

bought mark E as "mash marka," but he does not profess to have been misled by the mark itself; on the [418] contrary he noticed the difference of the mark from that to which he was accustomed and made enquiries about it. Fanindra Nath, the appellants' gomasta, gave evidence that he did not sell mark E to Mohamed Ali as "mash marka," but this we do not wholly believe.

There is no doubt some evidence of direct fraud by the appellants to pass off mark E to Ismail as the respondents' goods; but it is too vague and uncertain for us to rely on. A voucher was given to Mahomed Ali, in which the hooks supplied to him are described as "mash marka," and it is alleged that the description was put in and then struck out (exhibit F.) But the insertion and erasure have not been explained in the evidence and convey nothing to our minds.

Considering all the evidence on the subject, we find nothing in it to cause us to modify the opinion we have already expressed to the effect that mark E is not a false trade mark, or a false description in the sense we have mentioned. We have not to decide, and we do not decide, whether the appellants were justified in using mark E, or in supplying their own fish-hooks, when asked for L "mash marka." But we do hold that they have not committed any of the offences with which they have been charged.

It only remains to add that we need not determine whether the appellants have proved that they acted without an intent to defraud. Their evidence on this point almost entirely consists of the indent containing the order for the mark E fish-hooks, in which no mention is made of any mark (exhibit 5 A). This goes some way to prove the point, but falls short of satisfactory proof.

We much regret that recourse has been had to the criminal law to settle the matter at issue between the parties. The result is that nothing has in fact been decided and that the present proceedings have had no useful result. The appeal is allowed, the conviction and sentence being set aside. The fine, if realized, will be refunded.

31 C. 419=1 Cr. L. J. 438.

[419] CRIMINAL REVISION.

Before Mr. Justice Ghosh and Mr. Justice Stephen.

KASI SUNDAR ROY v. EMPEROR.*

[10th February, 1904.]

Criminal Procedure Code (Act V of 1898), s. 110 (e)—Abetment—Abetment of the commission of offences involving a breach of the peace—Residence—Jurisdiction.

Held: That where under the orders and with the connivance of the zemindar various acts of oppression are committed, such conduct of the zemindar would bring him within the scope of clause (e) of s. 110, C. P. C.

Held also, That, for the purpose of proceedings under s. 110, C. P. C. a Magistrate has jurisdiction to try a person, who has a residential house and frequently resides for the purpose of his business, within the local limits of the Magistrate's jurisdiction, provided acts of oppression (the subject of the charges under s. 110) are committed, while he so resides.

[Foll. 38 Cal. 156=15 C. W. N. 866=12 Cr. L. J. 164=9 I. C. 916. Diss. 29 I. C. 428.]

* Criminal Revision, Nos. 970 and 1014 of 1903, against the order passed by Sashi Bhushan Bose, Sub-divisional Magistrate of Natore, dated the 30th of July, 1903.

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RULE granted to the petitioners, Kasi Sunder Roy and others.

The petitioner in Revision case No. 970, Kasi Sunder Roy, was a zemindar ordinarily residing at Rampur Boalia in the district of Rajshahye, and the petitioners in Revision case No. 1014 were his servants; Kasi Sunder Roy possessed certain zemindaries situated in the Natore Sub-division of that district, where he also had a residential house. For the purpose of his zemindari he went frequently to Natore and lived in this house. During these visits, he through his servants committed various acts of oppression on his tenants in order to bring the refractory ones to obedience and to compel them to pay enhanced rents. On the complaint of some of them proceedings were drawn up against Kasi Sunder Roy by the Sub-divisional Magistrate of Natore under s. 110, C. P. C., and he and some of his men were bound down to keep the peace. They appealed against this order to the [420] District Magistrate, who dismissed the appeal; the petitioners then obtained the present rule, which was discharged.

Mr. K. N. Sen Gupta for the Crown.

