

That case appears to me clearly distinguishable from the present. In that case, the plaintiff held the lands in dispute as lakherajdar, and his possession was, consequently, adverse to that of the defendant, who was the zemindar; and in that case, Mr. Justice Mitter and myself, properly, as I think, applied the ruling of the Judicial Committee of the Privy Council, which is cited in our judgment. In the present case, the plaintiff was by his own admission the tenant of the defendant, and he states that he paid them rent; his possession, therefore, does not in itself lead to any inference as to the character of the tenure. The fact of his having occupied the land and paid rent for twelve years, or even twenty years, is equally consistent with his being a tenant-at-will, a farmer, or a mokurureedar. I think, therefore, that the Judge was wrong in holding that on proof of possession, the plaintiff was entitled to a decree. Moreover, he did not merely ask for possession, but he asked the Court to adjudicate upon his alleged mokururee title, and to restore him to possession as mokurureedar. I think the decision of the lower Appellate Court must be reversed with costs.

E. JACKSON, J.—I am wholly of the same opinion.

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

THE QUEEN *v.* RASSUL NUSHY AND OTHERS.*

Obstructing a Road—Act XXV. of 1861, s. 320.

Where A complained merely to the Magistrate that "a certain road had been obstructed by Band others," held, that the Magistrate was not bound to enquire into the matter under section 320 of Act XXV of 1861.

Durga Prasad Das complained to the Magistrate of Rungpore that "a certain road had been obstructed by Rassul Nushy and others." The Magistrate merely passed the order "let it be filed in the office." The Judge held, that the Magistrate was wrong: (1) in not enquiring if the road was public or private; (2) in not recording his opinion in English; (3) in not proceeding under sections 308 or 320 of the Criminal Procedure Code according as the road was public or private. The Magistrate considered that it was for the person aggrieved to make out his right to the road in the Civil Court. The Judge held, that the *onus* lay on the other side to show that they had a right to close the road. It did not appear that there was any fear of a breach of the peace.

JACKSON, J.—It is clear that the interference of the Magistrate in this case was not asked on the ground that the road was a public road. The application made by the petitioner consists of a hurriedly and carelessly written petition of four lines. It does not state when the pathway was dug up by the defend-

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

1869
SHIU DAYAL
PURI.
v.
THAKUR MA-
HABIR PRA-
SAD.

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July 25.

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ants. Under such circumstances, I am not prepared to say that the Magistrate was obliged to enquire into the dispute. Section 320 certainly gives the Magistrate a discretion in the matter. There is nothing in the petition to show that there was any dispute at the time the defendants dug up the pathway. The Civil Court is the proper tribunal to settle such disputes; and even the Magistrate's orders would be subject to the decision of a Civil Court. There are cases where a Magistrate should interfere to prevent a breach of the peace, but it does not follow that he must interfere in all cases. In the absence of all details as to when the occurrence complained of took place I think the Magistrate was right in this case in not interfering.

NORMAN, J.—I entirely concur in these remarks: It appears to me that it was for the complainants to make out a case for the summary interference of the Magistrate under section 320. They wholly failed to do so.

Before Sir Barnes Peacock, Kt., Chief Justice, and Mr. Justice Mitter.

SITANATH BOSE v. MATHURANATH ROY.*

Interest—Bond.

1869
Jany. 30.

When a bond is silent as to any interest to be allowed after the due date of the bond, it is in the discretion of the Court to fix the amount of interest, if any, to be paid from the due date of the bond to the date of the commencement of suit.

The following question was submitted by the Officiating Judge of the Small Cause Court of Kishnaghur, for the decision of the High Court :

“ In the case of a bond-debt, what amount of interest, if any, should be allowed between the due date of the bond and the date of action, when the bond itself is silent as to interest after the due date.”

The judgment of the High Court was delivered by

PEACOCK, C. J.—We are of opinion that there is no fixed rate at which interest must by law be allowed for the period which has passed between the time when the bond became payable and the commencement of the suit. That is a matter which was entirely in the discretion of the Court, having regard to all the circumstances of the case.

* Reference to the High Court from the Officiating Judge of the Small Cause Court of Kishnaghur, dated the 2nd December 1868.
