APPELLATE CRIMINAL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Weir.

QUEEN-EMPRESS

v.

CHERIA KOYA AND OTHERS.*

1890.
March 10, 21.

Penal Code—Act XLV of 1860, *ss.* 1, 2—*Criminal Procedure Code, s.* 1—*Scheduled Districts Act—Act XIV of* 1874, *ss.* 1 *to* 7 *and* 11—*Laws Local Extent Act—Act XV of* 1874, *ss.* 3, 4—*Criminal Procedure in the Laccadive Islands.*

The Scheduled Districts Act having been extended to the Laccadive Islands, but no notifications having been made under that Act with regard to the criminal law to be administered there, the Penal Code and the Criminal Procedure Code are in force.

Accordingly, when the Sub-Collector of Malabar, as such, tried and sentenced certain persons on one of the Laccadive Islands, not observing the procedure prescribed by the Criminal Procedure Code:

Held, that the proceedings were void and should be quashed.

PETITIONS praying the High Court to revise the findings and sentences of J. Twigg, Sub-Collector of Malabar, in calendar cases Nos. 1, 3 and 4 of 1889.

Mr. *K. Brown*, for petitioners in petitions Nos. 30 and 47, supported the petitions, firstly, as being preferred under Criminal Procedure Code, ss. 435 and 439; secondly, if the Criminal Procedure Code was held to be inapplicable, as being preferred under the High Court Charter Act for the exercise of the inherent revisional jurisdiction of the High Court, and referred to *Empress* v. *Burah and Book Singh*(1) and *Empress* v. *Burah*(2).

Raru Nambiar, petitioner in petition No. 46.

The Government Pleader and Public Prosecutor (*Mr. Powell*) for the Crown.

The facts of these cases and the further arguments adduced at the hearing appear sufficiently for the purposes of this report from the following judgment.

JUDGMENT:—In these cases we are asked to revise the proceedings of Mr. Twigg, Sub-Collector of Malabar, in cases Nos. 1,

* Criminal Revision Cases Nos. 30, 46 and 47 of 1890.

(1) I.L.R., 3 Cal., 78, 122. (2) I.L.R., 4 Cal., 176.

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3 and 4 of 1889, convicting certain inhabitants of the Island of Androth, one of the Laccadive group of islands situated in the Indian Ocean, of the offences of rioting, causing hurt and committing affray.

From the record it is gathered that, sometime during the year 1889, serious breaches of the peace occurred in the island and were reported, after some delay, to the authorities on the mainland, viz., the district authorities of Malabar. The matter was brought to the notice of the Madras Government, and on the 7th December the following telegram was despatched by the Government of Madras to the Collector of Malabar :—

"No. 443. Man-of-war *Griffon* placed at our disposal by "India; will be at Calicut twelfth instant. Government desires "Twigg proceed in her with small force police to Androth. His "stay there should not exceed two or three days. Issue necessary "orders."

It does not appear from the record what orders were issued to Mr. Twigg in compliance with the direction of Government to the Collector of Malabar "to issue necessary orders;" but the record shows that Mr. Twigg, being at the time on the Island of Androth, held an inquiry on the 13th, 14th and 15th December 1889, and on the date last mentioned convicted and punished certain accused persons, the present petitioners, as follows :—

(*a*) The nine persons concerned in criminal revision case No. 30 of 1890 he convicted of rioting and punished with fines varying from Rs. 10 to Rs. 100; he also, in addition to the sentence of fine, sentenced one of the accused, Kunnangelath Cheria Koya, to be rigorously imprisoned for three months, and he directed that all the convicted persons be bound over in a sum of Rs. 500 to keep the peace and to be of good behaviour for a period of two years.

(*b*) The two persons, who are petitioners in criminal revision case No. 46 of 1890 he found guilty of having committed the offences of committing an affray and causing hurt, and he sentenced one of the persons convicted, viz., Tanga Koya, to be rigorously imprisoned for two months and the other, Kasim Koya, to pay a fine of Rs. 100. He passed also an order similar to the order passed in criminal revision case No. 30 of 1890 in respect of taking security to keep the peace and be of good behaviour.

(c) The eight persons to whom criminal revision case No. 47 of 1890 relates he found guilty of the offence of causing hurt and sentenced to pay fines varying from Rs. 10 to Rs. 100. He also, as in the preceding cases, required all the convicted persons to give security to keep the peace and be of good behaviour.

It has here to be observed that the proceedings of Mr. Twigg convicting the petitioners purport to have been taken by that officer in the capacity of a Revenue officer, viz., Sub-Collector of Malabar, and not in the capacity of a Magistrate. The copies of the judgments laid before us are headed "In the Court of the Sub-Collector of Malabar."

