regards plaintiff No. 3, he was certainly not justified in refusing to entertain the suit of plaintiffs Nos. 1 and 2, who had a cause of action to which there was no legal bar.

We reverse the decision of the Judge, and send the case back to him to be tried on its merits. Costs to abide the result.

Appeal allowed.

FULL BENCH.

Before Sir Richard Garth, Kt., Chief Justice, Mr. Justice Jackson, Mr. Justice Pontifex, Mr. Justice Ainslie, Mr. Justice Birch, Mr. Justice Morris, Mr. Justice White, Mr. Justice Mitter, Mr. Justice McDonell, Mr. Justice Prinsep, Mr. Justice Wilson, and Mr. Justice Broughton.

GOPI MOHUN MULLICK (PLAINTIFF) *v.* TARAMONI CHOWDHRANI (DEFENDANT).*

1879 *March* 22, *and April* 17.

Act X of 1872, *s.* 518—*Powers of Magistrate to pass order under—Rival Haut-holders—Declaratory Decree.*

A Magistrate is not empowered to pass an order under s. 518 of Act X of 1872 which has more than a temporary operation: the grant of what is in effect an order for a perpetual injunction is entirely beyond his powers.

When a plaintiff alleged that he had held a haut on his own land for many years on Tuesdays and Fridays; that the defendant had set up a rival haut on these days and prevented persons from attending the plaintiff's haut; that this led to disturbances which ended in an order being made by the Magistrate prohibiting the plaintiff from holding his haut on the said days, and that the plaintiff suffered loss and damage in consequence,—*Held*, that assuming these facts to be true, the plaintiff was entitled to a decree, declaring as against the defendant, that the plaintiff had a right to hold his haut on Tuesdays and Fridays.

THIS was a suit brought by one Gopi Mohun Mullick, the taluqdar of Mouza Nalitabari, to establish his right to hold a haut on his own lands; and to have an order of the Magistrate of Jamalpur, dated 31st May 1875, set aside.

The plaintiff stated that his ancestors, in the year 1783, established a haut in Mouza Nalitabari, called the "Nalitabari haut,"

* Full Bench Reference on Special Appeal, No. 59 of 1877, against the decision of Baboo Nobin Chunder Ghose, the Subordinate Judge of Mymensingh, dated 12th December 1876.

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and that the haut had been held continuously every Tuesday and Friday by his ancestors and himself until the year 1282 (May 1875); that, subsequently to the establishment of the plaintiffs' haut, the defendant Taramoni Chowdhrani, the owner of certain lands on the opposite side of the river to the lands on which the plaintiff held his haut, established in Gharkanda a haut, called the "Taragunj haut," and endeavoured to prevent people from attending the plaintiff's haut; that, in consequence of such endeavours, disputes arose between the rival haut-holders; that the defendant had complained to the Magistrate that the plaintiff's men unlawfully assembled every Tuesday and Friday, and used threats in order to deter people from attending the Taragunj haut, and that the Magistrate, by his order dated 31st May 1875, had found that the plaintiff's men had been members of an unlawful assembly, and sentenced them to one month's rigorous imprisonment; and further, under the provisions of s. 518 of the Criminal Procedure Code, restrained the plaintiff from holding his haut on Tuesdays and Fridays; that since such order the plaintiff's haut had been closed; and that he therefore brought this suit to have his right established, and the order of the Magistrate set aside.

The defendant contended that a civil suit to set aside a Magistrate's order would not lie; that the plaint disclosed no cause of action against her; and that as the plaintiff's haut had not been assembled within the last twelve years, the suit was barred; and stated that her haut was a long established one. The Subordinate Judge held, that an order under s. 518 of the Criminal Procedure Code was no bar to a civil suit for the establishment of any right or title; that the Nalitabari haut had not been in existence for many years past, and that the defendant's haut had been in existence since 1836; that there was no evidence that the plaintiff's haut had been held on Tuesdays and Fridays; and that if permission were given to the plaintiff to hold his haut on these days, it would only lead to a breach of the peace; he therefore dismissed the plaintiff's suit with costs.

