

upheld with reference to five of the accused is perverse with reference to the other three and as their opinion for their conclusion which he considers to be distinct from their verdict is not before us, it is impossible to say they are wrong upon the one-sided opinion of the Judge alone, the Code requiring us to give due weight to the opinion of the jury; Mr. Justice Benson holding that the verdict is their opinion came to the conclusion that on the evidence the accused are guilty. I concur with the Officiating Chief Justice and Boddam, J., in holding that once the case is referred to the High Court under section 307 we have to form our own opinion on the evidence. [After going into the evidence, his Lordship agreed with the jury and acquitted the accused.]

EMPEROR  
v.  
CHELTAN.

## APPELLATE CRIMINAL.

*Before Sir S. Subrahmania Ayyar, Officiating Chief Justice,  
and Mr. Justice Sankaran Nair.*

ARUNACHELLAM CHETTIAR, PETITIONER,

v.

CHIDAMBARAM CHETTI, RESPONDENT.\*

1905  
July 18.

*Criminal Procedure Code—Act V of 1898, s. 147—Construction of the words “concerning any land”—Landlord and tenant—Right of tenant to enclose cultivable land by a wall.*

The enclosing by a tenant of cultivable lands by a wall instead of hedges is not *prima facie*, an interference with the landlord's rights and ought not to be interfered with under section 147 of the Code of Criminal Procedure by a Magistrate, being a matter to be settled by a Civil Court. In such cases, if a breach of the peace is apprehended, security must be taken from the party in possession.

The words “concerning the use of land” in section 147 of the Code of Criminal Procedure cannot be qualified and the section construed as if it contained words that the user to which the dispute relates is a user by a party other than the party in possession.

*The Empress v. Ganapat Kahwar*, (4 C.W.N., 779), not followed.

*Subba v. Trinca*, (I.L.R., 7 Mad., 461), referred to and followed.

\* Criminal Revision Petition No. 75 of 1905, presented under sections 435 and 439 of the Code of Criminal Procedure praying the High Court to revise the order of A. Thompson, Esq., Sub-Divisional First-class Magistrate of Ramnad Division, in Miscellaneous Case No. 29 of 1904.

ARUNA-  
CHELLAM  
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v.  
CHIDAM-  
BARAM  
CHETTI.

THE facts necessary for this report are set out in the judgment of the High Court and the proceedings of the Sub-Divisional Magistrate.

On an application by the petitioner (counter-petitioner in the High Court) to the Sub-divisional Magistrate, the Magistrate issued notice to the counter-petitioner under section 147 of the Code of Criminal Procedure and passed the following order :—

“ In this case I do not see how proceedings can rightly be initiated under section 147, Criminal Procedure Code. The question is as to the use of a piece of land which one party says that he has a right to build on, while the other party denies, that he (the first party) has such a right. Such a case is clearly not contemplated by section 147 of the Code. Nor are the facts such that proceedings can be taken under section 145 as there is no dispute as to the right of possession. No further proceedings will therefore be taken . ”

The counter-petitioner applied to the High Court to revise the proceedings under sections 435 and 439 of the Code of Criminal Procedure.

The Advocate-General (Hon. Mr J. P. Wallis) and S. Srinivasa Ayyangar for petitioner.

T. Rangachariar and K. N. Ayya for respondent.

ORDER.—The allegation of the petitioner was that the counter-petitioner, who was for the purposes of this petition treated as being in possession of a certain plot of land, was erecting a compound wall in the place of a hedge which existed before ; that his consent had not been obtained for the erection, and that the object of the counter-petitioner's building a wall was to annex it to his house, while it was cultivable land subject to payment of assessment to him. The contention on the other side was that it was part of the counter-petitioner's property and that he was replacing an old dilapidated wall. The dispute, thus, in truth, is whether the property belongs to the counter-petitioner as alleged by him. If his allegation be true, it would be quite competent to him to raise the wall without any let or hindrance on the part of the petitioner. Even if it were otherwise, the fact that a tenant encloses agricultural land in his occupation with a wall instead of a hedge would not *prima facie* interfere with the landlord's right. In these circumstances the case is one in which we ought not interfere in revision, as the dispute is really a civil dispute between the parties

which ought to be settled by Civil Courts. We accordingly dismiss the petition. In doing so, we do not wish to be understood as concurring in the view expressed by the Magistrate if he meant to decide the general question as to the scope of section 147 of the Criminal Procedure Code, the words concerning the use of any land cannot, we think be altogether qualified and the section construed as if it contained words that the user to which the dispute relates is a user by a party other than the person in possession. We should hesitate before we accept the restricted construction suggested in *The Empress v. Ganapat Kalwar*(1) to which our attention has been drawn on behalf of the counter-petitioner. The case of *Hari Mohun Thakur v. Kissen Sundari*(2) and the observations in *Subba v. Trincaal*(3) seem opposed to the view adopted in *The Empress v. Ganapat Kalwar*(1) if we understand it rightly. These cases were no doubt decided under the section of the repealed Criminal Procedure Code, the language of which is not identical with that of section 147 of the present Criminal Procedure Code, the alteration in the language seems intended rather to enlarge the scope than restrict it. It is perhaps not superfluous to observe that in cases like the present as pointed out in the case last cited [*Subba v. Trincaal*(3)], the proper course was for the Magistrate to take security from the party from whom a breach of the peace was apprehended, though it is not illegal for the Magistrate to act under section 147.

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(1) 4 C.W.N., 779.

(2) I.L.R., 11 Calc., 52.

(3) I.L.R., 7 Mad., 461.