APPELLATE CRIMINAL.

Before Mr. Justice Rampini and Mr. Justice Sharfuddin.

1908
Jan. 13.

KABIRUDDIN
v.
EMPEROR.*

Private defence, right of—Rioting—Assembly of armed men prepared for fight—Penal Code (Act XLV of 1860) ss. 96 to 106—Misdirection to Jury.

There is no right of private defence where two parties arm themselves for a fight to enforce their right or supposed right, and deliberately engage in large numbers in a fight. In such a case, if it is not shown that the accused were acting within the legal limits of the right of private defence, it does not matter which party was the first to attack.

In re Kalee Beparee(1) and *Jairam Mahton* v. *Emperor*(2) followed.

THE appellants were tried before the Sessions Judge of Patna and a Jury who unanimously found them guilty under ss. 147 and 148 of the Penal Code. They were sentenced to terms of imprisonment varying from one to two years. It appeared that on the morning of 10th March 1907 a large body of men, about 500 in number, belonging to a village called Chero went armed with *lathis* and swords to the Pathari *pyne* to throw up an *alung* taking earth from the dry channel for the purpose. While so engaged the opposite party from the village of Iswa, numbering 300 or 400, came up similarly armed, and a free fight ensued in the course of which one man was killed and several others wounded.

Mr. Norton (*Babu Manmatha Nath Mookerjee* with him), for the appellants. The charge of the learned Sessions Judge contains flagrant misdirections. He has expressly told the jury (i) that in his view of the law no right of private defence exists, (ii) that it is unnecessary for them to decide which party was in *de facto*

* Criminal Appeal No. 904 of 1907, against the order of H. W. C. Carnduff Sessions Judge of Patna, dated Sept. 30, 1907.

(1) (1878) 1 C. L. R. 521. (2) (1907) I. L. R. 35 Calc. 103.

possession, and which party was the aggressor. He has also cast the *onus* of proof upon the accused as regards the plea of self-defence. There is express authority for the proposition that a private individual has the right to oppose force to force if his possession of property is endangered by the wrongful act of another: *Queen* v. *Sohun*(1), *Queen* v. *Mitto Singh*(2), *Queen* v. *Sachee*(3), *Birjoo Singh* v. *Khub Lall*(4), *Shunker Singh* v. *Burmah Mahto*(5), *Ganouri Lal Das* v. *Queen-Empress*(6), *Moher Sheikh* v. *Queen-Empress*(7), *Pachkauri* v. *Queen-Empress*(8), *Anant Pandit* v. *Madhusudan Mandal*(9), *Poresh Nath Sircar* v. *Emperor*(10), *Bepin Behari Guha* v. *Pramkul Majumdar*(11), *Queen-Empress* v. *Narsang Pathabhai*(12), *Queen-Empress* v. *Peelimuthu Tevan*(13). These cases show that the main question for decision is who is in possession, and the learned Judge has in express words taken away from the Jury the decision of this point. If your Lordships differ from the rulings cited by me the case should be referred to a Full Bench.

Mr. P. L. Roy (*Babu Joygopal Ghose* with him), for the Crown. There is no error in the direction of the learned Judge that if the Jury were of opinion that both parties went prepared for a fight there would be no right of private defence. There is ample authority in support of this view: *Queen* v *Nowabdee*(14), *Queen* v. *Jeolall*(15), *Queen* v. *Mana Singh*(16), *In re Kalee Bepare*(17), *Queen-Empress* v. *Prag Dat*(18), *King-Emperor* v. *Kalji*(19), *Emperor* v. *Kadhu Singh*(20) and *Jairam Mahton* v. *Emperor*(21). The case has been tried by a Jury and their verdict cannot be set aside even on the ground of misdirection unless it has occasioned a failure of justice: *see* s. 537 of the Criminal Procedure Code.

