

(1871) 06 CAL CK 0014

Calcutta High Court

Case No: None

The Queen

APPELLANT

Vs

Kali Chandra Shah and
Mahima Ranjan Roy
ChowdhryRESPONDENT

Date of Decision: June 17, 1871

Judgement

Paul, J.

In this reference two questions have been submitted for our consideration: 1st, Before a case can be brought u/s 318 of the Criminal Procedure Code, is it necessary to adjudicate upon legal evidence? and, secondly, having been so brought, are the statements of the parties, and mere local enquiry, not on oath, sufficient data on which to decide who is in possession of the disputed lands? With reference to the first question, the Magistrate has considered the decisions u/s 318 of the Criminal Procedure Code to be apparently conflicting. We think the circumstances of this case do not admit of any reference to those decisions which are said to be conflicting, because we find that in this case a petition was presented by Sheikh Burra Mahomed on the 10th January 1870, that his evidence was then and there taken on solemn affirmation, and that he substantiated the principal matters contained in his statement.

2. This evidence plainly shows that a dispute existed concerning lands, &c, which was likely to create a breach of the peace; and the order that was made on that occasion was to the effect that, in order to prevent the breach of the peace, two inspectors should be deputed to the spot to keep the peace. All the subsequent proceedings are based upon this preliminary proceeding. The subsequent proceedings consist of petitions and other matters put in by the disputing parties, and they clearly confirm the view originally taken by the Magistrate, upon the evidence of Sheikh Burra Mahomed, as to the existence of a dispute concerning lands, &c, which was likely to create a breach of the peace. Under these circumstances, it appears that the Magistrate was reasonably and rightly satisfied, and that he acted fully within the provisions of section 318. In this view of the case, a consideration of what is said to be a conflict between the various decisions is not, I think,

called for, and I would suggest that in making references to this Court, the Magistrates should be careful to glean the facts first and see if any of the admitted facts, on being carefully weighed and considered, give rise to any questions which are mooted in the decisions said to be conflicting. In this case we consider that if the Magistrate had applied his mind to the particular facts of the case, he would have had no difficulty whatever in putting the correct interpretation upon section 318. It often happens that a confusion arises in the mind upon reading a number of decisions, without at the same time assiduously considering the particular facts upon which those decisions are come to.

3. With reference to the second question, it is quite clear that mere local enquiry and statements of parties not on oath are not sufficient data on which to decide what party is in possession of land. "We do not find on the records of this case any evidence of witnesses examined on oath by the Magistrate; and we consider that any statements that they have made not upon oath cannot be regarded as evidence, and ought not to be relied upon as such. It is admitted on both sides, that there is no evidence of parties on the record, that the statements were not taken on oath, and that the local enquiry was not conducted on oath. Under such circumstances, the question involved in this reference is too elementary to require discussion, and it has taken me by surprise, that an enquiry made on the spot, either in the presence or absence of the parties, and some statements elicited from persons not under the sanction of an oath, should be considered as any legal evidence on which to direct a party to be kept in possession to the exclusion of another. When we consider that an award u/s 318 gives a man a strong hold upon land, from which he cannot be dispossessed until the opposite party can prove a superior title, it cannot but be maintained that the proper proceeding must be that the local enquiry or investigation, of whatever nature it may consist, should be upon evidence in the legal sense of the word. I do not myself much approve of the term legal evidence," for all that courts of justice are concerned with is evidence in the legal sense of the term,--that is, that which is taken on oath. Oral evidence is the statement of a witness on oath, and unless it be upon oath it cannot be any evidence at all. Therefore the expression legal evidence" seems to create some confusion, in that it supposes that there may be evidence which is not legal. The adjudication in any case must be upon evidence properly so called. The adjudication by the Magistrate on the second question having been made upon matter which was not properly in evidence is manifestly wrong, and his proceedings must therefore be quashed.

Bayley, J.

4. On the first of the two questions referred by the Magistrate, I think there is no doubt that Sheikh Burra Mahomed's statement on solemn affirmation recorded by the Joint Magistrate after the presentation of his petition on its back, and followed by an order endorsed under the affirmation upon the police to act, and for two constables to keep the peace, fully satisfied the Joint Magistrate as to the likelihood of a breach of the peace, and this in such a manner as to make his proceedings in accordance with the provisions of section 318. It follows, therefore, that a discussion of the several decisions referred to

by the Magistrate is now unnecessary in this case and under the above circumstances. As to the second question, the pleader is unable to show us any statement on oath or solemn affirmation of any witness whatever. In fact, it seems clear that the Joint Magistrate went to the village in company with his mohurir, and asked the inhabitants their views of the rights and interests of the contending parties, but did not put their statements under the sanction of an oath or solemn affirmation. So these statements, under the law, are no evidence at all. The Joint Magistrate no doubt makes some reference as to "oral evidence" in his judgment, but, as stated above, there is no such evidence in a legal sense on the record. I concur, therefore, in the order that the Joint Magistrate's proceedings should be quashed as illegal on the second point referred.