

REVISIONAL CRIMINAL.

Before Mr. Justice West and Mr. Justice Birdwood.

IN RE BA'LKRIISHNA AMRIT PRADHAN.*

1887.
January 22.

Criminal Procedure Code (Act X of 1882), Sec. 147—Reasonable likelihood of a breach of the peace—Police report.

The lessee of certain grass land in a village disputed the right of the villagers to graze their cattle on his land during the rainy season. On the 26th August, 1886, he prosecuted twenty-one villagers before the Second Class Magistrate for having unlawfully brought their cattle on his land, and committed mischief on the 5th September, 1886, and pending this prosecution, the villagers assembled on the land in question, and there was a riot. The offenders were convicted and punished. In appeal, the Sub-divisional Magistrate on the 11th October, 1886, upheld the conviction. On the same day, finding from the police report that there existed a dispute between the lessee and the villagers as to the right of the latter to graze cattle on the grass land, and that the dispute was likely to lead to a breach of the peace, the Sub-divisional Magistrate thought it necessary to hold an inquiry into the matter, under section 147 of the Criminal Procedure Code (Act X of 1882). He, however, postponed the inquiry until the decision of the Second Class Magistrate in the mischief case. In that case the Magistrate found that the villagers had no right to graze cattle on the land in question, and that the lessee was in exclusive possession of it. He, therefore, held that the villagers had unlawfully entered upon the land; but, as the damage done was inappreciable, he acquitted the accused on the 19th October, 1886. The Sub-divisional Magistrate being of opinion that after this decision a breach of the peace was probable, held the inquiry under section 147 of the Criminal Procedure Code. He found that the villagers had the right of grazing cattle on the land in question during the autumn, and that they had exercised this right in the last preceding season. He, therefore, made an order allowing the right of grazing to the villagers. On application by the lessee to the High Court under section 435 of the Criminal Procedure Code,

Held, that the order was illegal. Though the police report afforded some justification for entering upon an inquiry under section 147, still after the rights of the parties had been judicially pronounced upon by the Second Class Magistrate in the sense that the villagers had no right of grazing cattle on the land in question, there was no reasonable ground for apprehending any further violence, and, therefore, no necessity for holding the inquiry under section 147.

THIS was an application, under section 435 of the Criminal Procedure Code (Act X of 1882), for revision of the order of Mr. Drew, Sub-divisional Magistrate of Alibag, under section 147 of the Code.

* Petition for Revision, No. 289 of 1886.

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The applicant, Báلكrishna, was the lessee of certain grass land in the village of Kulkunde Kultambe. The villagers claimed a right, which Báلكrishna denied, of grazing their cattle on this land during the rainy season. On the 26th August, 1886, Báلكrishna lodged a complaint before the Second Class Magistrate of Alibág against twenty-one villagers, charging them with having illegally brought their cattle on the grass land, and thereby committed mischief. On the 5th September, 1886, while the inquiry into this complaint was pending, the villagers assembled on the land in question, and there was a riot. The police prosecuted the offenders, who were convicted and sentenced to one month's rigorous imprisonment. In appeal, Mr. Drew, the Sub-divisional Magistrate, on the 11th October, 1886, upheld the conviction, but reduced the sentence.

On the same day, finding, from the police report filed in the riot case, that there was a dispute between Báلكrishna, the lessee, and the villagers as to their right of grazing cattle on the land in question, and that the dispute was likely to cause a breach of the peace, Mr. Drew thought it necessary to hold an inquiry under section 147 of the Criminal Procedure Code (Act X of 1882). He, however, postponed the inquiry until the Second Class Magistrate should have disposed of the complaint filed by Báلكrishna against the villagers on the charge of mischief. That case was decided by the Second Class Magistrate on the 19th October, 1886. He found that Báلكrishna was in exclusive possession and enjoyment of the land in question, and that the villagers had no right of grazing their cattle on this land. He found, also, that some of the villagers had unlawfully brought their cattle to graze on this land on the 28th August, 1886, but acquitted them on the ground that no appreciable amount of damage had been caused.

