

Criminal Procedure Code, under which the Magistrate would have been empowered to put the present petitioners in possession of the whole of A, he had no power to make an order that they should have a right of way over a part of A which order could only be made under section 147. It appears to us that that is far too technical a view to take of the case. The Magistrate might well have altered the proceedings and elected to proceed under section 147, Criminal Procedure Code. But apart from that it seems to us that the greater includes the less, and that as the Magistrate had power to put the petitioners in possession of a certain portion of A, so as to enable them to go to B, he was also empowered to give them a lesser right, namely, to pass over that strip between D and E in order to get to their land B. We, therefore, restore the original order of the Magistrate, treating it as being made under section 147, Criminal Procedure Code.

1924.

 AMARSANG,
In re.

Rule made absolute.

R. R.

 PRIVY COUNCIL.

RUSTOM *v.* KING-EMPEROR.

J. C.*

RANDHIR SINGH *v.* KING-EMPEROR.

1923.

[Petitions for Special Leave to Appeal from the High Court of Allahabad.]

TABA SINGH *v.* KING-EMPEROR.

November 14.

KHUDA BAKSH *v.* KING-EMPEROR.

J. C.†

[Petitions for Special Leave to Appeal from the High Court of Lahore.]

1924.

Privy Council—Criminal appeals—Practice.

February 6.

It ought to be understood very clearly in India that there is not a chance of the Judicial Committee turning itself into a mere Court of Criminal Appeal.

* *Present.*—Viscount Haldane, Lord Dunedin, Lord Carson, Sir John Edge and Sir Lawrence Jenkins.

† *Present.*—Lord Buckmaster, Lord Dunedin and Lord Atkinson.

1923.

 RUSTOM
 v.
 KING-
 EMPEROR.

Per LORD BUCKMASTER :—"The responsibility for the administration of criminal justice in India this Board will neither accept nor share, unless there has been some violation of the principles of justice or some disregard of legal principles.....They cannot but regret that those who are connected with the legal profession in India should have so completely disregarded those injunctions that their Lordships have so often laid down."

1924.

 TABA SINGH
 v.
 KING-
 EMPEROR.

PETITIONS for special leave to appeal to the Privy Council.

The actual facts of the cases are immaterial for the purposes of this report, it being sufficient to state that, in each case, the appeal turned on a pure question of fact and appreciation of evidence.

RUSTOM v. KING-EMPEROR.

RANDHIR v. KING-EMPEROR.

Dunne, K. C., with *A. D. C. Jackson*, appeared for the petitioners.

Kenworthy Brown, appeared for the Crown.

At the conclusion of the hearing, the following observations were made :—

LORD DUNEDIN :—Mr. Dunne, I should like to say this, if the President does not object to my saying it. I have now, since I have been here a good long time, sat in a great many of these cases, and, I may be wrong, but I do not remember any attempt so glaringly made, as in these two cases of yours, to bring up a question of mere evidence. Of course, I can quite understand that a man who is going to be hanged clings to any straw, and I can still more understand that you only do your duty in putting forward what you have done ; but I do think that it ought to be very clearly understood in India that there is not a chance of our turning ourselves into a mere Court of Criminal Appeal, and we could not take up these two cases which we have seen today without turning ourselves into a Court of Criminal Appeal.

Dunne :—No, my Lord. The difficulty, if I may say so here, is one that one keenly feels oneself. You may be perfectly satisfied, in these cases, my Lord, that when the papers first came the solicitors in this case sent out word to say that the cases were hopeless. They went before counsel; counsel said that they were hopeless, and that went out to India. Ultimately, the matter came at the last stage here, for the purpose of an application, and upon that, express information was given to the clients in India that it was perfectly hopeless to apply here, and in spite of that, my Lords, the instructions come back to put the matter before your Lordships. What is one to do in the face of that?

VISCOUNT HALDANE :—We are dealing with the East. It is very desirable that what Lord Dunedin has said should be well understood all over India. As for preventing people from appealing to the King-Emperor, we are dealing with the East, and they have a constitutional right to present their petitions for leave to appeal and get us to dispose of them; but it is an idle form when it is a question of evidence. The sooner they understand, the better.

Dunne :—I do not know if the matter can be reported, or whether your Lordships can send a communication to the Courts of India; but I am afraid, however, much it is done, the last straw they will attempt to clutch at, and we are so far away that no personal influence of anybody advising them can be brought to bear upon them.

VISCOUNT HALDANE :—We are dealing with the East. The fact that they have a constitutional right of appeal to the King-Emperor is enough for them, without going into the merits.

1923.

 RUSTOM
v.
KING-
EMPEROR.

1924.

 TABA SINGH
v.
KING-
EMPEROR.

1923.

TABA SINGH V. KING-EMPEROR.

 RUSTOM
 v.
 KING-
 EMPEROR.

Percival Clarke, appeared for the petitioner.

Kenworthy Brown, for the Crown.

1924.

At the conclusion of the hearing, the judgment of the Board was delivered by

 TABA SINGH
 v.
 KING-
 EMPEROR.

LORD BUCKMASTER :—Their Lordships are quite unable to grant the leave asked for in this case.

Counsel who has appeared before their Lordships has done his clear duty of placing before this Board such facts as appear to him relevant to obtain the success of this appeal. But their Lordships must express their regret that the pains that they have taken to make clear the rules upon which this Board will proceed in considering questions relating to Criminal appeals should have been so widely misunderstood or so wholly ignored as to have permitted the presentation of the petition in this case.

The responsibility for the administration of criminal justice in India this Board will neither accept nor share, unless there has been some violation of the principles of justice or some disregard of legal principles; this Board will not consider appeals brought from the Criminal jurisdiction in the Province of India.

They cannot but regret that those who are connected with the legal profession in India should have so completely disregarded those injunctions that their Lordships have so often laid down. It is a grievous thing to think of the distress and the anxiety which must be caused to the relations and friends of the condemned man by holding out to them vain and illusive hopes that the penalty which has been inflicted can be mitigated or reversed by this Board, except in the special circumstances to which I have referred.

KHUDA BAKSH v. KING-EMPEROR.

1923.

Majid, appeared for the petitioner, and was stopped in his argument.

RUSTOM
v.
KING-
EMPEROR.

Kenworthy Brown, for the Crown.

LORD BUCKMASTER :—That has nothing to do with the ground on which we proceed.

1924.

Majid :—If your Lordships take that view it would be impossible for me to argue it.

TABA SINGH
v.
KING-
EMPEROR.

LORD BUCKMASTER :—I take that view, and on behalf of the Board I assert it now, in order that it may not be thought that the Board will depart from its principles, that we deprecate the presentation of such a petition as this and the last one we have just heard.

I desire to repeat with emphasis the statements I made just now, and to regret greatly that the necessities and troubles of the relations and friends of a man under sentence in India should be used by careless or ignorant legal practitioners for the purpose of extorting from them money for a hopeless appeal.

Leave refused.

K. McI. K.

PRIVY COUNCIL.

RAMJIWAN NIVETIA (DEPENDANT), APPELLANT v. H. BHIKAJI & Co.
(PLAINTIFFS), RESPONDENTS^o.

J. C.^o

[On Appeal from the High Court of Judicature at Bombay.]

1924.

Sale of goods—Bales of cloth bearing certain numbers—Tender of bales bearing different numbers—Significance of numbers as regards quality or description.

February 1.

^o Present :—Lord Atkinson, Lord Wrenbury and Lord Phillimore.