

1902
 SURAT LALL
 CHOWDHRY
 v.
 EMPEROR.

before the commencement of the trial, for the application was not made until the very date fixed for the trial. The law does not require that an application for postponement under sub-s. (8) of s. 526, or an application to the High Court for transfer, should be made within any particular period before the date fixed for the hearing. It requires only that the party should notify to the Court before which the case is pending before the commencement of the hearing his intention to make an application for the transfer of the case; and it seems clear to us, that if such an intention is notified at however short a time before the commencement of the hearing, the Court before which the case is pending is bound to exercise its powers of postponement or adjournment without reference to any opportunity that the party might have had of making an application at some earlier time. We must, therefore, hold, as was held in the case of *Queen-Empress v. Gayitri Prosunno Ghosal* (1), to which we have referred, that the refusal to grant the application for postponement was illegal and that the whole of the proceedings that followed cannot be supported.

We therefore set aside the convictions and sentences in this case, and we direct that the case be re-tried. We think it is desirable that the case should be tried by another Court and we therefore direct that it be transferred for trial to the Sessions Judge of Tirhoot.

D. S.

CRIMINAL REVISION.

Before Mr. Justice Ameer Ali and Mr. Justice Stevens.

RAM LOCHAN SARCAR

v.

QUEEN-EMPRESS.*

1901
 Dec. 12.

Hiring and harbouring persons hired for an unlawful assembly, ingredients of offences of—Proof of unlawful assembly—Penal Code (Act XLV of 1860) ss. 141, 150 and 157.

* Criminal Revision Nos. 848 and 849 of 1900.

(!) (1888) I. L. R. 15 Calc. 455.

S. 150 of the Penal Code refers to a particular unlawful assembly. Where, therefore, it is found that any person has hired or engaged any other person to join or become a member of a particular unlawful assembly, he is liable for any offence committed by any member of that unlawful assembly in the same way as if he had been a member of such unlawful assembly or himself had committed such offence.

1901
 RAM LOCHAN
 SARCAR
 v.
 QUEEN-
 EMPRESS.

S. 157 of the Penal Code is of wider application. It provides for an occurrence that may happen and makes the harbouring, receiving or assembling of persons who are likely to be engaged in any unlawful assembly an offence. There, again, the law contemplates the imminence of an unlawful assembly, and the proof of facts which in law would go to constitute an unlawful assembly.

Therefore where a Magistrate only found that "what the accused has been doing is collecting and harbouring men for the purpose of committing a riot should he find it his interest to do so," and there was no finding that there had been any unlawful assembly, composed of persons said to have been hired by the accused and in the course of which some offence had been committed for which the accused would have been responsible equally with those who were members of that unlawful assembly, nor that an unlawful assembly made up of the elements provided for by s. 141 of the Penal Code was in the contemplation of the accused :—

Held, that the accused could not be convicted of having committed offences under ss. 150 and 157 of the Penal Code.

In this case there had been a long standing dispute between the accused Ram Lochan Sarcar and his nephew Mohim Chandra Dutt with regard to certain immoveable property in the district of Pubna. They were formerly joint and lived together, but owing to a quarrel Ram Lochan at the end of the year 1899 turned Mohim out of the joint-family dwelling-house. Since this occurrence Mohim had been endeavouring to establish himself in the house. Ram Lochan, however, would not permit this. Both parties then engaged lathials in order to strengthen their positions. In consequence of this they were charged with and convicted of having committed offences under ss. 150 and 157 of the Penal Code and sentenced to three months' simple imprisonment, and were also bound down under s. 106 of the Code of Criminal Procedure to keep the peace for one year. The convictions and sentences were upheld on appeal by the Sessions Judge of Pubna.

1901 <hr/> RAM LOCHAN SARCAR v. QUEEN- EMPRESS.	Mr. Jackson and Babu Dasarathi Sanyal for Ram Lochan Sarcar. Mr. S. Roy and Babu Surendra Nath Ghosal for Mohim Chandra Dutt.
--	--

1901
Dec. 12.

AMBER ALI AND STEVENS JJ. This Rule was granted on the application of one Ram Lochan Sarcar calling upon the District Magistrate to show cause why the conviction of the petitioner under ss. 150 and 157 of the Indian Penal Code and the sentence passed upon him should not be set aside on the ground that, in the absence of evidence indicating that the common object of the hired or assembled men was such as is stated in s. 141 of the Indian Penal Code, the facts found could not constitute an offence under those sections. We do not refer to the second portion of the Rule which relates to the reduction of the sentence as, upon consideration of the whole case we are of opinion that the conviction must be set aside.

