APPELLATE CRIMINAL.

Before Mr. Justice Markby and Mr. Justice Mitter.

1876 Sept. 11.

IN THE MATTER OF JUGGUT CHUNDER CHUCKERBUTTY.*

Criminal Procedure Code (Act X of 1872), ss. 294 and 297—Revision—Power of High Court—"Material Error."

In a case of apprehended breach of peace, the Magistrate bound over the parties in sums of money aggregating on the whole to Rs. 60,000 or upwards. The High Court quashed the order, holding that it was altogether unreasonable.

Per MARKBY, J.—Ss. 294 and 297, Act X of 1872, do not debar the High Court from interfering where in cases requiring the exercise of discretion, it appears upon the face of the proceedings that the Magistrate has exercised no discretion at all or has exercised his discretion in a manner wholly unreasonable.

Per MITTER, J.—Under s. 297, the High Court has the power of interfering with judgments, sentences, or orders of Court subordinate to it, if there has been a material error in any judicial proceeding of such Courts, meaning thereby any error appearing on the face of a judicial proceeding resulting in an unjust order.

APPLICATION under s. 297 of the Criminal Procedure Code (Act X of 1872).

The petitioner in this case had been bound over by the Joint Magistrate of Backergunge for an apprehended breach of the peace in a recognizance of Rs. 10,000 with two sureties for Rs. 5,000 each. A dispute had existed between the petitioner and one Baroda Chuckerbutty on the one hand, and one Sabir Myan on the other in respect of a plot of land. It was found by the Joint Magistrate that until Aghran last all the ryots, except a small minority, had paid the rent to Sabir Myan, but in that month, in consequence of his oppression, several of them went over to Baroda Chuckerbutty. Up to that time there had been much litigation between the parties, but no attempt to break

* Criminal Motion, No, 232 of 1876, against the order of the Joint Magistrate, dated 22nd February 1876, and against the order of the Sessions Judge of Backergunge, dated the 7th June 1876.

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the peace. A breach of the peace being, however, then apprehended, Police were stationed near the land in dispute, which from the Magistrate's judgment, appeared to have been effectual in preventing any disturbance. The Magistrate, nevertheless, thought it desirable to take some further security. Summonses were accordingly issued against four persons, including the petitioner, Baroda, Sabir, and two of their respective servants. After enquiry the Joint Magistrate bound over the principals in recognizances of Rs. 10,000 each, with two sureties of Rs. 5,000 each, and the servants in small sums.

An application was made to the Sessions Judge, among others, on the ground that the recognizance was excessive. In dealing with this objection, the Judge used the following words:—"Lastly, it is urged that the amount of the recognizance is excessive; here I quite agree with the petitioners, and, if I could only have seen my way, I should certainly have referred the case to the High Court for this reason alone; but this is a point on which the High Court decline to interfere."

The petitioner, thereupon, preferred the present application to the High Court.

Baboo *Ashootosh Dhur* for the petitioner.

No one appeared for the Crown.

The following judgments were delivered:

MARKBY, J. (after stating the facts as above, continued):—The Sessions Judge is quite right in supposing that this Court would not ordinarily interfere with the discretion of Magistrates, as to the amount of security to be taken in cases of this kind. The Magistrate is in a much better position than this Court for judging what would be the proper amount of security, which must vary with the danger to be apprehended and the means of the parties. But the Magistrate cannot make an order that is altogether unreasonable. Here the Magistrate, although there has been as yet no breach of the peace, and apparently no very strong determination to resort to violence, has required the parties to enter into bonds amount-

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ing altogether to upwards of Rs. 60,000. The parties do not appear to be wealthy; and had the security ordered been really required, in all probability it could not have been furnished. We find, however, that one of the parties, who has been accepted as surety for Rs. 5,000, is described as a *kotwal* and another as a *mookhtear*, and all the bonds were executed on the very day the order was made. It would thus appear as if the amounts mentioned in the bond are merely nominal, and that no real security to that extent was required.

I consider that in this case, the Joint Magistrate has not done that which the law requires. Either he has wholly failed to exercise the discretion which the law requires him to exercise in taking security for good behaviour, or, if he has exercised it at all, he has exercised it in a manner which is altogether unreasonable. Whichever be the case, I do not think we ought to allow such an order to stand.

No one appears on behalf of Government to support the order, and the Magistrate has offered us no explanation. We have nevertheless thought it necessary to consider whether this is a case in which we ought to interfere under the powers of superintendence and revision over the subordinate Courts conferred upon the High Court by Chapter XXII of the Code of Criminal Procedure. It has been held, notwithstanding the very general words of ss. 294 and 297, that this Court ought not, in the exercise of these powers, to go into the evidence and examine the conclusions of the Court below upon the facts. I desire to adhere to those decisions. It seems to me necessary to do so, as otherwise an appeal would virtually lie against every decision of the subordinate Courts, which was clearly not intended by the Legislature. But, nevertheless, I do not think that we are excluded from interference where, in cases requiring the exercise of discretion, it appears upon the face of the proceedings that the Magistrate has exercised no discretion at all, or has exercised his discretion in a manner wholly unreasonable. I think that we have the power and ought to interfere in such cases, just as we have the power, and ought to interfere where a Magistrate has been guilty of misconduct. I did not myself intend to say anything contrary to this in *In*

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the matter of Debichurn Biswas (1). Nor do I think that the decision in *In the matter of Belilios* (2) lays down anything contrary to this view. No doubt the language of Pontifex, J. in that case and my own language in the other case might be pressed to the extent of confining this Court when exercising powers of revision strictly to errors in law. As a general rule, that is so. Cases of misconduct or utter want of discretion are rare and exceptional, and were not, I think, contemplated when those decisions were given. I am of opinion that this Court, when exercising its powers of revision, is justified in dealing with such cases, and that we may do this without in any way interfering with the rule that this Court will accept the conclusions of the Court below upon the evidence in the case.

Upon the ground that it appears upon reading the proceedings that the Joint Magistrate has either exercised no discretion at all in fixing the amount of security, or that he has exercised his discretion unreasonably, and that the Magistrate has given us no explanation, I think we ought to set aside his order.

MITTER, J.—I am also of opinion that we ought to set aside the order of the Joint Magistrate in this case. Under s. 297 this Court has the power of interfering with judgments, sentences or orders of Courts subordinate to it, if there has been a "material error in any judicial proceeding" of such Courts. These words, it seems to me, mean any error appearing on the face of a judicial proceeding resulting in an unjust order. For the reasons given by my learned colleague, there appears, on the face of the proceeding of the Court below, such a material error as would warrant this Court in setting aside the order passed by it.

Order quashed.

(1) 20 W. R., Cr., 40.

(2) 12 B. L. R., 249.