1901 FEB. 20 & 21 PRIVY COUNCIL. 28 C. 401.

skill in the carrying. If one looks at that, as indeed at the two other cases which the learned Judge, Mr. Justice Ameer Ali, quotes as justifying the onus that he throws upon the Railway Company, it is intelligible enough. In the one case it was a child under three years of age, between whom and the Railway Company, of course, there was no contract, and the other is a case of the same character. It is important, perhaps, to observe, what runs through the judgments, and to observe that Mr. Asquith, naturally enough, used the same phrase yesterday in his argument as enforcing the necessity of the Railway Company discharging themselves by any conceivable evidence, by saying that their contract was to carry safely. Their Lordships think it is desirable that the error should be plainly stated, because it may mislead others hereafter. It is enough to say that, in their Lordships' judgment, there is no such obligation on the part of the Railway Company.

Their Lordships will therefore humbly advise His Majesty that the judgments appealed from must be reversed, and judgment entered for the defendants in both Courts below; **[411]** but having regard to what fell from Counsel at their Lordships' Bar, without disturbing any directions given in India as to costs.

Appeal allowed.

Solicitors for the appellants: Messrs. *Freshfield & Co.*
Solicitors for the respondent: Messrs. *T. L. Wilson & Co.*

---

28 C. 411.

CRIMINAL REVISION.

Before Mr. Justice Prinsep and Mr. Justice Handley.

RAMAN SINGH AND OTHERS (*Petitioners*) *v.* QUEEN-EMPRESS (*Opposite Party*).* [6th July, 1900].

Special constables—Refusal by persons appointed, to accompany police officer to obtain authority of appointment and arms, whether refusal to serve as such—Arrest—Arrest on refusal, legality of—Public servant—Obstructing him from discharge of his duty—Rioting—Police Act (V of 1861), ss. 17 and 19—Penal Code (Act XLV of 1860), ss. 147, 149 and 353.

N., S. and *G.* were appointed special constables under s. 17 of the Police Act. A Police Inspector accompanied by some police went to their village and informed them that they had been so appointed, and requested them to accompany him to the police station of *B.*, which they declined to do. The Inspector then had *N.* arrested, whereupon *N.* shook himself free and *N., S.* and *G.* with other persons, who had assembled, abused and threatened the police and compelled them to withdraw from the village.

N., S. and *G.* were convicted under s. 19 of the Police Act, and they were also convicted with other persons under s. 353 read with s. 149 of the Penal Code.

Held, that the refusal of *N., S.* and *G.* to accompany the Inspector constituted no offence under s. 19 of the Police Act, as the order was intended not for any purpose of police duty, but simply that they might obtain the authority of their appointment and the necessary arms.

Held, futher that the refusal of *N.* to accompany the Inspector was not an offence, for which *N.* could be arrested, and, as the police when obstructed were not acting in lawful discharge of their duty, none of the persons concerned could be convicted of an offence under s. 353 of the Penal Code, but that they were guilty of rioting under s. 147 of the Code.

---

* Criminal Revisions Nos. 381 and 382 of 1900, made against the order passed by G. W. Place, Esq., Sessions Judge of Patna, dated the 5th of May 1900, affirming the order passed by E. E. Forrester, Esq., Sub-Divisional Magistrate of Barh, dated the 26th of March, 1900

1900
JULY 6.

CRIMINAL REVISION.

28 C. 411.

[412] *Empress* v. *Dalip* (1) approved of.
Chunder Coomar Sen v. *Queen-Empress* (2) distinguished.

THE village of Bahadurpur, an outpost in the Bakhtearpore jurisdiction with some thirty other villages in the district of Patna, combined to resist all measures for the prevention or suppression of the plague, and there was an apprehension that a riot was likely to take place. Special constables were consequently appointed by the District Magistrate, and three of the petitioners Nawrangi, Sewbaran and Gangabissen were appointed special constables for Bahadurpur. To carry out this order Mr. Baker, Inspector of Police, accompanied by the Sub-Inspector and two constables, went to Bahadurpur. On arriving there they found a large number of people assembled. Mr. Baker informed the three petitioners, that they had been appointed special constables. Nawrangi, when asked, gave a false name. Mr. Baker then announced that the three petitioners were to go with him to the police-station at Bakhtearpore, which they declined to do. On this he ordered a constable to arrest Nawrangi, and on making the arrest the villagers, who were assembled and amongst whom were the other petitioners, abused and threatened the police. Nawrangi shook himself free of the constable and two others ran up and seized the constable's carbine. Mr. Baker seeing that a serious disturbance was imminent told the constable to stop, and the police hastily withdrew from the village.

