

1951

*Present : Nagalingam J.*

PACKEER, Appellant, and INSPECTOR OF POLICE, PETTAH,  
Respondent

*S. C. 680—M. C. Colombo, 14,987/B.*

*Criminal Procedure Code—Section 80—“ Offence which involves a breach of the peace ”—Security for keeping the peace on conviction.*

Where a person is convicted, under Section 314 of the Penal Code, of causing simple hurt, a binding over to keep the peace in terms of Section 80 of the Criminal Procedure Code is a proper order.

**A** PPEAL from a judgment of the Magistrate's Court, Colombo.

*M. M. Kumarakulasingham*, with *J. C. Thuraiaratnam*, for the accused appellant.

*A. Mahendrarajah*, Crown Counsel, for the Attorney-General.

*Cur. adv. vult.*

October 16, 1951. NAGALINGAM J.—

The only point urged on appeal in this case is that the learned Magistrate was in error in directing the appellant to enter into a bond to keep the peace in addition to the term of imprisonment imposed on him. The contention is that under section 80 of the Criminal Procedure Code, unless the offence of which the accused is convicted is one which involves a breach of the peace, no order could be made directing a convicted person to enter into a bond. It has been said that if in consequence of the offence a breach of peace might result then such an offence is not within the purview of this section but that it must be shown that the offence committed embodies in itself as a necessary ingredient the element of a breach of the peace.

The offence of which the accused has been convicted is that of causing simple hurt under section 314 of the Penal Code. It is no doubt true to say that the offence of causing hurt does not involve as an ingredient of the offence a breach of the peace. Learned Counsel for the appellant, however, submitted that where the offence of rioting is committed, it could be said that that offence involves a breach of the peace. I do not think this submission is correct. The term “ ingredient of the offence ” does not mean anything more than the essential element necessary to be established in order to constitute the offence. In this sense I do not think the offence of rioting itself is one in which the element of a breach of peace is involved, for it is not necessary in order to establish the offence of rioting that it should be proved that a breach of the peace was caused. But in my opinion, what is meant by the phrase “ offence which involves a breach of the peace ” does not mean anything more than that the commission of the offence must be attended by

a breach of the peace, and I cannot do better than quote Bertram C.J. in the case of *Abeywardena v. Fernando* <sup>1</sup> in regard to what should properly be understood by the term “breach of the peace” in this section :

“The peace referred to is the King’s peace. The king is entitled to require that all persons living under the protection shall not be subjected to violence in respect of their persons or their property. Any person who does subject to violence either the person or property of one of the King’s subjects has committed a breach of the King’s peace.”

In the present case, there is the fact that the person assaulted was subjected to violence in his person, and therefore the commission of the offence was attended by a breach of the King’s peace.

This very question was considered by de Sampayo J. in *Bastian v. Perera* <sup>2</sup>. In that case it was held that where a person was convicted under section 315 of the Penal Code a binding over to keep the peace in terms of section 80 of the Criminal Procedure Code was a proper order.

I am therefore of opinion that the order directing the appellant to enter into a bond to keep the peace was perfectly legal. The appeal is therefore dismissed.

*Appeal dismissed.*