In order to understand the circumstances which give rise to the application upon which this rule was obtained, it is necessary to mention that there is some dispute between the petitioner Ram Lochan Sarcar and his nephew Mohim Chandra Dutt regarding the possession of certain property. Disturbances have taken place, as found by the Magistrate, in consequence of those disputes, but with those disturbances and with the results of the prosecutions for those disturbances we are not at present concerned. It is alleged by the prosecution that Ram Lochan Sarcar has entertained in his house the services of several lathials and he has been convicted, as already mentioned, under ss. 150 and 157 of the Indian Penal Code. It is necessary to refer to the findings of the Magistrate before we go to the law on the subject. The Joint Magistrate says:—

“What the accused has been doing is collecting and harbouring men for the purpose of committing a riot should he find it his interest to do so.” That appears to contain the sum and substance of the reasons upon which the judgment proceeds. Now, s. 150 of the Penal Code provides that “whoever hires or engages or employs or promotes or connives

at the hiring, engagement or employment of any person to join or become a member of any unlawful assembly shall be punishable as a member of such unlawful assembly, and for any offence which may be committed by any such person as a member of such unlawful assembly in pursuance of such hiring, engagement or employment, in the same manner as if he had been a member of such unlawful assembly or himself had committed such offence." It is clear from the language of the section that it refers to a particular unlawful assembly; in other words, when it is found that any person has hired or engaged another to join or become a member of a particular unlawful assembly, he is liable for any offence committed by any member of that unlawful assembly in the same way as if he had been a member of such unlawful assembly or himself had committed such offence. Now, in the present case, the Joint Magistrate does not find that there has been any unlawful assembly which was composed of the persons said to have been hired by Ram Lochan Sarcar, and in the course of which some offence has been committed for which Ram Lochan Sarcar would be responsible equally with those who were members of that unlawful assembly. It is clear therefore that the conviction under s. 150 must fail.

S. 157 is of wider application. It provides for an occurrence that may happen and makes the harbouring, receiving or assembling of persons, who are likely to be engaged in any unlawful assembly, an offence. There again, the law contemplates the imminence of an unlawful assembly and the proof of facts which in law would go to constitute an unlawful assembly. In the present case the Joint Magistrate appears to have found only that the petitioner Ram Lochan had collected and harboured men for the purpose of committing a riot *should he find it his interest to do so*. There is no fact found to suggest that an unlawful assembly, made up of the elements provided for in s. 141, was in the contemplation of the accused person, and in the absence of any such proof or any such finding, we think it impossible to maintain a conviction under that section. If the Magistrate is of opinion that any disturbance of the public peace is likely to take place, the

1901

RAM LOCHAN
SARCAR
v.
QUEEN-
EMRESS.

1901
 RAM LOCHAN
 SARGAR
 2.
 QUEEN-
 EMPRESS.

aw confers on him sufficient powers to take steps to prevent the occurrence of such contingency. The law has also given power to the Magistrate to call upon anybody found loitering or wandering in the neighbourhood without any ostensible means of livelihood to enter into a bond for good behaviour, but we do not think that, with the object merely of preventing an apprehended breach of the peace, persons from whom disturbance is apprehended ought to be convicted under ss. 150 and 157 without proof of the particular facts, which the sections contemplate as necessary to be established in order to uphold a conviction thereunder. We accordingly make the Rule absolute and set aside the conviction and sentence of Ram Lochan Sargar. The order requiring him to give security must fail with the setting aside of his conviction.

With regard to the application of Mohim Chandra Dutt we have already mentioned the circumstances which gave rise to the proceedings against him. He has been convicted not under s. 157 but only under s. 150, which, as already pointed out, contemplates a particular unlawful assembly. There is no finding in the judgment of the Joint Magistrate such as would warrant his conviction under that section. We think, therefore, that his conviction must also be set aside as also the order requiring him to enter into a bond. The observations we have made regarding other steps being open to the Magistrate to insure the maintenance of the public peace in that locality apply also to this case.

D. S.

Rule made absolute.