

*Before Sir Richard Couch, Kl. Chief Justice, and Mr. Justice Kemp.*

MEECHOO CHUNDER SARCAR AND OTHERS (PLAINTIFF) v. J. H. RAVENSHAW, MAGISTRATE OF DINAGEPORE (DEFENDANT).\*

1873  
April 18

*Removal of a House by Order of Magistrate—Suit for Possession and for Damages—Jurisdiction of Civil Court—Criminal Procedure Code (Act XXV of 1861 and Act VIII of 1869), ss. 308, 310, & 311—Act VIII of 1859, s. 1.*

A Magistrate issued an order under s. 308 of Act VIII of 1869 calling upon A. to remove his hut as being an obstruction to a public highway. A. claimed a jury under s. 310, the majority of whom found that the Magistrate's order was reasonable and proper. A. refused to obey the order, and his hut was removed under s. 311. A. sued the Magistrate for possession of the land and for damages, held that such suit would not lie (1).

THIS suit arose out of certain proceedings taken by the defendant, the Magistrate of Dinagepore. It appeared that the plaintiffs had erected a house in such a manner as in the Magistrate's opinion amounted to an obstruction to a public highway, and under s. 308 of Act VIII of 1869, the Magistrate, on the 15th September 1870, ordered the plaintiffs to remove the same, or to show cause against the order within a certain time. Upon the plaintiffs' request, a jury was appointed under s. 310, the majority of whom found that the Magistrate's order was a reasonable and proper one. In consequence of the plaintiffs failing to obey the order, the house was, on the 29th November 1870, broken down and removed, and the plaintiffs thereupon brought the present suit against the Magistrate, alleging that the house had been used by them for a long time as a shop, that it was no obstruction to the public road, and that consequently the Magistrate had no power to pass the order of the 15th September 1870; and they prayed for possession of the land and the price of the house broken down,

\* Special Appeal, No. 1012 of 1872, from a decree of the Subordinate Judge of Dinagepore, dated the 28th March 1872, reversing a decree of the Mansif of that district, dated the 20th September 1871.

(1) See *Lalji Ukheda Jowba Dowha*, 8 Bom. II. C. Rep., A. C., 37; and Act X of 1872, s. 521.

1873

MERCHOO  
CHUNDER  
SARCAK  
v.  
RAVENSHAW

reversing the question of damages arising from the business of the shop being stopped for a separate action. The Munsif held that the present suit was not brought either directly or indirectly for the purpose of setting aside the order of the Magistrate, nor could that order be set aside; and that, inasmuch as the Government had undertaken to defend the suit, the Magistrate, ought to be released from all liability. He gave a decree against Government for possession of the lands sued for, and also for the price of the earth taken away. From this decision both parties appealed. The lower Appellate Court dismissed the plaintiffs' appeal and decreed the appeal preferred on behalf of Government, holding that the plaintiffs were indirectly trying to set aside the order of the Magistrate, and that such order could not be set aside by a Civil Court. Against this decree the plaintiffs preferred a special appeal.

Baboo *Romeshchunder Mitter* and *Rajender Nath Bose* for the appellants.

The *Legal Remembrancer* (Mr. Bell) and the Senior Government Pleader (Baboo *Unnoda Parsaud Banerjee* for the respondent.

Baboo *Romeshchunder Mitter*.—We sue for possession of the land on which this house was built. [COUCH, C.J.—But this land is a piece of a public road, so it was found by the majority of the jury; surely a suit against a Magistrate for possession of a piece of a public road is novel.] Possession being taken away by the order of the Magistrate, we are entitled to recover possession from him. Some of the jury were of opinion that the road did not extend up to the house. The concluding clause of s. 311 of Act VIII of 1869, though it prevents the Civil Courts from entertaining a suit to restrain a Magistrate from carrying out an order made under s. 308, or a suit for damages against the Magistrate, does not bar a person against whom such order has been carried into effect from instituting a suit to prove that land declared by the Magistrate to be public is his private property—*Lalji Ukheda v. Jowba Dowba* (1).

(1) 8 Bom. H. C. Rep., A. C., 94.

[COUCH, C.J.—But in that case the Collector did not sell a piece of the public road.] The land was sold as being waste, and the wood-work erected on it removed as being an obstruction. The other side will rely on *Ujalamayi Dasi v. Chandra Kumar Neogi* (1), but that case only decides that a suit to restrain a Magistrate from carrying his order into effect will not lie; it does not say that a suit brought after such order has been carried into effect would not lie; on this ground that case was distinguished in *Lalji Ukheda v. Jowba Dowba* (2) [COUCH, C.J.—I must prefer the decision of the Full Bench of this Court. I cannot see why a suit does not lie to restrain a party from doing an act, yet for the performance of which he would be afterwards liable to an action] The plaintiffs allege that this land is their private property; whether it is or not is the question to be tried in the suit which is one of a civil nature, and under s. 1 of Act VIII of 1859, I am entitled to a decision of a Civil Court on it unless the cognizance of such suit is taken away by express enactment.