On the 26th of March, 1900, the Sub-Divisional Magistrate of Barh convicted all the petitioners under s. 353 read with s. 149 of the Penal Code, and sentenced them to six months' rigorous imprisonment, and Nawrangi, Sewbaran and Gangabissen under s. 19 of the Police Act, and fined them Rs. 50 each.

The petitioners appealed to the Sessions Judge of Patna, who, on the 5th of May 1900, dimissed their appeal.

Mr. *Abdur Rahim* (with him Mr. *G. Gregory*, Babu *Atulya Charan Bose*, and Babu *Mahabir Sahaya*), for the petitioners.

The *Deputy Legal Remembrancer* (Mr. *Gordon Leith*), for the Crown.

[413] The judgment of the Court (PRINSEP and HANDLEY, JJ.) was as follows :—

These are two rules relating to the same trial and it will be more convenient that they should be disposed of simultaneously.

It appears that, in consequence of some combination amongst about 30 villages in the District of Patna to resist all measures for the prevention or suppression of the plague and an apprehension that a riot was likely to take place, the District Magistrate appointed a considerable number of the principal inhabitants of the villages to serve as special constables. To carry out this order, Mr. Baker, Inspector of Police, accompanied by the Sub-Inspector and two constables, went to the village of the petitioners for the purpose of informing the 3 petitioners, Nawrangi, Sewbaran and Gangabissen Singh, that they had been appointed special constables under s. 17 of the Police Act of 1861. On arriving at this village, the Police Officers found a large number of people assembled. Mr. Baker, the Inspector of Police, gave notice that Nawrangi, Sewbaran and Gangabissen had been appointed special constables. Two of these men were known to the Sub-Inspector, and it is said that they were pointed out to the Inspector, but there is reason to believe that the Inspector did not understand this. It is in evidence that Nawrangi,

(1) (1896) I. L. R. 18 All. 246. (2) (1869) 8 C. W. N. 605.

1900 JULY 6.

CRIMINAL REVISION.

28 C. 411.

when asked his name, gave a false name. Mr. Baker then announced that these men were to go with him to the police station at Bakhtearpore, which they refused to do. On this, he ordered a police constable to arrest Nawrangi and, on making the arrest, Nawrangi shook himself free and the villagers, who were assembled and amongst whom were the other petitioners before us, tumultuously threatened and used criminal force to the Police Officers, so as to cause them to leave the place. For these acts the petitioners have all been convicted under s. 353, read with s. 149 of the Indian Penal Code, that is, of being members of an unlawful assembly in prosecution of the common object of which some member assaulted, or used criminal force to a Police Officer, a public servant, in execution of his duty as such public servant, with intent to prevent or deter such person from discharging his duty as a public servant. Nawrangi, Sewbaran and Gangabissen have also been convicted under s. 19 of the Police Act of 1861 in that, being [414] appointed special police officers, they, without sufficient excuse, refused to serve as such or to obey the lawful order of the Inspector. The petitioners have all been sentenced to 6 months' rigorous imprisonment for the first offence and the three petitioners just named have also been sentenced to a fine under the Police Act.

Now there can be no doubt that Mr. Baker, Inspector of Police, had no authority to arrest Nawrangi Singh, and therefore, as the police when obstructed were not acting in lawful discharge of their duty, the petitioners can, none of them, be properly convicted of an offence under s. 353 of the Indian Penal Code. The refusal of Nawrangi to accompany the Police Inspector to Bakhtearpore was not an offence, for which the arrest could have been made. Nor do we think that any refusal of Nawrangi, Sewbaran and Gangabissen to accompany the Police Inspector to Bakhtearpore constituted an offence under s. 19 of the Police Act, for which they could be punished. It appears that the order was intended not for any purpose of police duty, but simply that they might obtain the authority of their appointment and the necessary arms. It seems to us that to require any one, who has been appointed a special constable, to leave his own occupation and to proceed to some distance for such a purpose is not a reasonable order, or one which can be properly called an order connected with the purposes of his duty. Nor do we regard the conduct of these men as a refusal to serve. We think rather that it was simply a refusal to go to Bakhtearpore, and that there was an opposition to the arrest of Nawrangi, in consequence of such refusal. Under such circumstances we think that the conviction and sentence under s. 19 of the Police Act is bad. It is accordingly set aside.

