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the well-known and well-considered limitation that they were only legislating for those who were actually within their jurisdiction and within the limits of the colony. The limitation as thus laid down is said to be found at page 459 of the report.

Now it appears to me there is nothing in either of these two cases which indicates that anything but the ordinary and natural construction should be placed on the words of the section of the Probate and Administration Act which defines the age of majority. And seeing that the action of the Legislature in fixing the age of majority at the age of 18 years is merely intended to apply to the cases of those persons who are seeking to deal with property within the jurisdiction of the Court, I do not think it can be said that the plain meaning of the section is to be set aside for the purpose of making the definition of the *status* of minority apply only to persons domiciled in this country. To my mind the words are express, and the limit of the period of disability is for the purpose of the Act fixed at 18 years, not merely for persons domiciled in this country, but for any other persons whether they be aliens or not.

The result is that I must refuse the application.

Application refused.

Attorney for the petitioner : *Mr. H. C. Chick.*

J. V. W.

CRIMINAL REVISION.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Rampini.

BEHARY LALL TRIGUNAIT, FIRST PARTY (PETITIONER) *v.* DARBY, SECOND PARTY (OPPOSITE PARTY.)* 1894 *July* 24.

Criminal Procedure Code (1882), section 145—Possession, Order of Criminal Court as to—Parties to proceedings—Right to notice.

Where proceedings under section 145 of the Code of Criminal Procedure were instituted by a Magistrate regarding a dispute as to the right to dig for coal in a certain *mouza* which was claimed by a Company to the exclusion of those in possession of the surface rights of a portion of the *mouza*, and the

* Criminal Revision No. 347 of 1894, against the order passed by N. Warde Jones, Esq., Sub-Divisional Magistrate of Govindpur, dated the 18th May 1894.

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Magistrate made the manager of the Company only a party to the proceedings and not the Company itself, and an order was made under the section in favour of the manager:

Held, that the order was bad and must be set aside as the parties interested were not properly before the Court. The manager had no interest, except as such, or possession except as representing the Company, and such possession is not the kind of possession contemplated by the section (1).

(1) *Before Mr. Justice Trevelyan and Mr. Justice Rampini.*

1893
August 29.

NEWAZ ALI (PETITIONER) *vs.* RAM BALLABH CHAKRAVARTI (OPPOSITE PARTY).*

THE facts which gave rise to these proceedings were shortly as follows:—Certain property, the subject-matter of the dispute, which then belonged to one Idu, was sold in 1295, at an auction sale, and then purchased by one Siddik Mia *benami* for one Hossein Ali. Hossein Ali was dead at the time of these proceedings, and was represented by Izatunnissa Bibee and her children. In 1297, the property was again sold in execution of a mortgage decree, and it was then bought by Newaz Ali, who was a *naib* in the employment of the lady, and it was alleged as against him that he was a mere *benamidar* for her. Ram Ballabh Chakravarti, it appeared, was at the time these proceedings were instituted a *kurpurdaz* in her employ, and himself had no claim to or interest in the property. In 1299, a quarrel took place between the lady and Newaz Ali, and subsequently thereto the latter applied to the Civil Court, and obtained an order for possession by virtue of his purchase, and obtained symbolical possession. Thereafter on his going to take actual possession he was resisted by Ram Ballabh Chakravarti and others on the side of the lady, and a riot ensued. The police thereupon reported the matter to the Magistrate, who instituted these proceedings under section 145 of the Code of Criminal Procedure, making Ram Ballabh Chakravarti (who was therein described as the *kurpurdaz* of the lady), the first party, and Newaz Ali, the second party. The Magistrate decided that Hossein Ali and his descendants had been in continual possession of the land in dispute, and that the purchase by Newaz Ali was *benami* for them, and after going into the question as to whether the latter could avail himself of his symbolical possession, and deciding that against him, made an order that the first party should be maintained in possession till ousted by due course of law.

Newaz Ali then obtained a rule from the High Court, calling on Ram Ballabh Chakravarti to show cause why the order should not be set aside upon amongst other grounds that the proceedings were bad *ab initio*, as he had no interest in the property, being merely a servant, and that the proper parties were never before the Court.

* Criminal Revision No. 501 of 1893, against the order passed W. H. Vincent, Esq., District Magistrate of Beerbhoom, dated the 12th of July 1893.

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THE petitioner in this case and his co-sharers alleged that they were the owners in *lakheraj* right and in exclusive possession of a piece of land known as Purniata in *mouza* Malikara in *pargana* Katras in the district of Manbhoom. Mr. Darby was the manager of the Jheria and Katras Coal Company, who held leases of the sub-soil rights under one Purno Chunder Daw who was a lessee of Rajah Gunga Narain Singh of Katras.

