APPELLATE CRIMINAL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Davies.

QUEEN-EMPRESS

v.

MANIKAM AND OTHERS.*

1896. February 23. March 3

Criminal Procedure Code, s. 555—Magistrate personally interested—Magistrate giving evidence before himself.

Where a Magistrate, in whose Court a complaint of rioting and mischief had been filed, made a personal inspection of the *locus in quo*: *Held*, that by so doing he had made himself a witness in the case and had thereby rendered himself incompetent to try it: *Held*, further that where a Judge is the sole Judge of law and fact in a case tried before himself, he cannot give evidence before himself or import matters into his judgment not stated on oath before the Court in the presence of the accused.

PETITION under sections 435 and 439, Criminal Procedure Code, against the conviction and sentence passed under section 147, Indian Penal Code, by the Second-class Magistrate of Musiri and confirmed on appeal by the Head Assistant Magistrate of Trichinopoly.

The accused were charged with rioting and committing mischief to the paddy sprouts of complainant. It appeared from the record that the said Second-class Magistrate on the day subsequent to the filing of the complaint made a personal inspection of the *locus in quo*.

Mr. *Bakewell* for petitioners.

The Magistrate was personally interested in the case within the meaning of section 555 of the Code of Criminal Procedure and was therefore not competent to try it. *Girish Chunder Ghose* v. *Queen-Empress*(1), *Hari Kishore Mitra* v. *Abdul Baki Miah*(2), *Queen* v. *Meyer*(3), *Serjeant* v. *Dale*(4). A Magistrate has power to inspect before receiving complaint, sections 159 and 202, but not after. There is a special provision for inspection by jurymen and assessors, section 293. The Magistrate had a legal interest in the decision of the case and therefore was incompetent to try it.

* Criminal Revision Case No. 596 of 1895.

(1) I.L.R., 20 Calc., 857.
(2) I.L.R., 21 Calc., 920.- (3) L.R., 1 Q.B.D., 173. (4) L.R., 2 Q.B.D., 558.

QUEEN-EMPRESS v. MANIKAM.

Serjeant v. *Dale*(1). The Magistrate being the sole Judge of law and fact could not be a witness before himself (*Queen-Empress* v. *Donelly*(2)), as the accused had no power to cross-examine him. In civil cases the evidence seems to be admissible. *Joy Coomar* v. *Bundhoo Lall*(3).

Mr. *Wedderburn* and *Rangachariar* for counter-petitioner.

It is open to the Magistrate to inspect the scene of offence and this course is frequently adopted. There is no special provision giving the Magistrate power to do so. There is no provision for inspecting instruments which have caused wounds. Inspection of a place comes under what is called real or material evidence, which appeals directly to the senses of the Judges. The Evidence Act does not contemplate such inspection but the definition of the word 'proved,' Evidence Act, section 3, seems clearly to contemplate more than what is included in the word 'Evidence'. *Joy Coomar* v. *Bundhoo Lall*(3). Criminal Procedure Code, section 526, lays down the desirability of inspecting the *locus in quo* as a ground for granting a transfer. The conviction has been upheld on other evidence and the irregularity must be taken to have been cured.

ORDER.—In this case certain persons—five and more in number—were convicted of rioting under section 147 of the Indian Penal Code, in that they forcibly entered upon the land of one Kandikkaruppan and there committed mischief by destroying some of his young paddy plants. It appears that on the day after the complaint in the case was filed, the Second-class Magistrate who tried the case went to make a local inspection of the scene of the alleged offence, not because he distrusted the truth of the complaint, for he had issued process against the accused, but apparently for the purpose of seeing what damage was done. The following is the account given by the Magistrate of the result of his inspection: "As alleged in the complaint the said two fields were in a very "disorderly and pitiable state. The young paddy plants and "sprouts in the said fields were lying trodden down. There were "innumerable pits in the field caused by the feet of the people. "A greater part of the said fields was dug up with spades and "several heaps of earth were lying promiscuously all over the said "fields. The spectacle was truly pitiable." The Magistrate then proceeds in his judgment to say "under the above circumstances

(1) L.R., 2 Q.B.D., 558. (2) I.L.R., 2 Calc., 405. (3) I.L.R., 9 Calc., 363.