In this connection it may also be observed that in his judgment and in the record of the proceedings, Mr. Twigg has employed the terminology of the Indian Penal Code, and that in binding over the convicted persons to keep the peace and be of good behaviour he has apparently followed a procedure specially provided in the Criminal Procedure Code.

Although these last-mentioned circumstances might seem at first sight to point to Mr. Twigg having been at least to some extent guided in his proceedings by the Indian Penal and Procedure Codes, it is nevertheless clear on the face of the proceedings, and it is not, we believe, seriously disputed that Mr. Twigg purported to act as Sub-Collector and not as a Magistrate deriving his powers under the Code of Criminal Procedure, and the first objection to Mr. Twigg's proceedings taken before us is that, as Sub-Collector of Malabar, Mr. Twigg had no jurisdiction to try the accused.

Assuming for argument's sake that Mr. Twigg could be taken to have acted as a Magistrate under the powers derived from the Code of Criminal Procedure, it is argued that the proceedings are vitiated by material irregularities, such as the omission apparently to affirm the witnesses, the adoption of a summary mode of procedure in respect of cases not summarily triable, and by other matters that need not be specially noticed.

On the state of circumstances above set out, the question which we have to determine is whether the Indian Penal Code and the Indian Criminal Procedure Code are or are not in force in the Island of Androth.

This island, with the other islands of the southern group of the Laccadives, formed part of the territory of the Beebee of

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Cannanore, and by the storm and conquest of Cannanore towards the end of the year 1791 fell into the possession of the Honorable East India Company along with the rest of the Beebee's dominions. The same islands were also included in the cessions of Tippu's entire dependencies in Malabar made at the peace of Seringapatam in 1792. They thus became an integral portion of the territories which became vested in Her Majesty by the Statute 21 and 22, Vic. Cap. 106, and, though, as appears from the subjoined brief narrative * of the history of the islands extracted from the Manual of the Administration of the Madras Presidency, a large share of administrative independence in their internal management was, till the year 1875, left in the hands of the Beebee and her successors, it is clear, having regard to the provision of sections 1 and 2 of the Indian Penal Code and of section 1 of the Code of Criminal Procedure that the provisions of these codes apply to the islands, unless it can be shown that they are expressly rendered inapplicable by special legislation.

Such special legislation, if it exists, must be sought for in the enactments of the Government of India known as the Scheduled

* In the Cannanore family, which, in addition to their estates on the mainland, held possession of the Southern Laccadive Islands, the chief male representative of the family was called Ally Rajah or Andy Rajah, the prince of the sea. The last of these was succeeded by his niece, whose husband died during the siege of Cannanore in 1790. This lady was succeeded by her daughter and grand-daughter. The last died in October 1861 and was succeeded by her son Ally Rajah, who died in 1870, and was succeeded by his nephew, the present Ally Rajah. This family, at first tributary to the Rajahs of Colatoonad, became independent about the middle of the last century. After Hyder Ally's conquest of Malabar in 1766, the representative of the family became his ally. Cannanore was taken by the British during the war with Tippoo in 1784, an indemnity was exacted from the Beeby, and a tribute of one lakh of rupees was imposed upon her. On the conclusion of peace with Tippoo, matters reverted to their former position; but when, in 1790, war again broke out with Tippoo, the Beeby instigated the Moplahs against the Nayars, the Company's allies. Cannanore was taken by storm, the possessions of the Beeby became the right of the British Government by conquest, and were included in the cessions made by Tippoo. She was, however, allowed to retain her possessions on condition of paying a moiety of the produce of her country, both on the mainland and in the five islands, amounting in all to Rupees 4,340, and Rupees 10,000 per annum as a similar share of the produce and commercial advantages accruing from the Laccadives. She also executed an agreement in 1793 engaging to submit to the sequestration of the Laccadives if it should be ordered by the British Government. Commissioners were sent to investigate the resources of the islands, the treatment of the islanders by the Beeby, the abuses connected with her monopoly of coir and similar matters. After a tedious negotiation, a provisional agreement was, in 1796, signed by the Beeby, subject to ratification by Government, by which she engaged to pay Rupees 15,000 per annum to the British Government, but the rights of Government to the islands under the agreement of 1793 were in no way altered or done away with. Owing to the breaking

Districts Act and the Laws Local Extent Act, Acts Nos. XIV and XV of 1874.