It remains, however, to consider the other part of the case against the petitioners. By reason of the terms of their conviction, we understand that they are all found to have been members of an unlawful assembly, by which the riot was committed. The question then arises, whether the facts found constitute the offence of rioting. Mr. Leith, who appears against the Rule, has brought to our notice the case of *Queen-Empress* v. *Dalip* (1), and we think that the facts of that case are, in nearly every respect, similar to those of the present case and we concur [415] generally with the rule laid down in that case. Mr. Abdur Rahim who appears on the other side cites as authority to the contrary

(1) (1896) I. L. R., 18 All. 246.

1900 JULY 6.

CRIMINAL REVISION.

28 C. 411.

the cases of *Chunder Coomar Sen* v. *Queen-Empress* (1) and *Mangobind Muchi* v. *Empress* (2). The last case clearly has no application. In reference to the case of *Chunder Coomar Sen*, we would observe that it was there held, as in the case in the Allahabad Court, that the accused could not be properly convicted under s. 353, when the resistance was to the action of an officer of the Civil Court, who was not acting under any legal authority. One of the accused in that case was, however, convicted of rioting, but his acquittal was on other grounds. The question was not considered in that case, whether any of these persons could properly be convicted of any other offence. That case is, therefore, not opposed to the case in the Allahabad Court.

On the facts found, therefore, we are of opinion that the petitioners should all be convicted of rioting under s. 147 of the Indian Penal Code. Their common object was to commit an offence, that offence being to assault or use criminal force to the Police Officers, and there was no real justification for such proceeding. It was a very dangerous assembly consisting of a very large number of persons, whose object, as was shown by their acts, was clearly to resist any action whatsoever on the part of the police, and it was entirely owing to the forbearance of the police and their withdrawal, that no serious consequences took place.

We think, however, that the sentences of six months' rigorous imprisonment passed are too severe, having regard to the cause of the commission of this offence. Although the accused were, in our opinion, not justified in what they did, we also think that the action of the police was injudicious and without legal authority, and that there was some provocation for the resistance to the arrest of Nawrangi Singh. Under such circumstances, we think that the sentence should be reduced to a sentence of rigorous imprisonment for two months in respect of each of the petitioners. The fines, if paid by Nawrangi Lall, Sewbaran and Gungabissen, must be refunded.

---

28 C. 416.

[416] CRIMINAL REFERENCE.

Before Mr. Justice Rampini and Mr. Justice Gupta.

JAGOMOHAN PAL (*2nd Party, Petitioner*) *v.* RAM KUMAR GOPE (*1st Party, Opposite party*).* [16th April, 1901.]

Immoveable property, dispute as to—Order of Magistrate, Contents of—Breach of the peace—Opportunity to produce evidence—Sessions Judge, power of revision or reference—High Court, powers of—Code of Criminal Procedure (Act V of 1898), ss. 145 and 435, Charter Act (24 and 25 Vict.), c. 104, s. 15.

Proceedings under Chapter XII of Code of the Criminal Procedure are not proceedings with regard to which a Sessions Judge has any power of revision or reference, nor has he the power to call for the records in such proceedings. The High Court only can interfere under the power of superintendence conferred upon it by the Charter Act.

The order of a Magistrate instituting proceedings under s. 145 of the Code of Criminal Procedure should set out the grounds on which he is satisfied that a dispute likely to cause a breach of the peace existed, and the parties to the proceedings should be given an opportunity of adducing their evidence.

---

* Criminal Reference No. 82 of 1901, made by C. P. Beachcroft, Esq., Sessions Judge of Mymensingh, dated the 20th of March, 1901.

(1) (1899) 3 C. W. N. 605. (2) (1899) 3 C. W. N. 627.