[APPELLATE CIVIL.

Before Mr. Justice L. S. *Jackson and Mr Justice Macpherson.*

THE COLLECTOR OF HOOGHLY, ON BEHALF OF GOVERNMENT, AND BABOO ISWAR CHANDRA MITTER (TWO OF THE DEFENDANTS) *v.* TARAK NATH MUKHOPADHYA (PLAINTIFF).* 1871 *June* 16.

Magistrate, Liability of—Criminal Procedure Code, (Act XXV of 1861), *Chap. XX—Act XVIII of* 1850—*Damages.*

The plaintiff sued a Magistrate for damages occasioned to him by the cutting of his *bund* at the Magistrate's order. The lower Appellate Court found as a fact that the Magistrate proceeded under Chapter XX of the Criminal Procedure Code, that he called on the plaintiff to show cause, and did hold an enquiry through the police. The High Court, in special appeal, accepting the facts as found by the lower Court, *held*, that the Magistrate was acting judicially and with jurisdiction (though, under the circumstances disclosed, carelessly and irregularly), and was therefore protected from an action for damages. See also 14 B.LR. 263.

A proceeding under Chapter XX of the Criminal Procedure Code, if regular and such as the law prescribes, is a judicial proceeding; but a Magistrate does not act legally under it, if he does not first call on the person with whose property he proposes to interfere to appear and show cause.

THIS was an application, on behalf of Government, for a review judgment delivered by this Court on the 5th of January 1870 (1). The grounds on which a review was sought were several; but the following two only were held to be admissible for argument, the points involved in the others having been already argued and determined at the hearing of the special appeal:—

1. Whether a Magistrate who acts irregularly and illegally within his jurisdiction is protected from a civil action for damages?

2. Was the Deputy Magistrate in this case acting judicially and within his jurisdiction?

* Application for Review, No, 44 of 1870, of the judgment of Mr. Justice L. S. Jackson and Mr. Justice Macpherson, dated 5th January 1870, in Special Appeal No. 1911 of 1869.

(1) 4 B. L. R., A. C., 37.

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Mr. *Bell*, Legal Remembrancer (with him Baboo *Annada Prasad Banerjee*) for the applicants, contended that Magistrates were protected from actions for things done within their jurisdiction, though erroneously or irregularly done, and, in support of it, cited *Calder* v. *Halket* (1). That case turned upon the construction of 21 Geo. III, c. 70, s. 24 (2). [JACKSON, J.—But in *Gasper* v. *Mytton* (3) the Magistrate was cast in damages.] That case turned upon a different point. Mytton made the arrest not as a Magistrate but as a Justice of the Peace, and as no formal complaint upon oath had been made before him, it was held that he had no jurisdiction. In the case of *Government* v. *Brijsoondree Dassee* (4), it was expressly declared that the official acts of Magistrates were exempt from the jurisdiction of the Courts; and the protection which these decisions threw around the Magistrate was confirmed and enlarged by Act XVIII of 1850. In *Garnet* v. *Ferrand* (5), a Coroner had turned the plaintiff out of the room in which an inquest was being held, and the plaintiff thereupon brought an action against the Coroner for trespass and assault. But Lord Tenterden held that no action would lie. "We are," he says, "unanimously of opinion that the plaintiff would have no right of civil action against the Coroner, even though he had the right of being present at the proceedings, and had been wrongfully disturbed in the exercise of it by the Coroner. The Court of the Coroner is a Court of Record; of which the Coroner is Judge; and it has been decided that a civil action will not lie against a Judge for an act done by him in his official character." The immunity of Judges from civil actions was also admitted by the late Supreme Court in *Moulvie Ally Kureem* v. *Sandys* (6). In this case the

(1) 2 Moore's I. A., 233.

(2) 21 *Geo III, c.* 70, *s.* 24.—"And whereas it is reasonable to render the Provinical Magistrate's as well natives as British subjects, more safe in the execution of their office; Be it enacted that no action for wrong or injury shall lie in the Supreme Court against any person whatsoever exercising a judicial office in the Country Courts for any judgment, decree, or order of the said Court, nor against any person for any act done by or in virtue of the order of the said Court."

(3) Taylor's Rep., 291.

(4) S. D. A., 1848, 456.

(5) 5 L. J. (O. S.), K. B., 221; 6 B. & C., 611.

