1902
February 27.

REVISIONAL CRIMINAL.

Before Mr. Justice Blair.

EMPEROR *v.* KADHU SINGH AND OTHERS.*

Act No. XLV of 1860 *(Indian Penal Code), section* 147—*Riot*—*Act No. XLV of* 1860, *sections* 96 *et seqq.*—*Right of private defence.*

Of two parties, each of which claimed title to certain trees, one party went to cut down the trees, and went armed with *lathis*, apparently with the intention of resisting anticipated opposition on the part of the other claimants. The other party attempted to stop the cutting down of the trees, and a fight ensued, in the course of which several people were injured. *Held* that the first party were guilty of rioting, and, whatever their title to the trees was, could not claim that they had acted in the exercise of the right of private defence.

IN this case six persons were convicted by a Magistrate of the first class of the offences of rioting and causing grievous hurt and were sentenced therefore to various terms of imprisonment. The facts on which the convictions were based are thus set forth in the order of the Magistrate :—

"This is the case of a fight which occurred at Usita between two parties of Thakurs, who are engaged in a dispute about certain land in their village. Kadhu Singh went to cut a tree, and had cut up a considerable amount of a *jamun* tree, and begun to cut down a *babul* tree, when Jai Singh came up and told him to stop. Both sides were enraged, and a fight took place in which a large number of injuries were inflicted. Both parties accused one another at the thana afterwards, but subsequently did all they could to hush up the case. I have convicted the other side of rioting and causing grievous hurt.

"The fact that Kadhu Singh, Sardar Singh and Heti Singh went to the place with *lathis*, shows that they were prepared to defend their right to the tree by force, and the whole course of the case shows that both parties knew quite well that the possession of the trees was in dispute. It is therefore clear that these three men, at any rate, were guilty of having the common object of enforcing their supposed right by a show of force, and the fact that they were attacked does not make their position any better, since they obviously provoked the attack. The patwari's evidence cannot be regarded as important, as he attempted to

* Criminal Revision No. 70 of 1902.

make out at first that there was no quarrel at all about these trees, though he afterwards had to admit that both parties laid claim to them, and his statement that the three men mentioned went together to cut the trees is totally at variance with all that has been said by the parties themselves, and is contradicted by the medical evidence, which shows that Kadhu Singh and Jai Singh had far more wounds than anyone else, and these two men must therefore have been fighting before anyone else came up. As regards Karan Singh, Jhamman Singh, and Dhan Singh, it is impossible to accept their explanation that they had no sticks, and only interfered to stop the quarrel. Supposing that a crowd had gone up to stop the quarrel, is it likely that five of them would have received injuries, and one of them would have had five distinct marks more than are to be found on several of the alleged actual combatants?

"Under sections 147 and 325, Indian Penal Code, I sentence Kadhu Singh as the ringleader to rigorous imprisonment for six months, and Dhan Singh, Sardar Singh, Karan Singh, Heti Singh, and Jhamman Singh to rigorous imprisonment for three months."

From this order an appeal was preferred to the Sessions Judge, who dismissed it and affirmed the convictions and sentences. The appellants thereupon applied in revision to the High Court.

Mr. *C. R. Alston*, for the applicants.

The Assistant Government Advocate (Mr. *W. K. Porter*), for the Crown.

BLAIR, J.—I do not see any reason to interfere. It is one of those cases arising out of one of those wretched little village squabbles, which should be disposed of by the Magistrate, but which both parties prefer to dispose of by *lathis*. These present applicants went prepared for a fight. They knew that there were other persons who claimed right and title in these trees. They thought to steal a march on them. They knew very well that there was a probability that they would be met by force. They cut down one tree in dispute, then they proceeded to cut down another. From the point of view of their opponents they were doing an act either of theft or mischief. In doing so they knew

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what they had to expect. They went prepared to fight, and they did fight. They have been punished, and rightly punished too. It is not a case where a man has been in actual exclusive possession of the land, in which case the presumptions of law are all in his favour; there is no such possession in this case. The petition is dismissed.

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March 4.

APPELLATE CIVIL.

Before Mr. Justice Banerji and Mr. Justice Aikman.

CHHEDI (JUDGMENT-DEBTOR) *v.* LALU (DECREE-HOLDER).*

Act No. XV of 1877 *(Indian Limitation Act), sch. ii, arts.* 178, 179—*Execution of decree—Limitation—Decree for pre-emption—Time from which limitation begins to run against the decree-holder.*

Article 179 of the second schedule to the Indian Limitation Act, 1877, applies only where there is a decree or order which can at its date be executed. In the case of a decree for pre-emption there is no decree capable of execution until the decree-holder pays into Court the pre-emptive price. The first application, therefore, for execution of such a decree will be governed, not by article 179, but by article 178, and limitation commences to run against the decree-holder from the time when the pre-emptive price is paid. *Muhammad Suleman Khan* v. *Muhammad Yar Khan* (1), referred to.

ONE Lalu obtained a decree for pre-emption against Chhedi. The decree was passed on the 20th of December, 1887, and was conditioned on the decree-holder's paying the pre-emptive price on or before the 20th of February, 1898. The decree-holder deposited the money on the 17th of February, 1898, but made no application for execution until the 16th of February, 1901. On that date the decree-holder applied to the Court which passed the decree alleging that he had in fact got possession of the property to which the decree related, but asking that for the sake of greater security formal possession might also be awarded to him. To this application it was objected by the judgment-debtor that it was barred by limitation. The Court of first instance (Munsif of Ghazipur) held the application to be barred and dismissed it. On appeal by the decree-holder the lower appellate

* First Appeal from Order No. 104 of 1901, from an order of Munshi Mata Prasad, Officiating District Judge of Ghazipur, dated the 25th September, 1901

(1) (1894) I. L. R., 17 All., 39.