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In this view, the properties obtained by Subhadra, granting that they were properties which, as the plaintiffs alleged, originally belonged to Radhakrishna, would pass to the nearest heir to her *stridhan*, that is, to her husband, defendant No. 1, in the same way as the properties left by the plaintiffs' mother passed to them, not because they were the reversionary heirs of their maternal grandfather, but because they were the nearest heirs of their mother. We therefore think that the plaintiffs' suit has been rightly dismissed by the lower Appellate Court, though upon a wrong ground. The result then is that this appeal fails and must be dismissed with costs.

*Appeal dismissed.*

F. K. D.

## CRIMINAL REVISION.

*Before Mr. Justice Ghose and Mr. Justice Gordon.*

SIAMA CHARAN CHAKRAVARTI AND OTHERS (PETITIONERS) v. KATU MUNDAL AND ANOTHER (OPPOSITE PARTY) \*

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January 13.

*Recognizance to keep the peace—Criminal Procedure Code (Act X of 1882), section 107—Jurisdiction of Magistrate.*

In a case where an accused was bound over to keep the peace by the Deputy Magistrate of the district in which the accused was temporarily residing at the time when the Magistrate received information and instituted proceedings against him :

*Held*, that, although the accused permanently or habitually resided in another jurisdiction, he was sufficiently within the jurisdiction of the Magistrate within the meaning of section 107 of the Criminal Procedure Code.

IN this case the District Magistrate of Dinajpur, upon information contained in a police report, drew up a proceeding on the 2nd of May 1896 under section 107 of the Criminal Procedure Code against two accused persons, calling upon them to show cause before the Deputy Magistrate of Dinajpur why they should not be bound down in their own recognizances of Rs. 500 each with two sureties of Rs. 200 each to keep the peace for one year.

\* Criminal Revision No. 485 of 1896 against the order passed by Babu Banku Behary Dutt, Deputy Magistrate of Dinajpur, dated the 29th of June 1896.

On the 29th of June the accused appeared before the Deputy Magistrate to show cause, and the first accused, Shama Charan Chuckerbutty, contended that as he was not residing within the District of Dinajpur, the Magistrate of Dinajpur had no jurisdiction to require security from him under section 107. The Deputy Magistrate found that both the accused were actually residing within the district of Dinajpur at the time when the acts likely to lead to a breach of the peace were committed and when the proceeding was drawn up by the District Magistrate, and therefore ordered that they should each execute a bond in their own recognizances for Rs. 250 with two sureties of Rs. 100 to keep the peace for one year.

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Thereupon the accused Shama Charan Chuckerbutty applied to the High Court for and obtained a rule to set aside the order of the Deputy Magistrate on 14th August 1896.

Mr. Jackson (with him Babu Grish Chunder Chowdry) for the petitioner.—Inasmuch as Shama Charan Chuckerbutty habitually resides in the district of Maldah, the Magistrate of Dinajpur had no jurisdiction to institute proceedings and issue process against him under section 107 of the Criminal Procedure Code, and in support of this contention I rely on the following cases: *In the matter of the petition of Jai Prakash Lal* (1). *In the matter of the petition of Rajendra Chandra Roy Chowdhry* (2). *In the matter of the petition of Dinonath Mullick* (3).

Mr. A. Chowdhry and Babu Surat Chundra Rai Chowdhry for the opposite party.

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

This is a rule upon the Magistrate of Dinajpur to show cause why an order passed by the Deputy Magistrate of that district under section 107 of the Criminal Procedure Code should not be set aside. The learned Judges in granting the rule observed as follows: “The main ground for the application is that one of the parties bound down to keep the peace is not a resident of the district, and as it may possibly be necessary to look at the

(1) I. L. R., 6 All., 26.

(2) I. L. R., 11 Calc., 737.

(3) I. L. R., 12 Calc., 133.

1897 evidence on the record, we do not separate the case of the two applicants, but let the rule run in favour of both." One of the two petitioners, Shama Charan Chuckerbutty, is the *sudder-naib*, and the other, Tarak Nath Ghoso, is the *tehsildar* of one Ghanesham Babu, proprietor of certain villages situated within the district of Dinajpur. Shama Charan Chuckerbutty resides in the district of Maldah, while Tarak Nath Ghose lives in the district of Dinajpur. The Deputy Magistrate has found on the evidence that there is a dispute existing between these two persons on the one side and the tenants of the villages in question on the other, which is likely to cause a breach of the peace. These villages have been recently measured, and an attempt is being made by the proprietor, through his agents, the present petitioners, to enhance the rents of the tenants; and with the object of compelling the tenants to submit to their landlord's demand the petitioners assembled a large number of *paiks* and *burkendazes*, and attempted to overawe them by threats, show of force and other oppressive measures, and have thus, in the opinion of the Deputy Magistrate, committed various acts within the local limits of his jurisdiction, which show that they are likely to commit a breach of the peace therein; and he has accordingly bound them down to keep the peace for the period of one year.