On the 20th October, 1886, Mr. Drew, the Sub-divisional Magistrate, being of opinion that after this decision a breach of the peace was probable, as both sides might consider the decision to be in their favour, issued notices to Báلكrishna and to the villagers for an inquiry into the matter, under section 147 of the Criminal Procedure Code. He found, on such inquiry, that the villagers had the right of grazing their cattle on the grass land during the

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rainy season, that they had exercised this right in the last preceding season, and that Bálkriřhna had not the exclusive possession or enjoyment of the land in question. He, therefore, passed an order on the 1st November, 1886, directing that Bálkriřhna should not retain possession of the land to the exclusion of the villagers' right of grazing cattle thereon during the rainy season.

Against this order, Bálkriřhna, made an application to the High Court, under section 435 of the Criminal Procedure Code. The High Court sent for the record of the case.

Branson (with him *Ghanashám Nilkant*) for the applicant:—The lower Court had no jurisdiction to interfere under section 147 of Act X of 1882, except in case of an imminent breach of the peace—*Obhoy Chandra Mookerjee v. Mohamed Sabir*⁽¹⁾ and *Subba v. Trincal*⁽²⁾. In the present case there was no probability of a breach of the peace after the Second Class Magistrate had judicially pronounced upon the rights of the parties. The lower Court ought rather to have bound over the villagers who had done wrong before.

Pándurang Balibhadra, (Acting Government Pleader), for the Crown:—The lower Court proceeded on the police report, which showed that there was a likelihood of a breach of the peace. There was, therefore, a sufficient justification for an inquiry under section 147. Under that section the existing easements and other rights over immoveable property are to be maintained, just as under section 145 the existing possession is to be retained until the rights of the parties are determined by a civil Court—*In re Kali Kristo Thákur*⁽³⁾; *Ambler v. Pushong*⁽⁴⁾; *Chunder Koomár Poddar v. Chundra Kanta Ghose*⁽⁵⁾. In the present case the villagers are found to have a right of grazing cattle on the land in question. The order in their favour is, therefore, legal and proper.

WEST, J.:—The police report of the 6th September, 1886, may have afforded to the Sub-divisional Magistrate a sufficient ground for supposing or, at any rate, conjecturing that at that time a

(1) I. L. R., 10 Calc., 78.

(3) I. L. R., 7 Calc., 46.

(2) I. L. R., 7 Mad., 460.

(4) I. L. R., 11 Calc., 365.

(5) I. L. R., 12 Calc., 521.

dispute existed as to the use of the land in question that might lead to a breach of the peace. He was justified, therefore, in entering on an inquiry. But when he had once stayed that inquiry, and in the meantime the rights of the disputant parties had been pronounced on in a regular judicial inquiry, in the sense that the villagers had no right to graze their cattle on the land in question, the purpose of the formerly proposed inquiry was attained. The rights of the parties being judicially ascertained, at least provisionally, no further investigation of them was necessary, nor could the Sub-divisional Magistrate properly assume that a dispute would be continued on a question that the magisterial decision should have set at rest. His assumption, that because no punishment was inflicted on account of the insignificance of the injury, therefore the decision as to the right was unjudicial, was quite unwarranted. A repetition of the injury would probably not be deemed insignificant, and those who after a declaration of a Court against their alleged right should again assert it by force, would know that they were increasing the risk of a substantial penalty. We do not intend to encourage, for a moment, any exercise, on either side, of violence; but we are of opinion that after the decision of the 19th October, 1886, the Sub-divisional Magistrate had no reasonable ground to apprehend it.

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There seems to have been no evidence at all of any subsequent manifestation of evil intention. It should have been presumed, not that the parties would enter into a contest in opposition to the judgment, but that they would submit to it. Probably they will do so; if not, the Sub-divisional Magistrate can take the requisite steps. But on the case as it now stands, we must set aside his order as not warranted, and not within the purpose of section 147 of the Code of Criminal Procedure.

Order reversed.
