

*Regular Appeal No. 1 of 1864.*1864.
Sept. 28.

A. C. CA'NA' (plaintiff) *Appellant.*
 H. F. MORGAN (defendant)..... *Respondent.*

Assault—Criminal Force—Threatening Gestures—Words do not amount to an Assault.

Any gestures calculated to excite in the party threatened a reasonable apprehension that the party threatening intends immediately to offer violence, or, in the language of the Indian Penal Code, is "about to use criminal force" to the person threatened, constitute, if coupled with a present ability to carry such intent into execution, an assault in law. Mere words do not amount to an assault, but the words which the party threatening uses at the time may either give his gestures such a meaning as may make them amount to an assault, or, on the other hand, may prevent them from being held to amount to an assault.

In order to have this latter effect the words must be such as clearly to show the party threatened that the party threatening has no present intention to use immediate criminal force.

THIS day the judgment of the Court, consisting of ARNOULD, Acting C. J., NEWTON and TUCKER, JJ., was delivered by ARNOULD, Acting C.J.:—

In this case, which was very ably argued before us last Wednesday, by Messrs. Anstey and Dunbar for the appellant, and Messrs. Marriott and Scoble for the respondent, there are two points for consideration:—

1st—Whether the facts proved amount to an assault in law.

2nd—If so, to what compensation in damages is the plaintiff entitled.

I. What amounts to an assault in law. On this point we were referred to many English authorities (especially to the cases collected and commented on in Addison on Torts, p. 394; Broom's Commentaries on the Common Law, p. 664; Lush's Saunders, p. 141, title "Assault and Battery;" Russell on Crimes, Vol. I., p. 750, Ch. X., on "Common and Aggravated Assault;" and to Secs. 349, 350, and 351 of the Indian Penal Code).

The result of the authorities may, we think, conveniently be thus stated:—any gestures calculated to excite in the party threatened a reasonable apprehension that the party threatening intends immediately to offer violence, or, in the

language of the Indian Penal Code, is "about to use criminal force" to the person threatened, constitute, if coupled with a present ability to carry such intent into execution, an assault in law.

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Mere words do not amount to an assault. But the words which the party threatening uses at the time may either give to his gestures such a meaning as may make them amount to an assault, or, on the other hand, may prevent them from doing so.

A good instance of a case in which the use of words may prevent a gesture from being held to amount to an assault, which but for the words would have been held to do so, is the following:—A laid his hands on his sword, and said to Z, "if it were not the assize time I would not take such language from you." This was held not to be an assault, on the ground that the words showed that A did not intend *then and there* to offer violence to Z (in the language of the Penal Code, was not "about to use criminal force" to Z). Here there was the menacing gesture, showing in itself an intention to use violence, there was the present ability to use violence, but there were also words which would prevent the person threatened from reasonably apprehending that the person threatening was really then and there about to use violence.*

In this case it is to be observed that the state of things which prevented the intention to use violence being carried into effect was a state of things over which the party threatening had no control, and the consequences of which, if the threatened violence were at once carried out, were such as might well make the boldest and angriest man pause before he struck.

It was the assize time, and the consequence of drawing a sword on another during assize time involved in those days (the latter end of Charles the Second's reign) not only the certain infliction of a heavy fine, but the possible chopping off of the hand by which the sword was drawn.

Having thus ascertained what amounts to an assault in law, the next question is, Do the facts proved in this case constitute a legal assault.

* *Tuberville v. Savage*, 1 Mod. Rep. 3 S. C.; 2 Keble's Rep. 515, A.D. 1675, cited in *Russell on Crimes*, Vol. I., p. 750.

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The evidence, as it always is in cases of this kind, is very conflicting; but without going minutely into its discrepancies it may be resolved substantially into the two following statements, one that of the plaintiff, the other that of the defendant. The plaintiff's version is that the defendant, in a violent state of anger, came running out of his compound after him with a stick in his right hand; that on coming up with him, the defendant, flourishing his stick within six inches of his face, and making a copious use of bad language, several times threatened that if he (the plaintiff) was any more impertinent, or (more idiomatically) gave him any more of his impertinence, he, (the defendant) would strike him; and the plaintiff swears that at the time he fully believed that the defendant was about to strike him.