The Scheduled Districts Act provides in section 1 that the Act extends, in the first instance, to the whole of British India other than the territories mentioned in the first schedule hereto annexed, and it shall come into force in each of the scheduled districts on the issue of a notification under section 3 relating to such district. Section 2 of the Act declares that certain enactments set out in schedule II of the Act shall be repealed. Then section 3 of the Act provides that the local Government, with the previous sanction of the Governor-General in Council, may, from time to time, by notification in the Gazette of India and also in the Local Gazette—

(*a*) declare what enactments are actually in force in any of the scheduled districts or in any part of any such district;

(*b*) declare of any enactment that it is not actually in force in any of the said districts or in any part of any such district.

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out of the war with France and other considerations, negotiations for the surrender by the Beeby of her sovereignty of the islands, for the reform of the administration and for the freedom of trade were not completed, and for many years the Laccadive Islands remained unnoticed. In 1848 petitions from the islanders complaining of the oppression of the Beeby attracted attention, and a British officer was deputed to report on the subject. The Beeby's resources having been much crippled by the damage caused by a recent storm, she was compelled to ask for a remission of the peshcush which had fallen much into arrears. The request was granted on condition of her introducing the necessary reforms into her administration, but as she declined to do so, the offer of remission was recalled and her lands at Cannanore were attached for arrears of peshcush. In 1854 the Laccadives were sequestrated on a similar account and brought under British management. The island of Minicoy, which the Beeby claimed as her private property, offered open resistance to the authority of Government, and was not finally brought under control till 1858. The islands were restored to the Beeby shortly before her death in 1861 with a distinct intimation that, in the event of any acts of oppression or extortion being proved against her or her agents, Government would sequestrate the islands in order to compel the introduction of good government. During the rule of her son and successor, Ally Rajah, the same mal-administration continued. While complaints on his part regarding the evasion by the islanders of the monopoly of coir were frequent, counter-charges were brought by them of oppression on the part of the Rajah and his agents in collecting the dues. Inquiries conducted on the spot showed that the Rajah's authority was completely in abeyance in the three principal islands, and that he was powerless to enforce the monopoly. Ally Rajah died in 1870 and was succeeded by Moosa Ally Rajah, the present head of the family; but no improvement took place in the relations between the Rajah and the islanders. At length as there was no hope of any reform in the administration as the Rajah declined to abolish the monopoly, and as the arrears of peshcush had again accumulated to a large sum, the islands were attached and their administration was assumed by the British Government in 1875.

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Section 4 of the Act provides that on the issue under section 3 of a notification declaring what enactments are in force or not in force in any scheduled district, the enactments so notified shall be deemed to be in force or not in force according to the tenor of the notification in such district, and every such notification shall be binding on all Courts of law.

Section 5 gives to the local Government, with the previous sanction of the Governor-General in Council, power to extend, by notification, to any scheduled district or to any part of any such district, any enactment which is in force in any part of British India at the date of such extension.

Then section 6 authorizes the local Government from time to time—

(*a*) to appoint officers to administer civil and criminal justice and to superintend the settlement and collection of the public revenue and all matters relating to rent, and otherwise to conduct the administration within the scheduled districts;

(*b*) to regulate the procedure of the officers so appointed, but not so as to restrict the operation of any enactment for the time being in force in any of the said districts;

(*c*) to direct by what authority any jurisdiction, powers or duties incident to the operation of any enactment for the time being in force in such district shall be exercised or performed.

Section 7 preserves and continues pending express alteration the authority of all heretofore existing rules and all previously appointed officials.

Finally, section 11 of the Act provides that nothing contained in this Act or in any notification issued under the powers thereby conferred shall be deemed to affect any law other than laws contained in Acts or Regulations or in Rules made in the exercise of powers conferred by such Acts or Regulations.

In the first schedule to the Act under the heading "Scheduled Districts, Madras," we find as part IV the Laccadive Islands, including Minicoy.

Turning to the Laws Local Extent Act XV of 1874, we find in section 3 that the Acts mentioned in the first schedule thereto annexed are now in force throughout the whole of British India, except the scheduled districts. In the first schedule referred to,

it has to be noted, neither the Indian Penal Code nor the Code of Criminal Procedure is mentioned, although the Code of Civil Procedure is mentioned.

The above examination of these special enactments shows that the Scheduled Districts Act comes into force in each of the scheduled districts only on the issue of the notification under section 3 of the Act. Section 3 says the local Government may, by notification, declare what Acts are and what are not in force, and section 4 shows that it is only on the issue of such a notification that the enactments notified shall be deemed to be or not to be in force, and the notification thereof to be binding on all Courts of law.

Now it is admitted that so far the only notification issued by the local Government in any way affecting these islands is a notification, dated 19th February 1889, in the following terms :—

"No. 83. In exercise of the powers conferred by section 3 "of the Scheduled Districts Act, 1874, the Governor of Fort St. "George in Council is pleased, with the previous sanction of the "Governor-General in Council, to declare that the Act is in force "in all scheduled districts of Madras in which it has not already "been declared in force."