The plaintiff appealed to the High Court.

The *Advocate-General* (Mr. *Paul*) for the appellant.

Baboo *Srinath Das* and Baboo *Kishen Doyal Das* for the respondent.

After hearing the arguments on both sides, MITTER, J. (MACLEAN, J., concurring) referred the case with the following remarks to a Full Bench:—"It has been urged before us on appeal, on behalf of the (defendant) respondent, that the plaintiff cannot succeed, even if all the facts stated in his plaint be established; that no cause of action against the defendant has been disclosed in the plaint, and that the Civil Court has no power to set aside an order passed by a Magistrate with jurisdiction under s. 518 of Act X of 1872. As the questions raised are not free from difficulties, and civil cases of this nature are likely to be more frequent in consequence of the very large powers vested in Magistrates under s. 518, we think it desirable that there should be an authoritative decision by a Full Bench on these points."

The questions referred are—

(1) Whether the plaintiff is entitled to a decree, and if entitled, to what decree upon the facts stated in the plaint;

(2) Is there any cause of action disclosed against the defendant;

(3) Upon the facts stated in the plaint, could the plaintiff claim any damages, or seek any other consequential relief, against the defendant;

(4) Whether the Civil Courts can set aside an order passed with jurisdiction by a Magistrate under s. 518 of Act X of 1872;

(5) Whether the Magistrate was competent to pass the order complained of in this case under the provisions of s. 518 of Act X 1872.

Mr. *Woodroffe* for the appellant.—Section 62 of Act XXV of 1861 is the same as s. 518 of Act X of 1872, at all events up to the word "affray" in the latter Act; and s. 308 of Act XXV of 1861 is the same as s. 521 of Act X of 1872, and deals with cases of public nuisances. It seems plain upon the wording of s. 518, and having regard to the chapter in which it is inserted, and the explanation appended to s. 518 of Act X

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of 1872, that a Magistrate is not empowered to pass an order under s. 518 save in cases where a speedy remedy is desirable, and where the delay which would be occasioned by a resort to the procedure contained in s. 521, &c., would defeat the intention of this chapter. It is not stated in the Magistrate's order that there were any circumstances requiring urgency. In the case of *Banee Madhub Ghose* v. *Wooma Nath Roy Chowdhry* (1) the Court explains the effect of explanation 1 to s. 518; and the Magistrate's order in that case was set aside on the ground that the Magistrate had no jurisdiction to pass it. In *Re Brindabun Dutt* (2) where a Magistrate passed an order under s. 518, which was afterwards on appeal held to be illegal, as the case was not one which required the application of s. 518, but that of s. 521, I can't say whether that case came up under s. 15 of the Letters Patent or as a reference. In the case of *Byhuntram Shaha Boy* (3) I raised a preliminary objection that the order under s. 518 not being a judicial proceeding, neither an appeal nor a reference could be heard upon it. In the case of *Sree Nath Dutt* v. *Unnoda Churn Dutt* (4) it was held that the state of the facts of the case did not require an order under s. 518. Also in *Re Krishnamohun Bysack* (5), which was an application to set aside an order of a Magistrate under s. 518, it was held that the order was illegal as a speedy remedy was not necessary. [GARTH, C. J.—We are quite agreed that the circumstances calling for an order under s. 518 must be circumstances of emergency, and so, if the order in this case was passed when there was no need of emergency, it would be without jurisdiction. The questions resolve themselves into these: (i) had the Magistrate jurisdiction to pass the order; (ii) even if there were jurisdiction, had he a right to make such an order as would stay the plaintiff from ever after holding his haut.] All these cases point out that s. 518 can only be used in certain cases, and the circumstances in the present case were not such as to admit of the Magistrate passing an order under that section according to the authority of the above cases; and that, therefore, the Magis-

