

*Miscellaneous Petition.*1867.
April 25.

BA'PUJI JAGJI'VAN *Petitioner.*
 THE MAGISTRATE OF KHEDA' *Opponent.*

Judicial Proceedings—Magistrate's Order—Crim. Proc. Code, Sec. 318.

Held that proceedings under Sec. 318 of the Crim. Proc. Code (Act XXV. of 1861) are judicial proceedings within the meaning of Sec. 401 of that Act, and that therefore the High Court has power to interfere with an order passed by a Magistrate under such section.

Under Sec. 318, a Magistrate is bound to inquire who is in actual possession, without regard to the question of who is legally entitled to possession, of the premises in dispute.

THE possession of a piece of land situated at Nariad was disputed between the petitioner and Bái Jeṭhi, who commenced to build upon it. Bái Jeṭhi, on an application made by the petitioner, was forbidden to do so, by an order of the Municipality, until the fact of possession should have been determined by the Magistrate, to whom, as a breach of the peace seemed likely to ensue, the matter was referred.

A. C. Trevor, Subordinate Magistrate of Nariad, gave possession to Bái Jeṭhi, and forbade the petitioner to interfere with her building until he established his right to do so in the Civil Court.

The petitioner prayed for a reversal of the order, on the following among other grounds:—That the Magistrate, without taking any evidence, not even a written statement of the case, as provided for in Sec. 318 of the Criminal Procedure Code, ordered that Bái Jeṭhi might proceed with the work; and that the Magistrate, instead of determining the fact of possession, went into the question of title to the land in dispute.

The petition came on for hearing before NEWTON and WARDEN, JJ.

The records and proceedings in the case having been sent up, and it appearing therefrom that the Magistrate had clearly attempted to determine who was legally entitled to

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possession, instead of determining who was in actual possession,

Dhirajlál Mathurádas was called on to support the order of the Magistrate.

He argued that the order was final, and could not be revised by this court. In fact, as ruled by the court in respect to Magistrates' orders under Secs. 62 and 131 of the Code of Criminal Procedure, this court had no jurisdiction to interfere with orders under Sec. 318, as such orders were not a *judicial proceeding* within the meaning of Sec. 404.

Shántarám Náráyan, in reply, urged that proceedings under Sec. 318 were clearly judicial proceedings, inasmuch as although the Magistrate had a limited jurisdiction, still he, as Judge, received evidence, and decided who was in possession, in the same way as Revenue Courts used to do.

NEWTON, J. :—Mr. Dhirajlál has shown no precedent in favour of the position he assumes. It has been repeatedly held by this court that orders under Secs. 62 and 131 are not judicial proceedings, and therefore they are final. But *proceedings* under Sec. 318 are *judicial proceedings*; and it is a fallacy to say that because the jurisdiction of a court is limited to certain points, therefore it is not a judicial proceeding. A Revenue Court, for instance, can decide questions of rent, but not of title, and it would be incorrect to say that the proceedings in such a case were not judicial proceedings. The Magistrate, under Sec. 318, was bound to inquire which party was in actual possession, and he had nothing to do with the question of legal possession. We reverse his decision and pass the following order :—

PER CURIAM :—The Court reverse the order of the F. P. Magistrate, inasmuch as he determined not the actual possession, but the title to possession; and he is ordered, after receiving a written statement, and otherwise conducting the inquiry according to the provisions of Chap. XXII. of the Code of Criminal Procedure, to decide which of the parties is *actually* in possession, and entitled to retain such possession until ousted by due course of law.