REVISIONAL CRIMINAL.

1933.

April, 26.

Before Macpherson, J.

HARIHAR SINGH

v.

UPENDRANATH BANARJI.*

Code of Criminal Procedure, 1898 (*Act V of* 1898), *sections* 144 *and* 145—*magistrate's discretion to adopt any proper method to meet the emergency.*

It is always enough that the magistrate adopts any proper method to meet the emergency if there happen to be several methods to choose from: his choice is not to be considered in the light of the fact that at a later stage when the emergency can be viewed on a different basis, another method may be adjudged to have been a proper or the most proper or rather the most satisfactory method in the circumstances.

The magistrate is to maintain the peace of his district as between the rival parties by the means at his disposal which he shall adjudge most appropriate to and most effective in the circumstances.

Application in revision by the second party.

The facts of the case material to this report are set out in the judgment of Macpherson, J.

Manohar Lal (with him *W. H. Akbari* and *Ahmad Raza*), for the petitioners.

P. C. Manuk and *Anand Prasad*, for the opposite party.

MACPHERSON, J.—Upon a police report of the 13th January last the Magistrate issued orders under section 144 against both the parties to the present proceeding and on hearing them directed on the 24th February that the order be made absolute against the present petitioners who were the second party.

* Criminal Revision no. 173 of 1933, from an order of Babu A. N. Chakravarti, Subdivisional Magistrate of Gaya, dated the 24th February, 1933, an application against which was rejected by K. P. Sinha, Esq., I.C.S., Sessions Judge of Gaya, by his order, dated the 3rd March, 1933.

The petitioners moved this court against the order under section 144 and obtained a rule " on the ground that the matter should have been dealt with, not under section 144, but under section 145 of the Code of Criminal Procedure ".

It appears, however, that the order under section 144 has expired by lapse of time which is three and a half months from the time when it was passed and more than two months from the time when it was made absolute. Furthermore, it is clear that the civil suit praying not only for a declaration but for confirmation or recovery of possession, which was brought by the petitioners as long ago as the 28th February, 1932, and pursued by them in a very dilatory way, will come to trial on the 19th of June next. It is quite clear that to take up proceedings under section 145 now would be futile since they could not possibly be brought to a conclusion, in all the circumstances of the present case, before the parties will have a definite decision one way or the other from the Civil Court towards the end of June.

It, therefore, does not matter in this case whether section 145 would have been the more appropriate method of settling the dispute between the parties which was stated by the police, whose view was accepted by the Magistrate, to require a speedy remedy such as is afforded by section 144. All things considered, I certainly see no reason to hold that section 144 was not *a* proper method of dealing with the emergency when it came before the Magistrate in January last. It is always enough that the Magistrate adopts any proper method to meet the emergency if there happen to be several methods to choose from: his choice is not to be considered in the light of the fact that at a later stage when the emergency can be viewed on a different basis, another method may be adjudged to have been a more proper or the most proper or rather the most satisfactory method in the circumstances.

1933.

HARIHAR SINGH v. UPENDRANATH BANARJI.

MACPHERSON, J.

I am satisfied that at the present stage proceedings under section 145 would be entirely inexpedient. The District Magistrate must maintain the peace of his district as between these warring parties until the forthcoming decision of the Civil Court, by the means at his disposal which he shall adjudge most appropriate to and most effective in the circumstances.

The rule is accordingly discharged.

Rule discharged.

APPELLATE CIVIL.

1933.

July, 10, 11, 12.

Before Wort, A. C. J. and Kulwant Sahay, J.

LAKHI PRASAD SINGHANIA

v.

UGRAH MISRA.*

Provincial Insolvency Act, 1920 (*Act V of* 1920), *section* 6(*g*)—*notice of suspension of payment, what amounts to*—*statement that the debtor asked the creditor to accept such cash as was in his possession and to take security for the remainder, whether amounts to notice of suspension*—*test to be applied in construing statements of debtor*—*authorities under the English Bankruptcy Act, whether apply to Indian law.*

Section 6, Provincial Insolvency Act, 1920, provides:—

"A debtor commits an act of insolvency in each of the following cases, namely:—.....

.....

(*g*) if he gives notice to any of his creditors that he has suspended or that he is about to suspend, payment of his debt;....."

Held, that a mere statement by a debtor that he is unable to pay his debts, however insolvent he may be, is not necessarily a notice, within the meaning of clause (*g*) of section 6, that he is suspending or about to suspend payment.

* Miscellaneous Appeal no. 309 of 1932, against a decision of R. B. Beevor, Esq., I.C.S., Additional District Judge of Bhagalpur, dated the 20th December, 1932.