The *Legal Remembrancer*.—A party dissatisfied with an order passed by the Magistrate under s. 308 of Act VIII of 1869 has his remedy under s. 310 of the same Act. Where a special remedy is given, the general remedy is thereby taken away—*Collector of Patna v. Romanath Tagore* (3), *Sakharam Shridhar Gadkari v. The Chairman of the Municipality of Kalyan* (4), and *Queen v. Dean and Chapter of Rochester* (5) S. 308 of Act XXV of 1861 is a reenactment of Act XXI of 1841, and under the old law no suit, such as the present, would lie—*Sohun Patuck v. Omoola Koowur* (6) *Prankishen Surma v. Rgmrooder Surma* (7), and *Ramkishore Bhuttacharjee v. Bisesbur Bhuttacharjee* (8) see also *Government v. Brijsoondree Dasse* (9). The reason for taking away the jurisdiction in such cases from the Civil Courts, and giving it to the Magistrate, is stated in *Baroda Prasad Mostaffi v. Gorachand*

(1) 4 B. L. R., F. B., 24.

(5) 20 L. J., Q. B., 467.

(2) 8 Bom. H. C. Rep., A. C., 94.

(6) Marsh., 7.

(3) Case No. 3354; of 1864; 25th February 1867.

(7) *Id.*, 214.(8) *Id.*, 231.

(4) 7 Bom. H. C. Rep., A. C., 33.

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

1873  
 MEECHOO  
 CHUNDER  
 SARCAR  
 v.  
 RAVENSHAW.

*Mostafi* (1). The case of *Ujalamayi Dasi v. Chandra Kumar Neogi* (2) is directly in point. If such an action as the present was to succeed, there would be no end to the legal proceedings in such cases—*Madhab Chandra Guho v. Kamalakant Chuckerbutty* (3).

The *Legal Remembrancer* was stopped by the Court.

Baboo *Romeschunder Mitter* did not reply.

The judgment of the Court was delivered by

COUCH, C.J.—In this case it appears that the Magistrate, considering there was an unlawful obstruction or nuisance on a public thoroughfare by the buldings which are called in this suit the plaintiffs' mud kothi, made an order under s. 308 of the Code of Criminal Procedure. The plaintiffs dissatisfied with the order availed themselves of the power given to them by s. 310, and applied to have it tried by a jury whether the order of the Magistrate was a right and proper one. A jury was appointed, and their finding was that the order was reasonable and proper. They also found that this building of the plaintiffs was an obstruction to the public thoroughfare. The present suit is brought against the Magistrate, the plaintiffs complaining that by his order the building had been demolished, and the earth had been taken away for the purpose of repairing the adjacent public road, and claiming 200 rupees for the value of the materials of the building, and asking for the recovery of the land, as to which the suit is valued at 800 rupees. Now s. 311 says, that "no suit or action shall be entertained in any Court in respect of anything necessarily or reasonably done to give effect to the order" of the Magistrate after the finding of the jury, where there is a jury; and were no jury is applied for, after the passing of such order. In regard to the damages claimed for the demolition of the building, they are clearly claimed for something which was necessarily and reasonably done to give effect to the order for removing the obstruction.

(1) 3 B. L. R., A. C., 295.

(3) 6 B. L. R., 643

(2) 4 B. L. R., F. B., 24.

It is plainly within the terms of s. 311, and no action can be brought for it. Then, in regard to the part of the claim which is for the recovery of the land, although it is put in that shape, it is in reality an action against the Magistrate on account of the plaintiffs having been dispossessed of what they say is their land in carrying out this order. If there is any cause of action against the Magistrate, it is that he has dispossessed the plaintiffs of their land, and he has only done so in giving effect to an order made under s. 308 of the Code of Criminal Procedure. State the nature of the plaintiffs claim in any way you may, it comes within that section. There is another objection to the plaintiffs being allowed to sue for the recovery of the land; they say, in fact, the land is our private property; there is no public road or way over it, and it is no part of a thoroughfare, and so we claim to have possession of it given to us. But the question as to whether it is part of a public thoroughfare has been tried in the manner which the law has provided in the Code of Criminal Procedure, namely, by a jury, and it has been found against them. I say nothing as to the propriety of that decision (probably it is a very right and proper one), as we have nothing to do with that now. The plaintiffs have had what the law gives them, the right to have the question determined by a jury partly selected by themselves, and a majority of the jury has found against them. They are not at liberty to bring a suit in the Civil Court to have the question tried again, and in fact to have the order of the Magistrate under s. 308, and the finding of the jury, reversed, and the whole matter reopened. The consequence of that, as pointed out by the Legal Remembrancer, would be that there might be another order by the Magistrate, another jury appointed, another similar finding, and then another suit, and so on. The law does not allow that.

There are no grounds therefore for this appeal, which must be dismissed with costs.

*Appeal dismissed.*

1873

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MEEHOO  
CHUNDER  
SARCAE  
v.  
RAVENSHAW.