

clear that the duty of the Magistrate is, not to continue to deprive the first of the exercise of his legal right, but to restrain the second from illegally interfering with that exercise of legal rights.

I think, therefore, that, in the present instance, the order of the 21st November 1878 must be set aside as being either in excess of the power given by s. 518, or as being altogether in excess of the jurisdiction of the Magistrate.

BROUGHTON, J.—I entirely concur in what has fallen from my learned colleague. I would only add a word with reference to the objection raised, namely, that the subsequent correspondence of the Magistrate would have explained the nature of his order. It appears to me that if the order does not on the face of it show that it was made with jurisdiction, no subsequent correspondence or explanation would make it a good order.

Order set aside.

Before Mr. Justice Ainslie and Mr. Justice Broughton.

IN THE MATTER OF DURJAN MAHTON AND OTHERS v. WAJID
HOSSEIN AND OTHERS.*

1879
April 23.

Beng. Act VIII of 1869, s. 53—Ejectment—Right to Standing Crops on land.

The effect of an order of ejectment under s. 53 of the Rent Act is to dispossess the ryots, not only of the land, but also of the crop standing thereon, the object of such an ejectment being, to terminate completely the connection between the parties as landlord and tenant.

In September 1878 one Wajid Hossein and others obtained a decree for arrears of rent against Durjan Mahton and others, the decree containing a provision under s. 52 of the Rent Act for the ejectment of the tenants, in case of nonpayment of the rent within fifteen days from the date of the decree. On the 7th November 1878 a writ of ejectment was issued, and on the 10th the decree-holders were put into possession. The ryots refused to

* Criminal Reference, No. 197 of 1878, dated the 3rd April 1879, made by J. M. Lewis, Esq., C.S., Sessions Judge of Bhagalpore.

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allow the decree-holders to remove the crop, and the decree-holders therefore made an application to the Magistrate, stating in their petition that they were entitled to divide the crop with the ryots. The Deputy Magistrate, on the 12th December, without taking any evidence or issuing any notice to the ryots, directed the police to cut the crop and store it for "the persons who might be entitled to it." On the 28th December 1878 the decree-holders amended their petition and claimed the whole of the crop, and asked that proceedings might be taken against the ryots under s. 530 of the Criminal Procedure Code. The Magistrate cancelled his order of the 12th December, and ordered the police to see that no breach of the peace occurred. The crop had however been cut previously to the latter order. In January 1879 the ryots represented to the Deputy Magistrate that the decree referred to the land, and not to the crop, and on this the Magistrate referred the matter to the police to enquire and report whether the decree for possession included the crop. The police reported their opinion that when the land was decreed the crop must go with it, and the Deputy Magistrate ordered the crop to be made over to the decree-holders.

The Sessions Judge, on the case coming up before him, was of opinion that the order of the Deputy Magistrate was illegal, inasmuch as without taking evidence or issuing any notice, he had ordered the police to cut the crop and made it over to the decree-holders on a report of the police; and he therefore referred the case to the High Court under s. 296 of the Criminal Procedure Code.

Moonshee *Mahomed Yusuf* appeared for Wajid Hussein.

No one appeared on the other side.

The opinion of the Court was delivered by

AINSLIE, J. (BROUGHTON, J., concurring), who after stating the facts continued:—The proceedings of the Deputy Magistrate have, no doubt, been very irregular, but it appears to us that the result arrived at is that which he must have arrived at if he had acted according to the law.

The dispute in this case arose, in respect of certain property which admittedly was in the possession of the ryots up to a certain date; and which was claimed by Wajid Hossein and others as having been transferred to them by the execution of a decree for ejectment under the Rent Law on the 18th of November 1878. Both the parties refer to the same decree, one as showing his right to both crop and land, and the other as showing that the zemindars were entitled to the land only, and not to the crop. When, therefore, it became necessary for the Deputy Magistrate to consider what steps he should take to prevent any breach of the peace, it clearly was necessary for him to come to some determination as to the effect of the Munsif's decree, which both parties put forward as conclusively establishing their respective rights. If he was of opinion that the evidence before him showed that a breach of the peace was likely to occur, he would have to give effect to his decision in regard to the effect of the execution under the decree, by binding over the party whom he considered to be wrongfully putting forward a claim to the property, in recognizances not to commit a breach of the peace. The practical effect of the recognizance would, no doubt, have been, to give the crop to one or other of the contending parties.

