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EMPEROR  
v.  
RAGHUNATH  
SINGH.

sureties tendered was one Randhir Singh ; but his suretyship was refused by the Magistrate for the following reason : "The property hypothecated by Randhir Singh," said the Magistrate, "is apparently sufficient for the security demanded, but he himself is a person who in January, 1901, was convicted under sections 147 and 325, Indian Penal Code. The character of such a person cannot be considered as being altogether satisfactory, and I do not think that he is a fit person to stand surety for a person like Raghunath Singh." Raghunath Singh applied in revision to the High Court, and prayed that the security offered by Randhir Singh might be accepted.

Mr. C. C. Dillon, for the applicant.

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

STANLEY, C.J.—I do not think that the fact that a proposed surety has on one occasion offended against the law and been punished for an offence under the Indian Penal Code of itself renders such person for ever afterwards unfit to be surety for a party who is required to give security for good behaviour. The learned Magistrate in this case finds that the property proposed to be hypothecated by Randhir Singh is sufficient for the security demanded, and under all the circumstances of this case, I think he may be accepted as one of the sureties for the applicant. Accordingly I allow the application and direct that he be accepted as surety.

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August 18.

*Before Sir John Stanley, Knight, Chief Justice.*

IN THE MATTER OF THE PETITION OF BASDEO AND OTHERS.\*

*Criminal Procedure Code, section 107—Security for keeping the peace—  
Evidence as to probability of breach of the peace.*

*Held* that facts which might be taken to establish the probability of certain persons disturbing the public tranquillity at a particular annually recurring festival, would afford no ground, after such festival had passed without the public tranquillity having been disturbed, for binding over such persons to keep the peace with a view to the possibility of their creating a disturbance at the next recurrence of the festival, *Uma Churn Santra v. Beni Madhub Roy* (1) referred to.

\* Criminal Revision No. 860 of 1903.

(1) (1880) 7 C. L. R., 352.

THE facts of this case are as follows:—

Shortly before the Muharram of 1903, which fell about the beginning of April, it was brought to the notice of the District Magistrate of Meerut that certain Hindus of the town of Hapur had organized a conspiracy with the object of giving trouble to the Muhammadans of that town during the Muharram and that the result of their organization would very likely be a breach of the peace. There was no time under the circumstances to take action under section 107 of the Code of Criminal Procedure, but precautionary measures were taken in the shape of drafting extra police into the town, and owing to the presence of the police a disturbance was averted. After the Muharram was past the District Magistrate instituted proceedings against Pandit Basdeo, one of the principal men of Hapur, and several other persons, and evidence was given of various acts on the part of these persons, which evidence, if believed, would indicate an intention on the part of a large number of the Hindu inhabitants of Hapur to provoke a breach of the peace on the occasion of the late Muharram. On this evidence Pandit Basdeo and others were bound over by the Magistrate to keep the peace for a term of one year. Against this order an application in revision was presented to the High Court, in which it was contended, first, that evidence showing a likelihood that the applicants might commit a breach of the peace at one Muharram was not evidence, after that Muharram was over, that they were likely to commit a breach of the peace at the next Muharram, and, secondly, that the evidence given before the Magistrate did not in fact show that the applicants were likely to commit a breach of the peace: but the first of these questions only was argued.

Mr. *G. P. Boys*, for the applicant.

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

STANLEY, C.J.—This case comes before the Court on an application for revision of an order of the learned District Magistrate of Meerut, dated the 27th of May, 1903, ordering the petitioners to furnish security to keep the peace for one year under the provisions of section 107 of the Code of Criminal

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Procedure. The main ground relied upon in support of the application is that upon the evidence which was produced before the learned Magistrate there was no justification for the order. It appears that prior to the last Muharram festival, which took place on the days succeeding the 31st of March up to the 9th of April, it was apprehended that certain Hindus, inhabitants of Hapur, which is an important town having a large population, would obstruct and throw obstacles in the way of the successful carrying out of the festival. It is said that the applicant, Pandit Basdeo, a person of some influence in Hapur, and the other applicants, were organizing a Hindu procession which would be co-incident with the great Muhammadan festival, and that this was certain to excite animosity and ill-feeling between the Muhammadans and Hindus, and would possibly lead to a disturbance. It is also said that instructions were given to the Hindus of the locality who carried doolies and palanquins not to serve Muhammadans on that occasion, and that the sweetmeat sellers were also directed not to supply any sweetmeats. It is further alleged that when the procession of Muhammadans reached a certain spot where a nim tree grew, a riot was organized with a view to breaking up the procession. The learned Magistrate was of opinion that the allegations made against the petitioners were well founded. Notwithstanding, however, the preparation which it is alleged they made for the disturbance of the festival, happily everything passed off peacefully, and no breach of the peace occurred, nor was the public tranquillity disturbed. After the festival had concluded the learned Magistrate held an inquiry, and has thought fit, after hearing evidence in respect of the several matters to which I have referred, to bind over the applicants to keep the peace for a period of one year. Mr. *Boys* on behalf of the applicants has shortly stated the main ground on which he relies, which is that, even admitting that the petitioners were guilty of the reprehensible conduct which is alleged against them, it cannot be inferred from that conduct, which was prior to the last Muharram festival, and did not lead to any disturbance, that the applicants are likely to commit a breach of the peace or disturb the public tranquillity at the next Muharram festival, or in the near future,

or at all. It appears to me that this argument is well founded. Section 107 presupposes that the person sought to be put under a rule of bail is likely (not *was* likely) to commit a breach of the peace or disturb the public tranquillity. The evidence goes to show that the petitioners at the utmost were likely to cause a breach of the peace during the last Muharram festival. It cannot be presumed from this that they are likely to do the same at the next Muharram festival. Let us hope that a spirit of toleration and kindness—if such does not at the present time exist—will by that time have sprung up amongst these parties, and that in future there will be no attempt by either religious party to disturb the religious festivals of the other. The acts in respect of which security is required must not be acts the repetition of which may be merely apprehended from past commission of similar acts, but acts from which a reasonable inference can be drawn that the accused are likely (not *were* likely) to commit a breach of the peace. In my opinion, therefore, the evidence did not justify the learned Magistrate in coming to the conclusion that the petitioners were likely to commit a breach of the peace or disturb the public tranquillity within the meaning of section 107. This view is supported to some extent by the ruling in the case of *Uma Churn Santra v. Beni Madhub Roy* (1). There it was held upon a reference under section 530 of the Criminal Procedure Code of 1872, a section which corresponds with section 145 of the present Code, that where there is no present danger of a breach of the peace, the fact that such a breach is likely to take place at a future time will not justify a Magistrate in making an order under that section. Mr. Porter argued that inasmuch as the applicants and others had made preparation for disturbing the public tranquillity on the occasion of the last Muharram festival, the probable and reasonable inference is that they will be guilty of like misconduct at the next ensuing Muharram. I am unable to accede to this argument. As I have said, I hope a better spirit will prevail when the next Muharram comes round. In view of my decision upon the question which I have now disposed of, it is unnecessary for me to consider whether or not the other objection to the

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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.

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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.