(1) 21 W. R., Crim., 26.
(2) 21 W. R., Crim., 24.
(3) 10 B. L. R., 434; S. C., 18 W. R., Crim., 47.
(4) 23 W. R., Crim., 34.
(5) 1 Calc., 58.

trate was not competent to pass the order: but I go further and say, that even if circumstances had existed allowing the Magistrate to pass the order, and if all the circumstances had been set out in the petition, even then the legislature does not permit of a Magistrate passing a perpetual order as he has done in the case. As to his power to pass a permanent order, the case of *Bykuntram Shaha Roy* (1) contains nothing in opposition to my argument, looking at the limited way in which the Judges put their answer. It amounts to this—Can a Magistrate in a case which comes within s. 62 prohibit a man for public reasons from holding a haut at a particular time; the answer given is, that such an order if given for a temporary purpose would be lawful. *Shibchunder Bhuttacharjee* v. *Saadut Ally Khan* (2) shows that a right to hold a haut is not a right with which the Magistrate can interfere under s. 62, and that s. 62 refers to nuisances, and not to the exercise of private rights; see also *Queen* v. *Kalika Prasad* (3). *In the matter of Harimohan Malo* (4) it was decided, that when a case comes under either s. 62 or s. 308 the order of the Magistrate ought to contain a clear statement of the facts upon the basis of which the Magistrate has made the order. There are a number of cases which show that Magistrates cannot make an order in derogation of a right of private property or an order which is irrevocable, *The Queen* v. *Ram Chundra Mookerjee* (5), also *In re Harimohan Malo* (4), *Arzanoollah* v. *Nazir Mullick* (6), where a Magistrate passed an order that a haut which had been used should not be reopened. *Taraknauth Mookerjee* v. *The Collector of Hughli* (7) points out that Magistrates will not be protected if they make orders in derogation of rights of private property which are illegal. *Pureeag Singh* v. *Jogessur Suhaye* (8) is a case where an order of a Magistrate passed under s. 62 was set aside by a civil suit, a claim for damages as against the person who obtained the order from the Magistrate being dismissed. It is clear that a Civil

(1) 10 B. L. R., 434; S. C., 18 W. R., Crim., 47.
(2) 4 W. R., Crim., 12.
(3) 5 B. L. R., App., p. 82.
(4) 1 B. L. R., App. Crim., 20.
(5) 5 B. L. R., App. Crim., 131.
(6) 21 W. R., Crim., 22.
(7) 13 W. R., 13.
(8) 8 W. R., 111.

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Court can set aside an order of a Magistrate under s. 518, but the Court must do so, not by restraining the Magistrate from carrying out his order, but by determining the rights of persons. *In re Sidgopal* (1), *Thakoor Singh* v. *Sheopershad Ojhar* (2) where a Magistrate had issued an order closing a haut on certain days, it was held that a Civil Court had jurisdiction to determine whether or no a person had the right to hold his haut on certain days.

(Mr. *Woodroffe* was here stopped by the Court).

Mr. *Evans* for the respondent.—I contend that the Magistrate had a right to make the order; the question cannot be tried between two private persons, but if it can be entered into at all, it must be as between the plaintiff and the Crown. Since the decision of *Joynarain Dutt* v. *Hurrichurn Deb* (3) it has been held that all zemindars have a right to hold hauts. This is, however, not the right tribunal to come to, to set aside an order of a Magistrate; if he has passed it with jurisdiction, it cannot be set aside; and if he has passed it without jurisdiction, it is a nullity, and does not want setting aside. It is impossible to consider what the order is, without considering the rights attached to it. Reg. XXVII of 1793 provides for the tolls and taxes on hauts; in this country there is no common law right to hold a market; the right to take tolls and taxes was taken from the zemindars, leaving them a right to lease out their lands as the site of hauts. Under the English law a right to hold a market was given under the King's Grant: See Bacon's Abridgment, title "Fairs and Markets," Vol. III, p. 552. In this case the Magistrate does not forbid the defendant from holding a haut, but he prohibits him from assembling people on Tuesdays and Fridays, and this is no right of property. [WHITE, J.—You say the order prevents the defendant from collecting together a large assembly on his lands on certain days?] I do not say the order is illegal, but it is clear, that there is not a common law right to hold a haut; but there is nothing

(1) 5 Agra, 108; see Prinsep's Cr. Pro. Code, note to s. 518.

