and Mahbub Shah, were each liable to separate punishments under ss. 147 and 325 of the Indian Penal Code, but I do so on entirely different grounds to those relied upon by my honourable colleagues.

I also have looked into the evidence, and I find that, only one person, *viz.*, Daya Ram, sustained "grievous hurt," and that injury was caused by one of the bones of his right wrist having been fractured by a "*lathi* blow." It is palpable, therefore, that only one of the accused persons can have caused grievous hurt with his own hands., and that three persons cannot properly be convicted of that offence, except under the provisions of s. 149 of the Indian Penal Code.

There is ample proof that the accused, with others, amounting to some fifty or sixty persons, armed with *lathis*, went to mauza Behri, with the common object that they would by means of criminal force, or show of criminal force to the zamindars of the village, take or obtain possession of a certain share in that village in case the Court Amin was unable to give them possession of that share, that they assembled at the village in spite of the remons-

(1) *Ante*, p. 414.

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trances of the Amin, who apprehended a riot, and that they remained behind when he went away without having been able to give possession to the decree-holder. It is clearly proved that the accused were members of an unlawful assembly, and they each thus became punishable, under s. 143 of the Indian Penal Code, with imprisonment of either description for a term which might extend to six months, or with fine, or with both. They, however, did not stop at the commission of this offence, and as they went on to commit riot, they were properly punished, not for being members of an unlawful assembly, but for the more heinous offence of rioting, which is punishable, under s. 147 of the Indian Penal Code, with imprisonment of either description, for a term which may extend to two years, or with fine, or with both. They became guilty of "rioting" as defined in s. 146 of the Code, in the following manner, *viz.*, that when they were members of an unlawful assembly, one of them, *viz.*, Narain Das, in prosecution of the common object of that assembly, struck Sewa Ram, the karinda of the zamindars, on the head with a *lathi*, and voluntarily caused grievous hurt to him; thereupon every member of the unlawful assembly, including the applicants, became guilty of the offence of rioting, and became liable to punishment as above-mentioned. During the riot a second person, *viz.*, Sadanand, also sustained hurt, and a third person, *viz.*, Daya Ram, sustained grievous hurt. Under the provisions of s. 149 of the Indian Penal Code, the accused, who were members of the unlawful assembly, were guilty of "rioting," of "voluntarily causing hurt," and of "voluntarily causing grievous hurt." These three offences were committed in one series of acts so connected as to form the same transaction, and the accused could therefore, under the provisions of s. 235 of the Criminal Procedure Code, be tried at one trial for every one of those offences. They could, as shown in *illustration* (*g*) of s. 235, have been separately charged with and convicted of the three offences above-mentioned, and that persons can under such circumstances, not only be convicted, but can still also be sentenced for each of the three offences, as when Act X of 1872 was in force, is, I think, conclusively shown in the latter of the two judgments referred to at the commencement of these remarks.

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I think it desirable here to observe that I am unable to agree in the opinion expressed by one of my learned colleagues at the hearing of the case, that *illustration* (*g*) of s. 235 of the Criminal Procedure Code applies merely to the case of persons who, in addition to the offence of rioting, have with their own hands committed the further offences of voluntarily causing grievous hurt, and of assaulting a public servant when engaged in suppressing a riot.

Illustrations are furnished from ordinary and not from extraordinary cases, and it is in the highest degree improbable that seven rioters should, each with his own hands, cause grievous hurt, and also assault a public servant engaged in suppressing the riot; but it is not improbable that one of the seven rioters should commit both of the said offences; and there is, I think, no room for doubt that the convictions under ss. 147, 325 and 152 of the Indian Penal Code, referred to in *illustration* (*g*) of s. 235 of the Criminal Procedure Code, relate especially to convictions obtained under the provisions of s. 149 of the Penal Code.

My reply to the reference is, that for the reasons above stated, as well as for the reasons stated in my judgment in *Queen-Empress* v. *Dungar Singh* (1), the separate sentences that were passed under ss. 147 and 325 of the Indian Penal Code, in the case before us, were not illegal.

APPELLATE CIVIL.

1885
May 14.

Before Mr. Justice Straight and Mr. Justice Brodhurst.

MUHAMMAD MALIK KHAN (DEFENDANT) *v.* NIRHAI BIBI AND OTHERS (PLAINTIFFS)*.

Suit for profits in respect of several years—Court-fees—Distinct causes of action—Distincts subjects—Act VII of 1870 *(Court-fees Act), s.* 17*—Civil Procedure Code, ss.* 43, 44.

In an appeal in a suit for recovery of profits under s. 93 (*h*) of the N.-W. P. Rent Act, in respect of several years, the proper court-fee leviable on the memorandum of appeal is one calculated on the aggregate amount of the profits claimed, and not one calculated separately on the amount of profits claimed for each year.

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* Stamp reference in First Appeal No. 97 of 1885.

(1) *Ante*, p. 29.