Instead of making the order in this form, he unfortunately allowed the police to interfere with the cutting and carrying away of the crop, and having got it into his own custody it became necessary for him to get rid of it.

The order to cut the crop, and subsequently to make it over to one of the parties, was not an order warranted by the Code of Criminal Procedure, but the effect of it was the same as if he had bound down the ryots under s. 491, or restrained them from interfering with the crop under s. 518.

The Judge is of opinion that in this case the Deputy Magistrate has encroached upon the functions of the Civil Courts, and that he has, instead of allowing the Civil Court to execute its own decree, proceeded to execute it after consulting with the police. This in our opinion is not quite a correct statement of what occurred. However irregular the proceedings of the Deputy Magistrate may have been in form, it clearly was neces-

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bury for him to come to a decision as to the effect of the decree of the Civil Court. The steps he took for arriving at that decision were, however, improper. If he had any doubt as to the intention of the Court executing the decree, the proper course for him was to consult the Court itself, and not to make enquiries as to the effect of the execution of the decree from the police. But although his mode of arriving at that conclusion was not correct, it appears to us that the conclusion arrived at, so far as we are able to come to any determination on the point in the exercise of criminal jurisdiction, was correct. We are not aware that the question as to the effect of an ejectment order under s. 53 of the Rent Law has yet been considered on the civil side of the Court. But looking at the provisions of the Act itself it seems to us that the conclusion arrived at by the Deputy Magistrate, that the effect of an ejectment under the Rent Law is, to dispossess the ryot, not only of the land, but also of the crop standing thereon, was a reasonable one. The object of that ejectment is to completely terminate the connection between the parties as landlord and tenant. The ejectment is in itself by way of penalty for nonpayment of the rent of previous years, and the provisions of s. 54 of the Rent Law are extremely stringent.

That section does not allow the Court executing the decree to entertain any application for stay of execution, and it does not allow any person evicted under an ejectment order to be restored to possession at all unless the decree shall be reversed.

We are, therefore, of opinion, that the conclusion at which the Deputy Magistrate arrived, as to the effect of the ejectment order, was a correct one; and that he would have been perfectly justified, in taking steps, under the provisions of the Criminal Procedure Code, for protecting the decree-holders from violence, when they proceeded to enforce their claim to the crop standing on the land from which the ryots had been ejected.

With reference to the explanation of the Deputy Magistrate, dated the 3rd of April 1879, in which he says that he is not aware that there is any particular section of the law applicable to his action, we would observe that if the law did not allow him to act in the way in which he did, his action clearly was illegal. He was bound to follow the provisions of the law, which properly applied

are sufficient for providing against a breach of the peace. In support of his view, that, in the absence of any special law he was justified in acting on his own discretion, Mr. Hampton says,—that “there is no section of the law authorizing return of stolen property recovered, to the man robbed, yet it is in reason that the property should be so returned.” Mr. Hampton has apparently overlooked the provisions of s. 418 of the Code. That section clearly provides for the case which he supposes to be left not provided for.

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ORIGINAL CIVIL.

Before Mr. Justice Wilson.

BHOYRUB DASS JOHURRY v. DOMAN THAKOOR.

1879
 May 12.

Abatement of Suit—Death of sole Plaintiff—Revivor—Civil Procedure Code (Act X of 1877), ss. 363, 365, 366, 371—Limitation Act (XV of 1877), sched. ii, arts. 171, 178.

Upon the death of a sole plaintiff, if no application to revive is made within sixty days from the date of the plaintiff's death, the suit abates. But the Court may, under s. 371 of the Code of Civil Procedure, revive the suit, on the application of the legal representative of the plaintiff, within three years from the time when the right to apply accrues, if he can show that he was prevented by sufficient cause from continuing the suit.

THIS suit was commenced on the 16th of September 1878 in the name of Bhoyrub Dass Johurry as sole plaintiff. Bhoyrub Dass Johurry died on the 9th of November 1878. Probate of his will was not obtained until the 5th of April 1879, on account of special citations having been issued, and other difficulties as regards the appointment of executors.

Mr. Bonnerjee for the executors obtained a rule nisi, calling upon the defendant to show cause, why the suit should not be revived in the names of the executors, or why the suit should not abate under s. 366 of the Civil Procedure Code, and in the event of an order being made for abatement, such order should not be set aside under s. 371, and the names of the executors be entered upon the record.