APPELLATE CRIMINAL.

Before Mr. Justice Doyle.

1927

Jan. 15.

MAUNG PU

v.

MAUNG CHIT PYU.*

Criminal Procedure Code (Act V of 1898), section 145—Omission by magistrate to record in writing his reasons for believing that dispute would lead to breach of peace, whether a material illegality.

Held, that the omission of a magistrate to state the grounds in his initial order that he is satisfied of the existence of a dispute likely to cause a breach of the peace, as stated in section 145 of the Criminal Procedure Code, is not such an illegality as to vitiate the whole proceedings, provided grounds for such belief do exist and the enquiry by the magistrate has been duly made.

Subramanian Aiyar v. *King-Emperor*, 25 Mad. 61 ; *V. M. Abdul Rahman* v. *King-Emperor*, 5 Ran. 53—*referred to.*

DOYLE, J.—Maung Chit Pyu, an old gentleman of 78, launched a complaint to the effect that, as the result of a dispute, Maung Pu was forcibly reaping his crops, and that, when he himself attempted to reap, Maung Pu had threatened to beat him, with the result that he was unable to plough his land, and, as he was afraid of a serious altercation over the disputed land, he requested that action might be taken under section 145 of the Criminal Procedure Code.

The Subdivisional Magistrate of Meiktila, after examining Maung Chit Pyu, issued a notice to Maung Pu and proceeded to take evidence.

The evidence of Maung Chit Pyu was to the effect that in 1287 B.E. after he had planted Indian corn, Maung Pu forcibly reaped the corn planted, he was prosecuted for theft and acquitted in Criminal Regular

* Criminal Revision No. 1516B of 1926 from the order of the Subdivisional Magistrate of Meiktila in Criminal Miscellaneous Case No. 118 of 1926.

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Trial No. 117 of 1925 of the Court of the Second Additional Magistrate of Meiktila. Maung Chit Pyu afterwards ploughed the land and planted sessamum and Indian corn; he in turn was consequently prosecuted for mischief in the Court of the Second Additional Magistrate, Meiktila, in Criminal Regular Trial No. 69 of 1926, but he won the case. There was a prior case—Criminal Regular Trial No. 116 of 1925—in which Maung Pu had filed a complaint against him, but the case was dismissed without issuing summons to him. He stated that, when he went to reap the corn, Maung Pu, with many men armed with sticks, *das* and weapons, threatened him, so that he was unable to reap the corn.

Maung San Nyein (P.W. 3), the headman testified that Maung Chit Pyu had reported to him that Maung Pu was forcibly reaping his crops and had threatened to beat him; the headman personally went to Maung Pu and remonstrated with him, but Maung Pu replied that he owned the land, that he was entitled to it, and that he would reap the crops, several witnesses testified that Maung Pu had reaped the corn sown by Chit Pyu.

The remainder of the evidence, both on behalf of Maung Chit Pyu and Maung Pu, who himself did not go into the witness box, was with a view to proving who actually worked the land. The Subdivisional Magistrate decided that, as they had been both ploughing the land simultaneously by force, it was probable that there would be a serious altercation, and that they would come to blows, and passed an order under section 145 of the Criminal Procedure Code giving possession to Maung Chit Pyu.

The Sessions Judge of Meiktila was moved in revision by Maung Pu and has submitted the proceedings to this Court with the recommendation that

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the order of the Subdivisional Magistrate be set aside.

The learned Sessions Judge recommended that the order should be set aside on the ground that the Subdivisional Magistrate, before ordering the parties to put in their claims, had not recorded in writing his reasons for believing that a dispute likely to cause a breach of the peace existed. He has also held that, beyond an unsupported statement by Maung Chit Pyu that Maung Pu came with sticks and *das*, "there is absolutely nothing to show that any breach of the peace has been or is likely to be committed."