(1) (1865) 2 W. R. Cr. 59.
(2) (1865) 3 W. R. Cr. 41.
(3) (1867) 7 W. R. Cr. 112.
(4) (1873) 19 W. R. Cr. 66.
(5) (1875) 23 W. R. Cr. 25.
(6) (1889) I. L. R. 16 Calc. 206.
(7) (1893) I. L. R. 21 Calc. 392.
(8) (1897) I. L. R. 24 Calc. 686.
(9) (1899) I. L. R. 26 Calc. 574.
(10) (1905) I. L. R. 33 Calc. 295.
(11) (1906) 11 C. W. N. 176.
(12) (1890) I. L. R. 14 Bom. 441.
(13) (1900) I. L. R. 24 Mad. 124.
(14) W. R. (1864) Cr. 11.
(15) (1867) 7 W. R. Cr. 34.
(16) (1867) 7 W. R. Cr. 103.
(17) (1878) 1 C. L. R. 521.
(18) (1898) I. L. R. 20 All. 459.
(19) (1901) I. L. R. 24 All. 143.
(20) (1902) I. L. R. 24 All. 298.
(21) (1907) I. L. R. 35 Calc. 103.

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The evidence shows that the *thana* was only a short distance away, but the parties not only did not go there but actually fought in the presence of the police. There is no right of private defence on the facts of the case: *see* s. 99, cl. (3) of the Penal Code.

RAMPINI J. This is an appeal by twelve persons who have been convicted by the Sessions Judge of Patna of offences under sections 147 and 148 of the Penal Code, and sentenced to terms of imprisonment varying from one to two years. The trial was held with the assistance of a Jury who unanimously found the accused guilty. The verdict of a Jury can only be set aside on the ground of misdirection in the charge by the Judge to the Jury which "has in fact occasioned a failure of justice." The alleged facts of this case are set out by the Judge as follows:—"On the morning of the 10th March Fakira Dhari, one of the chaukidars of Iswa, saw a mob collected on the Pathari *pyne*, and learnt that they were Chero people come to throw up an *alung* on the western side, taking earth from the then dry channel in order to do so; also that the Iswa people intended to contest the other's right to do anything of the kind. He at once went to the Surmera outpost and gave information to the writer-constable who was there alone, and could do no more than record a *sancha* on hearing what he and another chaukidar, Budhna, who had come almost simultaneously with similar information, had to say. Budhna was sent off to Sheikhpura in Monghyr to give formal information to the head-constable, Nurul Nabi, who had gone there to attend a police co-operation meeting, while two constables, Rajkumar and Surajnath, were deputed to accompany Fakira back to the *pyne* and avert a riot, if possible. On reaching the place they found some 500 Chero people armed with *lathis* and swords, among them being about 200 labourers, excavating the earth, and, most prominent of all, Kabiruddin directing operations, from horseback eventually, but himself unarmed. At the same time a slightly smaller *gahar*, 300 or 400 are the figures suggested, was seen coming from the Iswa side led by Sahdeo Singh of Iswa, also on horseback, armed and shouting '*Jai Mahabir*.' The police implored the Chero people first and then the Iswa people,

and then both together to desist and await the arrival of the Sub-Inspector, but remonstrances were in vain; the two armies ranged up, and a free fight ensued and lasted for a short time, after which the rioters on both sides dispersed. It was then noticed that one of the Iswa men had been so severely wounded as to be unable to move from the spot where he had fallen. This man, Mahar Singh, the Chero people are said to have made an attempt to carry away, and the Iswa people, according to the police, also tried to remove him altogether; but the constables very properly refused to let him be taken out of their sight, and they were present with him when he died in a hut hard by about a quarter of an hour later."

The Judge has then discussed the evidence very carefully and left the Jury to make up their minds as to the facts. He then goes on to say:—"I now come to deal with the question of right, title and possession, as to which a mass of evidence has been laid before you. *First*, there is the oral evidence. On the Iswa side a number of witnesses swear that the Pathari *pyne* lies entirely in Iswa, that it has always been repaired and maintained by the *maliks* of Iswa, and that the people of Chero have never had, nor exercised, any right to interfere with it in any way. On the other hand, the Chero witnesses allege that the Chero people have regularly excavated earth from the *pyne* so as to erect an *alung* along the western side, and it is argued, on the strength of certain admissions by Iswa witnesses as to the slope of the land, that, without such an *alung*, Chero could never grow a rice crop, as all the water would flow off their lands during the rainy season. Then Iswa produces a *thakbust* map of 1843, which seems to show that the northern branch at any rate of the *pyne*, *i.e.*, the so-called Pathari *pyne*, is in Iswa, while Chero produces a similar map and *khasra* and the counsel for the defence asks you to gather from it that in 1843 the *pyne* was in Chero. Next, the prosecution rely upon certain partition proceedings in 1901 between Iswa and Kalyanpur, but to these Chero admittedly was no party. Chero again file a number of old *rubakars* or decrees regarding a *pyne* apparently in their locality; but these relate to a dispute between Chero and Iswa, and I cannot myself see that the identity of the *pyne* referred to in

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them with the so-called Pathari *pyne* has been established. Next, there are Treasury *chalans* showing that Musst. Fasiban, the Chero *malika*, has paid into the Treasury at Patna in the years 1884, 1889, 1892, 1894, 1896, 1897, and 1901 sums of money on account of '*bandheri*,' and the '*sakri band*.' And lastly, each side has produced *gilandazi* papers and evidence in support thereof, while the defence have called a *beldar* who swears that he had repaired the *pyne* at the expense and on behalf of Chero.

