

REVISIONAL CRIMINAL.

Before Mr. Justice West and Mr. Justice Birdwood.

IN THE MATTER OF THE PETITION OF MAHĀ DA'JI
SADA'SHIV TILAK.*

1887.
February 10.

Criminal Procedure Code (Act X of 1882), Secs. 133, 137—Magistrate's duty to take evidence under Section 137.

Under section 137 of the Criminal Procedure Code (Act X of 1882), a Magistrate is bound to take evidence as a basis for the order he has to make.

Where a Magistrate had, without taking any evidence, ordered a privy to be removed, and it appeared that in so doing he had acted solely on his own opinion that the privy was a nuisance,

Held, that he acted illegally and *ultra vires*.

THIS was an application, under section 439 of the Criminal Procedure Code (Act X of 1882), for revision of an order made under section 137 of the Code, by Mr. Drew, the Sub-Divisional Magistrate of Panvel.

The District Magistrate of Kolába issued a notice under section 133 of the Criminal Procedure Code, requiring the applicant to remove a privy which he had built on his own land, or to appear before Mr. Drew, the Sub-Divisional Magistrate, and show cause why the privy should not be ordered to be removed.

The applicant appeared before Mr. Drew to show cause; but the Magistrate, instead of taking any evidence, merely went to inspect the place, and, acting on his own opinion that the privy was a nuisance, ordered it to be removed. The District Magistrate confirmed this order.

Thereupon the present application was made to the High Court for a revision of the aforesaid order. The High Court called for the record and proceedings of this case.

Mánekshá Jehángírshá for the applicant.

Pándurang Balibhadra, (Acting Government Pleader), for the Crown.

WEST, J. :—The applicant received notice from the District Magistrate to remove a privy built on his own land, or to show cause against the order before Mr. Drew, a Sub-Divisional Magistrate of the District. He appeared to show cause, and

* Criminal No. 325 of 1886.

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thereupon it became the duty of the Magistrate, under section 137 of the Code of Criminal Procedure, to take evidence as a basis for the order he was to make. Mr. Drew went to inspect the place, but he did not take evidence. His proceedings consequently show only his own opinion that the structure was a nuisance. They do not show, by evidence, that the privy was an unlawful obstruction or nuisance to a way, channel, or public place. But, unless there was such a case for interference, the Magistrate had not authority to issue the order, or to enforce it. It cannot be inferred, from the mere order of an inferior Court or an administrative authority, that all the conditions of its jurisdiction were satisfied, and here the proceedings show rather that they were not satisfied. When a statute, too, directs anything to be done in a particular way, that "includes in itself a negative, viz., that it shall not be done otherwise" (Plowden, 206); *Morgan v. Leech*⁽¹⁾. The order made by Mr. Drew does not satisfy the requisite conditions; the confirming order of the District Magistrate was simply *otiose*. We accordingly reverse them.

Order reversed.

(1) 2 Moo. I. A. at p. 435.

APPELLATE CRIMINAL.

Before Mr. Justice West and Mr. Justice Birdwood.

QUEEN EMPRESS *v.* MANGESH JIVA'JI.*

Penal Code (Act XLV of 1860), Secs. 503, 507, 511—Criminal intimidation—Attempt to commit an offence.

1887.

February, 10.

The accused sent a fabricated petition to the Revenue Commissioner, S. D., containing a threat, that if a certain forest officer were not removed elsewhere, he would be killed. The accused was charged with the offence of criminal intimidation under section 507 of the Indian Penal Code (XLV of 1860). The Sessions Judge found that the Commissioner had neither official nor personal interest in the forest officer. He, therefore, acquitted the accused of the offence of criminal intimidation, but convicted him of an attempt to commit the offence punishable under section 507, and sentenced him to four months' simple imprisonment.

Held, reversing the conviction and sentence, that as the person to whom the petition was addressed, was not interested in the person threatened, the act intended and done by the accused did not amount to the offence of criminal intimidation within the meaning of section 503 of the Indian Penal Code.

* Criminal Appeal, No. 2 of 1887.