(2) 5 N. W. P., 8.

(3) S. D. A., of 1853, p. 275.

illegal in holding a haut. The power given under s. 518 is a general power to regulate all kinds of disturbances, and the hauts ought to be so regulated, and if disturbances were likely to occur, the order made by the Magistrate was a reasonable one. As to what the order is, it is an order to prevent two persons from holding a haut on the same days, and under the circumstances he had jurisdiction to make the order. The case of *Bykuntram Shaha Roy* (1) decides that a Magistrate had a right to pass an order prohibiting a haut, at all events, temporarily. It is difficult to draw the exact line where the order is to stop; if there is not power under the section, then it is clear that further legislation is required to keep rival haut-holders from creating disturbances; whether the power so to act is legal or not it is at all events a salutary power: if the law laid it down that an old haut-holder could bring an action against a new haut-holder to restrain him from holding his haut, then the Magistrate's order would not have been necessary. In the case of *Joynarain Dutt* v. *Hurrichurn Deb* (2) it has been held that an old haut-holder could not bring a suit for damages arising from the establishment of a new mart. The Magistrate could not have acted under s. 521, as that section refers to the small class of cases therein referred to, and in it there is no mention made of a power to stop riots or affrays. I contend that s. 518 is intended to cover cases where a speedy remedy is desirable and delay injurious. The whole section is based upon the point that the Magistrate should consider that the consequences of his delay in stopping the haut would be riot or affray. With regard to Reg. XXVII of 1793 there are decisions which hold that the operative part of the regulation refers to the year 1793: *Moonshee Aftaboodeen Ahmed* v. *Mohinee Mohun Doss* (3), *Chunder Nath Roy* v. *Zemadar* (4), and *Bungsho Dhur Biswas* v. *Mudhoo Mohuldar* (5). The Civil Courts are bound to respect an order of a Magistrate passed with jurisdiction, and if his proceedings show due diligence in satisfying himself of the necessity of the order, they cannot question

(1) 10 B. L. R., 434; S C., 18 W. R., Crim., 47.
(2) S. D. A., of 1863, p. 275.
(3) 15 W. R., 48.
(4) 16 W. R., 268.
(5) 21 W. R., 383.

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his discretion, *Kedarnath* v. *Raghonath* (1). The proper course would be for the plaintiff to apply to the Magistrate to reconsider his order. [GARTH, C. J.—Suppose the Magistrate refused to reconsider his order?] Then, there is no remedy, except by suing the Magistrate. [GARTH, C J.—When he believes himself to have power and acts *bonâ fide*, we have held a suit could not be brought against him.] An order under s. 62 stopping the holding of a haut is not a judicial order, and is not open to revision; it has been held to be nonjudicial, although there are no words in the Act which state that it is so. *Queen* v. *Abbas Ali Chowdhry* (2). [GARTH, C. J.—The question there was, whether the order was so far judicial as to be subject to revision.] That question has been discussed in *Chunder Narain Singh* v. *Brijo Bullub Gooyee* (3). It was then held that the Magistrate was not protected, as the order was not judicial. No suit will lie in a Civil Court to set aside an order of a Magistrate under s. 308 of Act XXV of 1861, which was the section relating to nuisances; nor will a suit lie to restrain him from carrying his order into effect, *Ujalamayi Dasi* v. *Chandra Kumar Neogi* (4); the latest case on the subject is *In re Chunder Nath Sen* (5), where it was held that the High Court cannot interfere, under s. 15 of the Charter, with an order duly passed by a Magistrate under s. 518 of Act X of 1872. With regard to the question of jurisdiction, I find some difficulty, but there is power under s. 518 for a Magistrate to pass an order *ex parte*. But on the authority of the case of *Bykuntram Shaha Roy* (6) the Magistrate would have power to close the market, and pass an order under s. 518. [GARTH, C. J.—Would the Magistrate be justified in making an order to take effect in the future?] Is the order bad, because it is issued without any restriction as to time? It has been held good as a temporary order. With regard to the authority of the Magistrate to make such an order, see *The Queen* v. *Kalika Prasad* (7). [JACKSON, J.—In that case, we raised the question

