

*Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice
Cunningham.*

REID, MANAGER OF THE SUDDOWAH FACTORY (PETITIONER) v.
RICHARDSON, MANAGER OF THE RAJPORE FACTORY (OPPOSITE
PARTY).* 1887
March 16.

*Criminal Procedure Code (Act X of 1882), s. 145—Order passed under
s. 146 on proceedings taken under s. 145, Criminal Procedure Code—Power
of Court on revision—Evidence on revision.*

Where a Magistrate has passed an order under s. 145 of the Criminal Procedure Code, whereas the proper order in the case should have been one under s. 146, the High Court on revision will make the order which the lower Court ought to have made.

Case in which the High Court on revision entered into the whole of the evidence in the case. *Raja Baboo v. Muddun Mohun Lall* (1) explained.

THIS case originally arose out of disputes concerning the boundaries between the lands held by the Suddowah and Rajpore Factories. After enquiry the police reported that proceedings under s. 145 of the Criminal Procedure Code were necessary, a breach of the peace being imminent.

The Magistrate thereupon passed an order, after being satisfied that a breach of the peace was likely to occur, summoning the parties to appear before him, stating that the question arising was whether a portion of certain *khorrav* land, north of the cultivated part of a certain *deara*, was in possession of the Suddowah or the Rajpore Factory. After hearing the evidence on both sides he found that the Suddowah Factory had failed to prove possession of the land in dispute, and that the Rajpore Factory were in possession, and directed that they should be retained in possession until ousted by order of a competent Civil Court.

The Manager of the Suddowah Factory applied to the High Court and obtained a rule *nisi* calling upon the Manager of the Rajpore Factory to show cause why the order of the Magistrate above referred to should not be set aside.

*Criminal Motion No. 406 of 1886, made against the order passed by W. B. Martin, Esq., Deputy Magistrate of Gopalgunge, dated the 3rd of July, 1886.

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The grounds on which this rule was obtained and the arguments of Counsel thereon are not set out owing to the view taken by the Court at the hearing on a perusal and consideration of the entire evidence in the case, *viz.*, that the evidence of possession was extremely unsatisfactory; that an important witness as to the fact of possession had not been examined although his examination was applied for; and that therefore a proper trial of the issue of possession had not been held; and that the parties had, by proceeding under s. 145 of the Criminal Procedure Code, endeavoured to obtain a decision as to the boundaries between their respective estates.

Mr. Woodroffe and the *Officiating Standing Counsel* (Mr. Bonnerjee) showed cause.

The *Advocate-General* (Mr. Paul) and Mr. Pugh in support of the rule.

The order of the Court (PETTIERAM, C.J., and CUNNINGHAM, J.) was delivered by

CUNNINGHAM, J.—We have considered this case at great length, and, departing from the ordinary rule which the Court prescribes to itself in cases of revision, we have thought it desirable to go into the whole of the evidence in the case with the view of putting ourselves in full possession of all the facts appearing upon it, and we have also kept in mind the circumstance, which is constantly brought before us in these cases, that, as between the two parties to the present dispute, s. 145 of the Code of Criminal Procedure is being used for a purpose wholly alien to that for which it was originally intended, and one calculated to produce, in whosoever favor it is made, very unexpected and unfair results—in fact, that a squabble about some grass is to be turned into an important judicial decision as to the boundary of two large estates. That is a state of things which we regard with great disapproval and which it is the object of this Court to discourage as far as possible, and as we see in this case that the decision, whichever way it went, is calculated to have this effect in a very high degree, we have felt it necessary to scrutinise, with great minuteness, the legal grounds upon which the decision rests and the adequacy of the evidence which supports the decision at which the Magistrate has arrived.

Referring to a recent case, *Raja Babu v. Muddun Mohun Lall* (1), and to an observation made by the Chief Justice on that occasion, Mr. Bonnerjee has urged before us that we are not at liberty to decide anything except whether there was, or was not, any evidence to justify the finding of the Court below. We think it therefore desirable, before dealing with the present case, to point out the true meaning of that observation. The question before the Court then was, not such a question as we have before us now, but whether the fact of a large amount of attention having been directed by the Court below on the question of title ought to invalidate its decision. The observation made in that ruling with reference to what is the ordinary procedure of this Court in revision cases, as to findings of fact, does not, we consider, militate against the view that we have power in revision, if we think right, to consider the whole evidence.

We do not propose at present to consider in detail the whole of the evidence on which the conclusion of the Magistrate was based. With regard to the question of jurisdiction, we had, for a considerable time, some hesitation as to whether there were any grounds which would give the Magistrate jurisdiction to hold the enquiry. There was certainly, in the first instance, a complaint showing a likelihood of a dispute; upon that there was an order to the Police to hold an enquiry, and the report made to the Magistrate, in compliance with that order, though it did not certainly state very categorically the grounds which would show a likelihood of such a dispute as was necessary to give the Magistrate jurisdiction under s. 145, may, we think, on the whole, be taken as sufficient to confer jurisdiction on the Magistrate under that section.

We next come to consider the evidence as to possession. Now this evidence, though voluminous, is yet, to our minds, extremely unsatisfactory. Having given it the best consideration that we can, we cannot get over various circumstances which appeared in the course of the enquiry which make us feel extremely doubtful as to the justice of the conclusion at which the Magistrate has arrived, and especially with regard to the

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omission to examine a most material witness. We cannot, on the proceedings, as they now stand, consider that it is in any degree satisfactory or that there has been, in any way, what we can consider a proper trial of what we think was an important issue when we have the fact before us that the witness, whose evidence we think was likely to be of a very material character, was never brought before the Court, although the first party asked to have him brought.

In these cases the tribunal trying the case is not under the necessity which a Court trying a civil case, or ordinary criminal cases, is under of coming to a conclusion at all. The Legislature contemplates circumstances in which it may be desirable for such a tribunal as that of a Deputy Magistrate, presumably unacquainted with the conduct of civil proceedings and strictly a criminal tribunal, to say that the facts of the case do not enable him to come to a conclusion, and looking at the circumstances of this case and the conflicting nature of the evidence, and the various other circumstances which were before the Magistrate, we think that the wise and proper course for him to have adopted would have been to have accepted the liberty which the Code gave him of not coming to a conclusion as to the fact of possession, and to have passed an order under s. 146, and as we have the power, in revision, to make the order which the lower Court ought to have made, we alter the order of the Magistrate from an order under s. 145 to one under s. 146 of the Code of Criminal Procedure, and direct that the property, the subject of dispute, be kept under attachment by the Magistrate until a competent Civil Court shall have determined the rights of the parties thereto or the person entitled to the possession thereof.

Order varied.

T. A. P.
