

1869

LACHMAN
PRASAD
v.
HOLAS
MAHTOON.

been set apart as the share of the plaintiff, calculated the sum payable to the plaintiff by taking the price of the several sorts of grain at the rates prevalent at the time when it was cut. From that decision the plaintiff appeals, and contends that he is entitled to the prices which prevailed at the end of the year, which the Deputy Collector says were famine prices. The Judge on appeal affirmed the decision of the Deputy Collector. We think it quite clear that the Judge was right. The damage sustained by the plaintiff was equal to the value of the crop at the time when it was the duty of the defendant to have handed it over to the plaintiff. If, after that time, prices had fallen, it is clear that the defendant would have had no right to inflict on the plaintiff a loss by giving him anything less than the equivalent of that which he would have received, if the defendant had done his duty and handed the bhooli rent when it became due. On the other hand, the plaintiff has no right to make the defendant responsible for the possible profit which he might have made by the rise of the market price if he had kept the grain. The decision of the lower Appellate Court appears to us perfectly correct.

The appeal is dismissed with costs.

Before Mr. Justice Norman and Mr. Justice E. Jackson.

THE QUEEN v. CHOWDHRY AND OTHERS.*

1869
Feb'y 22.

Criminal Procedure Code (Act XXV. of 1861) s. 283—Recognizance to Keep Peace.

A charge of criminal trespass and mischief was dismissed. Thereupon the Magistrate recorded an order in the presence of both parties, calling on them to show cause, on a day fixed, why they should not enter into recognizances to keep the peace.

Held, it was not necessary also to issue a summons to them under section 283 of the Criminal Procedure Code.

Bhikari Rai, on behalf of Chowdhry Jagamohan Prasad and two others, complained against Mr. Crowdy, a planter, that he had forcibly uprooted tobacco and other crops belonging to his master's ryots, and forcibly sown indigo on their land. A local enquiry was ordered, and the case heard, when the Joint-Magistrate came to the conclusion that the charge was false and vexatious. He then recorded an order in the presence of both the parties, to the effect that, on a certain day then fixed, they should appear and show cause why they should not enter into security of Rs. 2,000 to keep the peace. On the day fixed, the Joint Magistrate took up the case, and without hearing any further evidence, ordered the Chowdhry and other two prosecutors in the first case to give security as above. The Judge, on application made, held that as no summons had issued under section 283, Criminal Procedure Code, the order should be set aside. He referred the case to the High Court.

* Reference under section 434 of the Code of Criminal Procedure.

The judgment of the High Court was delivered by—

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THE QUEEN
v.
CHOWDERY.

NORMAN, J.—We see no reason for interference, though no summons was served. An order was passed by the Joint-Magistrate in open Court, in the presence of the parties, that they should appear on a certain day and show cause why they should not give security to the amount of Rs. 2,000. In pursuance of that order, the parties did appear and shewed cause. They were fully informed of the grounds of the order by the proceedings which had previously taken place.

Before Mr Justice B Jackson and Mr Justice Macpherson.

MOONSHI JOWHER ALI (DEPNDANT) v. RAMCHAND AND OTHERS
(PLINTIFFS)

1869
Feb'y. 25

Possession—Limitation.

In a suit for possession of certain lands purchased by plaintiff at a sale, in execution of a decree of the Sudder Ameen's Court, the lower Court held that 'possession by proclamation of sale, through the Sudder Ameen's Court, was possession through the Court,' and that the suit, being brought within 12 years of that proclamation, was in time. *Held* on appeal, that such imaginary possession was no possession at all, and that the suit was barred by limitation.

Mr. C Gregory for appellant

Baboo Hem Chandra Binerjee for respondent.

The judgment of the High Court was delivered by

MACPHERSON, J.—The question on this case is, whether there is any evidence given by the plaintiffs of their possession within 12 years prior to the institution of the suit. The plaintiffs claim as purchasers at a sale in execution of a decree of a Sudder Ameen's Court, and their sale certificate bears date the 12th of August 1857. The plaintiffs are found by the lower Court to have obtained possession "by proclamation of sale, through the Sudder Ameen's Court," on the 25th of October 1857, but the Court also finds that they did not, in fact, get possession. The Court considering possession "by proclamation of sale, through the Sudder Ameen's Courts to be possession in a manner through the Court," held that the plaintiff's suit was not barred.

* Special Appeal, No. 2007 of 1863, from a decree of the Judge of Purneah, dated the 24th of March 1863, affirming a decree of the Sudder Ameen of that district, dated the 27th of July 1867.