(1) 6 N. W. P., 104.
(2) 6 B. L. R., 74.
(3) 14 B. L. R., 254.
(4) 4 B. L. R., F. B., 24.
(5) I. L. R., 2 Calc., 293.
(6) 10 B. L. R., 434; S. C., 18 W. R., Crim., 47.
(7) 5 B. L. R., App., p. 82.

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as to whether the Magistrate had power to restrain a person from exercising his undoubted rights]. Section 268 of the Penal Code, which gives the Magistrate a right to stop nuisances, is also the law in England, and as laid down in Bacon's Abridgment, Vol. III, p. 552, if rival hauts are held in too close proximity, one haut-holder could indict the other for a nuisance; and what the Magistrate has done here is, to prevent an assembly which would have become a public nuisance. That an unfavourable view has been taken of closely contiguous hauts is clear from *Bykuntram Shaha Roy's* case (1). [GARTH, C. J.—The point I want argued is, how far the order is good as providing against the haut being held on next Tuesday or Friday; and how far good as providing against it being ever held again. If the Magistrate refuses to review his order closing the haut, what is the remedy?] If the order is good, there is no remedy, if bad, the complainant might sue the Magistrate, or bring up the order on revision before the High Court. [GARTH, C. J.—There are English cases which decide that where an order is in its nature divisible, such as an order restraining any particular act, and an order as to the costs then the order may be altered or rejected as to part, and held good as to the other part; but the present order is an indivisible one, simply "restraining the plaintiff from holding his haut again."] I own that no limit of time is expressed in the order, but is it to be held bad on that account? It would be difficult to fix a time for the duration of the order. Looking at it strictly, according to English rules, it might be said to be bad, but seeing that it is in the common form of all orders made in these cases in this country, it ought not to be held bad. Now, as to whether the plaint discloses a cause of action. The question must be decided on the plaint alone, we have nothing to do with the written statement in answering the question. [GARTH, C. J.—We cannot decide the question if we are not allowed to look at the defendant's written statement; it would be impossible to know whether the order is set up as a defence, unless we did look into it.] The Full Bench is only asked in the reference, whether on certain facts a decree can follow. I am not

(1) 10 B. L. R., 434; S. C., 18 W. R., Crim., 47.

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prepared to admit that the plaintiff is entitled to a declaration; if it was framed on the allegation that I caused him loss by preventing people from attending, that would have been a good cause of action; but it was not so framed; it only states that I have in former times prevented people coming to his haut, and it does not say that I succeeded in stopping any one, and does not say that he has incurred any loss from my conduct: the damage and loss are stated to arise from the Magistrate's order, and the damage is therefore too remote. [GARTH, C. J.—It is alleged that the defendant has placed obstacles in the way of his holding his haut.] If it was alleged as part of the title of his relief, then the plaintiff would be entitled, but he clearly says it was the Magistrate's order that closed his haut. [GARTH, C. J.—If the Magistrate has acted rightly in issuing his order, the plaintiff is entitled to bring his suit as it is here framed.] He must allege that I was the cause and origin of the Magistrate's order. [WHITE, J.—Looking at the plaint, it seems clear that the plaintiff is entitled to a declaratory decree, (and to an injunction if he had asked for it); the only question seems to be, is he entitled to have the Magistrate's order set aside.] Unless he made the Magistrate a party to the suit he cannot succeed on that point. It is not enough to state historically a set of facts to the effect that I have prevented him from doing certain things; it might have been years ago that I prevented him, as he alleged that I did; he fixes no time, and does not even say that I deny his right to hold a haut [WHITE, J.—If you threw "obstacles in his way" you must have denied his right, and if so, he is entitled to a declaratory decree?] I contend that the order cannot be set aside by a Civil Court; it can only be set aside under s. 15 of the Charter, or under the Criminal Procedure Code.