(6) 1 Boul. Rep., 1.

defendant, who was a Mofussil Judge, was sued for libel in consequence of a report which he made to the Sudder Court regarding the plaintiff. The Court, however, held that the defendant as a Judge was protected from a civil action. "The authorities," said Colvile, C.J., 'show that the Judge's immunity from action in respect of words spoken is far wider than the real necessity of the particular case requires; that it exists even when it is abused in a degree that it would justify the removal of the Judge. The case of *The King* v. *Skinner* (1) is a strong instance of this. There the Judge had no power to command the grand jury to exercise their functions in the way agreeable to him: still less to use the gross and indecent language by which he rebuked their disobedience of what he was pleased to call his command. Yet Lord Mansfield lays down broadly that the words being spoken in office, he could not be put to answer civilly or criminally for them, and this probably is but a deduction from the principle that, for what is done within his jurisdiction, though irregularly and improperly done, a Judge shall not be liable in action." As to what is meant by acting judicially, and who are judicial officers, *Tozer* v. *Child* (2) may be referred to. In that case the defendant was a churchwaren, and refused to permit the plaintiff to vote as a vestryman, on the ground that he had not paid a church rate. It afterwards appeared that the church rate was an illegal one, and that the plaintiff's vote had been wrongfully rejected, and an action was thereupon brought against the defendant for having injured the plaintiff by illegally rejecting his vote. But the Court of King's Bench held that the action would not lie:—"I remember," said Cresswell, J., "a case in which Lord Tenterden declared that a Judge should be free in thought and independent in judgment. Here the defendants may not be Judges, but they are *quasi* Judges. They had to exercise an opinion upon the matter whether the plaintiff was entitled to vote or not. Having decided against the plaintiff without malice or any improper motive, it would be monstrous to subject them to an action. A man could never preside safely at a poll if in every case where

(1) Lofft., 55. (2) 26 L. J., Q. B., 151.

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he decided wrongly in rejecting a vote he would be subjected to an action." The case of *Barnardiston* v. *Soame* (1) is to the same effect. And the principle laid down in these decisions is this, that where the law imposes a duty upon an officer, a duty which requires the exercise of judgment and discretion, that officer, *quoad* that duty, is a Judge. This is clearly laid down in *Ferguson* v. *The Earl of Kinnoull* (2), *Kemp* v. *Neville* (3); and the case brought by the inhabitants of Mahalingpore against Colonel Anderson, the Political Agent of Modhool, decided at Bombay by Mr. Justice Bayley, (4) may also be referred to.

(1) 6 Howell's State Trials, 1095.
(2) 9 Cl. & F., 311.
(3) 31 L. J., C. P., 158.
(4) *Before Mr. Justice Bayley.*

INHABITANTS OF MAHALINGPORE v. ANDERSON.

THE following judgment was reported in *Times of India* of 28th April 1870:—

BAYLEY, J.—The plaint in this suit was presented to me in chambers on the 19th instant by Mr. Anstey, who called my attention to the question of jurisdiction, and cited some authorities for the purpose of showing that this Court might receive the plaint in its extraordinary original civil jurisdiction.

I shall consider, first, whether the plaint discloses any cause of action; and, secondly, whether this Court has jurisdiction to receive it.

The plaintiffs two in number, state in paragraph 1 that they are inhabitants of Mahalingpore, a village in the territories of the Chief of Moodhool; that they are Hindoos and belong to a caste called "Kurwin Setti;" that the said caste of the plaintiffs consists of 300 families or thereabouts, and numbers about 3,000 souls, all or the greater part of whom reside in the said village of Mahalingpore; that the plaintiffs are the heads of, or principal persons in the said families, and are acknowleged as the leading persons in the said caste; and they submit that for the purposes of the present suit they sufficiently represent the members of the said caste residents of the aforesaid village.

In the second paragraph of the plaint they estate that the defendant, at the time of the committal by him of the wrongful acts thereinafter complained of, was and still is Political Agent at the Court of the said Chief of Modhool, and as such then was, and now is entrusted with, and in fact then exercised and still exercises, exclusive civil jurisdiction throughout the territories of the said Chief and amongst other places in the aforsaid village of Mahalingpore; that the Court of the defendant wherein he exercises such jurisdiction as aforesaid is a Court subject to the superintendence of the High Court of Judicature of Bombay. (The learned Judge stated the rest of the plaint, and then proceeded.)

The plaint prays that Colonel Anderson may be ordered to pay Rs. 5,000 damages in respect of each or any cause of action, and it also prays for an injunction.

It is charged against Colonel Anderson, first, that on receiving the