It appeared that the Company claimed as lessees to be entitled to all sub-soil rights in respect of the whole *mouza*, whereas the petitioners denied that the Rajah, or any one claiming under him, had any right whatever in their *lakheraj* lands. The petitioner having started digging for coal in that land was stopped by people in the employ of Mr. Darby, and a breach of the peace being apprehended, the matter was reported to the Sub-Divisional Magistrate by the Sub-Inspector. These proceedings were thereupon instituted under section 145 of the Code of Criminal Procedure, in which Behary Lall Trigunait was made the first party and Mr. Darby the second party. In these proceedings evidence was gone into before the Magistrate who delivered the following judgment:—

"The facts which gave rise to these proceedings are briefly these: One of the parties Behary Lall Trigunait started digging for coal in village Malikara, in *pargana* Katras, when he was

Babu *Dwarka Nath Chuckerbutty* for the petitioner.

Mr. *P. L. Roy* and Moulvi *Serajul Islam* for the opposite party.

The judgment of the High Court (TREVELYAN and RAMPINI, JJ.), was as follows:—

In this case there can be no doubt that the proceedings are bad *ab initio*. The proceedings were instituted against Ram Ballabh Chakravarti, who happens to be the *kurpurdaz* of a Mahomedan lady and her children. We find that this Ram Ballabh was a party to the proceedings, and that the lady and her children were never made parties in any sense. But the dispute was really not between Ram Ballabh and the other side, but between this lady and her children on the one side and Newaz Ali on the other. We think that the original proceedings were bad and should be wholly set aside. If there is a dispute between this lady and the other side, and it is one likely to lead to a breach of the peace, fresh proceedings may be instituted in a legal way.

H. T. H.

Rule made absolute and order set aside.

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stopped by people in the employ of Mr. Darby, the manager employed by Messrs. Andrew Yule & Co. to work their coal fields in this district. A breach of the peace was apprehended, and the matter was reported for orders by the Sub-Inspector of Topchachi. Evidence on both sides has been gone into, and I have personally visited the scene, and have had Behary Trigunait to point out to me the old coal pits, which he alleges he dug. He has not been able, however, to show me the vestige of a pit. He tries to explain this by saying that the rains have filled them up: but he apparently forgets that the rains ended long before Magh last, when one of the pits is said to have been dug. There has been no rain since Magh, and the excuse is, therefore, impotent. Moreover the spots pointed out to me are in the bed of a streamlet, and even if one of them had been silted up by the stream in the rains, there would, at least, have been a hollow to mark the spot, or, at all events, a free deposit of sand. As a matter of fact, however, there is no hollow, no sand and not even the colour of coal; while, on the other hand, the outcrop which exhibits itself betrays that the coal is of extremely bad quality and too scant to work. In fact, there is no doubt that these old pits are nothing more than the product of an inventive imagination. A great deal has been said in argument about superficial possession, but the pleaders on both sides appear to have lost sight of the fact that the dispute is not about the surface but about the coal below. What I have to consider is the fact of possession of the coal. Now, it is not denied that Mr. Darby sunk inclines and extracted coal in January last, and those pits are visible and prominent now; on the other hand, I have already remarked that Behary Trigunait has failed to show me even a trace of any pit or incline made by him. The evidence adduced by him is wholly false, and its fictitious nature is exhibited by the fact that even the position of the alleged pits has been wrongly given by the witness. The places shewn me by the Trigunait are, as I have already remarked, in the bed of a streamlet; even positions are wrongly given. That Behary Trigunait has never taken possession of the sub-soil rights is beyond doubt; on the other hand the Rajah's enjoyment of the coaling rights is placed beyond doubt by the documents

filed, and Mr. Darby's possession of the coal is open to ocular demonstration. With rights I have nothing to do; but that Mr. Darby is in possession of the coal is manifest. I accordingly award possession of the coal in *mouza* Malikara to Mr. Darby and order Behary Lall Trigunait to refrain from touching or entering upon it until he shall have ousted Mr. Darby by law."

The petitioner then obtained a rule from the High Court on the opposite party to show cause why this order should not be set aside on the following grounds amongst others:—

That the Katras and Jheria Coal Co., the alleged lessees of the sub-soil rights in the *mouza*, not being made parties to the proceedings, and Mr. Darby, who was only the manager, having no personal interest in the matter, the proceedings were wholly void, and that underground or sub-soil rights could not rightly be the subject of proceedings under the section.

Numerous other objections were taken to the findings of the Magistrate, but it is not material to notice them for the purpose of this report.

Mr. *M. Ghose* and *Mr. J. G. Apear* appeared in support of the rule.

Mr. *G. S. Henderson* showed cause.

The judgment of the High Court (PETHERAM, C.J., and RAMPINI, J.) was as follows:—

We think that this rule must be made absolute, and that it is enough for us to say that it must be made absolute, because the persons interested are not before the Court. Mr. Darby, in whose favour this order has been made, in his written statement, states that the property in question belongs to a Coal Company, and that his position is that of a manager of the Company. He does not state that he has any interest except as manager, and does not state that he has any independent, or in fact any, possession, except as representing the Company on whose behalf he is managing the mine. We do not think that that kind of possession is a possession such as is contemplated by this section, or, as I said just now, that the parties interested are properly before us. For these reasons we make the rule absolute.

Rule made absolute and order set aside.

H. T. H.