

REVISIONAL CRIMINAL.

1907
May, 15.*Before Mr. Justice Dillon.*

EMPEROR v. HUSAIN BAKHSH AND OTHERS.*

Act No. XLV of 1860 (Indian Penal Code), section 153—Definition—“Wantonly”—Act No. V of 1861 (Police Act), section 30—Disobedience to orders of police as to conduct of a procession.

Where certain persons taking part in a religious procession gratuitously disobeyed the orders of the police concerning the manner in which such procession was to be conducted, with the result that a riot was only averted by bringing armed police upon the scene, it was held that the persons concerned acted—though not “malignantly”—yet “wantonly” within the meaning of section 153 of the Indian Penal Code, and were properly convicted under that section.

Held also that a conviction under section 153 of the Indian Penal Code does not warrant the taking of action under section 106 of the Code of Criminal Procedure.

ON the 5th of April 1907, which was the *chehlum*, or 40th day of the Moharram, the *qasais* and *sikligars* of Shahjahanpur started with *tazias* for the local *karbala*. A police order had been issued that day that all the *tazia* processions should arrive at a place called Ajan Chauki by 7 P.M., so as to reach the *karbala* at 10 P.M. As a matter of fact the *qasais* and *sikligars* did not start from the Chauki till 10 P.M. At the Chauki a dispute arose between the *qasais* and the *sikligars* as to which of them should go first. They were repeatedly ordered to move on, but instead of doing so, they proceeded to wrangle and abuse each other and it was with the utmost difficulty that they were induced to proceed. So also when the two parties had arrived at the *karbala* a dispute arose as to which *tazia* should go first. The *tazias* were ultimately buried at 2 A.M. not, however, before additional police had been summoned to prevent the two parties from coming to blows. Ten men of the two parties were arrested, tried for an offence under section 153 of the Indian Penal Code, convicted and sentenced to two months' rigorous imprisonment each by the District Magistrate. They were also bound over to keep the peace. From these convictions and sentences nine of the ten men applied in revision to the High Court.

* Criminal Revision No. 197 of 1907.

1907

EMPEROR

v.

HUSAIN
BAKHSH.

Mr. *M. L. Agarwala*, for the applicants.

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

DILLON, J.—This is an application for revision of an order passed by the District Magistrate of Shahjahanpur convicting the nine petitioners under section 153 of the Indian Penal Code, and sentencing them to two months' rigorous imprisonment each. The District Magistrate also passed an order under section 106 of the Code of Criminal Procedure directing that all the accused at the expiration of their respective sentences should execute a bond to keep the peace for one year in their own recognizance for Rs. 200 with two sureties of Rs. 100 each. The facts which gave rise to this conviction are these :—On or about the 5th of April last, which was the *chehlum*, that is, the 40th day of the Moharram, the *gasais* and *sikligars* of Shahjahanpur started with *tazias* for the local *karbala*. A police order had been issued that day that all the *tazia* processions should arrive at Ajan Chauki by 7 P.M. so as to arrive at the *karbala* at 10 P.M. As a matter of fact the *gasais* and *sikligars* did not start from the Chauki till 10 P.M. At the Chauki a dispute arose between the *gasais* and *sikligars* as to which of them should go first. They were repeatedly ordered to move on, but instead of doing so, they proceeded to wrangle and abuse each other, and it was with the greatest difficulty that they were ultimately got to move on. Similarly when the two parties had arrived at the *karbala* a dispute arose as to which *tazia* should go first. The *tazias* were however buried by 2 A.M. and the nine petitioners and a 10th man who has not applied for revision were arrested under the orders of Pandit Jagmohan Nath, Deputy Magistrate, and were charged on these facts with "giving provocation by wantonly doing an illegal act knowing it to be likely that such provocation will cause the offence of riot to be committed." The District Magistrate holds that the petitioners' action in refusing to move on with their *tazias* when ordered to do so and wrangling on the question of precedence was calculated to cause a serious riot. In this view I entirely agree. It has been argued before me that the accused committed no offence under section 153 of the Indian Penal Code, as they did not "malignantly or wantonly" refuse to

move on. It is not the case for the prosecution that they acted maliciously and the word "wantonly" as used in the section merely means "recklessly." I think that the evidence and the finding clearly show that the petitioners acted recklessly in refusing to move on when ordered to do so, and that they, in wrangling and abusing each other when they were all in an extremely excited condition and armed with lathis, acted wantonly within the meaning of section 153 of the Indian Penal Code. I think that these convictions must be affirmed. With regard to the order under section 106 of the Code of Criminal Procedure, I do not think that the offence of which the petitioners have been convicted would bring them within the purview of that section. I therefore set aside that order. As to the sentences passed, I think that the imprisonment already undergone by the nine petitioners is sufficient to meet the ends of justice. I therefore remit the remaining portion of their sentences. Although Altaf Mian has not applied to this Court in revision, as I have the record before me I proceed to deal with his case also. I direct that he suffer rigorous imprisonment for two months in lieu of the sentence which was passed upon him by the District Magistrate. In his case also the order under section 106 of the Code of Criminal Procedure is set aside. Subject to these modifications the application of the nine petitioners before me is rejected.

1907

 EMPEROR
 v.
 HUSAIN
 BAKSH.

APPELLATE CIVIL.

1907

 May 15.

Before Mr. Justice Aikman.

KUNNI LAL AND OTHERS (DEFENDANTS) v. KUNDAN BIBI (PLAINTIFF).
Act No. V of 1882 (Indian Easements Act), sections 15 and 28 (c)—Easement—Prescriptive right to light and air—Infringement of right—Actual damage.

Where a plaintiff is claiming relief upon the ground that his prescriptive right to the passage of light and air to a certain window has been interfered with, it is enough to show that the right has in fact been interfered with. The plaintiff is not obliged to go further and show that he has suffered actual damage thereby. *Colls v. Home and Colonial Stores, Ltd.* (1) and *Kins v. Jolly*

* Second Appeal No. 92 of 1906, from a decree of G. A. Paterson, Esq., District Judge of Benares, dated the 24th of August 1905, modifying a decree of Bibu Hira Lal Singh, Munsif of Benares, dated the 12th of April 1905.