CRIMINAL REVISION.

Before Mr. Justice Stephen and Mr. Justice Carnduff.

LAKHI NARAYAN GHOSE 1910

v. *Jan. 6.*

EMPEROR.*

Jurisdiction of Magistrate—Cognizance on information received by him in another public capacity—Legality of the institution of criminal proceedings in such case—Criminal Procedure Code (Act V of 1898), s. 190 (1) (c).

Held per Stephen J. (Carnduff J. *dubitante*), that a Magistrate who has received information in another public capacity, *e.g.*, as manager of an encumbered estate, of the offence of mischief by cutting timber from the estate forest, cannot act on it in his capacity of a Magistrate and initiate criminal proceedings under section 190 (1) (c) of the Criminal Procedure Code.

Thakur Pershad Singh v. *Emperor* (1) referred to.

An order, on taking cognizance of a case under section 426 of the Penal Code, directing the attachment of trees, the subject of the alleged offence, is without jurisdiction.

THE Deputy Commissioner of Singbhum, who was the manager of the Dalbhum encumbered estate in Chaibasa, acting in such capacity, deputed one Kedar Nath Sircar, a servant of the Court of Wards, to inquire into an alleged cutting of timber belonging to the estate. The latter, after holding an investigation, made a report, on the 4th November 1909, to the Deputy Commissioner, to the effect that under the instructions or permission of one Lakhi Narayan Ghose, the dewan of Raja Satrughan Deo, proprietor of the Dalbhum estate, 15 *mahua* trees had been cut by Bahadur Gir and Dhani Ram, and were lying in different parts of village Narsingar, and that the branches of the trees had been removed to the Railway-station yard for sale as fuel. It appeared that the Raja was desirous of establishing a *hât* in the village, and that the trees had been cut for the purpose of erecting

* Criminal Revision No. 1300 of 1909, against the order of A. W. Cook, Deputy Commissioner of Singbhum, dated Nov. 6, 1909.

(1) (1906) 10 C. W. N. 775.

1910

LAKHI NARAYAN GHOSE v. EMPEROR.

huts in the *hât*. Upon the receipt of the report of Kedar Nath, the Deputy Commissioner, acting in his capacity of a Magistrate, passed the following order on the 6th November :—

"Lakhi Narayan Ghose will be prosecuted under section 426, I. P. C. Attach the 15 *mahua* trees lying near Indtar and elsewhere, including the station yard. Babu A. C. Das will arrange for disposing of them. Kedar will have the huts in the new *hât* dismantled, and the wood will be sold by the Deputy Collector."

On the 19th November the petitioner received a summons, purporting to be signed by Babu B. Sirkar, Deputy Magistrate, calling upon him to answer a charge under section 426 of the Penal Code. He thereupon moved the High Court and obtained the present Rule.

Babu Manmatha Nath Mookerjee, for the petitioner.

The Deputy Legal Remembrancer (Mr. Orr), for the Crown.

STEPHEN J. In this case the Deputy Commissioner of Singbhum ordered a prosecution of the petitioner for wrongfully cutting certain trees in a forest, and on reading the Explanation we must take him to have done this under section 190 (1) (c) of the Criminal Procedure Code. He also ordered certain trees to be attached.

This Rule has been granted on two points. The first is that he had no authority to order the prosecution; and the second, that he had no authority to attach the trees.

As regards the second part of the Rule, it is admitted that the order was without jurisdiction, and the Rule must be made absolute.

As regards the first part, what happened is as follows. The Deputy Commissioner was also the manager of the encumbered estate, and in that capacity ordered one Kedar Nath Sircar, a servant of the Court of Wards, to make certain enquiries. The order which is now complained of was made as the result of the report made by Kedar Nath. It is now argued, on the strength of the ruling in *Thakur Pershad Singh* v. *Emperor* (1), that he had no authority to do so, because,

(1) (1906) 10 C. W. N. 775.

having received the information as the manager, he could not act upon it as a Magistrate. In accordance with that ruling, I am of opinion that his action in this matter was illegal, and that the present proceedings must accordingly be quashed. The Rule is made absolute.

CARNDUFF J. In the particular circumstances of this case, I am prepared to agree to the Rule being made absolute. It will, of course, be open to the authorities to reinstitute proceedings against the petitioner on a firmer basis, should they be so advised.

But I am not prepared to accept, without question, the ruling in *Thakur Pershad Singh* v. *Emperor* (1), in so far as it lays it down that a Magistrate is not competent to act under section 190 (1) (*c*) of the Code of Criminal Procedure on any information which has been transmitted to him in another public capacity. This clearly goes beyond the provisions of the Code itself; and I am inclined to think that the safeguards supplied by those provisions are sufficient, and that there is no adequate reason, based on general principles, for extending or amplifying them. If a Magistrate takes cognizance, under the clause referred to, on information received from any person other than a police officer, or upon his own knowledge or suspicion, then he is bound by section 191 to give the accused an early opportunity for objecting and obtaining a trial at the hands of another Magistrate. And where a Magistrate is "personally interested" in a case, he cannot, under section 556, try it, or commit it for trial, without special permission. These provisions follow the salutary rule that a Judge shall not be a Judge in what may be called his own cause: but they draw the line, advisedly as I imagine, at trial or commitment, and do not go the length of impeding mere cognizance of crime. Nor would it, in the circumstances of this country, be advisable to go so far; for, although it is undoubtedly better that a Magistrate should not move at all where he is, or has been,

(1) (1906) 10 C. W. N. 775.

1910

LAKHI NARAYAN GHOSE v. EMPEROR.

CARNDUFF J.

in any way himself concerned, it is not difficult to conceive cases in which there might be no one but such a Magistrate competent to act, and his incapacity to issue process might involve the escape scot-free of offenders. I should hesitate, therefore, to add to the Statute law on the subject.

Rule absolute.

E. H. M.

TESTAMENTARY JURISDICTION.

Before Mr. Justice Fletcher.

1909

Nov. 29

NAGENDRABALA DEBI

v.

KASHIPATI CHOWDHRY.*

Probate—Letters of Administration—High Court and District Court, Jurisdiction of—Concurrent jurisdiction—Probate and Administration Act (V of 1881), ss. 2, 51, 56, 87—"High Court," meaning of, in s. 87—Practice—Rule 740 (of the High Court Rules and Orders).

The High Court has jurisdiction to grant probate and letters of administration, on the Original Side, in any case which could have been brought before any District Judge in either of the two Provinces of Bengal.

"High Court" mentioned in section 87 of the Probate and Administration Act (V of 1881) is not merely confined to the Appellate Jurisdiction of the Court, but it includes its Original Jurisdiction.

In the goods of Mohendra Narain Roy (1), referred to.

Section 87 of the Probate and Administration Act does not require that any portion of the property should be within the limits of the Original Jurisdiction of the High Court; and Rule 740 of the High Court cannot override the express provisions of this section giving the High Court concurrent jurisdiction with the District Court.

THIS was a Rule obtained on the 4th of May 1908 by Kashipati Chowdhry and Surath Chandra Chowdhry, the first cousins (*i.e.* father's brother's sons of the deceased), calling upon Nagendrabala Debi, the executrix of the last will of the

* Motion in Original Civil Suit No. 6 of 1908.

(1) (1900) 5 C. W. N. 377.