Mr. *Woodroffe* was not called on to reply.

The judgment of the Full Bench was delivered by

GARTH, C. J.—In answering the questions which have been referred to us by the Division Bench, it will be convenient in the first place to dispose of the last and most important of them,

viz., whether the Magistrate was competent to pass the order complained of under the provisions of s. 518 of Act X of 1872.

The order was in these terms :—

"To Gopi Mohun Mullick, inhabitant of Paikara, Purgana Sherpur. Case,—unlawful assembly.

"It has appeared at the trial of the said suit, that a haut, having been established since 20 or 25 years at Taragunj, the estate of the said Chowdhrani, is duly held every week on Tuesday and Friday. At present you having set up a new haut at Nalitabari, which is quite close to the said haut, have fixed Tuesdays and Fridays, in other words, the days on which the Taragunj haut is held, for holding your newly-established Nalitabari haut. Since, by reason of the day fixed for holding this newly-established rival haut being exactly the days on which the Taragunj haut is held, an occurrence leading to a breach of the peace took place at the said newly-established Nalitabari on the 20th of April 1875, corresponding with the 8th of Bysack of the year 1282 B. S. Consequently, unless the days for holding the said Nalitabari haut be altered, there is every likelihood of man's health and peace being affected, and of affrays and breach of the peace taking place in future. Hence you are hereby prohibited from holding the Nalitabari haut on Tuesdays and Fridays in accordance with the provisions of s. 518 of the Criminal Procedure Code, and you are ordered to alter the days for holding the said haut. The 31st May 1875."

We may assume, for our present purpose, that the circumstances under which the Magistrate was called upon to interfere, were such as to enable him to make an order of some kind under that section.

The question is, whether he had the power, *under any circumstances*, to make an order prohibiting the plaintiff for ever from holding a haut on every Tuesday and Friday on his own land.

We believe that this is the first occasion on which this point has been seriously considered by a Full Bench of the Court; and as we are aware that Magistrates in this country have been in the habit of making orders of this nature, restraining persons for an indefinite period from the exercise of civil rights over

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their property, and as this practice has apparently derived some sanction from former Full Bench decisions of this Court, it has been thought advisable in this instance to take the opinion of the whole of the Judges, in order to determine a question, which undoubtedly is of very great importance to the public.

The first of these decisions is *The Queen* v. *Abbas Ali Chowdhry* (1). The order of the Magistrate in that case was made under s. 62 of Act XXV of 1861; and the only question raised was, not whether the order itself was good or bad, but whether the High Court had any power to deal with it as a Court of Revision; and it was held, that as the order was not a judicial act, the High Court had no such power.

The next of these decisions was *In the matter of Bykuntram Shaha Roy* (2). The order there also, which was similar in its terms to that which we are now considering, was made under s. 62 of the Act of 1861; but the question which was argued and decided there was, whether a Magistrate under that section could prevent a land-owner from doing *a lawful act* on his own land; it being contended that he had only a right to prevent acts *which were in themselves unlawful.*

The point which is now before us, namely, the time during which such an order could legally be made, was not raised, or intended to be raised, in that case; for the Chief Justice, in delivering the judgment of the Court, expressly says:—"It is not necessary for us to determine the question, whether the Magistrate has in this particular case exercised his discretion in a proper manner, *or whether his order, as it stands, requires any amendment as to the duration of the injunction or otherwise,* for these questions have not been referred to us by the Division Bench." And he goes on to say, that there may be circumstances "which would justify a Magistrate in issuing an order under s. 62 *at least for a limited time,*" which shows that the point which we have now to decide, was present to the mind of the Court, although they were not called upon to decide it.

