

part of the prosecution that the accused had removed any trees or shrubs from the land.

EMPEROR
v.
VENKANNA
PRABHU.

The Acting Public Prosecutor in support of the reference.

ORDER.—Both the lower Courts appear to have based their decisions on the assumption that the mere cultivation of the land in question involved a “clearing” within the meaning of section 21 (a) of the Madras Forest Act, 1882, and that the only point for consideration was whether what had been done by the accused was “fresh.” It seems to us that the word “clearing” means something in the nature of the removal of trees or shrubs. The provision is a penal one and must be strictly construed. There is no evidence that there was any removal of trees or shrubs by the accused or that cultivation of the land in question could not be carried on without such removal. In our judgment there is no evidence that the accused committed an act prohibited by section 21.

The conviction and sentence must be set aside and the fine, if paid, must be refunded.

APPELLATE CRIMINAL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Benson.

BELAGAL RAMACHARLU (SECOND DEFENDANT), PETITIONER,

1902.
October 28.

v.

EMPEROR, RESPONDENT.*

Criminal Procedure Code—Act V of 1898, ss. 112, 118, 144, 145—Notice to give security for three months—Order to give security for twelve months—Validity—Discretion to proceed under s. 107 or ss. 144 and 145.

Where a notice is issued under section 112 of the Code of Criminal Procedure to a defendant to show cause why he should not give security to be of good behaviour for three months, the Magistrate has no power to order security to be given for a longer period.

Where a defendant is found by the Magistrate to be in possession of land about which a dispute occurs, the Magistrate is not bound to act under sections

* Criminal Revision Case No. 400 of 1902, presented under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the proceedings of B. C. Smith, Head Assistant Magistrate of Hospet, dated 3rd June 1902, in Miscellaneous Case No. 3 of 1902.

BRHAJAL
RAJACHARLU
?
EMPEROR.

144 and 145, but has a discretion to proceed either under section 107 or under sections 144 and 145 of the Code.

Dolegobind Chowdhry v. Dhannu Khan, (I.L.R., 25 Calc., 559), distinguished.

ORDER to give security to keep the peace. The Head Assistant Magistrate of Hospet ordered two defendants to execute a bond for Rs. 100, with one surety each for a like sum, to keep the peace for a year. The notice which had been issued to the defendants called on them to show cause why they should not give security to be of good behaviour for three months. Second defendant filed this criminal revision petition, contending that the order was wrong: and that having regard to the finding of the Magistrate that the petitioner was in actual possession of the lands over which the dispute arose, the Magistrate should, if at all, have taken security only from the first defendant, or otherwise protected the petitioner's possession under section 145 of the Code of Criminal Procedure.

T. S. Krishna Ayyar for petitioner.

The Acting Public Prosecutor in support of the order.

ORDER. — The notice under section 112, Criminal Procedure Code, was to the petitioner to show cause why he should not give security to be of good behaviour for three months, but the order afterwards issued under section 118 binds the parties for a year.

Section 118 expressly provides that "no person shall be ordered to give security . . . for a period longer than that specified in the order made under section 112." The Magistrate had no power to make an order for more than three months, the term in the notice issued under section 112.

We therefore revise the Magistrate's order by substituting three months for one year.

It is urged that the proper course was for the Magistrate to have acted under sections 144, 145, Criminal Procedure Code, and reliance is placed on the case of *Dolegobind Chowdhry v. Dhannu Khan* (1).

The facts in that case are clearly distinguishable from those in the present case, but even were it otherwise we are not prepared to say that we should take the same view. We think the Magistrate has a discretion to proceed under section 107 or sections 144, 145, Criminal Procedure Code.

(1) I.L.R., 25 Calc., 559.