

QUEEN-
EMPRESS
v.
KANAPPA
PILLAI.

The orders of the Police are not binding on the magistracy.

We are further of opinion that great caution should be shown in sending, for investigation by the Police, charges against members of that force. In such cases it would generally be better that the enquiry should be prosecuted by a Magistrate.

The District Magistrate is directed to proceed with the case according to law.

Ordered accordingly.

APPELLATE CRIMINAL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.

QUEEN-EMPRESS

v.

SINNAI GOUNDAN AND OTHERS.*

Criminal Procedure Code—Act X of 1882, s. 203—Duty of Magistrate to examine witnesses for the complainant.

When a case has not been disposed of under Criminal Procedure Code, section 203, and the complainant's witnesses have been summoned, the Magistrate is bound to examine the witnesses tendered by the complainant, and is not entitled to acquit the accused on a consideration of the complainant's statement alone.

CASE reported for the orders of the High Court under section 438 of the Code of Criminal Procedure by H. Bradley, District Magistrate of Coimbatore.

In this case the accused were charged before the Sub-Magistrate of Palladam with the offences of forcible rescue of cattle being taken to the pound, assault, and criminal intimidation. The Sub-Magistrate summoned the witnesses named by the complainant, but examined the complainant alone and then acquitted the accused.

The Public Prosecutor (Mr. Powell) for the Crown.

Venkatasubbayyar for accused.

ORDER.—Inasmuch as the case was not disposed of under section 203, Criminal Procedure Code, but summonses were issued to the complainant's witnesses, the Magistrate was not at liberty, as he

* Criminal Revision Case No. 16 of 1897.

assumes, to "stop the case whenever he liked." - He was bound to examine the witnesses tendered by the complainant before acquitting the accused. This the Magistrate admits he did not do.

We must, therefore, set aside the acquittal and order a re-trial.

We observe that the Magistrate, though he issued summonses to the complainant's witnesses, did not examine them, but acquitted the accused on a consideration of the complainant's statement alone. It is not clear why this unusual and illegal procedure was followed. Having regard to it and to the fact that the Magistrate has formed a decided opinion in the case before hearing the evidence for the prosecution, we direct that the District Magistrate do transfer the case for trial to some other Magistrate.

QUEEN-
EMPRESS
v.
SINNAI
GOUNDAN.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.

PALANIANDI TEVAN AND OTHERS (DEFENDANTS), APPELLANTS,

v.

PUTHIRANGONDA NADAN AND OTHERS (PLAINTIFFS NOS. 2 TO 5),
RESPONDENTS.*

1897.
March 30, 31.
September
27.

Easements Act—Act V of 1882, s. 2 (b)—Easement over a well—Customary right to use the well.

No fixed period of enjoyment is laid down by law as necessary to establish a customary right, and a customary right to use a well may exist apart from a dominant heritage.

SECOND APPEAL against the decree of T. Ramasami Ayyangar, Subordinate Judge of Madura (West), in Appeal Suit No. 422 of 1895, reversing the decree of K. Krishnamachariar, District Munsif of Madura, in Original Suit No. 566 of 1894.

The plaintiffs having obtained leave under Civil Procedure Code, section 30, sued on behalf of themselves and other members of the Shanar caste for a declaration of their right to draw water from a certain well, and for an injunction to restrain the defendants from interfering with their exercise of that right.

The defendants Nos. 1 to 3 claimed that the well belonged to them, and defendants Nos. 4 and 5 stated that they had been

* Second Appeal No. 213 of 1896.