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every offender who is found to have committed an offence under section 392 or 395 (though himself not armed with a deadly weapon, and who at the same time was in company of others who were so armed) must receive a sentence of not less than seven years' imprisonment, language similar to that used in sections 394 and 396 would have been employed. It will be seen from our judgment that in our opinion no court should draw up a charge-sheet under section 397, as that section does not create a substantive offence. The charge to be in proper form should be in the case of offenders using a deadly weapon, &c., a charge under section 392 read with section 397 or section 395 read with 397, as the case may be; in the case of the others a charge under section 392 or section 395. As the appellant deserved the sentence passed on him we dismiss the appeal.

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February 3.

Before Mr. Justice Richards.

EMPEROR v. RAM BARAN SINGH AND ANOTHER.*

Criminal Procedure Code, sections 107 and 145—Attempt to eject by force a person in possession of immovable property—Jurisdiction—Procedure.

Where certain persons wrongfully and without any *bond fide* claim to possession, sought to eject another by force from the possession of certain land, and a breach of the peace was imminent, it was held that a Magistrate might legally take action against the aggressors under section 107 of the Code of Criminal Procedure and it was not necessary, on the finding that their claim was not *bond fide*, to take proceedings under section 145 of the Code.

ONE Gajadhar Singh, the occupancy tenant of certain land, mortgaged his occupancy holding to a Mr. Barber in 1900. The mortgagee, either as such or as lessee, was put into possession, and retained possession, cultivating the land either in person or through sub-tenants, for some years. In 1905 the zamindar, Ram Baran Singh, and Jhuri Singh, forcibly interfered with his possession of the land by preventing his labourers from working and threatened, according to Mr. Barber, to take possession of the crops by force. Accordingly a petition was presented on behalf of Mr. Barber, asking that security might be taken from Ram Baran Singh and Jhuri Singh to keep the peace. This application was opposed on the ground that the opposite party was in possession and had in fact sown the crops on the land, and that proceedings, if any were required under the Code of Criminal Procedure, could not be taken under section 107, but should be taken, if at all, under section 145. The

* Criminal Revision No. 8 of 1906.

Magistrate, however, found in effect that the plea of title set up by the opposite party was entirely a bogus plea and had no merits to support it, and was put forward merely to help the opposite party to get possession of the crops of the complainant. He found also that there was a danger of a breach of the peace being committed. On these findings the Magistrate made an order binding over the opposite party to keep the peace for six months. An application to the District Magistrate to set aside this order was rejected, and the opposite party then preferred a similar application to the High Court.

Mr. *R. K. Sorabji*, for the applicants.

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

RICHARDS, J.—This is an application in revision. The applicants were bound over under section 107 to execute a bond to keep the peace, and the objection which is taken to the order is that section 145 of the Code is the proper section and under which the Magistrate should act and not under section 107.

Section 107 provides that an order of the nature complained of may be made whenever the Magistrate is informed that any persons are likely to commit a breach of the peace, disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity. The evidence which was before the Magistrate was quite sufficient to make him think that the applicants were likely to commit a breach of the peace, and I think that, altogether irrespective of the provisions of section 145, he was justified in making the order he did. I am clearly of opinion that in every case in which a Magistrate finds that there is a *bond fide* dispute about land and that an order under section 145 will suffice to keep the peace, he ought to adopt the procedure laid down in section 145. I think that the Magistrate is entitled for the purpose of considering whether or not there is a *bond fide* dispute about immoveable property to hear evidence. The moment he comes to the conclusion that a real dispute exists, no matter how erroneous the contention of one or other of the parties may be, he ought to refrain from deciding any question of title between the parties. His decision should merely be whether or not the

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claim set up is bogus or *bond fide*. In the present case I think that it is quite clear that the Magistrate came to the conclusion that there was no *bond fide* belief by the defendants that they had any title whatever to the property and that they were in reality wilfully committing a wrongful act. If he came to that conclusion he was certainly justified in making the order under section 107. I reject the application.

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February 9.

APPELLATE CIVIL.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkill.

GANGA PRASAD AND ANOTHER (DEFENDANTS) v. KURA (PLAINTIFF)*
Civil Procedure Code, sections 521, 588—Award—Objections to award—Award set aside—Appeal.

Held that no appeal lies from an order under section 521 of the Code of Civil Procedure setting aside an award. *Shyama Charan Pramanik v. Prokhad Durwan* (1) followed. *Naurang Singh v. Sadajal Singh* (2) overruled. *Pureshnath Dey v. Nobin Chunder Dutt* (3) and *Rughoobur Dyal v. Maina Koor* (4) referred to.

IN this case a suit was brought for a declaration that a certain bond was a forgery. The defendants pleaded that the bond was genuine. The question was referred to arbitration through the Court and an award was passed declaring that the bond was a forgery. An objection to this finding was preferred under section 521 of the Code of Civil Procedure, and the Court (Munsif of Kairana) sustained the objection; set aside the award; considered the case on the merits, and ultimately found in favour of the genuineness of the bond. The plaintiff appealed. The lower appellate Court (District Judge of Saharanpur) going behind the order of the first Court, entertained the question of the alleged misconduct of the arbitrators; held that no misconduct was proved and that the award was a binding award, and accordingly passed a decree in conformity with the award. The defendants appealed to the High Court.

* Second Appeal No. 681 of 1904, from a decree of L. G. Evans, Esq., District Judge of Saharanpur, dated the 29th of April, 1904, reversing a decree of Pandit Bishun Lal Sharma, Munsif of Kairana, dated the 23rd of December, 1903.

(1) (1904) 8 C. W. N., 390.

(3) (1869) 12 W. R., 93.

(2) (1887) 1. L. R., 10 All., 8.

(4) (1888) 12 C. L. R., 564.