

law should be applicable to the rent reserved in the lease in question than a zemindar could make a binding stipulation to the effect to which I have referred.

1869
IN THE MATTER
OF BANKA
DHARI GHORE.

In this case, the Magistrate was proceeding in his character of Magistrate, and not in his character of Collector, and it appears to me that he had no authority whatever to issue the warrant ; and that this Court has the power under the Code of Criminal Procedure, to quash it upon revision ; and further, it appears to me that if the case did not fall within the Code of Criminal Procedure, this Court under its general power of superintendence would have power to quash an order made by a Magistrate for the issue of a warrant in a case in which he had no jurisdiction whatever so to proceed. We are of opinion, therefore, that the order must be quashed, and all subsequent proceedings thereon, including the warrant, set aside, the petitioner having undertaken not to take any legal proceedings for any thing done under the warrant or order. This undertaking, of course, does not extend to any proceedings which the Magistrate or Collector may have instituted or may institute with reference to the conduct of the mofussil officers in executing the warrant, pending the rule, contrary to the orders of the Magistrate and of this Court.

Before Sir Barnes Peacock, *Kt.*, Chief Justice and Mr. Justice Miller.

THE QUEEN v. KABIL MANJI AND OTHERS.*

1869
Mar. 5.

Obstructing Navigation—Act V. (B. C.) of 1864.

To render a person liable to punishment under section 16, Act V. (B.) C. of 1864, for obstructing the line of navigation of a Government canal, it must be shown that he wilfully obstructed the navigation.

Baboo *Srikant Mullik* for the petitioner.

THE judgment of the Court was delivered by

PEACOCK, C.J.—In this case, Mr. Beaufort, the Judge of the 24-Pergunnas, has sent up a conviction of three manjis, for having obstructed the line of navigation in the new canal, opposite Sura

* Reference by the Sessions Judge of the 24-Pergunnas.

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bazar. The conviction was under section 16 of Act V. of 1864 of the Bengal Council. That section enacts, that any person who shall wilfully cause or shall aid in causing any obstruction to any line of navigation, or who shall wilfully omit to remove such obstruction after being requested so to do, shall be punished on conviction before a Magistrate, with simple imprisonment, which may extend to one month, and shall also be liable to fine, &c.

Mr. Beaufort, upon a petition being presented to him, called for the record of the proceedings, and has sent up that record to this Court, in order that it may be revised; and the Court, therefore, has revised it under the provisions of section 404 of the Code of Criminal Procedure.

There does not appear to have been any summons to these persons, nor any warrant for their arrest, nor is there a record of any charge having been drawn up; but the manjis were arrested without warrant and brought before Mr. Galiffe. If there had been a summons, it must, according to the form annexed to the schedule to the Code of Criminal Procedure, have stated shortly the offence charged, and the party would have been summoned to answer it. If the parties had been arrested under a warrant, the warrant would, in like manner, have stated the offence. It is not necessary here to enquire under what authority of law these parties were arrested without warrant. I merely refer to the absence of a summons or warrant to show that there was no charge in writing which the manjis were called on to answer.

The record commences with the evidence of Mr. Milwick, who says that, on the 25th, at 3 P. M., whilst on rounds at Chingrighatta, he found three boats laden with wood tied to trees on the east side of the new canal, opposite Sura bazar, and thus obstructing and endangering the navigation of the canal. It was flood tide, and the traffic was very great. These boats were tied by one rope by their heads to trees, the stern across the canal; that he had these boats removed to Raja's Khal, and arrested three manjis named.

There is nothing in that evidence to show that the manjis were wilfully obstructing the navigation, and nothing to show

that they were required to remove the boats, or that they continued the obstruction after they were required to remove them.

The record proceeds: "Kabil admits the charge; Jailal, ditto; Sukea ditto; but states that his boat was not tied to a tree but to a lagi driven into the bank."

The admission of the charge does not amount to anything, unless we know what the charge was. The evidence does not show that the parties were wilfully obstructing, and the admission of the charge might be, and probably was, merely that they tied their boats to the bank, and not that they wilfully interrupted the navigation.

The finding was that the defendants "are convicted of obstructing the navigation of the Calcutta Canal," and they are then sentenced to 15 days' jail each, under Act V of 1864, section 16. The finding does not state that the accused *wilfully* obstructed the navigation. There is, therefore, no charge; there is nothing in the evidence or in the admission of the prisoners, or in the finding, to show or lead us to suppose that the prisoners wilfully obstructed the navigation. Mr. Galiffe appears to have considered that an obstruction, whether wilful or not, was sufficient to render the prisoners liable to imprisonment.

It is not for me to say that 15 days' imprisonment would have been too much for the offence of wilfully obstructing the navigation, or of wilfully continuing an obstruction after a request to remove it, if such an offence had been proved by the evidence; but it appears to me that there is nothing whatever to show that the prisoners acted wilfully. The accused have already suffered six days' imprisonment, and it appears to me that the order of the Deputy Magistrate ought to be quashed. It is, accordingly, quashed, and the prisoners are to be forthwith released.

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

THE QUEEN v. LUTHI BEWA AND OTHERS.*

False Personation—Registration Act

1869

March 31.

A vendor proceeded, in company with three persons, to Dacca to register her deed of sale. Falling ill on the way, the three companions went to the Registrar's

* Revision of proceedings under section 404 and 405 of the Code of Criminal Procedure.