In the notice itself no reference is made to the buildings being adjacent to any public street or place or property vested in His Majesty or in the Board.

Two other objections were raised, but they have no substance. [These are not material for the purpose of the report and are omitted.]

I set aside the conviction and sentence and order the fine, if any recovered, to be refunded.

Before Mr. Justice Dalal.

EMPEROR *v.* GAYA PRASAD.*

1928 August, 30.

Indian Penal Code, section 336—"Rashly or negligently"—Deliberate act not included—Indian Penal Code, section 153.

A rash act is primarily an over-hasty act and is opposed to a deliberate act; even if it is partly deliberate, it is done without due thought and caution.

Where a *pujari* of a temple left the temple at night and from outside deliberately threw bricks at it, hoping that the Hindus of the locality would believe that the bricks came from the Muhammadan quarter and that this would lead to a riot between the two communities, *Held* that the act was a deliberate one and not a rash or negligent act within the meaning of section 336 of the Indian Penal Code; also, that the provisions of section 153 did not apply to the case.

THE facts of the case sufficiently appear from the judgement of the Court.

Mr. *H. C. Desanges*, for the applicant.

The Assistant Government Advocate (Dr. *M. Waliullah*), for the Crown.

DALAL, J. :—It is difficult to understand the arguments of the two subordinate courts. The applicant has been convicted of an offence under section 336 of the

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*Criminal Revision No. 599 of 1928, from an order of Syed Iftikhar Husain, Additional Sessions Judge of Pilibhit, dated the 5th of April, 1928.

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Indian Penal Code. The section runs as follows:—"Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment . . ." What was alleged and found by the two subordinate courts against the applicant was this. He was a *pujari* of a temple and left the temple at night in charge of a third person. While away from the temple he deliberately threw bricks at the temple, hoping that the Hindus would believe that the bricks came from the Muhammadan quarter and that thereby the Hindus would be enraged against the Muhammadans and there would be a riot between the Hindus and Muhammadans. The applicant is held to have done that deliberately and not rashly or negligently. A rash act is primarily an over-hasty act and is opposed to a deliberate act. Even if it is partly deliberate, it is done without due thought and caution. Here there is no question of want of thought or want of caution. The applicant desired a certain result to follow from the throwing of bricks and he deliberately threw the bricks at the temple for that purpose. According to the findings of the two subordinate courts, there was neither rashness nor negligence in the act.

The learned Government Pleader was of opinion that the provisions of section 153 would apply: "Whoever malignantly, or wantonly, by doing anything which is illegal, gives provocation to any person, intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall be punished with imprisonment." Here, the provocation has to be caused by the doing of anything which is illegal. The word "illegal" has been defined in section 43 and is made applicable to everything which is an offence or which is prohibited by law or which furnishes ground for a civil action. The throwing of a brick at a temple is so far not declared to be an offence, nor is it prohibited by law.

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It may furnish grounds for a civil action if anybody was hit, but in the present case, nobody was hit. It cannot be said that the applicant's act was illegal.

The subordinate courts have themselves been doubtful of their finding. So they have taken refuge by raising a side issue. They say that the act of throwing a brick was rash and negligent because thereby the life of Dodhe, whom the applicant himself had left in the temple, was placed in danger. There was no such allegation made by the prosecution witnesses. The applicant, whose act was deliberate, must have taken good care to see that Dodhe was not hit by the bricks.

The conviction cannot be maintained. I set aside the order under section 562 of the Indian Penal Code.

Before Mr. Justice Dalal.

EMPEROR *v.* AJUDHIA PRASAD.*

1928 *August,* 30.

Indian Penal Code, sections 161/116—*Abetment of bribery—Offering bribe for doing something which the public servant has no power to do—Absence of such power immaterial.*

It is sufficient to constitute an offence under section 161, read with section 116, of the Indian Penal Code that there was an offer of a bribe to a public servant, in the belief that he had an opportunity or power in the exercise of his official functions to show the offeror a desired favour, although the public servant had in reality no such power.

THE facts of the case sufficiently appear from the judgement of the Court.

Mr. *A. Sanyal*, for the applicant.

The Assistant Government Advocate (Dr. *M. Wali-ullah*), for the Crown.

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*Criminal Revision No. 621 of 1928, from an order of H. J. Collister, Sessions Judge of Jhansi, dated the 4th of August, 1928.