we should extend the rule of forfeiture and make it applicable to a licensee. The grantor of the licence has ordinarily power by revocation to put an end to the licence and that may be the reason why the same rule has not been made applicable to a licensee denying the title of the grantor of the licence as to a tenant denying his landlord's title. It is to be noticed also, as regards Indian legislation, that although the Transfer of Property Act provides for forfeiture of his tenancy by a tenant denying his landlord's title, no such provision has been made regarding a licensee in the Chapter of the Easements Act which deals with licenses." It may seem anomalous that a tenant who denies his landlord's title is liable to forfeiture of his lease, whereas a licensee may deny a licensor's title without any such liability to forfeiture, but it is correct that there is no such provision in the Easements Act such as has been made in the Transfer of Property Act, section 111. In this state of the law we think that it would be proper to accept the ruling in the case mentioned, inasmuch as no good reason has been shown why we should differ from it. We therefore follow that ruling and in that view the appeal must fail. We therefore dismiss it with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

1917
June, 15.

Before Justice Sir George Knox, Acting Chief Justice.

EMPEROR *v.* KATWARU RAI AND OTHERS*.

Act No. XLV of 1860 *(Indian Penal Code), sections* 71, 147 *and* 323—*Criminal Procedure Code, sections* 35 *and* 235—*Separate convictions for rioting and causing hurt.*

Where, several persons being on their trial on a charge of rioting, it appears that some of them have also committed the offence of causing simple hurt under section 323 of the Indian Penal Code, there is no legal objection to charging such persons under that section and convicting them of, and sentencing them for, such offence as well as for the offence of rioting.

KATWARU RAI and six other persons were convicted on a joint trial of the offence of rioting under section 147 of the Indian Penal Code, and were sentenced to varying terms of imprisonment.

*Criminal Revision No. 433 of 1917, from an order of G. C. Badhwar, Sessions Judge of Ghazipur, dated the 8th of May, 1917.

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Amongst these, some were also charged with causing hurt and were convicted and sentenced under section 323 of the Indian Penal Code. The accused persons all appealed to the Sessions Judge, and their appeals were dismissed. They then applied in revision to the High Court, the principal ground, besides one as to the severity of the sentences, being that separate convictions and punishments under sections 147 and 323 were not warranted by law.

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

The Assistant Government Advocate (Mr. *R. Malcomson*), for the Crown.

KNOX, A. C. J.:—Katwaru Rai and six other persons have been convicted of an offence under section 147 of the Indian Penal Code and for that offence have been sentenced to varying terms of rigorous imprisonment. They went in appeal to the Sessions Judge of Ghazipur, and that court confirmed the sentences passed dismissing the appeals. They have now come here in revision. Of the four grounds taken in the application for revision only two have been argued before me, and those two are—(1) that separate convictions and punishments under sections 147 and 323 are not warranted by law, and (2) that the sentences are too severe. The main contention before me is that, whatever may have been the case before the year 1898, and whatever conflict the rulings of various High Courts may have had, the alteration introduced by Act No. V of 1898 into the Criminal Procedure Code makes it illegal now to convict and sentence accused persons of offences which are separable offences coming within the provisions of section 71 of the Indian Penal Code, inasmuch as they are no longer distinct offences within the meaning of section 35 of the Criminal Procedure Code. The question, therefore, which I have to consider is whether, in the light of the explanation added by Act V of 1898 to section 35 of the Criminal Procedure Code, the offences of rioting and of voluntarily causing hurt are or are not distinct offences. The argument is that an offence under section 143 of the Indian Penal Code does not reach the stage of rioting until force or violence has been used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly. A definition

