of the latest pronouncement of the Judicial Committee of the Privy Council in *Musammat Gaggo Bai* v. *Utsava Lal* (1) it is clear that this view cannot be supported. The learned Subordinate Judge has held that if Article 3 of Schedule III of the Bengal Tenancy Act does not apply, then the suit is not barred by limitation as it was brought within twelve years of the death of the widow under Article 141 of the Indian Limitation Act.

The result, therefore, is that the decision of the learned Subordinate Judge will be set aside and the suit will be decreed with costs throughout.

MACPHERSON, J.—I agree.

Appeal allowed.

CRIMINAL REFERENCE.

Before Terrell, C.J. and Rowland, J.

BENGALI PARIDA

v.

BANCHHANIDHI PANIGRAHI.*

1929.

July, 22.

Code of Criminal Procedure, 1898 (Act V of 1898), sections 145 and 146—Proceedings initiated on police report—written statements filed—no evidence adduced—attachment of subject-matter of dispute.

Where a magistrate initiates proceedings under section 145 of the Code of Criminal Procedure, on the strength of a police report, and both parties filed written statements but neither party adduced evidence, although given an opportunity to do so, and the magistrate was unable to determine who was in possession when the proceedings were initiated, he is entitled to attach the subject-matter of the dispute under section 146.

*Criminal Reference no. 38 of 1929, made by D. E. Reuben, Esq., I.C.S., Sessions Judge of Cuttack, in his letter no. 779-Cr., dated the 16th May, 1929.

(1) (1929) 33 Cal. W. N. 809, P. C.

1929.

BENGALI PARIDA v. BANCHHANIDHI PANIGRAHI.

Sheobalak Rai v. *Bhagwat Pandey* (1), dissented from.

Sheikh Manzar Ali v. *Matiullah* (2), distinguished.

Bijoy Madhub Chowdhury v. *Chandra Nath Chuckerbutty* (3), followed.

Pansuram Rai v. *Shivajatan Upadhya* (4), referred to.

The facts of the case material to this report are stated in the judgment of Courtney Terrell, C. J.

Nobody appeared for or against the reference.

COURTNEY TERRELL, C.J.—This case has been referred to a Bench by Mr. Justice Macpherson. It is a reference to the High Court by the Sessions Judge of Cuttack who recommends that an order of attachment made by the Subdivisional Magistrate under section 146 of the Code of Criminal Procedure may be set aside and the case remanded for re-trial.

The order-sheet of the Subdivisional Magistrate shows that on the 10th November, 1928, he received a police report that a breach of the peace was likely to occur concerning an area of some twelve acres in mouza Panisiali upon which paddy was growing, there being two rival claimants. He called for a further report which, when furnished on the 22nd, left it in doubt which party had grown the standing crop. The first party had got delivery of possession from the Court in 1926 but in 1927 the second party had cultivated it and had cut the crop. The Magistrate served notice under section 144 on the first party not to interfere with the harvesting by the second party. On the 26th November the first party showed cause. The Magistrate directed proceedings under section 145 and attached the land and the crops directing the police to effect the harvesting and fixed the 18th December for the written statements. On that date he granted further time until the 16th January,

(1) (1912) I. L. R. 40 Cal. 105.
(2) (1908) 12 Cal. W. N. 896.
(3) (1909) 14 Cal. W. N. 80.
(4) (1922) 3 Pat. L. T. 434.

1929, for the written statements which were duly filed on that day when the Magistrate fixed the hearing of evidence for February 4th and summoned the witnesses for that date. Neither party appeared on the 4th and the Magistrate stating that he was unable to find who was in possession made the order under section 146 complained of.

The order was perfectly right. If the parties refused, after ample time had been given them, to adduce evidence, the Magistrate was not bound to make an enquiry on his own account. He is entitled to act on his apprehension of a breach of the peace founded on the police report. If the proceedings had been initiated by one of the parties and if neither party had appeared at the hearing, the matter would have been on a different footing. The Sessions Judge mentions the case of *Pansuram Rai* v. *Shivajatan Upadhya* (1). This case is very badly reported and there is no adequate statement of the facts upon which the decision was based.

In *Bijoy Madhub Chowdhury* v. *Chandra Nath Chuckerbutty* (2), a similar order was made. The parties did not file written statements and prayed for a local investigation which was refused. Neither side produced evidence and after delay the Magistrate made the order which was approved by the High Court. The case of *Sheikh Manzar Ali* v. *Matiullah* (3) is clearly distinguishable from this one because in that case the Magistrate gave the parties no time to produce evidence; in other words, he did not conduct the enquiry under section 145 in a proper manner.

I do not agree with the reasoning of the Court in *Sheobalak Rai* v. *Bhagwat Pandey* (4). I can find no obligation imposed by section 146 on the Magistrate

(1) (1922) 3 Pat. L. T. 434.
(2) (1909) 14 Cal. W. N. 80.
(3) (1908) 12 Cal. W. N. 897.
(4) (1912) I. L. R. 40 Cal. 105.

1929.

BENGALI PARIDA v. BANCHHANIDHI PANIGRAHI.

COURTNEY TERRELL, C. J.

to make independent enquiry if the parties, having been given adequate opportunity, decline to adduce evidence as to possession. The Magistrate is then entitled to fall back on such information as he may have before him which would make him apprehensive of a breach of the peace. In the absence of material which would enable him to protect the possession of one or other of the parties he must attach the property.

I would reject the reference.

ROWLAND, J.—I agree.

REVISIONAL CRIMINAL.

1929.

July, 22.

Before Terrell, C. J. and Rowland, J.

MALTU GOPE

v.

KING-EMPEROR.*

Code of Criminal Procedure, 1898 (*Act V of* 1898), *sections* 221, 233, 234, 235, 236, 237, 238, 239 and 537—*charge of rioting—specific acts of violence—charge against some of the accused—conviction of others for individual assaults, legality of—Penal Code*, 1860 (*Act XLV of* 1860), *section* 147.

Where, in a trial for offences under section 147 for rioting with the common object of assaulting certain persons, specific acts of violence are charged against some of the accused persons but not against others, the latter may nevertheless be convicted in respect of assaults proved to have been committed by them on persons referred to in the statement of the common object even though the charge of rioting fails, provided the court is satisfied that they have not been misled in their defence.

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*Criminal Revision no. 296 of 1929, from an order of R. B. Beevor, Esq., I.C.S., Additional Sessions Judge of Patna, dated the 15th March, 1929, affirming the order of Munshi Kamla Prasad, Assistant Sessions Judge of Patna, dated the 7th January, 1929.