construction" [*Gokul Mandar* v. *Pudmanund Singh*(1)]. We may add that the accused is not in a worse, but is in a better, position when the items can be, and are, specified, rather than when they cannot be, or are not, specified. The view that we take is supported by the decisions of the High Courts of both Allahabad and Calcutta [*Emperor* v. *Gulzari Lal*(2), *Emperor* v. *Ishtiaq Ahmad*(3), and *Samiruddin Sarkar* v. *Nibaran Chandra Ghose*(4,] and we are not aware that a contrary view has been taken by any of the High Courts.

The trial was therefore not illegal by reason of the charges on which the accused was tried. On the merits we are satisfied that the accused was rightly convicted in respect of the two cheques which formed the subject of the first and second charges.

We dismiss the appeal.

APPELLATE CRIMINAL.

Before Mr. Justice Davies and Mr. Justice Moore.

SREEMAN KUMARA TIRUMALRAJA BAHADUR, RAJAH OF KARVETNAGAR, PETITIONER,

v.

SOWCAR LODD GOVIND DOSS KRISHNA DOSS, RESPONDENT.*

1906 July 16, 25, 30.

Criminal Procedure Code Act V of 1898, s. 145—Enquiry to be held before issuing preliminary order under - Jurisdiction of Magistrate—Failure of jurisdiction where Magistrate refuses to receive evidence which party is entitled to adduce under s. 145 (5).

In order that a Magistrate may have jurisdiction to act under section 145 of the Code of Criminal Procedure, he must be satisfied from a Police report, or other information, that a dispute likely to cause a breach of the peace exists concerning any land, etc. Where there is no Police report the statement of interested parties ought to be received with great caution and ought not to be acted upon unless they are corroborated by the testimony of less interested persons. The opposite party also, ought to be given an opportunity of

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(1) L.R., 29 I.A., 196. (2) I.L.R., 24 All., 254.
(3) I.L.R., 27 All., 69. (4) I L.R 31 Calc., 928 at p. 931.

* Criminal Revision Case No. 209 of 1906, presented under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the order of Stanley Rice, Esq., District Magistrate of North Arcot in Criminal Miscellaneous Petition No. 1 of 1906.

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cross-examining the party making such statements before the Magistrate takes any action on them.

Under section 145 of the Code of Criminal Procedure, a party who is required by a preliminary order to attend at the Magistrate's Court is entitled to show that no dispute likely to cause a breach of the peace exists or had existed, and it is not open to such Magistrate to refuse to receive such evidence when tendered. Where the Magistrate refuses to receive such evidence, his order will be set aside as having been passed without jurisdiction.

Per DAVIES, J.—A Magistrate acts *ultra vires* in clubbing together disputes relating to a large number of villages and treating them as one. Each village must stand on its own footing and the Magistrate should satisfy himself that a dispute existed in respect of all the villages. He should ascertain, as regards each village, which party was in possession at the date of the order and confirm that possession.

The object of Chapter XIV of the Code of Criminal Procedure being to procure prompt action to avert breaches of the peace, the Legislature could not have contemplated under that chapter wholesale proceedings in regard to a large number of villages which, if the procedure above stated be adopted, would entail a prolonged enquiry.

THE facts necessary for this report are fully set out in the order of the lower Court, the material portions of which are as follows :—

"The estate of Karvetnagar was until lately under the management of the Court of Wards, who handed it back to the Rajah of the Karvetnagar on 27th September 1905. While doing so, they restored possession of the Narayanavanam Taluk to the petitioner who was the usufructuary mortgagee. The Rajah immediately issued a notice to the ryots that he had come into possession and this has caused unrest. Hence the application.

"The facts are very clearly stated by my predecessor in his order of 9th March 1906, and I here embody it with this order.

"The Narayanavanam Taluk was mortgaged with possession to Dewan Bahadur Lodd Kristna Doss Bala Mukund Doss (father of the petitioner) on July 20, 1878, and was in possession of the usufructuary mortgagees subsequent to that date until management was assumed by the Court of Wards under Act IV of 1899. On the 13th June 1905 the incapacitated proprietor (the father of the counter-petitioner) died and the Court of Wards having decided to relinquish the superintendence and managements of the estate, restored the possession of the Narayanavanam Taluk to the usufructuary mortgagee on the 27th September 1905.

