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property was knocked down to Data Ram for Rs. 3,200. Obviously substantial injury resulted to the judgment-debtor and this injury was, I think, due to the fact that the Receiver took no proper steps to advertise the first auction.

Taking all the facts into consideration I am of opinion that the District Judge acted reasonably and in the interests of the insolvent and the creditors in setting aside the first sale. I accordingly dismiss this appeal with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Wilberforce.

SITAL AND CHITTAR (*Accused*)—*Petitioners,*

versus

THE CROWN—*Respondent.*

Criminal Revision No. 1033 of 1919.

*Criminal Procedure Code, Act V of 1898, sections 107 and 514—*forfeiture of bond to keep peace—*person bound over, having brought a Civil suit to enforce his right.*

The Hindus and Muhammadans of Gharuanda were disputing about the location of the latter's slaughter-house. The District Magistrate selected a new site, but on appeal by the Hindus the Commissioner changed this for another place. Some of the Hindus had meanwhile been bound down to keep the peace in this connection. They were dissatisfied with the place chosen by the Commissioner and brought a civil suit claiming that the site was in the *shamilat deh*, and that it was chosen without the consent of all the proprietors and prayed for an injunction restraining the Muhammadans from building the slaughter-house. The District Magistrate then passed an order of forfeiture of their bonds holding that the institution of the civil suit was likely to cause a breach of the peace.

Held, that it was not the intention of the legislature to prevent persons even though bound over under section 107 of the

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Code of Criminal Procedure from seeking to enforce their rights in the Civil Court and that the order of forfeiture was consequently illegal.

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Case reported by Lala Shibbu Mal, Sessions Judge, Karnal, with his No. 1231 of the 5th August 1919.

DAULAT RAM, for *Petitioners*.

SUNDAR DAS, for Government Advocate, for *Respondent*.

The facts of the case are set out in the order of the learned Sessions Judge.

The Petitioners, on conviction by W. S. Hamilton, Esquire, District Magistrate, Karnal, were sentenced by order, dated the 8th March 1919, under section 514, Criminal Procedure Code, to pay Rs. 500 each, their bonds having been forfeited to that extent.

The proceedings are forwarded for revision on the following grounds :--

There was a dispute between the Hindus and Muhammadans of Gharuanda as to slaughter of kine. The Deputy Commissioner of Karnal passed an order on the 3rd October 1918 forbidding the slaughter of kine except in a place licensed by him. The Hindus objected to the location of the new slaughter-house licensed by the Deputy Commissioner on the ground that it was close to the road leading from their village to Gharuanda and to the Railway Station. The Commissioner of Ambala in his order, dated the 31st December 1918, found this objection to be justified, mentioning that the site of the new slaughter-house being only about 100 yards from the Grand Trunk Road, it was prominently under the eyes of the passers-by on the road. He ordered that the slaughter-house should be moved to field No. 2945 which belonged to *Shamilat Deh* and was in possession of *Nawab Zulfikar Ali Khan* whose estate was under the Court of Wards. The Deputy Commissioner, in compliance with this order, directed the Muhammadans to make the slaughter-house in a corner of *Khasra* No. 2945 for which they would have to pay rent at annas 8 per annum.

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Before this order was passed, seven Hindus, namely, Suraja Mal, Sital, Chhattar, Latoor, Mani Ram, Chhattar and Risal Singh were placed on security under section 107, Criminal Procedure Code, by *Chaudhri Niamat Khan*, Magistrate, 1st class, on the 29th October 1918 to keep the peace as directed by the District Magistrate who afterwards refused to interfere with that order on the ground that it was under his orders that this security was taken on the 11th December 1918.

An application for revision of this order was made to me which I rejected on the 14th February 1919; holding that if the District Magistrate had failed to exercise his revisional Jurisdiction under section 125, Criminal Procedure Code, because the prosecution was started under his order, the applicants can move the Chief Court to transfer their application for revision under section 125, Criminal Procedure Code, they had made to the District Magistrate to some other Court. In the meantime, some of the Hindu Proprietors of the village, among whom were Sital and Chhattar Singh (from whom security under section 107, Criminal Procedure Code, had been taken as mentioned above) filed a Civil Suit against the Muhammadans alleging that the land in *Khasra* No. 2945 was *Shamilat* property which was owned by the proprietors of the village, and that Defendants in collusion with *Nawab Zulfikar Ali Khan* were making a slaughter-house without the consent of the other proprietors which they had no right to do, and it was prayed that Defendants be restrained from erecting any buildings in *Khasra* No. 2945 and should restore it to its former condition. The Defendants then applied again to the Deputy Commissioner protesting against the temporary injunction which was issued pending trial of the case. The Deputy Commissioner advised the Defendants that they should represent to the Civil Court that the land on which they were building had been in possession of *Zulfikar Ali Khan* under the Court of Wards and that they were building on it by order of the Commissioner passed under the rules notified under the Punjab Laws Act (*vide* the order of Deputy Commissioner, dated the 13th February 1919, passed on the back of the defendants' application which is on the record of the Civil case).

The Deputy Commissioner at the same time issued notice under section 514, Criminal Procedure Code, to Sital and Chittar who were two out of eight plaintiffs in the Civil Suit and their sureties to show cause why their bonds taken under section 107, Criminal Procedure Code, should not be forfeited because they had done an act which would probably cause a breach of the peace in that they had brought a Civil Suit to prevent the Muhammadans of Gharuanda from killing kine in the very place which, with their consent, was selected by the Commissioner for the slaughter-house. On the 8th March 1919 these two men appeared before the Deputy Commissioner who put the following question to them :—

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Q. You are on security to do nothing in the matter of kine killing to cause a breach of the peace. You appealed against an order of mine as to the site of the slaughter-house and the Commissioner on the spot selected another site to meet your wishes. Now you have brought a suit to stop building of the slaughter-house on this site and so have greatly annoyed the Muhammadans who have already had to build two slaughter-houses.

