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to the facts found by the lower courts. In the result I dismiss the application in revision.

Before Mr. Justice Bennet.

RAI TODAR MAL AND ANOTHER *v.* HARDEO TIWARI.*

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Criminal Procedure Code, sections 146, 147 *and* 539B—*Dispute relating to right of user of a tank—Imminent danger of breach of the peace not a requisite— Police report on which proceedings under section* 147 *are initiated need not be proved—Local inspection—Omission to make a memorandum—Irregularity not vitiating trial.*

Where a Magistrate initiates proceedings under section 147 of the Criminal Procedure Code upon a police report, it is not necessary to call the police officer to give evidence in regard to the correctness of his report.

Non-compliance with the direction in section 539B of the Criminal Procedure Code to make a memorandum of a local inspection made by a Judge or Magistrate does not vitiate the trial or inquiry.

The provisions of chapter XII of the Criminal Procedure Code are intended to provide a speedy remedy in cases of disputes with which that chapter deals, in order that the matter may be settled temporarily while more lengthy civil proceedings take place. It is not the law that action under that chapter against a party is not justified unless it is shown that the breach of the peace is imminent and that the opposite party has not sufficient time to go to the proper civil court.

Messrs. *Kumuda Prasad* and *Mansur Alam*, for the applicants.

Messrs. *Panna Lal* and *Haripal Varshni*, for the opposite party.

BENNET, J. :—This is a reference by the learned Sessions Judge of Benares recommending that the order passed under section 147 of the Code of Criminal Procedure by a Magistrate should be set aside. The learned Sessions Judge gives three grounds under which he considers the order was invalid. The first

*Criminal Reference No. 433 of 1930.

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ground was that no service of a copy of the preliminary order was made on the applicants in revision. The Magistrate in his explanation points out that a copy of the preliminary order was served on the two applicants in revision, and it is admitted by the learned counsel for the applicants that this is correct. The second ground is that the Magistrate relied on a police report without having that report proved by the police officer who made it. The learned Sessions Judge is apparently unaware of the procedure under section 147 of the Code of Criminal Procedure. Section 147(1) lays down that whenever a Magistrate is satisfied from a police report or from information that a dispute likely to cause a breach of the peace exists regarding any alleged right of user of any land or water, etc., he makes an order in writing and requires the parties to put in written statements and thereafter he holds an inquiry. The only use that the Magistrate has made of the police report is the use contemplated by this section, and accordingly it was not necessary for him to call on the police officer to give evidence in regard to the correctness of his report. The third ground on which the learned Sessions Judge relies is that although the Magistrate made a local inspection he did not make a memorandum of that local inspection as required by section 539 B of the Code of Criminal Procedure. This the Magistrate admits, but he points out that all that he saw on his local inspection was that there was a pond on a certain number, and that matter is hardly a matter requiring a memorandum. The order of the Magistrate extends to eight pages and there are only seven lines in which he referred to what he saw on his local inspection. Accordingly it is clear that the order of the Magistrate was based on evidence in the case and not on what he saw on his local inspection. The learned Sessions Judge

refers to a ruling in *Hriday Govinda* v. *Emperor* (1) in which it was held that a memorandum of a local inspection was mandatory, but it has been held in the later ruling of the Calcutta High Court in *Forbes* v. *Ali Haidar Khan* (2) and also in *Bhola Nath Nandi* v. *Kedar Nandi* (3) and in *Khushal Jeram* v. *Emperor* (4) and in *Tan Kyi Lin* v. *King-Emperor* (5) that non-compliance with the direction in section 539 B of the Code of Criminal Procedure to make a memorandum of an inspection does not vitiate the trial. In the ruling of this High Court mentioned by the learned Sessions Judge, *Tirkha* v. *Nanak* (6), it was merely held that the section required a memorandum to be made, but it was not held that the mere absence of a memorandum would vitiate the trial or inquiry. Accordingly I consider that the absence of a memorandum of a local inspection did not render a trial or inquiry illegal.

Two other points were urged by the learned Sessions Judge for the applicants in revision, firstly that unless it is shown that the breach of the peace is imminent and that the opposite party has not sufficient time to go to the proper court, action under chapter XII of the Criminal Procedure Code is not justified. There is nothing in chapter XII or in section 146 which states that the danger of a breach of the peace should be imminent. In fact no case could ever be made legal under that chapter if it was necessary that it should be impossible to have sufficient time to go to the proper court, because obviously it is always as easy to file a plaint in a civil court as to file a complaint in a criminal court. The provisions of chapter XII are intended to provide a speedy remedy in cases of disputes with which that chapter deals, in order that the matter may be settled temporarily while more

(1) (1924) I.L.R., 52 Cal., 148.
(2) (1925) I.L.R., 53 Cal., 46.
(3) A.I.R., 1925 Cal., 353.
(4) (1926) I.L.R., 50 Bom., 680.
(5) A.I.R., 1926 Rang., 193.
(6) (1927) I.L.R., 49 All., 475.

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lengthy civil proceedings take place. The remaining ground urged by the learned counsel was that there was no finding of the Magistrate under section 147(2), proviso. Irrigation from this tank is a matter which is exercisable at particular seasons and therefore the section requires that an order should not be passed unless the right had been exercised on the last season preceding the date of institution. I find that the first witness for the applicant to the Magistrate states that from all time irrigation has gone on from this tank and other witnesses give similar evidence. The Magistrate on this evidence in his order states "that water accumulates in this tank No. 410 and this water is used for irrigating a number of fields in the village". This shows that the case before the Magistrate was that the tank was used in previous seasons by the applicants and that those applicants in the present season were prevented from making a similar use of the tank for irrigation by the opposite party. I consider that there is nothing in any of these grounds of reference or revision. Accordingly I refuse the reference and uphold the order of the Magistrate.

Before Mr. Justice Bennet.

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EMPEROR *v.* SUNDAR TELI.*

Criminal Procedure Code, section 260—*Summary trial—Jurisdiction—Prosecution launched not on complaint but on police report—Report to police of offence not triable summarily—Police prosecuting on lesser charge, triable summarily.*

A shopkeeper made a report to the police of theft from his shop of several things, the total value of which was above Rs. 50. He did not make any complaint to a Magistrate. The police, after investigation, discovered part of the stolen property with the accused person and prosecuted him in respect of it, which was less than Rs. 50 in value. The case was therefore tried summarily. The shopkeeper, who was

*Criminal Reference No. 552 of 1930.