The effect of this notification, as we understand it, is to place all the Madras scheduled districts in a position to be operated on by further notifications under section 3 of the Act, declaring that such and such Acts are in force or are not in force in such districts. These islands have, however, not been operated upon by any such further notification or notifications, and as far therefore as the Scheduled Districts Act is concerned, the position is that the laws applicable to British India generally and not specially excluded from operation by the mere fact of a district being a scheduled district are in force in these islands. Section 2 of the Scheduled Districts Act read with schedule II of that Act and the Laws Local Extent Act, section 3 read with schedule I of the latter Act show that the Code of Criminal Procedure and Penal Code are not excluded from applicability to a scheduled district by the mere fact of such district being declared to be a scheduled district.

It may here be noticed that the local Government by a notification of the same date as that already referred to, viz., 19th February 1889, declared certain sections of the Code of Civil

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Procedure to be in force in the Madras scheduled districts. This action on the part of the Government declaring certain provisions of the Civil Procedure Code applicable to the islands is significant. It may be taken by implication to show that the local Government did not intend to exclude the operation of the Penal Code and Criminal Procedure Code from these islands.

The same inference is also derivable from a number of other notifications issued by the local Government from time to time in respect of certain specified Madras scheduled districts. These notifications are set out in a work * compiled by authority, and their effect is to show that the Madras Government has, when so advised or when it has thought proper, declared certain enactments to be in force in certain of the Madras scheduled districts other than those with which we have to deal. It has also, acting under the authority conferred in that behalf in section 6 (*b*) of the Scheduled Districts Act framed rules for the guidance of the officials administering certain scheduled districts.

In the course of the argument, it has been stated by the learned Government Pleader that in 1876 the Government considered that it was not desirable to bring these islands under the general criminal law in force in the mainland. Whatever may have been the views of Government on the subject, it has been admitted, as already stated, that no notification under the Scheduled Districts Act affecting these islands has been issued other than the notification of 19th February 1889 already referred to.

The conclusion, therefore, which we arrive at on an examination of the special legislation contained in these two Acts is that the Penal Code and the Criminal Procedure Code, not having been by any notification under section 3 of the Scheduled Districts Act expressly declared to be inapplicable to the Laccadive Islands, are in force in such islands. Any act done in these islands contrary to the provisions of the Penal Code can, therefore, under the provisions of section 2 of that code and of section 5 of the Criminal Procedure Code, be inquired into and tried only in accordance with the provisions of the latter code. In the cases now before us it has been found that Mr. Twigg, although he holds the office of Joint Magistrate of Malabar, and as such possesses the powers of a First-class Magistrate, did not exercise authority or

* List of notifications and rules issued and published under the provisions of Acts and Regulations, printed at the Government Press in 1887.

purport to exercise authority in the islands in virtue of his office of Joint Magistrate of Malabar, but in virtue of his office of Sub-Collector of Malabar.

This being so, we must hold that in convicting and punishing the accused whose cases are now before us, he acted without authority, and that his proceedings were void and must be quashed.

The proceedings being void *ab initio* for the reasons stated, it becomes unnecessary to notice the other irregularities alleged against Mr. Twigg's proceedings. These latter would only require consideration in case it had been shown that Mr. Twigg had proceeded or professed to proceed under the Indian Penal Code or Criminal Procedure Code.

For the reasons stated, we quash the proceedings and direct that the accused Kunnangelath Cheria Koya and Tanga Koya be set at liberty and that the fines imposed on all or any of the accused, if they have been paid or collected, be refunded.

The orders requiring the accused to give security to keep the peace and be of good behaviour are also quashed.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Handley.

EASWARA DOSS (PLAINTIFF), APPELLANT,

v.

PUNGAVANACHARI AND OTHERS (DEFENDANTS), RESPONDENTS.*

1890. February 14.

Rent Recovery Act (Madras)—Act VIII of 1865, *ss.* 3, 7, 51, 87—*Jurisdiction of Civil Courts—Suit to enforce acceptance of improper patta—Decree for rent—Limitation—Evidence of local usage—Judgments not* inter partes.

A landlord sued his tenants in the Court of a District Munsif to enforce acceptance of pattas and the execution of muchalkas by them, and to recover arrears of rent. The suits were filed more than thirty days after tender of the pattas, which were found to contain certain improper stipulations:

Held, (1) the suit was not barred by the rule of limitation in Rent Recovery Act, section 51;

(2) the Civil Court had jurisdiction to entertain the suit and to modify the pattas where they were found to be improper and to enforce the execution of corresponding muchalkas;

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* Second Appeals Nos. 197 to 208, 265 and 541 to 551 of 1889.