

“traffic.” This point was, however, not argued, and my judgment proceeds upon the ground that grave inconvenience to the public has not been shown, and the rule, as it stands, is an unreasonable one. I confine my judgment to the immediate matter before me, *viz.*, the using the Upper North Mall by a servant not in attendance on his master. No other point in the bye-law arises for decision. I accordingly set aside the conviction and the fine, and direct the latter to be refunded.

1902

 EMPEROR
v.
 BAL
 KISHAN.

Before Mr. Justice Blair.

IN THE MATTER OF THE PETITION OF BEHARI LAL.*

Criminal Procedure Code, section 145—No decision come to by Magistrate as to party in possession—Application for revision at instance of party who could not in his own right be entitled to immediate possession—Practice.

 1902
 April 29.

Held that where a Magistrate, after entertaining proceedings under section 145 of the Code of Criminal Procedure, had declined to make any order declaring one or other of the contending parties in possession, the High Court would not interfere in revision at the instance of a person who, though apparently the next reversioner to the estate, could for the time being have no possible right on his own behalf to present possession. *Laldhari Singh v. Sukhdeo Narain Singh (1)* and *Anesh Mollah v. Ejaharuddi Mollah (2)*, distinguished.

THIS was an application in revision arising out of certain proceedings under section 145 of the Code of Criminal Procedure held before the Joint Magistrate of Moradabad. The facts as found by the Magistrate were as follows:—One Har Sahai Patak died, leaving a widow, but apparently no direct male heir. After his death a dispute arose about mutation of names. This ended in a compromise, whereby it was settled that the widow Musammat Chunno should be entered in the khewat as owner for her life-time, and that Behari Lal the grandson of the deceased should be entered as her manager. It was also clearly laid down that Musammat Chunno had not reserved the right to remove Behari Lal from his possession. Musammat Chunno granted leases of certain villages belonging to the estate to Ram Sarup and others, and this action of hers led to the

* Criminal Revision No. 229 of 1902.

(1) (1900) I. L. R., 27 Calc., 892. (2) (1901) I. L. R., 28 Calc., 446.

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initiation, at the instance of Behari Lal, of proceedings under section 145 of the Code of Criminal Procedure. The Magistrate relying upon certain rulings of the High Court at Calcutta declined to make any order on these proceedings, holding that such proceedings were bad *ab initio* as having been entered upon between parties who had not an actual proprietary right in the property in dispute.

Against this order of the Magistrate Behari Lal applied in revision to the High Court.

Mr. *W. M. Colvin*, for the applicant.

Mr. *B. E. O'Connor* and *Munshi Gokul Prasad*, for the opposite parties.

BLAIR, J.—This is an application to revise an order of a Magistrate made in proceedings under Chapter XII of the Code of Criminal Procedure. The circumstances are these. Har Sahai Patak, the owner of the property in dispute, died, leaving him surviving a widow and two sons of daughters. It is not disputed that under the ordinary law of inheritance the widow would take a life estate, and the daughters' sons' interest would open up upon her decease. It is alleged that the deceased, Har Sahai Patak, made a will, the validity and the provisions of which became the subject of dispute between the widow of Har Sahai and Behari Lal and others. It was concluded by a compromise, which defined the relations of the parties to be established from that moment. It provided that the widow should retain her life estate, but that Behari Lal should manage the property on her behalf, not, however, taking any steps with regard to it without her consent. The Magistrate made the order, having received information that a dispute dangerous to the public peace was likely to arise in respect of the possession of the property. These proceedings were set on foot by the present applicant in revision, Behari Lal. The Magistrate upon hearing the parties came to the conclusion that he could pass no orders, and accordingly no order was passed deciding the possession of either one side or the other of the disputants. He held that Behari Lal had in effect no *locus standi* to claim possession at all. He was an agent and manager, and had in himself no right to possession whatever. It is true that he had a reversionary

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interest, but that is a very different thing from being a person interested in the present possession of the property. It seems to me that Behari Lal is not entitled to be heard in revision, upon the ground that he is not a person concerned in the dispute as to possession. Whatever present right he has is a purely derivative one, and comes to him as agent for the widow, just as much as if there had been no compromise at all, and he had been chosen by the widow to act for her.

Two cases decided by the Calcutta High Court were cited, one that of *Laldhari Singh v. Sukhdeo Narain Singh* (1) and the other of *Anesh Mollah v. Ejaharuddi Mollah* (2). I think by both those cases the revisional jurisdiction of that Court has been extended to an extent which is beyond the practice of this Court. That, however, is unnecessary for me to decide, as they are not in point. In this case it is enough for me to say that the applicant Behari Lal has no *locus standi* in respect of the proceedings. For these reasons I reject his application.

APPELLATE CIVIL.

 1902
 May 1.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Burkitt.

TIKAM SINGH (PLAINTIFF) *v.* DHAN KUNWAR AND OTHERS
 (DEFENDANTS).*

Evidence—Legitimacy—Possible length to which the period of gestation may be protracted discussed.

Where a child born some 365 days after the last period at which he could have been begotten by the husband of his mother was set up as legitimate, it was held that although such a period of gestation was perhaps not absolutely beyond the bonds of possibility, yet there being evidence that the mother had been married to her husband for ten years without having had any children by him, and also evidence which pointed strongly to the conclusion of immorality on the part of the mother, the only reasonable finding was against the legitimacy of the child.

THE pedigree of the family to which both the plaintiff and the defendants belonged was as follows:—

* First Appeal No. 227 of 1899 from a decree of Munshi Rajnath Prasad, Subordinate Judge of Agra, dated the 16th November 1899.

(1) (1900) I. L. R., 27 Calc., 892.

(2) (1901) I. L. R., 28 Calc., 446.