

1895

R. WALL
v.
J. E. HOW-
ARD.

it was open to the appellants to continue them against the representatives of the deceased. We were referred to no precedent in support of this view, and such a view appears to us to be in direct contravention of the letter and spirit of section 214. But it was argued that if this was the interpretation to be placed upon the explanation in question, at any rate there was a right of appeal, so far as that part of the order is concerned, which directs that costs be paid by the appellants to the deceased H. C. Mann; and that, if this order as to costs was illegal, their recovery could be claimed and enforced against the representatives of the said H. C. Mann. We do not see how this part of the order can be divorced from the rest of the order. The order, as a whole, was passed in proceedings taken under section 214. It cannot be enforced either in whole or in part against the representatives of the deceased except by a proceeding which can only be taken under or in pursuance of the proceedings already taken under s. 214. Any attempt to take such proceedings would be an attempt to take them against persons over whom the law has thrown a shield. The effect and tenor of section 214 has been fully discussed in this Court in other proceedings, and in the judgment passed in those proceedings we fully concur. They explain, what in fact section 214 puts in more concise language, the nature and object of this section; and we are satisfied that it is a section which provides special remedies differing from all other legal proceedings. We dismiss the application with costs.

Application dismissed.

REVISIONAL CRIMINAL.

1895

December 12.

Before Sir John Edge, Kt., Chief Justice.

QUEEN-EMPRESS v. KHUSHALI RAM AND OTHERS.

Criminal Procedure Code, sections 133, 135, 138, 139—Order for removal of obstruction—Appointment of jury to consider the reasonableness of such order—Procedure.

One K. R., having been ordered by a Magistrate under section 133 of the Code of Criminal Procedure to remove an alleged obstruction, applied for a jury. Five jurors were chosen, who, having examined the place in dispute, proceeded without consultation to deliver separate and independent opinions. The verdict of the

majority was in favor of upholding the Magistrate's order. The Magistrate however discharged his order.

On reference by the Sessions Judge under section 438 of the Code, it was *held* that the last order of the Magistrate should be set aside and the case remanded for consideration by a fresh jury.

THE facts of the case sufficiently appear from the order of Edge, C.J.

Mr. D. N. Banerji for the opposite parties.

EDGE, C. J.—A Magistrate, acting under section 133 of Act No. X of 1882, made an order on Khushali Ram and others to remove an alleged unlawful obstruction or to appear at a time and place fixed by the order and move to have the order set aside or modified under section 135. The persons against whom the order was made applied to the Magistrate to appoint a jury. The Magistrate proceeded in accordance with section 138, and a jury was summoned. The jurors, five in number, appear to have gone to the *locus in quo* and then individually to have made up their minds without any discussion of the question. The two jurors and the foreman appointed by the Magistrate found that the order of the Magistrate to abate the nuisance was reasonable. The two nominated by Khushali and his companions found against the Magistrate's order. The Magistrate thereupon, under section 139, discharged the order, so far as I can see. He says that he kept the question open. But what he did appears in law to have been a discharging of the order. The majority of the jury having found that the order was a reasonable one, I fail to see how the Magistrate could discharge the order. The jury should have consulted together and not acted like partisans; and if they required evidence, evidence should have been produced before them. It was for the Magistrate to show by evidence that the obstruction referred to was an unlawful obstruction of a public way or in a public place. I set aside the proceedings subsequent to the application made under section 135 of Act No. X of 1882, and direct the Magistrate of the district to cause a jury to be summoned in accordance with section 138 and to cause the question involved to be tried.

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QUEEN EM-
PRESS.
v.
KHUSHALI
RAM.