"It appears from the affidavit of R. Subramania Ayyar, the Deputy Tahsildar of the mortgagee in possession, that on the very

day that possession was given to the mortgagee the counter-petitioner issued notices to the ryots and village officers to the effect that possession of the taluk had *passed* to him and not to the mortgagee and that rents were to be paid and accounts rendered to him alone and not to the mortgagee.

"On this being brought to the notice of the Regulation Collector, that officer caused a notice to be promulgated in the villages by beat of drum informing the ryots and village officers of the true facts.

"The records of this case also show that a copy of the notice was obtained and supplied to the Collector and District Magistrate who communicated with the counter-petitioner in the hope of inducing him to recall the notice to the ryots and refrain from action that appeared as illegal, as it was ill advised and was likely to lead to a disturbance of the public tranquillity.

"The affidavit of the Deputy Tahsildar of petitioner shows that the Karvetnagar Rajah without paying the least attention to the disinterested advice given him by the Chief Magistrate of the District, has made further determined efforts to gain possession of the taluk by force instead of through the proper Courts. He has opened a Taluk Office of his own in the taluk and is employing every means to induce the ryots and village officers to attorn to him.

"The action of the counter-petitioner, even if he *bonâ fide* believes that possession "passed" to him on the surrender of management by the Court of Wards, cannot but lead to breaches of the peace and disturbances throughout the taluk, and paragraphs 19 to 25 of the Deputy Tahsildar's affidavit recount what I must consider are only the mutterings of the coming storms.

* * * *

"Being satisfied then that a dispute likely to cause a breach of the peace exists regarding the possession of the Narayanavanam Taluk of the Karvetnagar Zamindari which is within the local limits of my jurisdiction, I make this order in writing in which I have stated above the grounds of my being so satisfied and I hereby require the parties concerned in the dispute to attend this Court in person or by pleaders within the next 10 (ten) days and to put in written statements of their respective claims as respects the fact of *actual possession* of the subject of dispute.

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"The two special points on which the enquiry was to proceed were these;—(1) is there any likelihood of a breach of the peace; (2) in whom does the actual possession vest.

* * * *

"It is for these reasons that I declined to take oral evidence to the effect that no breach of the peace has taken place or was to be apprehended. It is evident that relations are even now strained to the point of breaking.

* * * *

"Next it is argued that the Raja can show that whole villages have entirely attorned to him and that such partial possession should be declared to be with him. I see no reason for splitting up the case in this way. The question is, what is to be the unit? In this case, it has been taken to be the taluk. The office is administering the Taluk as a whole and not merely a bundle of unconnected villages in it. Would it be possible if the dispute were about a village to say that the dry lands were in possession of one party and the wet of another, or that of his wet lands certain survey numbers were possessed by one party and certain others by the other? or that a sub-division of a field was in possession of A and the rest of B? where can the line be drawn? I am clearly of opinion that as the dispute is about the Taluk the order should deal with the Taluk as a whole."

Against this order the petitioner preferred a Revision Petition.

The Hon. the Advocate-General (Mr. *J. E. P. Wallis*) and the Hon. Mr. *L. A. Govindaraghava Ayyar* for petitioner.

The Acting Public Prosecutor (Mr. *C. Sankaran Nair*), *P. R. Sundara Ayyar* and *A. S. Balasubrahmania Ayyar* for respondent.

