

CRIMINAL MOTION.

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

IN THE MATTER OF THE PETITION OF PRAYAG SINGH AND OTHERS.
THE EMPRESS v. PRAYAG SINGH.*

1882
July 19.

Jurisdiction—Protection of Property—Criminal Procedure Code (Act X of 1872), s. 518.

A Magistrate has no jurisdiction to make an order under s. 518 of the Code of Criminal Procedure merely for the protection of property.

THIS was a motion to set aside an order of the Assistant Magistrate of Nawada, directing Prayag Singh and others to remove a bund, which they had erected across a stream called the Goukhana, and ordering that the watercourse remain open until Prayag Singh and others should establish their right to close it in the Civil Court. The matter had been referred to the Sub-Deputy Collector for investigation and report, and his statement of the facts was as follows:—"The real facts of the case are, that there is a stream called Goukhana, which, issuing from the *Chur* of Haswa, passes through Pancher, Bugoor, Bujra, Sukra, and Kuhooara, and falls into the River Dhauraje. About a chain above the boundary of the Government estate Sukra, a *pyne* from the village Mea Bigha joins on to this stream. As the *pyne* of Mea Bigha is a little higher than the bottom of the stream, it requires a deal of deepening to take a sufficient quantity of water to the village Mea Bigha. But the maliks of Mea Bigha, instead of deepening their own *pyne*, placed in September last a dam across the main stream to take the water into their *pyne*. As this dam would not allow a drop of water to go to the Government estate Sukra, and would injure the cultivation of that estate, the *tehseeldar* reported the matter to Mr. Shircore, the then Subdivisional Officer, on the 28th September last, and an order was passed on the same day directing the maliks of Mea Bigha to remove the dam at once, or to

* Criminal Motion, No. 152 of 1882, against the order of E. N. Baker, Esq., Assistant Magistrate of Nawada, dated the 4th January 1882.

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file objections if they had any. The maliks wrote in reply to the notice on the 30th September, that they would file objections within fifteen days, but they filed no objections, and the dam was cut open. They again, on the 11th December 1881, placed a dam across the main stream, and kept about a dozen of lathials to guard the dam, so that the Sukra men might not cut it open. The maliks of Mea Bigha admitted that they had placed the dam and pleaded justification alleging that the bund is a very old one, and that they have been preserving it for generations." Several witnesses were examined before the Sub-Deputy Collector, who came to the conclusion that the proprietors of Mea Bigha had no right whatever to maintain the bund. He then went on to say: "As for most of the lands so injuriously affected by the dam the ryots pay rent in money, I apprehend a serious breach of the peace if the dam is not removed. Under the circumstances I consider it essentially necessary that the defendants Prayag Singh and other maliks of Mea Bigha be directed under s. 518, Criminal Procedure Code, to cut open the dam at once, and not obstruct the main course of the stream more than a day or two in the week. The defendants may also, I think, be prosecuted under s. 430, Indian Penal Code, for causing mischief by placing a dam across the irrigation channel of Sukra, the consequence of which has been a serious damage to the agriculture of that estate."

On the strength of the Sub-Deputy Collector's investigation and report, together with a visit made by him to the place where the bund had been erected, the Assistant Magistrate made the order now sought to be quashed.

Baboo Umbica Churn Bose and Baboo Pran Nath Pundit
 for the petitioners.

The judgment of the Court (WILSON and O'KINEALY, JJ.)
 was delivered by

WILSON, J.—The order of the Assistant Magistrate must be set aside as made without jurisdiction. The order under s. 518 can only be made when it is necessary to prevent obstruction, annoyance or injury to the person or injury to human life,

health, or safety or a riot or affray. Such an order cannot be made merely for the protection of property.

In the present case, taking the Assistant Magistrate's finding at the highest, it cannot amount to more than this, that the bund in question diminishes the supply of water to the land lying at a lower level.

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Order quashed.

APPELLATE CIVIL.

Before Mr. Justice Cunningham and Mr. Justice Tottenham.

LALJEE LALL (DEFENDANT) v. HARDEY NARAIN (PLAINTIFF).'

1882
June 1.

Cause of Action—Jurisdiction—Contract—Promissory Note—Place of Performance—Code of Civil Procedure (Act X of 1877), s. 17, Illus.

Where a promissory note is executed in one district, and it is agreed that the amount of the note shall be paid in another, the Courts of the latter district have jurisdiction to entertain a suit on the note.

The illustrations to s. 17 of the Code of Civil Procedure afford no safe guide as to what is meant in the Code by the term "cause of action."

Gopi Krishna Gossami v. Nil Komul Banerjee (1), *Muhammad Abdul Kadar v. E. I. Railway Co.* (2), and *Vaughan v. Weldon* (3) followed.

IN this case the material portion of the judgment appealed from was as follows:—

"This is a suit to recover money due on a promissory note, dated the 3rd of October 1876. The defendant denies its genuineness, and contends that this Court has no jurisdiction to entertain this suit. The first point to be determined is, whether this Court has jurisdiction to entertain this suit. The facts stand thus:—The plaintiff is a banker in the district of Monghyr, where he has his principal place of business and his books of account; where he had, on other occasions, made payments for the defendant; and where, as an agent of the defendant, he paid

Appeal from Original Decree, No. 263 of 1880, against the decree of Baboo Jogesh Chunder Mitter, Officiating Second Subordinate Judge of Bangalore, dated the 31st July 1880.

(1) 13 B. L. R., 461; S. C., 22 (2) I. L. R., 1 Mad., 377.
W. R., 79. (3) L. R., 10 C. P., 48.