In answer, it was stated by these men that the Commissioner did not select the site in their presence and that they had only heard that the Commissioner had passed an order rejecting their appeal. They further stated that they were willing to withdraw from the suit.

Another question was put to them whether they were willing to pay the Muhammadans their costs.

In answer to it they stated that they were poor men and moreover they were not able to induce others to withdraw.

The sureties were also asked to show cause why the security furnished by them should not be forfeited, as Sital and Chittar had done an act likely to cause the Muhammadans to break the peace, in bringing a suit to stop the construction of the slaughter-house.

The reply to this question was that there was no danger of a riot and they were ready to give up the case.

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The District Magistrate without taking any evidence or allowing the sureties of the persons against whom an order under section 107, Criminal Procedure Code, was passed, an opportunity to produce evidence in their defence held that the bonds were liable to forfeiture and ordered the recovery of Rs. 500 each from Sital and Chittar and their sureties. In his order, dated the 8th March 1919, he has also referred to the arguments that to bring a Civil Suit is a perfectly legal action and cannot be a ground for forfeiting the bonds taken under section 107, Criminal Procedure Code, but he has met this argument by saying that neither the Criminal Procedure Code nor the bond itself says that the act guarded against must be an illegal act, but on the other hand the persons placed on security to keep the peace are bound not to do any act which may probably occasion a breach of the peace. He expressed his surprise that the bringing of the Civil Suit did not cause a breach of the peace. He further mentioned that if the suit had been for possession, there might have been something to say for the Hindus, but a suit for an injunction is just as provocative as standing round the field and preventing the Muhammadans in that way. He was of opinion that the Hindus had just committed the very act to prevent which they were put on security, namely, interference with the authorised slaughter of kine. These were the reasons given by him in support of his order forfeiting the bonds under section 514, Criminal Procedure Code.

An application for revision of this order has been presented on behalf of Sital and Chittar whose bonds have been forfeited to the extent of Rs. 500 each. The grounds of the revision are that the proceedings of the Lower Court were quite irregular and contrary to law and there had been no infringement of any of the terms contained in the bond. It is further urged that there was no apprehension of breach of the public tranquility, and that to bring a Civil Suit was a perfectly legal action and there could be no apprehension of a breach of peace by it.

The Public Prosecutor did not address any arguments in support of the order of the District Magistrate

but confined himself to the statement that the reasons given by the District Magistrate for forfeiting the bonds were sufficient. In answer to my question he cut a sorry figure by trying to justify the order and though he had to admit that the mere filing of a Civil Suit for a declaration of a Civil right may not amount to an act likely to disturb the peace, it may be attended by other consequences as mentioned in the order of the District Magistrate which may lead to a breach of the peace. As a matter of fact, the District Magistrate has referred to no other circumstances except the mere filing of the Civil suit, and there is absolutely no evidence from which any such inference may be drawn.

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I am clearly of opinion that the order of the District Magistrate cannot be maintained, as the mere filing of the suit cannot by any stretch of language be held to be a wrongful act that may probably occasion a breach of the peace or disturb the public tranquility on which grounds alone security is taken under section 107, Criminal Procedure Code. The facts mentioned in the order of the District Magistrate and referred to above speak for themselves, and I would accordingly recommend that the order of the District Magistrate passed under section 514, Criminal Procedure Code, forfeiting the bonds of Chittar and Sital, to the extent of Rs. 500 each may be set aside.

Order of the High Court.

WILBERFORCE, J.—The facts of this case are very fully given by the learned Sessions Judge. There was a dispute between the Hindus and Muhammadans of Gharu-anda regarding the location of a slaughter-house for the convenience of the latter. A site had been selected by the Deputy Commissioner, but on appeal by the Hindus the Commissioner visited the spot and decided on another site. Meanwhile certain of the Hindus were bound over under section 107 to keep the peace. On the passing of the Commissioner's order seven of the aggrieved Hindus brought a Civil Suit for an injunction to stay further building. On this the Deputy Commissioner in his capacity as District Magistrate called upon two of them to show cause why their bonds should not be forfeited inasmuch as their conduct in instituting a

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suit for an injunction was extremely provocative to the Muhammadans. After a summary hearing he found their bonds liable to forfeiture and ordered the recovery of Rs. 500 each from them. The Sessions Judge referred this case on the revisional side with a recommendation that the District Magistrate's order be set aside.

The District Magistrate admitted the Hindus were guilty of no wrongful act in instituting a civil suit. He held that their action was none the less provocative and likely to cause a breach of the peace. His order plainly cannot be upheld as the Hindus were acting within their rights, and it is clearly not the intention of the legislature to prevent persons even though bound over under section 107, from seeking to enforce their rights in Civil Courts, otherwise the result would be that no person so bound over would be able to institute a Civil or Criminal Proceeding without endangering the forfeiture of his bond. Any person proceeded against civilly or criminally is always annoyed and a case could always be made out for forfeiture of a bond. On the facts as found by the District Magistrate it appears to me that he ought to have put the Muhammadans on security under section 107 as he feared that they might take violent measures against the Hindus and not *vice versa*.

I accept the application for revision and set aside the order of the District Magistrate. Any amounts recovered will be refunded.

Revision accepted.