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 JOHN
 BROTHERS
 v.
 OFFICIAL
 LIQUIDATOR,
 AGRA
 SPINNING
 AND
 WEAVING
 MILLS
 Co.

this Letters Patent appeal and we set aside the order of the learned company Judge. We make no orders as to costs in view of the fact that the appellants admit that the claim is correct, and that the matter of jurisdiction had not been taken seriously before the learned company Judge in the form in which it has been taken before us.

REVISIONAL CRIMINAL.

*Before Sir Shah Muhammad Sulaiman, Chief Justice, and
 Mr. Justice Bennet*

EMPEROR v. JASNAMI AND OTHERS*

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Indian Penal Code, section 153—"Illegal act"—Depressed classes riding in palanquins through a hill village—Objection by high caste Hindus—Local practice—Police officer's order to dismount from palanquin—Order unauthorised—Police Act (V of 1861), section 31—Scope of section—Apprehension of riot.

Section 31 of the Police Act is intended primarily for the purpose of keeping order on public roads, preventing confusion, regulating traffic and avoiding obstruction. The section cannot empower every police officer, whether a police inspector or a constable, to issue orders prohibiting the doing of otherwise legal acts simply because he apprehends that a breach of the peace would be committed by other persons if the persons ordered not to do the legal acts persisted in doing them. The section does not authorise a police officer to issue an order which only a Magistrate might have issued under section 144 of the Criminal Procedure Code, to refrain from doing a perfectly legal act.

A bride and bridegroom, *doms* by caste, were about to be carried in palanquins through a hill village in Kumaun, and objections were raised by the high caste Hindus of the village that depressed class people were never permitted to ride in palanquins through the village, that the palanquins should be carried empty and the bride and bridegroom should walk. The qanungo, who in Kumaun has the status of circle inspector of police, and who had been directed to be present, apprehending a possible breach of the peace, intervened and ordered

*Criminal Revision No. 853 of 1935, from an order of J. R. W. Bennet, Sessions Judge of Kumaun, dated the 29th of July, 1935.

that the palanquins should be carried empty. Certain persons, in disobedience of this order, put the bride and the bridegroom into the palanquins and had them carried through the village. These persons were thereupon convicted under section 153 of the Indian Penal Code. The criminal courts found that there was a local practice against depressed classes riding in palanquins through the village. *Held*, that the conviction under section 153 was bad, as the accused had not done anything which was illegal; riding in palanquins through a village was not an act illegal in itself, nor had any civil court held that there was any village custom having the force of law which prevented people of depressed classes from doing so in the village, and which the accused could be said to have transgressed. Disobedience of the qanungo's order was not an illegal act, as he had no authority to issue the order.

Mr. *D. P. Uniyal*, for the applicants.

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

SULAIMAN, C.J., and BENNET, J.:—This is an application in revision from an order of the Sessions Judge upholding the conviction of the accused persons under section 153 of the Indian Penal Code and the sentences of fine imposed on them.

It appears that the accused are Doms by caste who have recently become Arya Samajists. There has been a practice in some hill villages not to allow marriage processions with palanquins and dandies occupied by the bridegroom and the bride to pass through village sites. The high caste Hindus had on previous occasions objected to such actions. Indeed the present accused took out such a procession on the 16th of November, 1933, which was obstructed and had to be postponed till the 22nd of December, 1933, when the present occurrence took place. The secretary of the local Depressed Classes Association submitted an application to the Deputy Commissioner stating that on the previous occasion, namely on the 16th of November, 1933, the marriage party had been intercepted and looted on the way by high caste Hindus and that the very marriage was to take place on the 22nd of December, 1933, and

