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forbidding the defaulters from removing them. On these facts we think the Mamlatdar was in possession and that the offence of theft was constituted by the removal of the buffaloes.

We therefore see no reason to interfere with the conviction and sentence passed by the Magistrate, First Class, of Nadiad, and direct that the record and proceedings be returned.

HEATON, J.:—I concur.

Conviction and sentence confirmed.

R. R.

CRIMINAL REVISION.

Before Mr. Justice Heaton and Mr. Justice Pratt.

EMPEROR v. SAYED YACOOB SAYED LALLAMIAN. *

1918:

November
13.

Criminal Procedure Code (Act V of 1898), section 106—“Offences involving breach of the peace”—Offence punishable under section 504 of the Indian Penal Code (Act XLV of 1860) is such an offence—Security for keeping the peace on conviction.

On a conviction for an offence punishable under section 504 of the Indian Penal Code, the accused was ordered to furnish security to keep the peace for a period of one year under section 106 of the Criminal Procedure Code. The accused having applied to the High Court to have the order set aside:—

Held, that the order was properly made, for the expression “other offences involving a breach of the peace” in section 106 of the Criminal Procedure Code included offences which were offences because a breach of the peace had occurred or because a breach of the peace was likely to occur.

THIS was an application to revise an order passed by Chunilal H. Setalvad, Second Presidency Magistrate of Bombay.

* Criminal Application for Revision No. 283 of 1918.

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The accused was a rent-farmer of a building in Bombay. The complainant was a tenant in the same building. With a view to compel the complainant to vacate the building, the accused placed obstruction in the passage to his privy. This gave rise to an altercation between the parties in the course of which the accused insulted the complainant.

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On these facts, the complainant lodged a complaint of wrongful restraint and criminal insult (sections 341 and 504 of the Indian Penal Code). The accused was convicted and fined for each of these offences. He was further ordered to furnish security in the sum of Rs. 200 to keep the peace for one year under section 106 of the Criminal Procedure Code.

The accused applied to the High Court.

Munshi, with *M. B. Dave* (for *G. N. Thakor*), for the accused:—Before an order to furnish security can be passed under section 106 of the Criminal Procedure Code, 1898, there must be an express finding, (1) that the acts of the accused involved a breach of the peace; or (2) that the accused had an evident intention of committing such breach of peace: see *Abdul Ali Chowdhury v. Emperor* ⁽¹⁾; *Raj Narain Roy v. Bhagabat Chunder Nandi* ⁽²⁾; *Birbal Khalifa v. Emperor* ⁽³⁾; *Arun Samanta v. Emperor* ⁽⁴⁾; *Emperor v. Brijnandan Prasad* ⁽⁵⁾; and *Kannookaran Kunhamad v. Emperor* ⁽⁶⁾.

S. S. Patkar, Government Pleader, for the Crown, was not called upon.

PRATT, J.:—The applicants in this case have been convicted of offences under sections 341 and 504 of the

(1) (1915) 43 Cal. 671.

(4) (1902) 30 Cal. 366.

(2) (1908) 35 Cal. 315.

(5) (1914) 37 All. 33.

(3) (1902) 30 Cal. 97.

(6) (1902) 26 Mad. 469.

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Indian Penal Code and further the applicant No. 1 has been ordered under section 106 of the Criminal Procedure Code to furnish security for keeping the peace.

The application for revision in regard to the convictions and sentences has not been pressed, and in regard to applicant No. 1 it is contended that the order for security is illegal as the offence which he has committed under section 504 is not one which involves a breach of the peace.

In my opinion the phrase "other offences involving a breach of the peace" includes offences which are offences because a breach of the peace has occurred or because a breach of the peace is likely to occur. This is consistent with the cases of *Jib Lal Gir v. Jogmohan Gir* ⁽¹⁾; *Baidya Nath Majumdar v. Nibaran Chunder Gope* ⁽²⁾; *Kannookaran Kunhamad v. Emperor* ⁽³⁾; *Raj Narain Roy v. Bhagabat Chunder Nandi* ⁽⁴⁾ and *Abdul Ali Chowdhury v. Emperor* ⁽⁵⁾, where it was held that the offence under section 143, Indian Penal Code, of unlawful assembly does not necessarily involve a breach of the peace. This is so for the common object of the unlawful assembly may not be to commit a breach of the peace. I do not agree with the decisions in *Arun Samanta v. Emperor* ⁽⁶⁾ and *Kannookaran Kunhamad v. Emperor* ⁽³⁾ that offences which are likely to lead to a breach of the peace are excluded. This is contrary to the decision in *Jib Lal Gir v. Jogmohan Gir* ⁽¹⁾ that the Court "should be satisfied that the acts do involve a breach of the peace or an evident intention of committing the same".

