

1895.

ABDUR  
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v.  
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DAT DUBE.

then comes into the lands of the law and attachment does not abate on the death of the judgment-debtor, and for the purpose of proceeding against, and if necessary selling, that property, it is not necessary to implead any one as a legal representative. It was therefore in this case quite unnecessary to ask for an order to bring the brother and the widow of the deceased judgment-debtor on the record. It was an order which the Court had no jurisdiction to pass, and in refusing to pass it the Court was right, though, as I said before, the reasons it gave for that refusal are wrong and irrelevant.

*Appeal dismissed.*

## REVISIONAL CRIMINAL.

1895  
February 4.

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

QUEEN-EMPRESS v. SRI LAL AND OTHERS.

*Act No. XLV of 1860 (Indian Penal Code), ss. 159, 160—Affray—"Public place."*

*Held* that a *chabutra* which was neither a place to which the public had a right of access, nor a place to which the public were ever permitted to have access, was not, though it adjoined a public road, a "public place" within the meaning of s. 159 of the Indian Penal Code.

The facts of this case sufficiently appear from the judgment of the Court.

Mr. *Roshan Lal* and Babu *Satya Chandar Mukerji*, for the applicants.

The Government Pleader (*Munshi Ram Prasad*), for the Crown.

EDGE, C.J., and BANERJI, J.—This is an application for revision of an order of the Sessions Judge of Farakhabad dismissing the appeal of the applicants from a conviction under s. 160 of the Indian Penal Code.

The fighting appears to have taken place on a *chabutra*, which from the evidence in the Court below appears to have been private property adjoining a public thoroughfare. We infer from the evidence that that *chabutra* was neither a place to which the public had a right of access, nor a place to which the public were used to

have access, nor was it a place to which the public were ever permitted to have access, though it adjoined a public road. We must look to s. 159 of the Indian Penal Code to see what are the ingredients of the offence of an "affray." S. 159 runs as follows:—

"When two or more persons by fighting in a public place, disturb the public peace, they are said to commit an "affray." It will be observed that this section does not make fighting "in public," which is likely to disturb the public peace, an affray. The fighting disturbing the public peace which is an affray, is fighting which takes place in a "public place." No doubt the fighting in this case on the *chabuttra* was fighting in public, because the public could see what was taking place.

Some of the statutes in England make acts penal which are done in public, others make acts penal which are done in a public place, so that in the criminal statute law in England, the distinction is, it will be observed, between doing an act in public and doing an act in a public place. As the *chabuttra* was not a place to which the public had by right or by permission, or by usage or otherwise, access, we must hold that it was not a public place, although any member of the public walking along the street could walk on to it, but in doing so he would be committing a trespass.

Under these circumstances we must set aside the convictions. We acquit the applicants, and order that the fines, if paid, be refunded.

## APPELLATE CIVIL.

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

NATTHU SINGH (DEFENDANT) v. GULAB SINGH (PLAINTIFF).\*

*Limitation—Suit for possession of property incidentally necessitating the setting aside of or declaration of invalidity of an adoption—Act No. XV of 1877, (Indian Limitation Act) sch. ii, art. 118.*

Article 118 of sch. ii of the Indian Limitation Act applies only to suits for a declaration that an adoption is invalid or in fact never took place; it does not apply

\* First Appeal No. 93 of 1893, from a decree of Bābu Ganga Saran, B.A., Subordinate Judge of Aligarh, dated the 23rd January 1893.

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February 5.