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wholly unable to suggest that, if these proceedings were set aside and the cause were tried again, it would be tried in any other way, or upon any other materials, than those on which it has been tried.

He has himself brought the case here on second appeal, as he could only have done in a regular suit, and the only difference which we can see from first to last between this proceeding and a regular suit, is that the plaintiff's application to the first Court is called a *petition* instead of a *plaint*, and that the case has been allowed to proceed without the payment of an institution fee.

The revenue is really the only sufferer. The error, if any, is a mere matter of form, which has not affected the trial of the case upon the merits, and which, therefore, (under s. 578 of the Code) we consider ourselves bound to disregard.

We find no reason to suppose that there is any error of law in the lower Court's judgment, except this informality, and we, therefore, think it right to entertain the appeal, and to dismiss it with costs. *Appeal dismissed.*

Before Mr. Justice Mitter and Mr. Justice Pigot.

IN THE MATTER OF OBHOY CHANDRA MOOKERJEE.
 OBHOY CHANDRA MOOKERJEE v. MOHAMED SABIR.*

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 October 2.

Possession, Order of Criminal Court as to—Dispute likely to cause breach of the Peace—Duty of Magistrate—Criminal Procedure Code (Act X of 1882), s. 145.

It is the duty of a Magistrate, before taking proceedings under s. 145 of the Criminal Procedure Code, to satisfy himself whether there is any dispute likely to cause a breach of the peace, and that the suggested apprehension of a breach of the peace is not merely colourable, and made to induce him to deal with matters properly cognizable by the Civil Court.

Mr. *Bell* for petitioner.

Mr. *Gregory* for opposite party.

THE facts of this case sufficiently appear from the judgment delivered by

MITTER, J.—I am of opinion that the basis on which the jurisdiction of Criminal Courts under s. 145 of the Code of Criminal Procedure is founded does not exist in this case.

* Criminal Motion No. 243 of 1883, against the order of Baboo Dwarkanath Roy, Deputy Magistrate of Burisaul, dated the 16th July 1883.

Section 145 says that, "whenever a Magistrate is satisfied from a police report or other information that a dispute likely to cause a breach of the peace exists, &c., &c.," then a proceeding under this section may be instituted.

In this case what happened was this: A police report was submitted to the Magistrate on the 8th November 1882, and in that report the police officer stated as his opinion that there was a dispute between the parties to these proceedings relating to a chur, and that in his opinion there was a likelihood of a breach of the peace. This opinion was based upon this ground: The police officer says that if one of the parties would attempt to collect rent forcibly from the ryots, there was a likelihood of a breach of the peace. Upon that, both the parties to these proceedings were called upon to show cause why they should not be bound down to keep the peace. They appeared and asked the Magistrate to allow them time to settle the matter amicably. For some reason or other this amicable settlement did not take place, and they were directed to enter into recognizances to the amount of Rs. 500 each, not to commit a breach of the peace for four months.

Then on the 15th Pous 1289 (corresponding with the 29th December 1882) an application was made by Mohamed Sabir, the opposite party, alleging that the applicant before us, *viz.* Obhoy Chandra Mookerjee, was about to commit acts of oppression upon his tenants, and in that application Mohamed Sabir also stated that some of the tenants had complained against the servants of Obhoy Chandra. On that very day his deposition was taken, and he confirmed the statements made in his application. The Magistrate, without any further enquiry as to whether all these statements were correct or not, on the 2nd January 1883, upon this petition, and the deposition of Mohamed Sabir, ordered the proceeding now before us to be instituted.

It appears to me that it was the duty of the Magistrate to see whether there was any dispute likely to cause a breach of the peace concerning this chur land before instituting these proceedings. He has acted simply on the statement of Mohamed Sabir, that is to say, he has assumed jurisdiction without really satisfying himself as to whether there was a dispute between

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the parties. It may be that Mohamed Sabir was anxious to have the question of possession decided in a cheap way, but it was the duty of the Magistrate, under s. 145, to satisfy himself that really there was a dispute likely to cause a breach of the peace concerning this chur land.

On the whole, I am of opinion that the foundation upon which the jurisdiction of the Criminal Courts under s. 145 is based was wanting in this case. We therefore set aside the order, dated 16th July 1883, and the rest of the proceedings.

PIGOT, J.—I entirely agree. I only wish to add that it seems to me that Magistrates ought to be very careful in acting under s. 145 of the Code of Criminal Procedure, so as to guard themselves from the danger of assuming jurisdiction in cases not really contemplated by the section, and where the suggested apprehension of a breach of the peace is little more than colourable, and made to induce the Magistrates to deal with matters properly cognizable by the Civil Courts.

Order set aside.

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 August-15.

Before Mr. Justice Mitter and Mr. Justice Tottenham.

KAROO SINGH (DEFENDANT) v. DEO NARAIN SINGH
 (PLAINTIFF)*

Review—Grant of Application, Notice of—Hearing by Successor—Civil Procedure Code (Act XIV of 1882), s. 624.

An application for review of judgment, upon a ground other than those mentioned in s. 624 of the Civil Procedure Code if presented to the Judge who delivered it, and who thereupon directs notice to be given to the opposite party, may be heard and disposed of by his successor. *Pancham v. Jhinguri* (1) dissented from.

THIS was a suit for possession of land. The Munsiff gave the plaintiff a decree. The defendant appealed to the District Judge who reversed the Munsiff's decision. The plaintiff then applied for a review, and the District Judge ordered notice to be given to the defendant. Before the hearing of the application the Dis-

* Appeal from Appellate Decree No. 1627 of 1882, against the decree of H. Beveridge, Esq., District Judge of Patna, dated the 14th of August 1882, affirming the decree of Baboo Kedarnath Roy, Additional Munsiff of Patna, dated the 31st of August 1881.

(1) I. L. R., 4 All. 278.