

## REVISIONAL CRIMINAL.

1906  
March 22.*Before Mr. Justice Aikman.*

EMPEROR v. BAHAL AND OTHERS.\*

*Act No. XLV of 1860 (Indian Penal Code), sections 99 and 353—Assaulting public servant in the execution of his duty—Vaccinator attempting to vaccinate a child forcibly—Right of private defence.*

A vaccinator attempted to vaccinate a child against the wishes of its father. The father and some of his relations intervened and assaulted the vaccinator, but did not do him any particular harm. *Held* that the child's father and other relations were perfectly justified in interfering, and under the circumstances could not be said to have acted in excess of their right of private defence. *Mangobind Muchi v. Empress* (1) followed.

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

Mr. J. Simeon, for the applicants.

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

AIKMAN, J.—The four applicants, Bahal, Dwarka, Jhullan and Naipal, were convicted by a Magistrate of the first class of assaulting a public servant in execution of his duty as such public servant and sentenced, under the provisions of section 353 of the Indian Penal Code, to four months' rigorous imprisonment each. On appeal the learned Sessions Judge sustained the conviction. The sentence imposed on Bahal was maintained, the sentences imposed on the other accused were reduced to a term of two months each. It appears that on the 10th of November last a vaccinator, named Muhammad Nasir, went to the village in which the accused live. He saw a little boy of three years of age playing at the door of the house of his father, the accused Bahal. Bahal was present at the time. The vaccinator says:—"I seized him (the boy) and taking out my needle began to vaccinate him. Bahal was present at the door and caught hold of my hand. He broke the needle and threw it away." The vaccinator announced his intention of insisting on vaccinating the child. Thereupon Bahal and the other accused, who are relations of Bahal, are said to have assaulted and beaten the

\* Criminal Revision No. 460 of 1906.

(1) (1899) 3, C. W. N., 627.

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vaccinator. There is nothing in the evidence to show that the vaccinator received any special injury. I must express my surprise that on these facts the Courts below should have held that an offence under section 353 of the Indian Penal Code was committed. The vaccinator was not acting in the execution of his duty. It is no part of a vaccinator's duty to insist on vaccinating a child in opposition to the wishes of its parent or guardian. The vaccinator rendered himself liable to a charge of assaulting the child. The accused do not appear to me to have exceeded their right of private defence. The view which I take is supported by the decision in *Mangobind Muchi v. Empress* (1). It is true that the accused Bahal had no right to break the vaccinator's needle and throw it away, and his actions in so doing might possibly constitute an offence under section 426 of the Indian Penal Code. But as he has been for a month in prison, I do not deem it necessary to consider whether a conviction should be entered under that section. For the above reasons I quash the convictions of the applicants under section 353 of the Indian Penal Code and the sentences passed on them. I am informed that they have been released on bail under the order of this Court, dated the 22nd January, 1906. The result of the order now passed is that the bail is discharged and the applicants need not surrender.

P. C.

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November 28.

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## PRIVY COUNCIL.

AHMAD WALI KHAN (PLAINTIFF) v. SHAMSH-UL-JAHAN, BEGAM  
AND ANOTHER (DEPENDANTS).

[On appeal from the High Court of Judicature, Allahabad.]

*Act No. IV of 1882 (Transfer of Property Act), section 95—Joint mortgage bond in ordinary form—Payment by one mortgagor and redemption of whole property mortgaged—Charge on property of co-mortgagors—Failure of plaintiff in suit for money paid on mortgage to prove that he executed bond as surety only—Right to contribution—Pleadings—Relief.*

The fact that a plaintiff has claimed too much on one cause of action does not preclude him from recovering what he is actually entitled to on another cause of action, provided the pleadings are wide enough to cover such a claim

*Present*.—Lord DAYBET, SIR FORD NORTH, SIR ANDREW SCOBLE, and SIR ARTHUR WILSON.