Of course a breach of the peace or a probability of the breach of the peace must be an ingredient of the offence.

(1) (1899) 26 Cal. 576.

(4) (1908) 35 Cal. 315.

(2) (1902) 30 Cal. 93.

(5) (1915) 43 Cal. 671.

(3) (1902) 26 Mad. 469.

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A breach of the peace must be the common object of the unlawful assembly in a conviction under section 143, Indian Penal Code, or the intention of the accused in a conviction under section 448, Indian Penal Code: *Subal Chunder Dey v. Ram Kanai Sanyasi*⁽¹⁾. Section 106 could not be applied after a conviction for defamation although the person defamed was provoked to commit a breach of the peace for that is something beyond the scope of the offence charged.

But in regard to section 504, Indian Penal Code, it is clear that a breach of the peace or a probability of a breach of the peace is an ingredient of the offence. For insult is not an offence unless it is given with the intention or knowledge that it would be likely to provoke the breach of the peace.

I am fortified to this construction by the fact that section 106 also includes the offence of criminal intimidation. It would be remarkable if the section justified security in the case of language used with the intention of causing alarm and not language with the intention of provoking a breach of the peace.

I would accordingly discharge the Rule.

HEATON, J.:—I agree that the Rule should be discharged. We have from time to time had a good deal of argument as to the meaning of the words "other offences involving a breach of the peace" which occur in section 106 of the Criminal Procedure Code, and at last we have determined to record what we have to say in relation to these words as they apply to the particular case before us. It seems to me that they are difficult words to construe and there is no doubt that their meaning has been differently interpreted by different Judges at different times. I have a pretty

⁽¹⁾ (1897) 25 Cal. 628.

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clear view of my own as to what the words mean and why they are used. But I do not profess to suppose that my particular view will be accepted at any rate by the majority of other Judges, because the words are so elusive that they must of necessity attract different interpretations from different minds. To my thinking the words cover at any rate two classes of cases. They may cover more, but I am quite satisfied in my own mind that they cover two classes of cases. The first class of cases is where there actually has been a breach of the peace; not where it has been intended merely or been likely to occur, but where in fact it has occurred. That is one class. The other class is where the definition of the offence involves a breach of the peace as it does in one of the two classes of cases which occur under section 504. There insult as a criminal offence is defined. One class of cases is where the insult is perpetrated with the intention or knowledge that it is likely to give provocation which will cause another person to break the public peace; the other class is where it is perpetrated with the intention or knowledge that it is likely to provoke another person to commit some other offence.

Now in the kind of case we are dealing with the insult was an offence. It was perpetrated with the intention or knowledge that it would be likely to cause a breach of the peace. So the determination of what is an insult in this case involves a determination of what is a breach of the peace. You cannot do the first without the second. You cannot decide that the insult is punishable under section 504 unless you know what you mean by the words "breach of the peace". And where that is so, I think that the words in section 106 have operation. The case we are dealing with is a case of that type.

Therefore, I think, the Rule should be discharged.

I only wish to mention one other point. I have said nothing about what actually constitutes a breach of the peace, and that is a matter that also is very frequently argued. It is questioned whether in order to reach what is known as a breach of the peace you have to go so far as to inflict blows. One view is that you must go that length. The other view is that you may have a breach of the peace long before you come to the infliction of blows. This view contemplates that the mere assembling of men for a criminal purpose is a breach of the peace and that the mere use of language, if it is violent enough, is a breach of the peace. But on this topic I do not wish to express any opinion, because to do so is not necessary for the purposes in hand.

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Rule discharged.

R. R.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice and Mr. Justice Shah.

SHRIDHAR MADHAVRAO DHOPAOKAR AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS v. GANPATI PUNJA GODSE AND OTHERS (ORIGINAL DEFENDANTS) RESPONDENTS.²

1918.

Novem-
ber 18.

Civil Procedure Code (Act V of 1908), Order XXI, Rules 95, 96—Court-sale—Symbolical possession—Judgment debtor in actual possession—Adverse possession—Limitation.

In execution of a decree in a suit of 1890, the plaintiff purchased the plaintiff property at a Court-sale and a receipt for possession was given by the plaintiff to the bailiff on the 3rd July 1901. The defendants, judgment-debtors, who had been previously in possession of the property were, however, not disturbed in their possession at the date of the receipt. The plaintiff having sued to recover possession on the 3rd July 1913,

²Second Appeal No. 167 of 1916.