

1903

IN THE
MATTER
OF THE
PETITION OF
BASDEO.

order stated in the petition, can be supported. These matters have not been gone into or considered. For these reasons the order of the learned Magistrate cannot be supported. It is therefore set aside and the bail bonds are directed to be discharged.

1903

August 24.

Before Sir John Stanley, Knight, Chief Justice.

EMPEROR v. JANGI SINGH.*

*Act No. XLV of 1860 (Indian Penal Code), section 441—Criminal trespass—
Intent—Dispossession of tenant under a false pretext.*

When a zamindar under the pretext that one of his tenants had left the village and abandoned his holding took possession of the tenant's holding wrongfully, it was held that, in the absence of evidence of one of the objects specified in section 441 of the Indian Penal Code, the zamindar could not properly be convicted of criminal trespass, his intention apparently being merely to get possession of the land. *King-Emperor v. Nandan* (1) distinguished.

JANGI SINGH, the applicant in this case, was a zamindar, and one Bhola Nath was an occupancy tenant. The zamindar had quarrelled with Bhola Nath, and when the latter was absent temporarily from the village by reason of ill-health, he induced the patwari to record that Bhola Nath had left the village and abandoned his holding, and thereupon took possession of it. On these facts, without any definite finding as to the motive of Jangi Nath, he was convicted of the offence of criminal trespass. His appeal to the District Magistrate was dismissed, and he thereupon filed an application for revision in the High Court.

Mr. J. Simeon, for the applicant.

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

STANLEY, C.J.—The facts proved in the case do not in my opinion justify a conviction under section 447 of the Indian Penal Code. In order to establish a case of criminal trespass it must be proved that the accused party entered into possession of the property of another "with intent to commit an offence, or to intimidate, insult, or annoy any person in

* Criminal Revision No. 407 of 1903.

(1) Weekly Notes, 1902, p. 42.

possession of such property." It has not been proved in this case, and indeed it has not been asserted, that the applicant took possession with intent to commit an offence, or with the intent to intimidate, or insult or annoy the party in possession. The applicant is zamindar of the property in question, and he alleges that he took possession on the abandonment of the land by his tenant. His intention possibly was to obtain possession contrary to law, but this of itself would not constitute criminal trespass. Proof of an intention to commit an offence or to intimidate, insult or annoy was necessary. There was no evidence of any such intention, or from which such an intention might be reasonably inferred. The facts are dissimilar from those in *King-Emperor v. Nandan* (1) to which I have been referred. An unlawful act is not necessarily an offence (see section 40 of the Indian Penal Code), and an intention to commit an unlawful act, not being one of the acts mentioned in section 441, does not render the accompanying trespass criminal trespass. The order therefore of the 24th of January, 1903, affirmed in appeal on the 23rd of February, 1903, is set aside, and the fine, if paid, must be refunded.

1903

 EMPEROR
 v.
 JANGI
 SINGH.

APPELLATE CRIMINAL.

1903

September 4.

Before Sir John Stanley, Knight, Chief Justice.

EMPEROR v. FATTU AND OTHERS.*

Criminal Procedure Code, section 233—Charge—Charge not distinguishing separate offences alleged against accused—Charge held to be bad in law.

Certain persons, who were alleged by the prosecution to have committed three, if not four, separate dacoities in the course of the same night, were charged to the effect that they on or about the 12th December at Dabri "committed dacoity and therefore committed an offence punishable under section 395 of the Indian Penal Code."

Held that the charge ought to have specified each alleged dacoity separately, and that in the form in which it was drawn it was not merely irregular but bad in law; and a new trial was ordered. *Subrahmaniu Ayyar v. King-Emperor* (1) referred to.

THE appellants in this case were convicted by the Sessions Judge of Naini Tal of the offence of dacoity under section 395

* Criminal Appeal No. 561 of 1903.

(1) Weekly Notes, 1902, p. 42.

(2) (1901) I. L. R., 25 ad., 61.