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As regards Shama Charan Chuckerbutty, Mr. Jackson has contended that, inasmuch as he habitually resides in the district of Maldah, the Magistrate of Dinajpur had no jurisdiction to institute proceedings and issue process against him under section 107 of the Criminal Procedure Code; and in support of this contention he has relied on the following cases: *In the matter of the petition of Jai Prakash Lall* (1), *In the matter of the petition of Rajendra Chandra Roy Chowdhry* (2), and *In the matter of the petition of Dinonath Mulliek* (3). We observe that the facts of these cases are not similar to those of the present case. In these cases it appears that the petitioners had committed no acts likely to cause a breach of the peace within the local limits of the jurisdiction of the Magistrate, who instituted proceedings against them under

(1) I. L. R., 6 All., 26.

(2) I. L. R., 11 Calc., 737.

(3) I. L. R., 12 Calc., 133.

section 107 of the Criminal Procedure Code ; whereas in the present case it is found that the petitioners have committed various acts of this character within such limits.

It appears upon the record that Shama Charan, being deputed by the zemindar, came over to the Dinajpur district, committed various acts calculated to cause a breach of the peace, and was residing (though temporarily) within the local limits of that district at the time when the Magistrate received information of the probability of a breach of the peace, and instituted proceedings under section 107 of the Code of Criminal Procedure. The Magistrate finds that "he was hovering about the district, or at least he did so in the months of Falgoun, Chyt, Bysack, Joisto and Assar." This would cover the whole of the period antecedent and subsequent to the institution of the proceedings. He means, as we understand, that Shama Charan was hovering in various parts of the district during these months. That being so, we are of opinion that the Magistrate had jurisdiction over him.

Section 107 says: "Whenever a Presidency Magistrate, District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class receives information that any person is likely to commit a breach of the peace, or to do any wrongful act that may probably occasion a breach of the peace, within the local limits of such Magistrate's jurisdiction, or that there is within such limits a person who is likely to commit a breach of the peace or do any wrongful acts as aforesaid in any place beyond such limits, the Magistrate may in manner hereinafter provided require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix."

It appears to us that if, at the time when the Magistrate receives information and institutes proceedings, the accused person is residing within the local limits of his jurisdiction, he would have authority to proceed against him under section 107, though that person may be habitually or permanently residing in another jurisdiction. To hold otherwise would lead to various difficulties and inconveniences. No doubt, there are observations in the cases cited before us which may at first sight seem to be opposed

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1897 to this view ; but having regard to the facts of those cases we do not think that those observations militate against the opinion which we have formed in this case.

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As regards Tarak Nath Ghose no such question of jurisdiction arises.

Upon these grounds we are of opinion that this rule should be discharged.

C. E. G. *Rule discharged.*

## ORIGINAL CIVIL.

*Before Mr. Justice Jenkins.*

SRINATH ROY v. GODADHUR DAS. \*

1897  
February 24. *Deposit of Title-deeds—Transfer of Property Act (IV of 1882), section 59—Equitable mortgage—Immoveable properties situated partly outside the limits of Calcutta—Transaction in Calcutta—Decree for sale—Form of decree—Practice.*

The defendant borrowed money from the plaintiff in Calcutta by deposit of title deeds relating to immoveable properties situated partly inside and partly outside the limits of the town of Calcutta. In a suit by the plaintiff it was held that the transaction having taken place in Calcutta the mortgage was valid as an equitable mortgage under section 59 of the Transfer of Property Act, though some of the properties were situated outside the limits of the town, and that according to the practice of the Court the appropriate remedy in such a mortgage suit is a decree for sale.

THE facts of the case are these : One Godadhur Das borrowed a sum of Rs. 35,000 from Rajah Srinath Roy, and deposited with him in Calcutta the title deeds of premises No. 306, Upper Chitpore Road, No. 7, Shampookar Street, and No. 138, Baliaghata Street, and executed the following memorandum which was registered : "Having this day borrowed from you Rs. 35,000 I do hereby deposit with you the title deeds as collateral security for the repayment of the said sum." Of the abovenamed properties the first two are situate within and the third outside the town of Calcutta. On default by the defendant in repayment of the loan, the plaintiff having obtained leave under clause 12 of the Charter brought the present suit for recovery of his claim by sale of the properties mortgaged.

\* Original Civil Suit No. 91 of 1896.