

precedent cited only in this respect, that in that case the appellant had not made the question of limitation one of the grounds of appeal. In the case before us the judgment-debtors, against whom the judgment of the first Court on this point was pressed, did not appeal against it, nor did they, when the decree-holder appealed, make any objection in writing within the terms of s. 561. Under these circumstances the lower Appellate Court was not competent to re-open the point. The order of the lower Appellate Court must therefore be reversed, and that of the first Court restored. The decree-holder will be entitled to costs, both in this Court and in the lower Appellate Court.

1882

RUGHU
NATH SINGH
MANKU
v.
PARESHRAM
MAHATA.

WILSON, J.—I am entirely of the same opinion. The effect of s. 4 of the Limitation Act, as I understand it, is simply this: Whenever a case is properly before a Court, whether it is a Court of appeal or a Court of first instance, it is bound to take notice of the question of limitation; but in order to enable the Appellate Court to do that the case must be before it. In the present case the order objected to was not before the Court below at all in its entirety, but only a portion of it. The whole might have been brought before the Court by appeal, or by cross appeal only on objection under s. 561 of the Code. That was not done. The lower Appellate Court therefore had no right to enter into the question of limitation, affecting that part of the order which was not before it.

Appeal allowed.

APPELLATE CRIMINAL.

Before Mr. Justice Mitter and Mr. Justice Field.

THE EMPRESS v. BROJOKANTO ROY CHOWDHURI.

1883

Criminal Procedure Code (X of 1882), s. 133—Nuisance—Erection of Buildings—Unconditional order. February 28.

Every order made under s. 133 of the Code of Criminal Procedure, Act X of 1882, must appoint a time within which, and a place where, the person to whom it is directed may appear before the Magistrate, and move to have the order set aside or modified.

No unconditional order can be made under that section.

* Criminal Reference No. 16 of 1883, and Letter No. $\frac{9}{36}$, from the order made by J. F. Bradbury Esq., Officiating Sessions Judge of Backergunge, dated the 21st February 1883.

1883
 THE
 EMPRESS
 v.
 BROJOKANTO
 ROY CHOW-
 DHURI.

THIS was a reference to the High Court by the Sessions Judge of Backergunge, to set aside an order made by the Deputy Magistrate of Putuakhali. The facts of the case are thus stated by the Sessions Judge: "On the 5th of January last the Deputy Magistrate addressed to the applicant for revision, an order, which after reciting that last year the official residence of the subdivisional officers of Putuakhali with its out-offices was destroyed by fire, that he apprehended a recurrence of such a calamity, and that the propriety of directing the applicant to remove his bazar to a distance from the subdivisional officers' abode was under consideration, forbade the applicant (1), to erect or cause or permit to be erected within his bazar (he is the proprietor of the soil on which stand the shops and other buildings that constitute the bazar) or within the prostitute's quarter, any thatched buildings, or buildings constructed of easily combustible materials; (2), to repair and cause or permit to be repaired within the aforesaid limits, any such buildings, and enjoined him to put a stop to the creation of such buildings, which had been undertaken within such limits prior to the issue of the Deputy Magistrate's order.

"The order served on the applicant is annexed to the application for revision. It purports to have been promulgated under s. 133 Criminal Procedure Code, but in lieu of being conditional peremptorily requires compliance therewith in ten days, and threatens the applicant with pains and penalties in the event of disregard thereof. It appoints no time or place for shewing cause against it, nor does it intimate that the applicant will have an opportunity of moving a Magistrate to set it aside or modify it." The Sessions Judge then went on to say that the Deputy Magistrate had given an explanation of his proceedings, but that in such explanation he had "overlooked the one irregularity which is fatal to the validity of his order, namely, its unconditional character."

No one appeared to argue the case.

The judgment of the Court (MITTER and FIELD, JJ.) was delivered by

MITTER, J.—We agree with the Sessions Judge that the order of the Deputy Magistrate of Putuakhali, purporting to have been passed under s. 133, Criminal Procedure Code is illegal, and

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
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DHURI.

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 if 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 Permashwar 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.