

## REVISIONAL CRIMINAL.

1911  
August, 3.

Before Mr. Justice Sir George Knox and Mr. Justice Piggott.

EMPEROR v. MASIT.\*

Act No. XLV of 1860 (*Indian Penal Code*), section 296—*Disturbing a religious assembly—Religious procession on a high-way—Carrying of flags to a temple.*

Where certain Lodhas, who, with the sanction of the public authorities, had been carrying flags to a temple in procession through a public street were attacked by persons who objected to the procession: *held*, that such attack constituted a disturbance of the performance of a religious ceremony punishable under section 296 of the Indian Penal Code.

CERTAIN Lodhas of Bareilly, who had obtained the permission of the local authorities for that purpose, were carrying flags in a procession to a temple. The procession was attacked on its way to the temple by sundry Muhammadans, and one of them, Masit, was charged for this under section 296 of the Indian Penal Code, convicted, and sentenced to six months' rigorous imprisonment. Masit appealed to the Sessions Judge, and, his appeal being dismissed, then came in revision to the High Court.

Mr. *Ahmad Karim* (for Mr. A. H. C. *Hamilton*,) for the applicant.

The Government Advocate, (Mr. A. E. *Ryves*), for the Crown.

KNOX and PIGGOTT, JJ.—Masit has been convicted of an offence under section 296 of the Indian Penal Code, and has been sentenced to rigorous imprisonment for six months. He appealed to the Sessions Judge of Bareilly, and his appeal was dismissed. He comes here in revision and raises the point whether the facts found constitute an offence under section 296 of the Indian Penal Code; the question of sentence is also put forward as being excessive.

The facts found are that Masit joined with others in attacking a procession of Lodhas who were carrying flags to a temple with the sanction of the public authorities.

The learned counsel who appeared for him in this Court raised the question whether the carrying of flags to a temple before they had been, so to speak, consecrated, could be considered the performance of a religious worship or religious ceremony.

\* Criminal Revision No. 291 of 1911 from an order of F. E. Taylor, Sessions Judge of Bareilly, dated the 19th of May, 1911.

He argued that this section of the Indian Penal Code may fairly be supposed to have been framed upon the kindred English law to be found in 52 Geo. III, Chapter 155, section 12, also 23 and 24 Victoria, Chapter 39. The case of *Vijiaraghava Chariar v. Emperor* (1) and the case to be found in 3 Indian Cases, 981, were also cited and have been fully considered by us.

We have no reason to suppose that the English law is any guide. The words of section 296 are quite clear. As regards the Madras case we agree with what was said by Mr. Justice BENSON.

We are satisfied that the carrying of these flags to the temple was considered by the Lodhas as the performance of a religious ceremony. They had applied to the public authorities and had got permission to carry the flags through the public streets. The assembly which was engaged in the carrying of these flags was an assembly lawfully engaged in the performance of a religious ceremony.

This being so, we see no reason for interfering, the sentence does not appear to us on the findings, to be excessive. We dismiss the application.

*Application dismissed.*

## APPELLATE CIVIL.

1911

EMPEROR  
v.  
MASIT.

1911

August 7.

*Before the Hon'ble Mr. H. G. Richards, Chief Justice, and Mr. Justice Banerji.*

INDAR SEN SINGH (DEFENDANT) v. HARPAL SINGH (PLAINTIFF).\*

*Hindu law—Mitakshara—Impartible property—Succession—Impartible property governed by the rule of primogeniture nevertheless joint property.*

Where ancestral property is impartible and is held by a single member of the family, all the members of the family must be deemed to be joint in estate and the rule of succession to the property is the same as that which governs the case of partible property, so that a junior member of the family, who gets maintenance from the person holding the impartible estate, succeeds upon his death to the estate by right of survivorship.

Whatever may be the powers of alienation of the holder of an impartible estate, the succession to it is governed not by the rule which applies to separate property but by the rule of survivorship. Therefore the person who succeeds to

\* First Appeal No. 406 of 1909 from a decree of Keshab Deo, Subordinate Judge of Jaunpur, dated the 15th of September, 1909.