The task of deciding what, in the result, is established by this conflict of evidence, would, I think, be a difficult one, and, in the view I take of the law, it is not necessary for you to attempt any adjudication. In a word, I am clearly and strongly of opinion that, if the case of a free fight deliberately engaged in by the parties is true, it is wholly immaterial what their rights were or are. This brings me to an explanation of the law of rioting.

An assembly of five or more persons is an 'unlawful assembly' if the common object of the persons composing it is by means of criminal force or show of criminal force to any person to enforce any right or supposed right. And an assembly which was not unlawful when it assembled may become an unlawful assembly. Whoever intentionally uses force to any person without that person's consent in order to the committing of any offence, or intending by the use of such force to cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other. Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of its common object, every member of it is guilty of rioting under section 147 of the Indian Penal Code. And if any person so guilty is armed with a deadly weapon or anything, which, used as a weapon of offence, is likely to cause death, he is liable to severe punishment under section 148.

In order then to convict anyone of the accused under section 148 you must be satisfied (*i*) that he was one of five or more persons assembled with a common object, (*ii*) that the common object was forcibly to assert the supposed right of Chero to take earth from the Pathari *pyne*, (*iii*) that in prosecution of that common object force or violence was actually used, and (*iv*) that he was armed with a deadly weapon.

As I have already told you, it is a question of fact whether a sword or a *lathi* is a deadly weapon and that is for you to decide. I have also told you in the case of Kabir, and I repeat it now once for all, that, even if you find point (*iv*) above not proved, it will be open to you to convict under the minor section 147, should you find the other essentials proved.

Now, apart from the *alibi* pleaded by some of the accused, the defence is that the Chero people, were not asserting any right, but were merely maintaining undisturbed the exercise of a right, and taking the necessary precaution to protect themselves from aggressive interference, and the learned counsel has cited a number of rulings drawing the distinction—referring in particular to one of 1875 and another of 1897—*Shunker Singh* v. *Burmah Mahto*(1) and *Pachkauri* v. *Queen-Empress*(2). Now even if the soundness of these decisions be accepted unquestioned, and I cannot help thinking that the case of 1897 goes dangerously far in the direction of allowing the subject to take the law into his own hands, the present case seems to me to be readily distinguishable. And here I ought to remind you that, where the right of private defence is set up, the *onus* shifts on to the accused, and it is for them to prove the plea.

In laying down the law I rely first, on the clear language of section 141 (*4*), which refers to an actual right as well as a supposed one, and then on a long series of rulings which begin with *Queen* v. *Jeolall*(3) and end with *Anant Pandit* v. *Madhusudan Mandal*(4). There can, I tell you, be no right of private defence, either on one side or on the other, where both parties are evidently aware of what is likely to happen and turn out in force. The right of private defence cannot be pleaded by persons who expecting to be attacked go out of their way to court an attack. When the parties of the complainant and accused are prepared to fight, it is immaterial who was the first to attack, unless it be shown that the accused were acting in the exercise of the right of private defence. If the accused—it was held by the Judges at Allahabad not many years ago, see *Queen-Empress* v. *Prag Dat*(5)—were determined to vindicate

(1) (1875) 23 W. R. (Cr.) 25.
(2) (1897) I. L. R. 24 Calc. 686.
(3) (1867) 7 W. R. (Cr.) 34.
(4) (1899) I. L. R. 26 Calc. 574.
(5) (1898) I. L. R. 20 All. 459.

