should be set aside on the ground that it is unconditional. As required by the section, it does not appoint any time or place within which and where the person to whom it is directed may appear before the Deputy Magistrate himself, or some other Magistrate of the first or second class, and move to have the order set aside or modified. We accordingly set aside the order, which the Sessions Judge recommends to be set aside.

1883 THE EMPRESS *v.* BROJOKANTO ROY CHOWDHURI.

Order set aside.

Before Mr. Justice Wilson and Mr. Justice Maclean.

IN THE MATTER OF PEARY MOHUN SIRCAR AND OTHERS.

PEARY MOHUN SIRCAR *v.* THE EMPRESS. *

1883 *March* 1.

Unlawful Assembly—Penal Code, Act XLV of 1860, *s.* 143.

On the trial of certain persons charged with being members of an unlawful assembly, it was proved that there was a dispute of long standing between the accused and certain other parties regarding the possession of certain land; that neither of the parties was in undisturbed possession of the land; that the accused went to sow the land with indigo, accompanied by a body of men armed with *latties*; that they were prepared to use force it necessary; and that the *lattials* kept off the opposite party by brandishing their weapons while the land was sowed.

Held, that the accused were rightly convicted of being members of an unlawful assembly, under s. 143 of the Penal Code.

Sunker Singh v. *Burmah Mahto* (1), distinguished.

IN this case the prisoners were convicted by the Joint Magistrate of Rajshahye of being members of an unlawful assembly and sentenced to three months' rigorous imprisonment, under s. 143 of the Indian Penal Code. The prisoners appealed to the Sessions Judge of Rajshahye, the material portion of whose judgment was as follows :—

It does not seem to be seriously denied in this case that the retainers of Messrs. Watson & Co. went in a large body to sow down indigo on the lands which are referred to by the witnesses, and that many of these retainers were armed. This fact is proved by the clearest evidence, and the evidence of the constable Permeshwar Singh shews that while the *lattials* were brandishing their *latties*, some fifty persons sowed down the lands in indigo. The pleader for Messrs. Robert Watson & Co., relying upon the

* Criminal Motion No. 32 of 1883, against the order of L. Hare, Esq., Joint Magistrate of Rajshahye, dated the 4th January 1883.

(1) 23 W. R. Cr., 25.

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case of *Shunker Singh* v. *Burmah Mahto* (1), contends that the charge in this case cannot be sustained, as the intention of the defendants was not to enforce a right, but to maintain, undisturbed, the subsisting enjoyment of their rights. It seems to me, however, that the ruling above quoted is not applicable to the present case. It referred to the enjoyment of water actually flowing, and to the protection of the then subsisting enjoyment of this right, under circumstances where there was no time to have recourse to the police authorities. In the case now under appeal it is clear that the land, of which the enjoyment is claimed, is disputed land, and was so in April and May 1882, as well as in the following November, when it reappeared from the bed of the Padma river. [The District Judge went on to say that he agreed] with the Joint Magistrate that the evidence on the record is not sufficient to prove conclusively that either party was in *bonâ fide* possession. It is clear, however, that both parties claimed the right of possession, and that these claims arose as soon as the disputed land reappeared from the bed of the river. It is the forcible assertion of this claim on the part of the appellants, which is the subject of the present charge against them.................................. From a review of the whole evidence I concur with the Joint Magistrate in the opinion that the appellants are guilty of the offence of which they have been convicted, and I accordingly dismiss this appeal.

The prisoners moved the High Court for a rule to show cause why the conviction should not be set aside as bad in law.

Mr. *Evans* for the petitioners.

The judgment of the Court (WILSON and MACLEAN, JJ.) was delivered by

WILSON, J.—This was a rule granted to show cause why a conviction should not be set aside on the ground that, assuming the facts found to be correct, the conviction was bad in law. We have had the advantage of hearing the arguments of the petitioner's Counsel, and it appear to us that, assuming the facts found to be correct, the conviction is good in law. The facts found are these: that there was no one in undisputed possession of the land in question, but that a dispute of some considerable standing existed between the two parties as to who was entitled to the land and who was in possession of it; that a number of persons of the petitioner's party went to sow the land, together with a body of men armed with *latties*; that they were prepared to use force, if

(1) 23 W. R., Cr., 25.

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necessary ; and that they stationed these *lattials* to keep off the opposite party and these were brandishing their weapons, while the land was sowed. That falls within the definition of the offence, because there was an assembly for the purpose of enforcing a right by criminal force, or shew of criminal force.

It was contended that this case was governed by the case of *Shunker Singh* v. *Burmah Mahto* (1) ; but as was pointed out by the Judge in the appeal Court in this case, that case is distinguishable. It was decided on this ground that what was done there was an act justified by the sections relating to private defence, and it was expressly pointed out that it did not fall under cl. 3 of s. 99 of the Penal Code. There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities. In this case it appears that there was plenty of time to have recourse to the public authorities, therefore the law as to private defence does not apply.

The rule will be discharged.

Rule discharged.

APPELLATE CIVIL.

Before Mr. Justice Maclean and Mr. Justice O'Kinealy.

DWARKA NATH AND OTHERS (PLAINTIFFS) *v.* ALOKE CHUNDER SEAL AND OTHERS (DEFENDANTS).*

1883 *January* 9.

Sale for arrears of rent—Beng. Act VIII of 1869, ss. 59, 60—Sale Certificate—Proclamation of Sale—Under Tenure.

Held, on the construction of a sale certificate and a proclamation of sale purporting to be made under ss. 59 and 60 of the Rent Act, Beng. Act VIII of 1869, that what passed by the sale was not an under tenure, but merely the right, title and interest of the judgment-debtor therein.

The declaratory portion of a sale proclamation is not by itself sufficient to override the description of the property in the body of the document.

THIS was a suit for possession of a *howla* which the plaintiffs claimed to have purchased in 1871 at a sale held under the provi-

*Appeal from Appellate Decree No. 873 of 1881, against the decree of Baboo Banco Madhub Mitter, Subordinate Judge of Backergunge, dated the 23rd September 1880, modifying the decree of Baboo Doorga Churn Sen, Sudder Munsiff of Burrisal, dated the 30th September 1879.

(1) 23 W. R., Cr., 25.