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it was just possible that the marriage party might be disturbed on the way. He therefore prayed that police arrangements should be made for their safe passage. The Deputy Commissioner ordered: "If they want regular police, they cannot have them; they may have no protection if they want to go through villages on conveyances. If they are molested on the public way, the assailants will be prosecuted." The Deputy Commissioner apparently declined to grant the processionists the protection of the police if they insisted on going through the villages on conveyances, but offered them protection if they were molested while going along a public road. The order contained no prohibition against their going on conveyances through the villages but merely contained an intimation that they should not in such an event expect protection by the police. The qanungo and patwari were later directed to be present on the 22nd of December and to prevent a breach of the peace. The accused took out a marriage procession on that day and when an objection was raised by the residents of another village both sides came to an agreement and the palanquins were allowed to go unoccupied while passing through the village. But the processionists entered the village of the bride and carried the bridegroom in the palanquin during the night time, when the villagers did not see the passengers. So no disturbance took place. But on the 23rd of December, 1933, the marriage procession started from the house of the bride at 10 o'clock in the morning and there was an objection raised by the high caste Hindus of the village that the palanquins should be carried empty. The qanungo, accompanied by the patwari, intervened and ordered that the palanquins should be carried empty. This order was not obeyed and the accused forcibly put the bridegroom and the bride into the palanquins and carried them through the village sites. They were then prosecuted for an offence under section 153 of the Indian Penal Code on the allegation that they

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made the bride and the bridegroom to be carried in conveyances through the inhabited area of the village contrary to the custom of the locality. Both the Magistrate and the Sessions Judge came to the conclusion that there was a local practice against such conduct. They also thought that the qanungo was empowered under section 31 of the Police Act to issue the order for the purpose of maintaining law and order, and acted in good faith in trying to preserve peace. When the matter came up in revision before a learned Judge of this Court he felt some doubt as to the power of a police officer to prevent a person from doing what would ordinarily be considered to be a legal act though on a public thoroughfare, and has therefore referred the case to us.

Now it has to be conceded that section 153 cannot possibly apply unless there has been "doing anything which is illegal". If the act done is illegal, then if the other conditions laid down in the section are fulfilled, the case would be governed by it. One has therefore to see whether the act of the accused in taking out the bride and the bridegroom in palanquins through the village site was an illegal act. Now no civil court has held that there is any such village custom having the force of law which prevents people from going over village sites in palanquins or dandies. It may well be doubted whether such a custom can ever be recognized by a court of law. There is accordingly no finding that the accused committed an illegal act because they acted in defiance of any such custom having the force of law.

The learned Assistant Government Advocate supports the conviction on the ground that the act of the accused was illegal because it was contrary to the order of the qanungo who in Kumaun has the status of a circle inspector. Now the action of the accused in defiance of the circle inspector's order would be illegal, if the latter were authorised to issue that order. It is therefore

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necessary to see whether a circle inspector is empowered to order the bride and the bridegroom to get down from the palanquins in which they are being carried through inhabited parts of the hill villages. The act of going through the village on conveyances is in itself perfectly legal. It is not illegal within the meaning of section 43 because it is neither an offence, nor is it prohibited by law, nor does it furnish a ground for a civil action, unless a custom having the force of law has been established.

The main question is whether under section 31 the police officer whose duty it is to "keep order" on the public roads, etc., and to prevent obstructions, etc., can issue such an order. So far as the latter portion of the section is concerned there can be no doubt whatsoever that the action of the accused did not in any way cause obstruction on the public roads. There was no objection taken to the taking out of the palanquins themselves. The objection was taken to the bridegroom and the bride being inside such palanquins. It cannot therefore be suggested that the fact that the bridegroom and the bride were placed inside the palanquins instead of being made to walk on foot on the public road caused any fresh obstruction which had to be prevented. As a matter of fact even if there had been any obstruction on the public road, this might well have lessened it. But it is contended that the words "keep order" mean "maintain law and order" and therefore also mean "prevent a breach of the peace". It is therefore urged that a police officer, when he finds that there is an apprehension of a breach of the public peace, is entitled to issue necessary orders which would have the effect of preventing such a breach. Now although one is not inclined to give a narrow scope to section 31, as that may hamper the police in their legitimate exercise of their duty in preserving the public peace and in preventing the commission of crimes, it is necessary not to give it so wide a scope as to empower all police officers under