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their supposed rights and engaged in a fight with men equally determined to vindicate them no question of private defence can arise. It comes to this simply, that our law does not permit rival claimants to enter in cold blood into battle to settle a dispute which can be settled in a lawful manner. Here you must remember that the occurrence took place on the 10th March, six months after the last rains had ceased and three months before the next rains were expected. There would, therefore, be no pressing necessity for the erection of an *alung*. On the contrary, not only was there plenty of time to seek the protection of the police at the outpost, a mile distant, but the police were on the spot, if you believe them, trying to prevent a breach of the peace. There was plenty of time to ask the Magistrate at Barh to issue an order under section 144 of the Code of Criminal Procedure so as to enable the Chero people to put up the *alung* before the rains; there was time indeed to bring a suit to establish the right. And what was there to prevent them waiting until the settlement officer arrived and went into the matter on the spot with a view to the record of rights contemplated? If you find that the accused well knew that the right was disputed and would be forcibly contested by Iswa, that they, nevertheless, went in anything like the numbers asserted to exercise the right in the teeth of opposition, that there was no necessity or justification in the patent facts for their taking the earth and throwing up the *alung* at the time in question, and that they joined battle in the face even of police remonstrance on the spot, then you should, without hesitation, convict all who participated of rioting."

Mr. Norton, for the appellants, contends that in this passage in the Judge's charge there is a flagrant misdirection on a point of law and that, therefore, the conviction of the appellants cannot stand. He urges that the Judge should not have told the Jury that when two bodies of armed men go out to fight a pitched battle, defying the representatives of the law that are present and urge them to desist from fighting, the questions of right and who are the aggressors are immaterial, but on the contrary that the Judge should have directed the Jury to find (i) who were in the possession of the *pyne* about which the fight took place, (ii) by what right they were in possession, and (iii)

who were the aggressors and the attacking party at the time of the occurrence. In support of his contention he has cited and relied on the following cases: *Queen* v. *Sohun*(1), *Queen* v. *Mitto Singh*(2), *Queen* v. *Suchee*(3), *Birjoo Singh* v. *Khub Lall*(4), *Shunker Singh* v. *Burmah Mahto*(5), *Ganouri Lal Das* v. *Queen-Empress*(6), *Moher Sheikh* v. *Queen-Empress*(7), *Pachkauri* v. *Queen-Empress*(8), *Anant Pandit* v. *Madhusudan Mundal*(9), *Poresh Nath Sircar* v. *Emperor*(10), *Bepin Behari Guha* v. *Pranakul Majumdar*(11), *Queen-Empress* v. *Narsang Pathabhai*(12), and *Queen-Empress* v. *Peelimuthu Tevan*(13).

Mr. Roy, for the Crown, on the other hand has replied that the Judge's charge contains no misdirection, that the Judge has correctly laid down the law, and that, as no failure of justice has in fact taken place in consequence of the alleged misdirection, the conviction of the appellants according to section 537 of the Criminal Procedure Code should not be set aside. He relies on the cases of *Queen* v. *Nowabdee*(14), *Queen* v. *Jeolall*(15), *Queen* v. *Mana Singh*(16), *In re Kalee Beparee*(17), *Queen-Empress* v. *Prag Dat*(18), *King-Emperor* v. *Kaliji*(19), *Emperor* v. *Kadhu Singh*(20), and *Jairam Mahton* v. *Emperor*(21).

There appears to me to be no necessity to discuss these cases at length. They lay down no general rule. Further, they have all been considered and commented on from time to time by the different Benches of this Court, and the facts of each case distinguished. They undoubtedly appear to be conflicting, and Mr. Norton has suggested that if we do not agree with the law as laid down in the cases he has cited, we should make a reference to a Full Bench. But we see no reason and consider it unnecessary to do so. The law of the Penal Code, however apparently

(1) (1865) 2 W. R. Cr. 59.
(2) (1865) 3 W. R. Cr. 41.
(3) (1867) 7 W. R. Cr. 112.
(4) (1873) 19 W. R. Cr. 66.
(5) (1875) 23 W. R. Cr. 25.
(6) (1889) I. L. R. 16 Calc. 206.
(7) (1893) I. L. R. 21 Calc. 392.
(8) (1897) I. L. R. 24 Calc. 686.
(9) (1899) I. L. R. 26 Calc. 574.
(10) (1905) I. L. R. 33 Calc. 285.
(11) (1906) 11 C. W. N. 176.
(12) (1890) I. L. R. 14 Bom. 441.
(13) (1900) I. L. R. 24 Mad. 124.
(14) W. R. (1864) Cr. 11.
(15) (1867) 7 W. R. Cr. 34.
(16) (1867) 7 W. R. Cr. 103.
(17) (1878) I C. L. R. 521.
(18) (1898) I. L. R. 20 All. 459.
(19) (1901) I L. R. 24 All. 143.
(20) (1902) I. L. R. 24 All. 298.
(21) (1907) I. L. R. 35 Calc. 103.

