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KAMTA NATH
v.
THE
MUNICIPAL
BOARD OF
ALLAHABAD.

convenience of the public or of persons residing in the vicinity. They are empowered to ask for the site plans with details. It is impossible to suppose that those who framed section 87 intended it to apply to acts such as the inclosing of a space with screens of canvas, which must of necessity be removed during the rains of each year. This would be the using of a Nasmyth hammer to crack a nut. It was contended by the prosecution that it would not be difficult to conceive that the inclosing of spaces with canvas screens might in the cold weather be extended so far as to be prejudicial to the health, safety, and convenience of the public. This may be so, and if it is, it is for the Municipal Board to consider whether such acts cannot be guarded against under more specific rules made under some other provisions of Act No. I of 1900.

I hold that section 87 of the Act was not intended to have reference to the act now complained of.

I accordingly set aside the conviction and sentence and direct that the fine or any part of it if paid be refunded.

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August 19.

Before Mr. Justice Richards.

EMPEROR v. CHANDA.*

Act No. XLV of 1860 (Indian Penal Code), section 426—Mischief—Definition—Fishery—Draining of water from a river to the detriment of the fishing rights therein.

D., as lessee of Government, held rights of fishery in a particular stretch of river. C., by diverting the water of that river, converted the bed of the river for a considerable distance into dry land, or land with a very shallow covering of water upon it, and by so doing he was enabled to destroy, and did destroy, very large quantities of fish, both mature and immature. *Held* that when C. deliberately changed the course and condition of the river in the manner described to the detriment of D., he was guilty of the offence of mischief mentioned in section 426 of the Indian Penal Code. *Bhagiram Dome v. Abar Dome* (1) distinguished.

THE facts of this case are as follows :—

The fishery rights of the right half of the river Asan in the Dun for a certain portion of the length of the river were leased by Government to the Dehra Dun Fishing Association. While

* Criminal Revision No. 403 of 1905.

(1) (1888) I. L. R., 15 Calc., 338.

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this lease was in force, one Chanda, who claimed to be a lessee from a Mr. Powell of the fishery rights in the other side of the river set to work to divert the river for a considerable distance. By so doing he reduced a section of it to practically dry land, and was enabled to destroy a very large quantity of immature as well as marketable fish. The trap was so arranged that from time to time a fresh supply of water, and of fish, could be let in. According to the evidence Chanda caused the destruction of immense quantities of fish of all sizes. In respect of this he was tried for and convicted of the offence of mischief as defined by section 425 of the Indian Penal Code. Chanda thereupon applied in revision to the High Court.

Mr. C. Ross Alston, for the appellant.

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

RICHARDS, J.—This is an application by way of revision from an order of the Joint Magistrate convicting the accused under section 426 of the Indian Penal Code and fining him under that section Rs. 100 or two months' rigorous imprisonment in default, and also from a conviction under section 6, sub-section (3), of Act No. IV of 1897, and a fine of Rs. 50 or one month's simple imprisonment in default. It appears that the accused by diverting a river for a considerable distance entrapped large quantities of fish in a section of the river. He so arranged that from time to time a fresh supply of fish could be let into the trap. It appears also that a very great quantity of immature fish were destroyed by boys and beasts of prey while so entrapped, the accused presumably removing for his own benefit all mature and marketable fish. Two questions have been raised by way of defence—firstly, that this was private water and that therefore section 6 of the Fisheries Act does not apply, no notification having been issued by the Local Government under sub-section (2), section 6; and, secondly, that the prosecution cannot be sustained under section 426, inasmuch as fish or rights of fishing are not "property" within the meaning of section 426. As to the first point it is admitted by Mr. Porter that the water is private water and that no notification was issued at the time of the commission of the offence. One

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bank of the river, so far as fishery rights are concerned, appears to be held by Mr. Powell, under whom the accused claims, and the Dehra Dun Fishing Association is the lessee of the fishery rights of the other bank. It does not appear from the judgment, nor is it very material, but I am informed that the rights of the Dehra Dun Fishing Association are restricted to fishing with a rod or line, or at least that they are not entitled under the lease to use nets or engines for the capture of fish. It is clear that the water is "private water" within the meaning of the section, and therefore the conviction under the Fisheries Act must be set aside. The other question, namely, whether or not the accused could be convicted under section 426 is one of some difficulty. Mr. *Ross Alston* has cited the case of *Bhagiram Dome v. Abar Dome* (1), where it was held that fish caught in a public river could not be the subject-matter of theft under section 378 of the Indian Penal Code. In that case the accused had been convicted under a number of sections, including section 426, but the evidence shows that all they did was to catch fish with a net in a river in which they had no right to fish. The learned Judges dealt with various sections, including section 426. A right of fishing although "property" has been held not to be such a right as to be the subject-matter of a criminal trespass under section 451, and the Court held in the case cited by Mr. *Ross Alston* that the accused could not be convicted under section 426. The facts of the present case are, however, quite different from the case decided in the Calcutta High Court. The accused in that case did not in any way interfere with the river; in the present case the accused most materially interfered with the river, for by the dams which he placed above and below he practically reduced a section to dry land or land with a very shallow covering of water upon it. Under section 425 of the Indian Penal Code a person commits mischief who, knowing that he is likely to cause damage to any person, causes any such change in any property or in the situation thereof or diminishes its value or utility or affects it injuriously, and under the explanation to that section it is not essential that the property interfered with shall belong to the person

(1) (1888) I. L. R., 15 Calc., 398.

injuriously affected. Now it is quite clear that the river bed was the property of Government; the accused caused a change in the river, and he must have known that the alteration of the river and the destruction of thousands of fish, mature and immature, caused thereby would injuriously affect the Dehra Dun Fishing Association. I accordingly think that when he deliberately changed the course and condition of the river he was guilty of the offence mentioned in section 426 of the Indian Penal Code. I accordingly set aside so much of the Magistrate's order as convicted the accused under section 6 of the Fisheries Act, and also so much of the said order as imposes a fine under that section, and I confirm the conviction and sentence under section 426 of the Indian Penal Code.

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MATHURA PRASAD v. BASANT LAL.*

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September 7.

Criminal Procedure Code, section 344—Adjournment of Criminal case—Power of Court to order costs of the day to be paid by the party for whose benefit an adjournment is granted.

Held that a Magistrate in granting an adjournment under the provisions of section 344 is competent under the same section to order the costs of the day to be paid by the party in whose favour the order for adjournment is made. *Sew Prasad Poddar v. The Corporation of Calcutta* (1) followed. *King-Emperor v. Chhabraj Singh* (2) discussed and doubted.

IN this case Mathura Prasad made a complaint against Basant Lal under section 500 of the Indian Penal Code. The case was tried by a Magistrate of the 1st class, and in the course of it the 14th of June was fixed for the cross-examination of the prosecution witnesses. Upon that date the complainant did not appear. He represented to the Court that he was ill; but the Court did not believe the excuse to be genuine. Accordingly, whilst adjourning the case, the Court, under section 344 of the Code of Criminal Procedure, ordered the complainant to pay Rs. 100 to Basant Lal as the costs of the day. Basant Lal applied to the Sessions Judge to set aside this order; and the Judge, being of opinion that the ruling in *King-Emperor v.*

* Criminal Reference No. 446 of 1905.

(1) (1904) 9 C. W. N., 18. (2) Weekly Notes, 1902, p. 59