The last Full Bench decision, in which a similar order came under discussion, was in the matter of *Chunder Nath Sen* (3).

(1) 6 B. L. R., 74. (2) 10 B. L. R., 434; S. C., 18 W. R., Crim., 47.
(3) I. L. R., 2 Calc., 293.

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The order there was made under s. 518 of the present Code, with which we are now dealing; and the question referred was, whether this Court had jurisdiction to set aside the order under s. 15 of the Charter Act.

It was there contended that under the circumstances the Magistrate had no power to make any order at all, and if that were so, that this Court could and should, under s. 15, have set aside the order as being made without jurisdiction.

But the Court decided, that the circumstances were such as to give the Magistrate jurisdiction to act, and consequently that they could not interfere.

The point was never raised in that case, though probably it might have been, that the terms of the order itself, as regards its duration, were not warranted by law; and, therefore, we find ourselves now dealing with a point which, although mooted on more than one occasion in this Court, and also by the Allahabad High Court in the case of *Kedar Nath* v. *Rugho Nath* (1), is for the first time directly submitted for our determination.

The provisions of s. 62 in the Code of 1861 are substantially the same as those of s. 518 of the present Code; but there are certain explanations appended to the latter section, which aid us materially in the construction of it.

The first of them relates to the cases to which the section was intended to apply, and shows that it is applicable only where a speedy remedy is called for, and where for either of the reasons specified a more formal procedure would be inappropriate. We think it would be inconsistent with this expression of the intentions of the Legislature, that a Magistrate should pass under this section an order meant to have more than a temporary operation; and although such order may, no doubt, for what seems to the Magistrate sufficient cause, restrain a man in the otherwise lawful exercise of his rights, such restraint ought clearly not to be indefinite in its terms, or to have effect beyond the urgency which it was intended to provide for.

Now, in this instance, it is clear that the order of the Magistrate would have such effect.

The plaintiff says, in his plaint, that for many years past he

(1) 6 N. W. P., 104.

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has been in the habit of holding a haut on every Tuesday and Friday in his own mouza; and that as the owner of the adjoining mouza insisted on holding a rival haut on the same days, disputes arose and violence was threatened, which the Magistrate was called upon to prevent: whereupon he made the order in question under s. 518, prohibiting the plaintiff for the future from holding his haut on Tuesdays and Fridays.

We consider that the Magistrate had no jurisdiction to make so wide an order; and that the grant of what is in effect a perpetual injunction, is entirely beyond his powers. He might have prohibited the holding of the haut on any particular occasion or occasions; but he had no right to deprive the plaintiff for ever of a right to which he was by law entitled.

The last question, therefore, is answered in the negative; and we now proceed to deal with the questions 1, 2, and 3, which may conveniently be answered together.

The plaint, after alleging that the plaintiff had held his haut on his own land for many years on Tuesdays and Fridays, alleges that the defendant set up a rival haut, and endeavoured to prevent persons from attending the plaintiff's haut. That this led to disturbances, which ended in the order being made by the Magistrate, prohibiting the plaintiff from holding his haut on the above days, and that the plaintiff has suffered loss and damage in consequence.

We think that, assuming these facts to be true, the plaintiff is entitled to a decree, declaring that, as against the defendant, he has a right to hold his haut on Tuesdays and Fridays.

We are agreed that for the purposes of this case, it is unnecessary to answer the fourth question.

Appeal allowed.