

this case is concerned, because this is a case of specific performance of a contract, and the case of *Flight v. Bolland* (1) is applicable. On the authority of that case I am bound to say that this suit will not lie, and I must dismiss the suit with costs on scale 2 to be paid by the next friend.

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Suit dismissed.

Attorneys for the plaintiff: Messrs. *Remfry and Rose.*

Attorneys for the defendant: Messrs. *Bannerjee and Chatterjee.*

H. T. H.

CRIMINAL REVISION.

Before Mr. Justice Prinsep and Mr. Justice Ghose.

DHANPUT SINGH (2ND PARTY—PETITIONER) v. CHATTERPUT
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*Criminal Procedure Code (Act X of 1882), s. 145—Breach of the peace—
Police report—Duties of Magistrate acting under section 145—
Record of grounds—Notice to parties.*

Before instituting proceedings under section 145 of the Code of Criminal Procedure, a Magistrate is bound to satisfy himself, on grounds which are reasonable, that a breach of the peace is imminent in regard to properties of the description specified in that section, and that a dispute likely to cause a breach of the peace exists concerning them; and the grounds stated by him must be such as to satisfy a Court of Revision before which such case may be brought by any of the parties concerned.

Where a Magistrate, in consequence of the institution of various cases relating to breaches of the peace between the partizans of two rival zemindars, had directed the police to enquire and report whether there were sufficient grounds for proceeding under section 145, Criminal Procedure Code, and, having received a report which both suggested the necessity for such and set forth substantial reasons in support of the suggestion, made such report the foundation for the proceedings which he instituted, it was contended, among other things, that the Magistrate had not complied

* Criminal Revision No. 501 of 1892, against the order passed by C. J. S. Faulder, Esq., District Magistrate of Purneah, dated 29th of October 1892, reversing the orders of Baboo Sarada Prasad Sarkar, Deputy Magistrate of Arrareah, dated 22nd of September and 13th of October 1892.

(1) 4 Russ., 298.

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with the provisions of the Code in omitting to state the grounds of his being so satisfied of the imminence of a breach of the peace.

Held, that inasmuch as the police report contained abundant evidence of the likelihood of a breach of the peace, it was sufficient, for the purposes of notice to the parties, for the Magistrate to cite it as the ground of his proceeding on which he was satisfied that a dispute within the terms of section 145 existed, and that it would be open to the parties during the proceedings, if they disputed the necessity for them, to show before the Magistrate that no such dispute existed, or, if so advised, to move the Court of Revision to set aside the proceedings, on the ground that the Magistrate had proceeded on grounds which were not reasonable or which could not be held to be sufficient to satisfy him that such a dispute existed.

THE parties to this proceeding were zemindars possessed of landed property within the jurisdiction of the Subdivisional Magistrate of Arrareah in the district of Purneah. Owing to disputes between them regarding the rights of ownership, which had given rise to various cases of breach of the peace which came before the Subdivisional Magistrate, he ordered the police to enquire and report whether there was a likelihood of a breach of the peace between the parties such as to necessitate proceedings under section 145 of the Criminal Procedure Code. The following report was submitted by the Inspector of Police:—

On the 30th August 1892, in Court before the Bench of the Deputy Magistrate in your subordinate's presence, Baboo Chandra Kant, servant of Baboo Chatterput Singh, stated that estate Purwaha is in my possession; if the servants of Rai Dhanput Singh come to take possession, then he will drive them off; thereafter I received the parwana annexed to this file for making report for instituting a case under section 145, Act X. Thereupon I took the statements of the Sub-Inspectors of station Arrareah and Metiari and head-constable of the station Ranigunj. From their statements there is a likelihood of rioting and breach of the peace between the servants of Rai Dhanput Singh and Baboo Chatterput Singh as respects the Purwaha estate is apparent. And several cases have been instituted between the said parties in respect to the said estate, but even then there does not appear any means of stopping the same.

The statement of Mr. C. Durand has been taken, and I enquired after Baboo Keshab Ram Bhatt, Manager of Baboo Chatterput Singh, for taking his statement, and I issued summons too, but he did not appear. I have been informed that he has gone to his own house. This fact was brought to the notice of the Deputy Magistrate Bahadur. He verbally ordered that I need not wait for Keshab Ram Bhatt, nor is it necessary to take any statements or hold any local enquiry. From the statements of the police

officers, likelihood of breach of peace is apparent, on that report for proceedings under section 145 to be made, here the parties will adduce evidence of their respective possession, therefore I did not hold any local enquiry. The statements of the police officers and the Manager of Rai Dhanput Singh are submitted along with this report. From enquiry there appears to be likelihood of a dispute occurring in respect to the Purwaha estate between Rai Dhanput Singh and Chatterput Singh, and hence there is likelihood of breach of the peace. Hence I pray through this report that proceedings be instituted under section 145 in respect to the whole of the Purwaha estate between the said parties, and it be decided by the Court, so that no likelihood of the breach of the peace may occur, and the proceedings be taken as soon as possible. Dated the 9th September 1892.