The petitioner has been systematically committing various acts of oppression over his tenants in order to make them pay enhanced rents. He commenced his operations at a village called Patal, where the houses of several of his tenants were set fire to and the tenants thereafter agreed to pay enhanced rents. He then took up another of his villages, viz., Dakhinpore, where two arsons were committed and the acts of oppression ceased only after a notice under s. 107, C. P. C., had been served on the petitioner. He then directed his attention towards another of his villages named Basudebpore, where the tenants were oppressed in various ways. This is sufficient to constitute habit under s. 110, C. P. C. There was evidence that the petitioner had a residential house within the jurisdiction of the Magistrate, who initiated these proceedings, and in this house the petitioner occasionally came to live and was actually residing, when these acts of oppression were committed.

Mr. Jackson (Babu Dasarathi Sanyal with him), for the petitioner in Revision case No. 970.

There is no trace of any act of a breach of the peace, there was no opposition on the other side, so there could not have been a likelihood of a breach or an attempt to commit a breach of the peace, nor can it be said to be habitual. It is clear that isolated instances are not evidence of habitual offences. There must be an offence involving a breach of the peace. An unlawful assembly is not a breach of the peace, *Sheo Bhajan Singh v. S. A. Mosawi* (1), *Jib Lal Gir v. Jugmohan Gir* (2). The evidence goes to show that there was criminal intimidation and that does not come within s. 110.

The expression "involving a breach of the peace" occurs also in s. 106, and that section would equally apply.

Babu P. C. Roy Chowdhury for the petitioners in Revision case No. 1014 (the servants of Kasi Sunder Singh). Upon the petition there is nothing to show that these men are habitual [441] criminals. To convict the petitioners it is necessary to find that in the absence of particular acts of violence simple threats amount to habitual offence.

GHOSE AND STEPHEN, JJ. These rules relate to certain orders made by the Deputy Magistrate of Natore under s. 110, Code of Criminal Procedure, confirmed, as they have been, by the District Magistrate of

(1) (1900) I. L. R. 27 Cal. 983.

(2) (1899) I. L. R. 26 Cal. 576.

Rajshahye in appeal. The petitioner in rule No. 970 is one Kasi Sundar Roy, and the petitioners in the other rule No. 1014, are Nilu Pramanik, Sukh Chand Pramanik, Ruplal Pramanik, Basna Pramanik and Kalu Sardar, who are said to be the employees or under-*raiyats* of the said Kasi Sundar Roy. This person appears to be a zemindar. He owns three villages,—Patal, Dakhinpore and Basudebpur—and the case which was made by the complainants, who are some of the tenants of Basudebpur, before the Deputy Magistrate was that various acts of oppression were committed by the petitioners in rule No. 1014 under the orders and connivance of the zemindar Kasi Sundar Roy, the object of such oppression being to compel the *raiyats* to pay enhanced rents. According to the case for the complainants and as it has been found by the lower Courts, the system which Kasi Sundar Roy followed was this:—He would call upon the *raiyats* to pay enhanced rents : if the *raiyats* did not agree to pay such enhanced rents, he would employ *lathials* to go about in the village threatening the *raiyats* with violence and unyoking their ploughs, when engaged in cultivating their lands, and then commit arson in the houses of some of the *raiyats*. It is said that he has been following this system ever since the year 1304 (B. S. when he commenced such operations through his men upon the village Patal. The Courts below have found that there were two arsons in that village, and the result was that the *raiyats* agreed to pay enhanced rents. The next operation or rather series of operations were upon Dakhinpore, and these operations are said to have been commenced in the year 1306-7. There were arsons in that village, but by reason of certain applications that were made by some of the villagers for the purpose of binding the zemindar down, and by reason of some notice or other having been issued upon him by [422] the Magistrate, the operations were dropped. The third series of operations related to, as it is said, the village Basudebpore, where according to the finding of the District Magistrate, the chain of events was as follows :—In the year 1308 Chaitra, demands for enhancement of rent were made on behalf of Kasi Sundar Roy, and various *raiyats* were opposed when engaged in sowing their lands. In 1309 Bysakh Kasi Sundar sent for Saroda Prasad Bhattacharjee, one of the complainants, and threatened him with rack and ruin, unless the *raiyats* agree to pay enhanced rents. In 1309, Assar, cases under s. 145, Code of Criminal Procedure, were instituted in regard to certain lands in the same village, when Kasi Sundar again sent for some of the jotedars; but when the latter arrived, he was not there, and one of his employees, Mohim Bhuyan, held out a threat of arson to Saroda Prasad, Hari and Prangopal. In Pous of the same year, a number of houses in the village Basudebpur were burnt, and this was followed by another conflagration in the same year, in the month of Falgun. If the system which Kasi Sundar Roy is said, and is found to have been following from the year 1304 down to the year 1309 be what we have stated, there can be no doubt that he has been habitually following such line of conduct in order to bring the refractory *raiyats* to obedience, so that they might be compelled to pay him enhanced rents. The question then is, whether his conduct, as has been found by the Courts below, is such as would bring him within the scope of s. 110, Code of Criminal Procedure. There are only two clauses in that section to which reference need be made in this case. Clause (d) says :—“habitually commits mischief, extortion or cheating or counterfeiting coin, currency notes or stamps or attempts so to do,” and the other clause (e) says “habitually commits or attempt to commit or abets

