

(1880) 06 CAL CK 0021

Calcutta High Court

Case No: None

In Re: Surjanarain
Dass and Others

The Empress on the
prosecution of D.R.
Daly

APPELLANT

Vs

RESPONDENT

Date of Decision: June 15, 1880

Acts Referred:

- Penal Code, 1860 (IPC) - Section 141

Citation: (1881) ILR (Cal) 88

Hon'ble Judges: Tottenham, J; Jackson, J

Bench: Division Bench

Judgement

Jackson, J.

We are altogether unable to approve of the decision of the Sessions Judge in this case, as it appears to us that he has missed the true points in the case, and has given prominence-and given, so to say, by his judgment a certain validity-to that which he ought to have discountenanced.

2. As we understand the statements of the contending parties, the Maharaja of Tippera claimed a right to collect certain duties, of which the nature is not precisely stated, in respect of bamboos cut not only over land admittedly belonging to him, but over land of which the ownership appears to be in doubt, and of which at any rate the Collector of Sylhet appears to have made a grant to the opposing parties in these proceedings. Whether upon application from the grantee or otherwise, the Deputy Commissioner, as Collector, appears to have taken upon himself to issue a proclamation to all persons concerned, warning them that the collection of duties or tolls on the part of the Maharaja was illegal. Notwithstanding the issue of that proclamation, the people of the Maharaja appear to have made a further demand of

tolls which was resisted by the Collector grantee, and thence a dispute arose; and the result of that was, that certain persons were convicted in the Court of the Extra Assistant Commissioner, and sentenced to rigorous imprisonment and fine. These persons appealed to the Sessions Judge, and the Sessions Judge, in our opinion very strangely, says:-" So long as the order of the Deputy Commissioner stands, and until it has been set aside, these appellants have no right to disobey the order of the Deputy Commissioner, and to take the law into their own hands. It is not for this Court to form an opinion of the legality or the illegality of the order of the Deputy Commissioner. The employers of these appellants have their remedy by suit or otherwise." This declaration of the Sessions Judge would seem to justify the doctrine, that any public servant, with or without authority, is at liberty to issue any notification which seems good to him, and that any person committing an act contravening such notification is liable to be punished. The Judge goes on to say:-"The evidence for the prosecution proves that these appellants did illegally assemble." Now, except in so far as the assembly was in contravention of the Deputy Commissioner's proclamation, it does not appear to have been illegal at all. Further on the Judge says:-"The order of the Deputy Commissioner has clearly made over to the Chowtully Garden managers the sole right to the south side of the Sawal Charra, and forbade the Maharaja of Tippera and his people to make any collections." This is a view of the functions of the Deputy Commissioner very much wider than anything that my previous experience has made me acquainted with. When the Code of Criminal Procedure authorizes the making of orders by executive authorities with the view of preventing a breach of the peace or for similar purposes, it has always been held, and is now enacted in the existing Code, that the propriety of such orders is not a matter of question in that state of things for the appellate judicial authorities. It is when the executive officers seek to enforce those orders by the infliction of penalties that the Courts have to step in and see whether the orders made were with authority or not. This was precisely the occasion on which it was the duty of the Sessions Judge to consider whether that order was properly made or not. The order of the Sessions Judge, upon the ground on which it is based, cannot be supported. It, no doubt, remains to be considered, and it has not been considered, whether the agents of the Maharaja of Tippera or his farmer did, with a view to enforce any right or supposed right, commit any act which comes within the purview of Section 141 of the Indian Penal Code, and for which, therefore, they are properly punishable. That is a question which the Sessions Judge ought to inquire into, and with a view to the consideration of which this case must go back. There can be no doubt, we think, that if the Maharaja has been accustomed to levy these duties or tolls or whatever they are called, and attempted on the present occasion to levy them from the persons from whom they are due, that would be an "attempt to enforce a right or supposed right."