

satisfaction or calling to account. Thus *muakhizadar* is a man who is responsible or called to account. There is nothing in the word which necessarily implies taking and selling. For what it may be worth we note that the word *muakhiza* is used in the authorized translation of section 100 of the Transfer of Property Act for the word *charge* in the original. The words ordinarily used to denote a mortgage were well known in 1891, when the deed in question was executed. The word *muakhiza* does not necessarily imply a power of sale, and there is nothing else in the deed from which an intention to give a power of sale can be inferred. We are unable to hold that the deed conferred upon the creditor a power to bring the property to sale. In our opinion the deed is not a mortgage. We allow the appeal, set aside the decree of the lower appellate court and restore the decree of the first court. The appellants must pay the respondent's costs in all the three courts.

*Appeal decreed.*

## REVISIONAL CRIMINAL.

*Before Mr. Justice Sir George Knox.*

EMPEROR v. THAKUR PANDE.\*

*Criminal Procedure Code, sections 107, 145—Security to keep the peace—Dispute concerning land likely to lead to a breach of the peace—Procedure.*

Where there exists a dispute relating to immovable property which is likely to lead to a breach of the peace, the magistrate concerned is not necessarily bound to proceed under section 145, but can take action—and this may sometimes be the better course—equally under section 107 of the Code of Criminal Procedure. *Sheoraj Roy v. Chatter Roy* (1) and *Emperor v. Ram Baran Singh* (2) followed. *Mahadeo Kunwar v. Bisu* (3) distinguished. *Balajit Singh v. Bhoju Ghose* (4) not followed.

A magistrate of the first class found after taking evidence that there existed between two parties a serious dispute relating to certain immovable property which was likely to give rise to a breach of the peace. He also came to the conclusion that one party was attempting on their own authority to set aside a possession of long standing. The Magistrate, however, did not take action

\* Criminal Revision No. 60 of 1912 from an order of Sri Lal, Sessions Judge of Ghazipur, dated the 23rd December, 1911.

(1) (1905) I. L. R., 32 Cal., 966. (2) (1903) I. L. R., 25 All., 587.  
(3) (1906) I. L. R., 28 All., 406. (4) (1907) I. L. R., 35 Cal., 117.

1912

DALIP  
SINGH  
v.  
BAHADUR  
RAM.

1912  
April, 11.

1912

EMPEROR  
v.  
THAKUR  
PANDE.

under section 145 of the Criminal Procedure Code, but, under section 107, bound over the party which he considered to be in the wrong to keep the peace. Against this order an application for revision was made to the High Court.

Mr. *Ahmad Kareem*, for the applicant.

The Assistant Government Advocate (Mr. *R. Malcomson*) for the Crown.

KNOX, J.—A magistrate of the first class, after taking evidence, came to the conclusion that there was great probability of a breach of the peace.

There is apparently between the parties a dispute relating to immovable property, and according to the Magistrate one party is trying to set aside a possession of long standing on their own authority, with the result, the learned Magistrate says, that a great riot will take place in pargana Duaba; he accordingly bound down the petitioners before me and required that they should give security for keeping the peace for one year.

I am asked to interfere with this order on the ground that the dispute being a dispute in regard to immovable property, the Magistrate should not have acted under section 107, and in support of this contention I am referred to the case of *Mahadeo Kunwar v. Bisu*. In that case an order had been passed under section 147 of the Code of Criminal Procedure, without any of the procedure prescribed by section 145 being adopted, and that order was set aside as an order passed without jurisdiction. The learned counsel relies upon certain dicta contained in the judgement, in which it was laid down that where a report was made by the police that a dispute likely to cause a breach of the peace existed between the parties concerned regarding certain land, the Magistrate should have proceeded in the manner prescribed in section 145 and not under section 107, but the learned Judge has been careful to add that "it was not necessary to decide, for the purposes of this case, whether the fact of the Magistrate having been informed that a dispute existed in regard to land, ousted his jurisdiction to take proceedings under section 107."

I was also referred to the case *Balajit Singh v. Bhoju Ghose* (1). The learned Judges in that case held that, as the language of section 145 was mandatory and that of section 107 contained

words which were discretionary, the order passed under section 107 of the Code of Criminal Procedure when there was a dispute relating to land was an order which should be set aside. I find, however, in the case of *Sheoraj Roy v. Chatter Roy* (1), the learned Judges of the same High Court held that, where a dispute relating to possession of land is likely to cause a breach of the peace, a magistrate has a discretion to proceed either under section 107 or under sections 144 and 145 of the Criminal Procedure Code.

In *Emperor v. Ram Baran Singh* (2) a learned Judge of this Court held that a magistrate under similar circumstances might legally take action under section 107 of the Code of Criminal Procedure. With that view I entirely concur.

It is a matter of experience that cases coming under section 145 are, as a rule, cases long drawn out, and in the interval it is more than probable that owing to the hot blood excited over the matter a breach of the peace might occur. The magistrate often does well to take action under section 107. It is open to the petitioners in the present case to move the magistrate having jurisdiction to take action under section 145 if they make out a proper case. I have no doubt that the magistrate will take the necessary steps.

I find no cause for interference and dismiss the application.

*Application dismissed.*

---

*Before Mr. Justice Sir George Knox.*

EMPEROR v. GANGA.\*

*Criminal Procedure Code, section 177—Jurisdiction—Effect of place of commission of offence ceasing to be British territory.*

An offence was committed in March, 1910, at a place which was then part of the Mirzapur district. Subsequently one of the persons alleged to have taken part in the commission of such offence was arrested in Bengal and sent to Mirzapur, where he was committed by the Joint Magistrate to take his trial before the Court of Session. In the meanwhile the place where the offence was committed had ceased to be British territory. *Held* that this fact did not oust the jurisdiction of either the Magistrate or the District Judge of Mirzapur.

An offence was committed on the 18th of March, 1910, at a place which was then within the jurisdiction of the courts of the

---

1912

EMPEROR  
v.  
THAKUR  
PANDE.

---

1912

April 13.

---

\* Criminal Revision No. 140 of 1912 by the Local Government from an order of W. R. G. Moir, Sessions Judge of Mirzapur, dated the 15th of January, 1912.

(1) (1905) I. L. R., 32 Cal., 968. (2) (1906) I. L. R., 28 All., 406.