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variously interpreted in different sets of circumstances, remains the same, and we are bound to apply it to the circumstances of the present case according to our lights. I have no doubt that according to the Penal Code no right of private defence arises in circumstances such as those of the present case, when both parties armed themselves for a fight, to enforce their right or supposed right and deliberately engaged in very large numbers in a pitched battle, killing one man and wounding others In such a case, as said in the exactly similar case of *In re Kalee Bepare*(1), where both parties are armed and prepared for battle, and it is not shown that they were acting within the legal limits of the right of private defence, it does not matter which is the first to attack. In the present case the appellants, if they had any right of private defence, which in the circumstances in my opinion they had not, did not act within the legal limits of such right. They did not restrict themselves merely to the use of such force as was necessary to resist trespass. On the contrary, they far exceeded their right, if they had any, for they killed a man and inflicted serious injuries on others As has been said in the case of *Jairam Mahton* v. *Emperor*(2), "The right of private defence of property is a restricted right. Section 99 of the Indian Penal Code expressly lays down that there is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities, and it also lays down that the right of private defence in no case extends to doing more harm than is necessary for the purpose of defence. Sections 100 to 105 make the right depend on the circumstances of each case. No man has the right to take the law into his own hands for the protection of his person or property, if there is a reasonable opportunity of redress by recourse to the public authorities. Referring to *Hyde* v. *Graham*(3), Holloway J. in *Madras High Court Proceedings, 8th January 1873*(4) says:—'The natural tendency of the law of all civilized States is to restrict within constantly narrowing limits the right of self-help, and it is certain that no other principle can be safely applied to a country (like this). . . .' The right of self-help, when it causes or is likely to cause damage to the

(1) (1878) 1 C. L. R. 521.
(2) (1907) I. L. R. 35 Calc. 103,
(3) (1862) 1 H. & C. 593.
(4) (1873) 7 Mad. H. C. Ap. xxv.

person or property of another person, must be restricted and recourse to public authorities must be insisted on. If a person prefers to use force in order to protect his property when he could, for the protection of such property, easily have recourse to the public authorities, his use of force is made punishable by the Indian Penal Code. No matter what the intention of that person may be, the law says that he must not use force in such a case. To hold otherwise would be to encourage and put a premium on offences of rioting which are so frequent in this part of India. The country would, in the language of Holloway J., 'be deluged with blood' if an offender who could get relief by recourse to law is allowed to take the law into his own hands."

For these reasons, I am of opinion that there was no misdirection in the charge to the Jury by the Sessions Judge, and I would accordingly dismiss the appeal.

SHARFUDDIN J. This is an appeal by the present appellants who have been convicted and sentenced, as mentioned by my learned brother in his judgment. The trial was held with the assistance of a Jury whose unanimous verdict was that all the accused were guilty.

The facts of the case have been fully discussed by the learned Sessions Judge in the heads of his charge to the Jury, and also dealt with by my learned brother. I need not, therefore, repeat them.

It has been urged on behalf of the appellants that there has been misdirection in the charge on a point of law, namely, that "in the case of a free fight deliberately engaged in by the parties it is wholly immaterial what the rights were or are." And that the misdirection has been further amplified by the learned Sessions Judge by directing the Jury "that there can be no right of private defence either on one side or the other when both parties are evidently aware what is likely to happen and turn out in force. The right of private defence cannot be pleaded by persons who expecting to be attacked go out of their way to court an attack. When the parties of the complainant and the accused are prepared to fight, it is immaterial who was the first to attack

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unless it be shown that the accused were acting in the exercise of their right of private defence."

Mr. Norton, counsel for the appellants, contends that the above amounts to a misdirection, inasmuch as the learned Sessions Judge was bound to place before the Jury the evidence as to possession; and that this omission has caused a miscarriage of justice, for if the Jury had found possession of his clients, even for a few hours before the occurrence, they had a right to defend their possession against any aggression by the other side.