Section 145 of the Criminal Procedure Code is a mandatory order that, if a Magistrate has reason to believe that a dispute as to land is likely to lead to a breach of the peace, he is bound to take action to prevent such a breach arising by placing one or other of the parties in possession and forbidding the other the disturbance of such possession. There have in the past been conflicting decisions as to whether the omission of the Magistrate to record the grounds on which he considers an enquiry should be instituted, results in his subsequent proceedings being void as without jurisdiction. It is only right and proper in order to avoid hasty action that a Magistrate should be required to state the grounds of his belief as to the necessity for an enquiry. It would *primâ facie* appear to be absurd where an enquiry proves that there is a dispute which may lead to bloodshed, and where a Magistrate has taken effective steps under this section to abate temporarily the cause of dispute, that his order should be capable of being set aside, thereby reviving the conditions he is specifically ordered to remedy, merely because he omitted to put in writing the grounds which had caused him so to act. The former view of the jurisdiction was, however,

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based on a mistaken interpretation of *Subramanian Aiyar* v. *King-Emperor* (1). The Privy Council, approving the judgment of this Court in *V. M. Abdul Rahman* v. *King-Emperor* (2) has recently decided that disobedience of a mandatory and directory order does not, as a general rule, render proceedings null and void unless it can be proved that injustice has been done to any party as a result of that omission.

It cannot be said that, in the present case, any injustice resulted. The enquiry appears to have been carried out by the Subdivisional Magistrate with considerable thoroughness and it has not been alleged that either of the parties was prevented from producing evidence in support of their claims. So far as the legal aspect is concerned, there is therefore no cause for interference.

As regards facts, it is undoubted that the parties have been ploughing and over-ploughing the land in question, and that there has been forcible taking of the crops. This is a form of action that in all countries in the world is notoriously liable to lead to a breach of the peace. "Cursed be he who moveth his neighbour's land mark". The fact that each party has been ineffectually to the law Courts far from being an argument in favour of the probability of future peace justifies the inference that, the legal measures having proved ineffectual, more summary methods would be recorded to.

There is a definite statement by Maung Chit Pyu that he was threatened with physical force when he endeavoured to enforce claims which he believed to be legitimate. This statement is, to a certain extent, corroborated by the evidence of the headman that

(1) (1901) 25 Mad. 61. (2) (1927) 5 Ran. 53.

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he actually remonstrated with Maung Pu. The Subdivisional Magistrate who tried the case, has believed the evidence of Maung Chit Pyu, which is in accordance with the probabilities suggested by the circumstantial evidence.

Under these circumstances, this Court, in revision, does not consider that there are sufficient grounds for dissenting from his finding of fact.

The proceedings will be returned with these remarks.

APPELLATE CIVIL.

Before Sir Guy Rutledge, Kt., K.C., Chief Justice, and Mr. Justice Brown.

1927

Jan. 18.

THE BURMA OIL Co., LTD.
v.
U PO NAING.*

"Oil" whether includes "oil-gas" in Government grant—Ownership in oil-gas—Indian Petroleum Act (VIII of 1899), section 2—Upper Burma Oil Fields Regulation No. VI of 1910—Burma Oil Fields Act (Burma Act I of 1910), section 2.

Held, that a grant from Government to win, get and dispose of earth-oil from a well site does not entitle the grantee to the natural gases exuding from the well and they remain the property of Government. The grantee cannot therefore claim any compensation from his lessee of the oil-well site for the use by the lessee of them oil-gas which the grantee does not own. "Oil" as defined in the Indian Petroleum Act and in the Upper Burma Oil Fields Regulation No. VI of 1910 does not include oil-gas; and whilst the definition of "oil" includes "oil-gas" in the Burma Oil Fields Act, 1918, that Act does not purport to enlarge any grant made by Government previous to the date of the Act.

Burnard-Argue-Roth-Stearn's Oil and Gas Company, Limited and others v. *A. Farquharson*, [1912] A.C. [illegible] *referred to.*

McDonald and *Paget*—for the Appellants.
Kyaw Din—for the Respondent.

RUTLEDGE, C.J. AND BROWN, J.—This is an appeal from the judgment of this Court on the Original Side

* Civil First Appeal No. 209 of 1926 from the judgment of the Original Side in Civil Regular Suit No. 75 of 1926.