under section 43, Madras Act I of 1886. From the fact that the inspector is directed to send the bond to the Magistrate "having jurisdiction to try" the offence of which the person bailed is accused, the intention of the Legislature would appear to have been that the Magistrate should proceed in the same manner and with the same powers as if the default had been made by a person bailed to appear before his own Court. This inference is strengthened by the fact that where the Legislature intended as in section 516, Criminal Procedure Code, that the Magistrate should have no discretion, but should merely execute the orders of superior authority, the direction to levy the amount may be addressed to "any" Magistrate.

Nor can we uppose that the Legislature intended to make the orders of the station-house officers and the Abkari Inspectors final, and to take away by implication the liberty to appeal under section 515, Criminal Procedure Code.

For these reasons we are of opinion that the view taken by the Second-class Magistrate as to his legal powers was correct.

APPELLATE CRIMINAL.

Before Mr. Justice Best.

QUEEN-EMPRESS

v.

KUPPAYYAR AND ANOTHER.*

1894. September 25.

Criminal Procedure Code—Act X of 1882, s. 145—Parties bound by order.

Orders passed under Criminal Procedure Code, s. 145, are binding only on the actual parties to the cases in which they are made.

CASE referred for the orders of the High Court under section 438, Criminal Procedure Code, by G. Stokes, District Magistrate of Salem.

The case was stated as follows:—

"The facts are shortly that a dispute existed in regard to a piece of land in the Singapore village, and the Head Assistant

* Criminal Revision Case No. 420 of 1894.

QUEEN-EMPRESS v. KUPPAYYAR.

Magistrate passed an order under section 145, Criminal Procedure Code, declaring that one Krishnayyar was entitled to retain possession of the land till ousted in due course of law. In this order but two persons are mentioned—Nanjunda Sastri and Krishnayyar. Subsequent to the date of this order, the accused in the present case, the village munsif and karnam of the village, entered on and disturbed Krishnayyar's possession and he charged them with mischief. They have been acquitted by the second-class magistrate on the ground that, as they were no parties to the proceedings in which the Head Assistant Magistrate's order was passed, they were not bound by these proceedings, and he finds that no criminal intent is proved against them.

"I find, on examining the proceedings in which the Head Assistant Magistrate's order was passed, that the village munsif and karnam were witnesses in these proceedings, and were examined in them by the police, and distinctly disputed then the complainant's right to the land then in dispute. In fact the Head Assistant Magistrate finds that the village munsif was at the bottom of the whole dispute in that case.

"On the record, therefore, it seems to me that the finding of the sub-magistrate is opposed to fact, and that the accused were parties to these proceedings so as to be bound by the order. I am aware that it has been ruled (see in re *Gopal Burnawar*(1), also in re *Nobo Kishore Chackerbutty*(2)), that in a dispute between A and B and his tenants, where A was by an order declared to be in possession, subsequently tenants of B could not be criminally punished for disobeying this order, but I think this a most mischievous and unnecessary ruling, and one which renders the maintenance of the peace needlessly more difficult. The magistrate may forbid all disturbance of such possession until the party is evicted in due course of law. The order under section 145 seems much in the same category as an order addressed to the public under section 144, and to be justified by exactly the same reasons. The ruling is a premium on what has been done in this case, viz., to put forward only one disputant, and then another and so on, wasting the magistrate's time to no purpose and perhaps keeping open a dangerous dispute.

"The magistrate's proceedings seem further to be defective,

(1) 3 B.L.R., App. Cr., 13. (2) 7 C.L.R., 291.

for there is nothing on the record to show that he has taken any steps to ascertain whether the land referred to in the Head Assistant Magistrate's order is the same as that to which mischief has been caused. The complainant asserts this; but the accused deny it."

Parties were not represented.

JUDGMENT.—I concur in the opinion expressed in re *Gopal Burnawar*(1) that an order passed under section 145 of the Code of Criminal Procedure is binding only on the actual parties to the case in which it was passed.

The mere fact of a person being examined as a witness in such a case does not make him a "party" bound by the order.

The inconvenience pointed out by the District Magistrate can be avoided by care being taken to include as parties to proceedings under section 145 all persons interested in, or claiming a right to, the property in dispute. Cf. *Ram Chandra Das v. Monohur Roy*(2).

This case is not one calling for interference under section 438 of the Code of Criminal Procedure.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Shephard.

GURULINGASWAMI (PLAINTIFF), APPELLANT,

v.

RAMALAKSHMAMMA AND ANOTHER (DEFENDANTS NOS. 1 AND 2), RESPONDENTS. *

1894. August 31. September 20.

Hindu law—An only son given in adoption by his widowed mother—Estoppel—Specific Relief Act—Act I of 1877, *s.* 42—*Suit for declaration by a remote reversioner—Parties.*

The plaintiff, claiming a remote reversionary interest in the estates of a deceased Hindu, sued for a declaration of the invalidity of an adoption made by the widow. It appeared that the nearer reversioners (who were in the first instance joined as defendants in the suit) refused to call in question the validity of the adoption and that the plaintiff himself had concurred in it at the time when it took place. It appeared further that the alleged adopted son had been given in adoption by his widowed mother, and also that he was an only son:

(1) 3 B.L.R., App. Cr., 13. (2) I.L.R., 21 Calc., 29.

* Appeal No. 17 of 1894.