

tained. Both the lower Courts have substantially found that the property belonged to Moonshi, and that upon his death it devolved upon the plaintiffs. Whether, upon Moonshi's death, the property devolved upon all the three plaintiffs, or to the minor plaintiff alone, is a question which has not been, and which need not have been, gone into in the present case. That is a question which may hereafter be raised, if occasion should arise, as between the plaintiff No. 3, the minor daughter, and the plaintiffs Nos. 1 and 2, the nephews of Moonshi. We are, therefore, of opinion that the appeal should be dismissed with costs.

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Appeal dismissed.

CRIMINAL REVISION.

Before Mr. Justice Wilson and Mr. Justice Ghose.

IN THE MATTER OF THE PETITION OF DINONATH MULLICK.

DINONATH MULLICK v. GIRIJA PROSONNO MOOKERJEE.*

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August 24.

Recognizance to keep the peace—Criminal Procedure Code (Act X of 1882), s. 107—Power of District Magistrate to call on person residing in another district for security.

A Magistrate has no jurisdiction to take proceedings under s. 107 of the Criminal Procedure Code, against a person not personally within his jurisdiction. *In the matter of the petition of Jai Prokash Lal (1), and in the matter of the petition of Rajandro Chunder Roy Chowdhry (2) followed.*

Even assuming there was jurisdiction, it was not a case where the Magistrate should have called upon the petitioner to appear personally, he residing at a distance, there being no special circumstance making his personal attendance necessary, and the Magistrate having power under s. 116 to allow him to appear by a pleader.

THE petitioner Dinonath Mullick, through an agent, made an application to the Deputy Magistrate of Bongong to the effect, that, as a breach of peace was apprehended on the part of Girija Prosonno Mookerjee and his servants, on their attempt to put up by force a bund on the *khul* belonging to the petitioner, they

* Criminal Revision No. 333 of 1885, against the order of Baboo Troinkya Nath Sen, Deputy Magistrate of Bongong, dated the 3rd August 1885.

(1) I. L. R., 6 All., 26.

(2) I. L. R., 11 Cal., 737.

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might be required to enter into recognizances to keep the peace towards him. A similar application was also subsequently made on the part of Girija Prosonno Mookerjee and his men to obtain security to keep the peace towards the petitioner and his servants. The Magistrate, after calling on the police for a report, directed both parties and their respective partisans to appear before him on 6th August to show cause why they should not be bound down to keep the peace under s. 107 of the Criminal Procedure Code.

Notice was thereupon issued on the petitioner (among others) calling upon him to appear personally before the Deputy Magistrate, and to show cause why he should not be bound down to maintain peace.

On or about the 3rd or 4th of August 1885, the petitioner made an application with a medical certificate to the Deputy Magistrate that he might be excused from personally attending on the ground of illness, but that application was refused, and a warrant was issued against the petitioner for his personal attendance in the Court of the Deputy Magistrate at Bongong, under which warrant he was arrested but released on bail.

The petitioner stated that he resides at No. 81, Upper Circular Road in Calcutta, and never went to his zemindari where breach of peace was apprehended, the said zemindari being in the district of Jessore and under the management of his naib. He prayed that the proceedings of the Deputy Magistrate might be set aside, and that he might be allowed to appear by his mooktoar on the following grounds:—

(1) That the proceedings of the Deputy Magistrate at Bongong were illegal and irregular.

(2) That the order of the Magistrate under the circumstances of the present case directing his personal attendance was illegal and unjust.

(3) That under section 107 of the Criminal Procedure Code a Magistrate has no jurisdiction to issue process on a person not residing within the limits of the district.

Mr. Pugh, and Baboo Baidonath Dutt, for the petitioner.

Mr. Pugh for the petitioner, contended that under s. 107 of the Criminal Procedure Code the Magistrate had no jurisdiction to issue process on a person not residing within the limits of

his jurisdiction, and cited *In the matter of Jai Prakash Lal* (1), and *In the matter of the petition of Rajendro Chunder Roy Chowdry* (2).

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The judgment of the Court (WILSON and GHOSE, JJ.) was as follows :—

WILSON, J.—The petitioner in this case is Baboo Dinonath Mullick. He has obtained a rule to show cause why certain proceedings taken by the Deputy Magistrate of Bongong, under s. 107 and the following sections of the Criminal Procedure Code, should not be set aside so far as they affect the petitioner. The principal ground on which it is contended that those proceedings are illegal is this: it is said that under s. 107, the Deputy Magistrate had no jurisdiction to take such proceedings against a person who was not in any sense personally within the jurisdiction of that Deputy Magistrate.

The construction of the section taken by itself may not be wholly free from doubt. It is not very clearly worded: and it might perhaps be capable of two constructions. It might perhaps be read as meaning that where a Magistrate receives information that any person, wherever that person may be, is likely to commit a breach of the peace within the local limits of such Magistrate's jurisdiction, he may take proceedings. On the other hand the jurisdiction of the Magistrate is ordinarily confined within local limits, and this is a personal jurisdiction, that is to say, not a jurisdiction for punishing offences, but a jurisdiction for restraining persons from committing offences. It may well be said that the section should be read, with reference to that primary rule, that the Magistrate's jurisdiction is local; and that the words, "where a Magistrate receives information that any person is likely to commit a breach of the peace within the local limits of his jurisdiction," apply only to any person subject to his jurisdiction. Speaking for myself personally I should from the words themselves alone be disposed to think that the narrower construction of the words is the correct one. It is, we think, certainly the one most in accordance with convenience. The wider construction would empower any Magistrate in any part of India, who receives an *ex-parte* information that a breach of the peace is likely to be committed within his jurisdiction by

(1) I. L. R., 6 All., 26.

(2) I. L. R., 11 Calc., 737.

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any person in any part of India, to require the attendance of that person from any part of India in his Court. That would be a very great hardship and a wholly unnecessary hardship, because the last part of the section provides that, whenever a breach of the peace is likely to be committed proceedings may be taken against any person in the district in which he is. Considerations of convenience therefore are in favour of the narrower construction.

The authorities also support that view. We have been referred to two cases: the first case is *In the matter of the petition of Jai Prakash Lal* (1) in which the point was considered by a Full Bench of the Allahabad Court, and they came to the conclusion that the Magistrate has no jurisdiction to take such proceedings against a person who is not within the local limits of his jurisdiction. The same question appears to have been considered by a Division Bench of this Court in a case for revision under section 435, Code of Criminal Procedure, *In the matter of the petition of Rajendro Chunder Roy Chowdhry* (2), and the same construction appears to have been put upon the section. We think it right to follow these decisions. On that ground in our judgment the whole of the proceedings, so far as they affect Baboo Dinonath Mullick, are without jurisdiction and must be set aside.

We think it right to add that had we come to the conclusion that there was jurisdiction, we should still be of opinion that that jurisdiction had not been judiciously exercised. We can find no sufficient materials before the Deputy Magistrate tending to involve Baboo Dinonath Mullick himself in any matter pointing to a breach of the peace. Therefore proceedings ought not to have been taken against him.

Further, having regard to the fact that the person against whom proceedings were taken was at a distance, and that there was no special circumstance making his personal attendance necessary, it appears to us that it would have been a very unwise exercise of jurisdiction to require him to appear personally, seeing that the Magistrate had power under section 116 to allow him to appear by a pleader.

The whole of the proceedings of the Deputy Magistrate will be set aside so far as they affect the petitioner.

Proceedings set aside.