this section to do things which under the Code of Criminal Procedure are limited to being exercised by Magistrates or police officers of high rank. Section 31 is obviously intended to empower police officers to regulate traffic on public roads, to prevent the commission of offences on such roads, for example, affrays, and also to do their best to prevent obstruction. Where a breach of peace is apprehended and there is a previous intimation the proper course, of course, is to approach the Sub-Divisional Magistrate for necessary orders. Section 144 of the Criminal Procedure Code gives ample powers to Magistrates to issue appropriate orders for the immediate prevention of a disturbance of public tranquillity, and in the exercise of his powers under that section a Magistrate is authorised to prevent the doing of even lawful acts. Again where there is an immediate danger of the commission of a cognizable offence a police officer may under section 149 of the Criminal Procedure Code interpose for the purpose of preventing the commission of such cognizable offence. Where there is an immediate apprehension of a breach of the peace between two unlawful assemblies, the officer in charge of a police station may order either or both of the two unlawful assemblies to disperse, and failure to obey his order would amount to an illegal act and may constitute an offence under section 188 of the Indian Penal Code. Such was the case in *Emperor v. Raghunath Venaik Dhulekar* (1), where the sub-inspector had ordered the assembly to disperse on becoming convinced that it was likely to cause a disturbance of the public peace, and his order being legal, the failure to obey it and acting contrary to his order amounted to an illegal act within the meaning of section 151 of the Indian Penal Code. The case of *Sham Sunder Lal v. Emperor* (2) was a case where there was actually an obstruction of a thoroughfare caused owing to the altercation which ensued between the accused, who was the driver of a bullock

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(1) (1924) I.L.R., 47 All., 205.

(2) A.I.R., 1926 All., 264.

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cart, and the tax collector when the former refused to pay the toll demanded from him.

But we are unable to hold that section 31 of the Police Act empowers every police officer, whether a police inspector or a constable, to issue orders prohibiting the doing of otherwise legal acts simply because he apprehends that a breach of the peace would be committed by other persons if the persons ordered not to do the legal acts persisted in doing them. Such an interpretation of section 31 would make it come in conflict with the various provisions of the Code of Criminal Procedure where particular forms of orders are within the exclusive authority of Magistrates or police officers. For instance, an order for the dispersal of an unlawful assembly can be made only by a Magistrate or an officer in charge of a police station under section 127 of the Criminal Procedure Code and a head constable is not empowered to act under that section. It could not have been the intention of the legislature to empower head constables to exercise under section 31 of the Police Act powers which have been conferred exclusively on Magistrates and officers in charge of police stations under section 127 of the Criminal Procedure Code. Nor could it have been the intention of the legislature to empower every police officer, including constables, to issue orders, for example, under section 144 of the Criminal Procedure Code, which a Magistrate only can issue. Section 31 is intended primarily for the purpose of keeping order on the public road, preventing confusion, regulating traffic and avoiding obstruction. Orders passed in such cases would be well covered by the provisions of that section. In our opinion section 31 does not authorise a police officer to issue an order which a Magistrate might have issued under section 144 of the Criminal Procedure Code to refrain from doing a perfectly legal act.

The act of the accused was a perfectly legal act in taking out the bridegroom and the bride in palanquins

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along public roads or highways and their failure to agree to carry out the instructions of the police officer to dismount did not amount to an illegal act within the meaning of section 153 of the Indian Penal Code because in our opinion the police officer was not empowered to issue such an order. If there had been any apprehension of an immediate breach of the peace he might have asked the assembly to disperse under section 127, or if he had previous intimation of it he might have obtained an order under section 144 from the Magistrate. Failing to have adopted either of these courses he could not arrogate to himself the power to order that the bridegroom and the bride should not go in palanquins. We think that to uphold the conviction of the accused in this case would amount to an undue interference with the liberty of ordinary citizens which it is their right to enjoy.

We accordingly allow this application and setting aside the convictions and sentences of the accused acquit them of the charge and direct that the fines, if paid, be refunded.

REVISIONAL CIVIL

Before Mr. Justice Allsop

RAM GHULAM (PLAINTIFF) v. BANDHU SINGH
(DEFENDANT)*

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Agriculturists' Relief Act (Local Act XXVII of 1934), sections 3, 5, 8, 12—Conversion of preliminary decree on mortgage into instalment decree—Transferee of mortgagor is entitled to apply—Period of instalments—Date from which such period is to be reckoned.

A preliminary decree for sale on a mortgage was passed against a transferee of the property from the mortgagor. Subsequently, on the coming into force of the U. P. Agriculturists' Relief Act, he applied under section 5 of the Act for conversion of that decree into a decree for payment by instalments in accordance with section 3.