APPELLATE CRIMINAL.

Before Mr. Justice Ayling and Mr. Justice Coutts Trotter.

RAMASWAMI AYYAR (SECOND ACCUSED), PETITIONER.*

1921, January 27.

Indian Penal Code (Act XLV of 1860), sec. 341—Restraint upon a drunken and disorderly person—Common Law of England—Applicability to India.

A private citizen has the right to arrest under the Common Law any person as to whom there is reasonable apprehension that he would commit a breach of the peace.

Timothy v. *Simpson*, (1835) 4 L.J. (Ex.), 81, and *Queen* v. *Light*, (1857) 27 L.J. (M.C.) 1, referred to.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment of the Court of the First-class Subdivisional Magistrate of Māyavaram in Criminal Appeal No. 21 of 1920, presented against the judgment of the Stationary Second-class Magistrate of Pāpanāsam, in Calendar Case No. 205 of 1919.

The facts are set out in the judgment.

K. S. Jayaram Ayyar for petitioner.

The Public Prosecutor for the Crown.

The Court delivered the following ORDER:

The appellant in this case has been convicted and fined for an offence under section 341, Indian Penal Code, wrongful restraint of the person. The facts appear to be these. The appellant was a Village Magistrate and on the day in question his attention was drawn to the misconduct of one Mari Goundan. Mari Goundan is described as having been very drunk. He tore the sacred thread of one of the witnesses and, subsequently, at what stage of the proceeding it is not quite clear, bit the appellant, the Village Magistrate, in the foot. Thereupon, the Village Magistrate with the help of several persons tied his hands and removed him to the police station.

The lower appellate Court took the view that there was nothing in the conduct of Mari Goundan which justified the action

* Criminal Revision Case No. 390 of 1920.

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of the appellant, on the ground that the evidence disclosed that Mari Goundan was drunk and probably disorderly, which is a non-cognizable offence. An argument has been addressed to us to show that under various Regulations of the last century, the appellant as Village Magistrate possessed powers which would enable him to effect an arrest in circumstances of this kind, apart from his position as one of the general public. In our opinion, it is very doubtful whether such Regulations giving such a power were not really repealed by Act XVII of 1862; but in any case we think that the matter is of sufficient importance to base our judgment upon a more general and wider ground and we propose to deal with the matter as if the Village Magistrate had been merely an ordinary member of the general public.

The Common Law of England on the subject seems to have become, if it was not so at the outset, reasonably free from doubt. Hale in his "Pleas of the Crown" seems a little doubtful as to how far the rights of arrest without a warrant except in cases of felony extend, but we have been referred to later passages in Hawkins' "Pleas of the Crown," Russell "On Crimes," and other standard books, which show that the Common Law rights are much wider than Lord HALE was disposed to concede. Without going into ancient authorities we may cite a passage from a judgment of PARKE, B., in *Timothy* v. *Simpson*(1), which sums up the law. After citing from Lambard, Hawkins, Hale and other text-books of authority he says:

"It is clear therefore that any person present may arrest the affrayer at the moment of the affray and detain him till his passion has cooled and his desire to break the peace has ceased, and then deliver him to a peace officer. And if that be so, what reason can there be why he may not arrest an affrayer after the actual violence is over, but whilst he shows a disposition to renew it by persisting in remaining on the spot where he has committed it. Both cases fall within the same principle, which is, that, for the sake of the preservation of the peace any individual who sees it broken may restrain the liberty of him whom he sees breaking it so long as his conduct shows that the public peace is likely to be endangered by his acts. In truth whilst those are assembled together who have committed acts of violence and the danger of their renewal continues the affray itself may be said to continue."

(1) (1835) 4 L.J. (Ex.), 81.

We have also been referred to a decision of the Court of Crown Cases Reversed in *Queen* v. *Light*(1), where a very powerful Court consisting of COCKBURN, C.J., ERLE and WILLIAMS, JJ., MARTIN and CHANNELL, BB., held that there was a power not only in a constable but in all Her Majesty's subjects to apprehend a person as to whom there is reasonable ground for supposing that he is about to commit a breach of the peace. The Common Law of England on the subject may be said to be clearly established, and there is authority in this Court in *In re Venkata Reddy*(2) for holding that the Common Law of England may be applied to India except where a Statute either expressly or by implication abro gates it. We think that the power given in this matter is one which is very essential to the orderly government of society and the preservation of the peace. No doubt the magistracy and the judiciary should jealously watch any interference with the liberty of the subject and scrutinize carefully the acts of any person who alleges that in order to preserve the peace he had to interfere with the liberty of his fellow citizen. But if that necessity is once clearly established, we think that it is not only the law, but it is extremely expedient, th at the power of interference should be upheld.

In this case we think that there was ample justification, on the facts as found, for the appellant, not as Village Magistrate but as a private citizen, to put a restraint upon this drunken and disorderly person who was not only threatening to commit a breach of the peace but was a danger to the other villagers. We, therefore, hold that the conviction and sentence must be set aside; the fine, if paid, must be refunded.

M.H.H.

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(1) (1857) 27 L.J. (M.C.), 1. (2) (1913) I.L.R., 36 Mad., 216.