The defendant admits the anger, admits (and in a far more aggravated than the plaintiff had represented it) the use of bad language and its repetition, but in other respects agrees with the plaintiff. He admits that when he ran out of his compound he had the stick in his right hand, but that as he ran, seeing what a miserable, little, puny man the plaintiff was, and fearing lest he might be tempted to use the stick on him if he continued to hold it in his right hand, he shifted it from his right hand to his left. On getting up to the plaintiff he admits that he gesticulated with his raised right hand unclenched within six inches of the plaintiff's face, but swears that he had no present intention of striking him, and merely used his right hand in gesticulation for the sake of emphasis. He also swears that the words he used to the plaintiff were not that he would strike him if he continued his impertinence, but that "if he were not such a miserable little snob, or brute"—he forgets which—"he would knock his head off his shoulders."

Now, whether it were his stick or his unclenched right hand that the defendant held uplifted within six inches of the plaintiff's face is a point which, though it may bear on the question of damages, has no bearing on the question of assault or no assault, for a blow with an unclenched hand would have the same legal quality (though not quantity) of violence or criminal force as a blow with a stick. Neither are the defendant's declarations that he never meant to strike the plaintiff, and that he moved his hand merely to give emphasis to the words, to be attended to. The point to be consi-

dered is, what must the plaintiff have reasonably apprehended from the gestures and abusive language which the defendant admits? As to this we consider there can be no reasonable doubt: if a man in a towering passion comes running towards another, and on reaching him flourishes his hand, although unclenched, within six inches of his face, the reasonable apprehension of the person threatened must be that the person threatening is about to use violence to him.

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The only question is, whether the "if," either on the plaintiff's version of it, or on the defendant's, makes any real difference in the case, and tends to show that the plaintiff could not have reasonably apprehended that the defendant was then and there about to use criminal force.

Take the defendant's version, "If you were not such a miserable snob (or brute), I would knock your head off your shoulders." Was that "if" such as to lead the plaintiff to apprehend that he had no reason to dread immediate violence?

We think not: how was the plaintiff to tell at what moment the increasing irritation of this violently angry man might not surmount his restraining feeling of contempt, and bring down the uplifted hand in a blow?

Take again the plaintiff's version, "If you give me any more impertinence I will strike you." Here, again, how was the plaintiff to know what a violently incensed man might or might not regard as impertinence?—a look, a gesture, a word, even silence, might be construed as such. The condition of the threat would be held fulfilled, and the momentarily suspended violence would become actual criminal force.

On these grounds, and because we think that in interpreting law it is better to go on grounds of plain good sense than on any subtleties or refinements, we have come to the conclusion that the circumstances of this case are such as to show that the plaintiff, at the time of the acts complained of, had reasonable ground to apprehend that the defendant was "about to use criminal force to him," and that, therefore, the acts complained of amount in law to an assault.

The judgment of the Court on the second point for consideration, depending as it did on the special circumstances

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of the case, is not reported further than *this*, that though the Court were of opinion that an assault in law had been committed, yet, having regard to the provocation given by the plaintiff, the nominal damages of one rupee only were awarded. The Court, therefore, reversed the decree of the District Judge, and awarded to the plaintiff damages one rupee: costs throughout to be borne by each party proportionately to the amount awarded.

Special Appeal No. 633 of 1864.

1865.
Jan. 13.

NAVALRA'M A'TMA'RA'M *Appellant.*
NANDKISHOR SHIVNA'RA'YAN, deceased, by
his brother Narotam Shivraráyan ... *Respondent.*

Hindú Law—Stridhan—Woman's Property—Married Woman's Inheritance.

According to the Hindú law of inheritance as received in the Bombay Presidency, immoveable property inherited by a married woman from her father, whether or not it be strictly entitled to the name of *stridhan*, descends on her death to her own heirs, and not to her father's ascendants, according to what is called the "melancholy succession."

An inheritance descending on a married woman from her father classes as *stridhan*, and descends accordingly.

THIS was a Special Appeal against the decree of the Senior Assistant Judge of Broach.

Shántázám Náráyan for the appellant.

Kéil, Dhivajál Mathurádás, and Nánábháí Haridás for the respondents.

The appeal was heard by ARNOULD, Acting C. J., FORBES and WARDEN, JJ. The facts of the case are sufficiently disclosed in the following judgment of the Court, delivered by FORBES, J. :—

Umédram, a person of the Súrati Shriváli Bráhma caste, died, leaving a widow, a son named Nároshankar, and a daughter named Lalítá. Nároshankar died in his mother's lifetime, but Lalítá survived both her mother and her brother. Lalítá married Nandkishor, and had by him two daughters, one of whom, named Rukshmani, survived her. Navalráam, the plaintiff in this action, is the judgment-creditor of Harishankar, the husband of Rukshmani; and Narotam, the defendant, is the brother of Lalítá's husband,