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Thereupon the Subdivisional Magistrate passed the following order, which was issued in the form of a notice to the representatives of the parties :—

As it appears from the report of the Police Inspector of this subdivision that there have been several disputes between you and Baboo Chatterput Singh through his servants in respect to the Purwaha estate which lies within the local limits of my jurisdiction, from which there is likelihood of breach of the peace being imminent, you are, therefore, ordered to put in written statement of your claims, especially as respects the fact of actual possession of the subject in dispute referred to above in person or by pleader on the 23rd September of the current year before this Court at Arrareah, Bassutpore, at 10 A.M., and if you wish to apply for process against any of your witnesses, such application must be made immediately, otherwise no time will be allowed for this purpose on the date fixed. You must know this order is very peremptory.

Objection having been taken to the form of the notice, fresh notices were issued on the parties themselves.

An application was then made to the High Court by Rai Dhanput Singh, questioning the regularity of these proceedings on among other grounds that the Magistrate had omitted to record a proceeding stating the grounds of his belief that a dispute existed which was likely to occasion a breach of the peace, and the petition asked for the record to be sent for and the proceedings under section 145 set aside. A rule was issued on this application which now came on to be heard.

Sir G. Evans, Mr. W. C. Bonnerjee, Baboo Saroda Charn Mitter, Baboo Hara Prosad Chatterjee, and Baboo Promotha Nath Sen, for the petitioner.

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Mr. Phillips, Baboo Dwarka Nath Chakravarti, and Baboo Digamber Chatterjee for the opposite party.

The following cases were cited during the course of the arguments :—

In the matter of the petition of Kishoree Mohun Roy (1), Gour Mohun Majee v. Doolubh Majee (2), Munglo v. Durga Narain Nag (3), In re Kunund Narain Bhoop, (4), Gobind Chunder Moitra v. Abdul Sayad (5), Kali Kristo Thakur v. Golam Ali Chowdhry (6), Teacotta Shekdar v. Ameer Majee (7), Obhoy Chandra Mookerjee v. Mohamad Sabir (8), Uma Charu Santra v. Beni Madhub Roy (9).

The judgment of the High Court (PRINSEP and GHOSE, JJ.) was as follows :—

The matter on which this rule has been granted relates to proceedings taken under section 145, Code of Criminal Procedure, by the Magistrate of Purneah on notice given to the parties. Written statements have been put in, and the case was transferred by the order of the District Magistrate, under section 528, from the Sub-divisional Magistrate of Arrareah to a Magistrate holding his Court in Purneah, the head-quarters of the district. The trial of the case has not yet commenced. The rule has been granted on two grounds taken on behalf of Rai Dhanput Singh, one of the parties to the case ; first, that the Magistrate does not state the grounds of his being satisfied that a dispute likely to cause a breach of the peace exists concerning certain lands within his jurisdiction in setting out the facts, and his belief in them upon which he considers such breach of the peace as imminent ; further, that he does not set out that such is imminent in regard to any specified property ; and, secondly, that he transferred the case to the Magistrate sitting at Purneah without notice to the parties so as to give them an opportunity of stating their objections to such a transfer.

In regard to the first point, we have heard learned Counsel for both parties to these proceedings at considerable length, and have

(1) 19 W. R. Cr., 10.

(5) 1. L. R., 6 Calc., 835.

(2) 22 W. R. Cr., 81.

(6) 1. L. R., 7 Calc., 46.

(3) 25 W. R. Cr., 74.

(7) 1. L. R., 8 Calc., 393.

(4) 1. L. R., 4 Calc., 650.

(8) 1. L. R., 10 Calc., 78.

(9) 7 C. L. R., 352.

been referred to numerous cases in the reports expressing the opinions of various Benches in regard to the proper institution of proceedings under section 145, and similar provisions of the Codes of Criminal Procedure of 1861 and 1872 now repealed. The substance of the decisions cited to us seems to be that the Magistrate is bound to satisfy himself on grounds which are reasonable that a breach of the peace is imminent in regard to properties of the description specified by section 145, that a dispute likely to cause a breach of the peace exists concerning them, and that the grounds stated by him must be such as to satisfy a Court of Revision before which such case may be brought by any of the parties concerned.