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the commission of offences involving a breach of the peace." Kasi's conduct could hardly be brought under clause (d), because that clause evidently contemplates cases of people, who do certain things themselves, unlike clause (e) which contemplates cases of persons either doing things themselves or abetting others to do the same. But it is not necessary to draw this distinction in the case before us, because we are of opinion that the conduct of Kasi Sundar, having regard to the evidence in the case, more appropriately falls [423] under clause (e) than under clause (d) of the section. It seems to us that if the system that he has been following from the year 1304 be as has been found by the Courts below—and we think there is plenty of evidence to support that finding—then he has been abetting other people to commit offences involving a breach of the peace, in order to compel the *raiyats* to pay him enhanced rents. It has, however, been argued before us by the learned Counsel for the petitioner that, looking at s. 110 as a whole, it was never meant to apply to a person in the position of the petitioner, who is a zemindar of considerable means. But upon consideration we are unable to agree with that view of the matter; for, a person may be possessed of zemindaries and of considerable means, yet his desire to acquire more may lead him to follow the course of conduct, which is proved in this case to have been followed by the petitioner, and this would bring him within the scope of clause (e) of s. 110. It has also been argued by the learned Counsel that Kasi Roy is a person over whom the Magistrate (the Sub-divisional Officer of Natore) had no jurisdiction to proceed under s. 110, Code of Criminal Procedure. It, however, appears upon the evidence that although he ordinarily resides in the town of Rampur Boalia, he has a residential house in Natore within the jurisdiction of the Sub-divisional Officer of Natore; and that he occasionally, if not often, goes there for the purpose of his business as a zemindar in that part of the country; and it appears that all the acts attributed to him are acts which were done by him while residing at his place in Narsarpur. It is those acts of his which occasioned the institution of proceedings against him under s. 110 of the Code. In these circumstances, we think it could not be rightly said that the Sub-divisional Officer of Natore had no jurisdiction to take proceedings against him under s. 110. In the result we think that this Rule (No. 970) must be discharged. We order accordingly.

As regards the other Rule (No. 1014), we think that, upon the judgments of the Courts below, and upon the evidence, as has been read to us by the learned Counsel and the learned Vakil on both sides, the order, so far as it affects *Sukh Chand, Nilu and Ruplal*, must be maintained. But as regards *Basna, Parsula and Kalu*, the facts disclosed or found are not such as would bring [424] their conduct within the scope of section 110, whether you take clause (d) or clause (e) as applicable to the case. We accordingly hold that the order of the Magistrate must be discharged so far as these three individuals are concerned.

We ought to mention that *Parsula's* name does not appear in the petition of motion presented to this Court. But the record being before us, and the whole matter having been brought to our notice, we feel no difficulty in making the order that we have made on behalf of that individual as well.