"the thoughtless attempt made by the defence to prove that no "mischief was committed to the plants and sprouts of paddy in the "fields in question is utterly futile. Nothing has been adduced by "the accused or their witnesses to show how the said seedlings and "sprouts in the said fields were damaged. The whole defence "therefore falls to the ground." In the appeal against the conviction to the Court of the Head Assistant Magistrate, Trichinopoly, objection was taken to this inspection by the Magistrate, on the ground that the Magistrate was making himself a witness in the case and that his evidence should therefore have been open to cross-examination and also that the Magistrate, after conducting such a local enquiry, should not have tried the case. The objections were overruled by the Head Assistant Magistrate, because he found that the Magistrate's evidence was not the only evidence on the point and because he considered that the Magistrate was perfectly right in satisfying himself that the complaint was well founded. It is clear from the facts stated, that the Magistrate's view of the *locus in quo* was what influenced him in finding that the complaint of actual damage being caused was true and that the defence, that no damage was caused, was false. The question now before us is whether the Magistrate, having made himself a witness in the case, rendered himself incompetent to try the case. The Privy Council has observed in *Hurpurshad* v. *Sheo Dyal*(1): "It ought to be known, and their Lordships wish it to "be distinctly understood, that a Judge cannot, without giving "evidence as a witness, import into a case his own knowledge of "particular facts." There is no provision in the Code of Criminal Procedure, which authorizes a Magistrate to make a local inspection in a case which is being tried by himself, and therefore there is no provision as to what is to be done in regard to his examination, in case he should make such local inspection by which he becomes personally acquainted with relevant facts in the case, such as is made in section 294 of the Code, in the case of a juror or assessor who is personally acquainted with any relevant fact, that is for his being sworn, examined, cross-examined and re-examined in the same manner as any other witness. As it is not possible, therefore, for the Magistrate to be so examined in a trial held before himself, it follows that he cannot comply with the rule of the Privy Council

(1) L.R., 3 I.A., 259.

QUEEN-EMPRESS v. MANIKAM.

requiring that he should give evidence as a witness. That being so, we agree with the Calcutta High Court in holding that when a Judge is the sole Judge both of law and fact, he cannot give evidence before himself and that the accused are entitled to have nothing stated against them in the judgment which was not stated on oath in their presence and which they have no opportunity of testing by cross-examination and of rebutting. (See *Girish Chunder Ghose* v. *Queen-Empress*(1) and *Hari Kishore Mitra* v. *Abdul Baki Miah*(2). A Magistrate by making himself a witness has a legal interest in the decision of the case which disqualifies him from trying it, no matter how small that interest may be (see *Serjeant* v. *Dale*(3). The learned Judges Mellor and Lush, JJ., therein observed that "the law in laying down this strict rule has "regard not so much perhaps to the motives which might be sup-"posed to bias the Judge as to the susceptibilities of the litigant "parties. One important object, at all events, is to clear away "every thing which might engender suspicion and distrust of the "tribunal and so to promote the feeling of confidence in the "administration of justice which is so essential to social order and "security." Although the law makes no provision for a local inspection by a Magistrate of the *locus in quo* in a case being tried by himself, we do not go the length of saying that under no circumstances may local inspection be made. But we are satisfied that such inspection should only be made for the purpose of enabling the Magistrate to understand the better the evidence which is laid before him, and it must be strictly confined to that. This is the view taken by the learned Chief Justice (Petheram, C.J.) of the Calcutta High Court in the case already quoted. (*Hari Kishore Mitra* v. *Abdul Baki Miah*(2)). To this we would add that when any inspection is made with the object stated, the Magistrate should invariably be accompanied by both parties or their representatives.

Holding as we do for the reasons above given that the Second-class Magistrate rendered himself incompetent to try this case, we must set aside the conviction and sentences of fine and direct that a new trial be held by another Magistrate in the case of those of the accused whose conviction was confirmed by the Appellate Court.

(1) I.L.R., 20 Calc., 857. (2) I.L.R., 21 Calc., 920. (3) 1.L.R., 2 Q.B.D., 558.