The Indian Penal Code deals with the right of private defence in sections 96 to 106. Under section 97 "every person has a right, subject to the restrictions contained in section 99, to defend his property or that of any other person against any act which is an offence falling under the definition of offences mentioned in that section." One of the restrictions under section 99 is that "there is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities." By the above restriction an accused cannot set up this right with regard to property in his possession if he has time to invoke the protection of the authorities. In cases of sudden fights, where there has not been any preparation by either side, a man, no doubt, is within the law, if in defending his property he causes such bodily injuries to the aggressive party as are allowed by the sections of the Penal Code which deal with the right of private defence.

If the facts of the present case disclose a state of things which clearly goes to show that the accused had full knowledge of the fact that they would be opposed by the other side, their duty, as required by law, would be to have recourse to the protection of the authorities, provided there was time enough to do so. If there was time, they had no right to go to the scene of occurrence and thus invite the other side to come and attack them. The occurrence is said to have taken place on the 10th March 1907, when the Pathari *pyne* was quite dry. The accused had gone to the place to repair the embankment of the said *pyne* which embankment is situated on the Chero side of the *pyne*. Chero is the village to which the accused belong. The opposing party belong to the village Iswa. On the date of the occurrence there

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was no pressing necessity to throw up any earth on the Chero side of this *pyne*—the next rainy season being some months after the occurrence.

From facts proved in the case and accepted by the Jury it is clear that the Chero people were fully aware that they would be attacked by the Iswa people. The Chero people numbered 400 or 500 including about 200 labourers. They were armed with swords and *lathis* and were led by Kabiruddin on horseback, who had only a whip in his hand. On the appearance of such a large body of men the Iswa people also began to collect their forces. In the meanwhile two chowkidars started for the *thana*, which is only four miles from the scene of occurrence, and only a mile from Chero, to give information of a likelihood of a breach of the peace. On receipt of the information two police constables arrived on the spot before the fighting had commenced. In spite of the remonstrances of these two constables fighting began and there was a regular combat. This fighting commenced on the Iswa people trying to cross the *pyne*.

On the above facts it is clear that the Chero people had full knowledge that they would be opposed by the Iswa people, and this is evidenced by the fact of their having gone fully armed and in such large numbers. An assembly of such a large body of men indicates that they had not gone to the spot for any peaceful purpose. They knew quite well that they would be attacked and they went to the spot to meet force by force. The law does not delegate to any private individual the functions of those public servants who are specially charged with the protection of life and property and the apprehension of offenders. In the present case there having been no pressing necessity for repairing the embankment, and there being ample time to seek protection of the authorities, the Chero people had no right to assemble, as they did, and court an attack by the Iswa people.

It is contended on behalf of the appellants that inasmuch as the Chero people had arrived on the spot admittedly a few hours before the Iswa people, the former had a right to defend the continuance of a state of things which, if altered, would have disturbed the *status quo ante*, and that the Chero people having arrived there first were maintaining their right of possession.

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The common object mentioned in the charge is to support a supposed right to take earth from the Pathari *pyne*. The question, therefore, is as to whether the Chero people had gone to the spot to defend a right or to assert it. It is clear that they had gone to assert that right, or otherwise there would have been no necessity of going to the place in such a large body and so armed. It is contended on behalf of the appellants that they, having arrived on the spot first, had the right to remain there, and if disturbed in that right they were entitled to set up the plea of the right of private defence. I cannot accept the above proposition, as such an enunciation of law would be dangerous to the peace of the country. It would justify a regular race between two factions as to who should arrive first.

In the above circumstances, I am of opinion that the learned Sessions Judge was right in telling the jury that if they found (*a*) that there had been a premeditated fight between the parties, (*b*) that the remonstrances of the two constables were ineffectual, (*c*) that there was no pressing necessity to repair the *pyne*, and (*d*) that there was ample time to seek the protection of the authorities, it was immaterial as to which of the parties was in possession.

One of the common objects mentioned in section 141 of the Indian Penal Code is—"by means of criminal force or show of criminal force to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of the right of way or of the use of water or other incorporeal right of which he is in possession or enjoyment, or *to enforce any right or supposed right*." The expression "to enforce any right or supposed right" suggests an opposing party, and hence I find that the accused have been charged with rioting with the common object, *to wit*, to assert by force or show of force a supposed right.

Our attention has been drawn by the counsel on both sides to various authorities in support of their respective contentions. They have been referred to by my learned brother in his judgment and I need not discuss them.

For the above reasons I concur with my learned brother and dismiss this appeal.

Appeal dismissed.

E. H. M.