has been given to the word 'force' in section 349 of the Indian Penal Code. Violence, so far as I know, has not been made the subject of a definition in the same Code. If we adopt the definition given in section 349 of the Indian Penal Code, members of an unlawful assembly would be guilty of the offence of rioting as soon as any member of the unlawful assembly in prosecution of the common object of the assembly caused motion to any person against whom that assembly was acting. To turn this into simpler language, the offence of rioting would be complete if any member of the unlawful assembly in prosecution of a common object of the assembly pushed any person against whom that assembly was acting; but no offence would have been caused under section 323 unless that act of pushing caused bodily pain, disease, or infirmity to the person so pushed. In the case before me the finding which I take in revision as the finding of the lower court is that (1) hurt was caused to one Raghunandan Rai, and (2) hurt was also caused by a separate act to Sakal Rai. There is evidence as to various other acts which might amount to force as defined in section 349. But the finding regarding them is rather vague, and I take it that by one of the acts complained of, viz., that to Raghunandan Rai, rioting was committed, while by the act committed on the body of Sakal Rai hurt was caused. Turning to section 235 of the Code of Criminal Procedure it will be found in illustration (*g*) of section 235 that "where *A*, with six others, commits the offence of rioting, grievous hurt, and assaulting a public servant, etc., *A* may be separately charged with and convicted of offences under sections 147 and 325, etc., of the Indian Penal Code." Perhaps the more remarkable case is to be found in the illustration (*i*), which stands in the same section, in which *A* wrongfully strikes *B* with a cane, *A* may be separately charged with and convicted of offences under sections 352 and 323 of the Indian Penal Code. But it may be urged that clause (4) of section 235 says that nothing contained in this section shall affect the Indian Penal Code, section 71. It is hardly to be conceived that with that clause staring them in the face the Legislature would have gone on to give illustrations which would be ruled out by clause (4). But when section 71 is read and carefully compared it seems to me that it in no way

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conflicts with the illustrations which I have alluded to. Offences falling under section 323 and under section 147 of the Indian Penal Code need not be separable but distinct offences. In the present case the offence of causing hurt to Sakal Rai is distinct and apart from the offence under section 147. This view is in conformity with both Full Bench decisions arrived at before the explanation was added to section 35 of the Criminal Procedure Code and with one case of later date of this Court which is before me now, namely the case of *Anup Singh and others* (Criminal Revision No. 689 of 1911, decided on the 1st of February, 1912). Looking to the injuries inflicted I am not prepared to say that the sentences passed erred on the side of severity. The more salutary provision would probably have been to take action binding down the applicants to keep the peace, and in that case a substantive sentence might have been, without danger to the public, lighter. The application is dismissed.

Application dismissed.

APPELLATE CIVIL.

1917

March, 10.

Before Mr. Justice Piggott and Mr. Justice Walsh.

PITA RAM (DEFENDANT) v. JUJHAR SINGH (PLAINTIFF) AND SHANKAR SINGH (DEFENDANT).*

Civil Procedure Code (1908), *section* 11—*Res judicata—Act No. III of* 1907 *(Provincial Insolvency Act), sections* 22 *and* 46—*Insolvency Court—Application for recovery of property attached by court—Subsequent suit for same purpose.*

A person claiming as his own property attached by the Judge of an Insolvency Court as property of an insolvent may apply to the Insolvency Court under section 22 of the Provincial Insolvency Act, 1907, for a declaration of his title and for possession of the property claimed, or he may sue to recover the same in the ordinary way. But where such person has elected to pursue his remedy under section 22 of the Provincial Insolvency Act, and the claim has, after a full inquiry, been decided against him, and he has not appealed from the decision under section 43, he cannot afterwards file a separate suit with the same object. *Ram Kirpal* v. *Rup Kuari* (1), *Ex parte Swinbanks* (2) and *Ex parte Butters* (3) referred to.

*First Appeal No. 181 of 1915, from an order of Pratab Singh, Subordinate Judge of Jhansi, dated the 21st of September, 1915.

(1) (1883) I. L. R., 6 All., 269. (2) (1879) 11 Ch. D., 525.

(3) (1880) 14 Ch. D., 265.