In the case before us it is objected in the first instance that no proceeding was drawn up by the Magistrate as contemplated by the law. We find, however, that there was an order passed by the Magistrate which, if not in form, was at least in substance sufficient to comply with the requirements of the law, and that on this notice was served in the first instance on the agents of the parties now before us, and on their representation, on the principals themselves to appear and put in written statements such as they have now put in; we, therefore, think that the proceedings are valid in respect to the manner of their institution.

It appears that in consequence of several cases before him relating to various acts amounting to breaches of the peace between the partizans of the parties now before us, the Magistrate directed the police to enquire whether there were sufficient grounds for proceeding under section 145, and that thereupon a report was made suggesting that, for the reason stated, such proceedings were necessary. If, therefore, the police report which the Magistrate has made the foundation of the proceedings instituted under section 145 does sufficiently set out substantial reasons for believing that a dispute likely to induce a breach of the peace between the parties now before us relating to certain lands exists, there are no valid grounds for impugning the regularity of the proceedings under which the matters contemplated by section 145 are now about to be tried. The report of the police officer sets out a statement made by the agent of Baboo Chatterput Singh that

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he is prepared to resist any attempt made by Rai Dhanput Singh to obtain possession of certain lands. A statement was also taken by the police officer, and forms portion of the report from the agent of Rai Dhanput Singh, the petitioner before us, which shows good reason to suppose that Rai Dhanput Singh was prepared to assert his possession of certain lands either held by Chatterput Singh or claimed by Chatterput Singh as in his possession. There are also statements of various police officers that disputes are going on between the parties relating to lands within their respective jurisdictions and, amongst these, we may refer to the statement of one police officer who alleges that there has already been a breach of the peace and a case in Court, and that in his opinion there is likely to be a repetition of this disturbance unless the Magistrate should interpose. For the purposes of notice to the parties, we think it sufficient for the Magistrate to cite, as the ground of his proceeding, the police report on which he is satisfied that a dispute within the terms of section 145 does exist. It is open to the parties if they dispute the necessity for such proceedings either within the terms of the last clause of section 145 to show before the Magistrate that no such dispute exists or has existed or, if they are so advised, to move the Court of Revision that the Magistrate has proceeded on grounds which are not reasonable or which cannot be held to be sufficient to satisfy him that such a dispute exists. So far as concerns this Court as a Court of Revision, we think that the proceedings of the Magistrate sufficiently fulfil the requirements of the law.

It is next objected that the proceedings of the Magistrate are indefinite so far as describing the particular lands concerning which the dispute between the parties exists. We observe that, in the first instance, the Magistrate specifies this land as estate *Purwaha*, and that on receipt of the written statement of the parties he has narrowed the subject of his enquiry to the possession of certain specified properties which, it is admitted before us, all form portions of estate *Purwaha*. There cannot, in our opinion, be any objection to such a proceeding of the Magistrate in thus limiting the subject-matter of his enquiry so as to confine it only to lands which the written statement of the parties have satisfied him were the sole matters in dispute. We think, therefore,

that we should not be justified as a Court of Revision in obstructing the course of the proceedings so instituted by the Magistrate, having the object to maintain the peace and to settle the disputes between the parties, rival zemindars, in such a manner as, at least temporarily, to quiet the tenantry of the particular lands. It is open to either of the parties, if so advised, to show to the Magistrate that no dispute likely to induce a breach of the peace exists or has existed regarding any of these lands.

The second point on which the rule was granted relates to the order of the District Magistrate transferring the proceedings from the Subdivisional Court of Arrareah to that of the Magistrate at Purneah without notice to the petitioner. It has been stated on behalf of Chatterput Singh that the application for transfer was made by consent of the agents of Dhanput Singh or, at least, after notice to them that such application was about to be made, and without any objection. This has been contradicted, and we may take it, therefore, that there has been a misunderstanding, or that any consent that may have been given has been given without proper authority. However that may be, we think it unnecessary to interfere directly with the order passed by the District Magistrate, because it is still open to the District Magistrate to reconsider his order on any objection made by the petitioner, and we have no doubt that on such objection being made the District Magistrate will give due consideration, and will thereupon make such orders as may be best calculated to ensure an early decision of the matters in dispute to the convenience of the parties and in the interests of justice. The law leaves it open to the Magistrate to deal with this matter and to direct the trial to be held either at the Purneah or the Arrareah Court as he may think proper on further consideration of the matter as represented by the parties.

For these reasons, we think that the rule should be discharged.

Rule discharged.