ORDER—MOORE, J.—In order that a Magistrate may have jurisdiction to act under section 145, Criminal Procedure Code, he must be satisfied from a Police report or other information that a dispute likely to cause a breach of the peace exists concerning any land, etc. It is therefore necessary to ascertain what information Mr. Pinhey, District Magistrate, North Arcot, had before him when he passed his order of the 9th March 1906, and Mr. Rice who succeeded him as District Magistrate, when he passed his final order in this matter on the 2nd April. From Mr. Pinhey's order it is clear that he had no Police report before him. He was

District Magistrate. He believed that there was serious danger of riots breaking out all over a whole taluk in one of the zamindaris in his district, and yet as far as can be ascertained from the record, he never referred the matter to the District Superintendent of Police for enquiry and report, or obtained any information from that officer or any of his Subordinates in the Police before he jumped to the conclusion that there was a danger of riots all over a considerable tract of country. All that the District Magistrate had before him was a petition from a Deputy Tahsildar in the employment of Mr. Lodd Govinda Doss, the mortgagee who had taken over possession from the Court of Wards. Mr. Lodd Govinda Doss was, it is clear, most anxious that the District Magistrate should take action under the Criminal Procedure Code and decide that he was in possession. The facts being as stated it must be held that the District Magistrate should have received the Deputy Tahsildar's statements with great caution and should have declined to act on them unless they were corroborated by some less interested person. This official should also have been summoned before the District Magistrate and examined on oath, full opportunity being given to the Vakil of the Raja of Karvetnagar to cross-examine him more especially as to the statements that he makes in his petition as to the danger of riots breaking out in various villages in the taluk. Nothing of the sort, however, was done and Mr. Pinhey, considering that the action that had been taken by the Raja on the surrender of the management by the Court of Wards, could not but lead to breaches of the peace and disturbances throughout the taluk placed on record in his order of the 9th March 1906 that he was satisfied that a dispute likely to cause a breach of the peace existed, and directed the parties concerned in the dispute to attend at his court within ten days. Mr. Rice took the matter up and passed final orders on the 2nd April. He stated in his proceedings that the facts of the case had been clearly set out by his predecessor, and he accordingly embodied Mr. Pinhey's order of the 9th March in his proceedings. He then went on to add that as each party was claiming possession of the taluk and trying to collect rents and get leases executed to distrain, and generally to exercise acts of ownership, he was satisfied that a collision was inevitable sooner or later. The vakil for the Raja of Karvetnagar wanted to produce evidence to show that there was no danger of a breach of the peace. The District Magistrate

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however, refused to receive any evidence. It is clear that in so refusing Mr. Rice acted contrary to law. Section 145, clause 5 of the Criminal Procedure Code, lays down that nothing in that section shall preclude any party required by a preliminary order to attend at the Magistrate's Court, as the Raja had been required, from showing that no dispute likely to cause a breach of the peace existed, or had existed, and it was consequently not open to the District Magistrate to refuse to receive the evidence tendered to him. I feel very doubtful if it could be held that the petition of the Deputy Tahsildar afforded information such as to give Mr. Pinhey jurisdiction to pass his order of March but however this may be, I have no hesitation in holding that Mr. Rice's subsequent refusal to receive evidence gives this Court no option but to declare that his order of April was passed without jurisdiction and to direct that it be on that account set aside.

DAVIES, J.—I concur throughout with my learned colleague. I would go even further and hold that *ab initio* the District Magistrate acted *ultra vires* in clubbing together 230 alleged subjects of dispute and treating them as one. Each village stood on its own footing. The Raja had possession of some and the mortgagee of others. Before the District Magistrate made his declaration that there was a dispute likely to lead to a breach of the peace, he should have found that that was so in respect of all the villages, but as Mr. Justice Moore has pointed out he had no materials for saying that such a dispute existed in respect to a single village.

Then, when he came to the question of possession he should have decided which party at the date of his order was in actual possession of this or that village and confirmed that possession. Here without taking any evidence on the point he has arbitrarily found that the mortgagee was in actual possession of all the villages, which, as a matter of fact, we understand he was not. This course would no doubt have entailed a prolonged enquiry a circumstance which itself indicates that the Legislature did not contemplate wholesale proceedings of this sort in cases under chapter XIV of the Code of Criminal Procedure, the object of which is to procure prompt action to avert breaches of the peace. Had the provisions of the Code been strictly followed the cases before us could not have been disposed of in so offhand a fashion.