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30 C. 588=7 C. W. N. 547.

cases of the Presidency Group has no jurisdiction [592] over the Court of Small Causes at Calcutta, and it has no power to set aside the decree of the same Court. It is worthy of notice that in that case the Judges said that they had not been asked to exercise their extraordinary jurisdiction under section 15 of the Charter. It may well be that the decision in that case is not open to question, but it does not affect the present case. The application here is made not to the Bench taking the cases of the Presidency Group as such, but to the Chief Justice, who has power under section 14 of the Charter Act to determine what Judges in each case shall sit alone and what Judges shall constitute the various Division Benches, and to say what Judge or Judges shall hear a particular case. It is by reason of this power, so vested in the Chief Justice, that applications of this nature, that is, in connection with orders made by the Presidency Small Cause Court, have invariably been made to the Chief justice, who can appoint, and who does then and there appoint himself and the Judge who may be sitting with him, to be the Bench to hear the application. It has been the universal practice, I believe, ever since the High Court was established, for the Chief Justice to say what particular case shall be tried by any particular Judge or Judges, and, until this moment, that position has never been challenged. In this present case I, as Chief Justice, have constituted this Bench, consisting of the learned Judge who is sitting with me and myself, to hear this application, and I do not think there is anything which prevents me from doing that.

The preliminary objection must be overruled.

On the merits, I have no doubt that the Registrar had no jurisdiction to entertain the application in question after the *ex-parte* decree had been made by him. The Court, as opposed to the Registrar, was under the rules the proper and the only authority which could deal with an application to set aside the *ex-parte* decree. It is clear, looking at rules 63, 70, 92 and 94 that the Registrar had no jurisdiction to deal with the application to set it aside under rule 63. The Court and the Court alone as opposed to the Registrar, who is invested with only a limited judicial power, can deal with such applications. A marked distinction is drawn in the rules between the power of [593] the Court and the power of the Registrar. Section 36 does not help the opposite party; that section applies to decrees and orders made by the Registrar under section 14, which is the only previous section which gives him jurisdiction to act judicially.

On these grounds the Rule must be made absolute as to the order of the Registrar of the 7th July 1902 and the 17th February 1903 with costs.

MITRA J. I concur.

Rule absolute.

30 C. 593 (=7 C. W. N. 390.)

CRIMINAL REVISION.

A. M. DUNNE *v.* KUMAR CHANDRA KISORE.*

[15th December, 1902.]

Receiver—Party—Jurisdiction—Proceedings under s. 145 of the Code of Criminal Procedure (Act V of 1898)—Possession of Receiver.

* Criminal Revision No. 877 of 1902 against the order of Rakhal Das Chatterjee, Subdivisional Officer of Gaibandha, dated July 8, 1902.

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A Receiver appointed by the High Court cannot be made a party to a proceeding under s. 145 of the Code of Criminal Procedure merely in his capacity of Receiver, and a Magistrate has no jurisdiction to interfere with him in respect of his possession of the estate, without the sanction of the Court,—his possession being the possession of the Court.

Ex-parte Cochrane (1), *William Russell* v. *The East Anglian Railway Company* (2) and *Ames* v. *The Trustees of the Birkenhead Docks* (3) referred to.

Semble. The Receiver can neither sue nor be sued without the leave of the Court. *Miller* v. *Ram Ranjan Chakravarti* (4) referred to.

[Appl. 30 C. 721 ; Rel. on. 13 Cr. L. J. 489=15 Ind. Cas. 489; 60 Ind. Cas. 519; Dist. 12 Cr. L. J. 185=9 Ind. Cas. 1009=9 M. L. T. 502; Ref. 46 C. 352=23 C.W.N. 496=51 I. C. 486 ; 30 C. L. J. 279=53 I. C. 747.]

RULE granted to the petitioner, A. M. Dunne.

This was a Rule calling upon the District Magistrate of Rangpur and the opposite party to show cause why an order made [594] by the Subdivisional Magistrate of Gaibandha dated the 8th July 1902, under s. 145 of the Code of Criminal Procedure, should not be set aside as made without jurisdiction on the grounds (i) that there was no jurisdiction to make such an order against the Receiver; (ii) that the police report was insufficient; (iii) that the first and second party were in joint possession of the *hat*.

In this case there was a dispute between the Burdhan and Tagore zemindars relating to the collection of tolls at a *hat* which was said to be situated on the boundaries of the Burdhan and Tagore estates. The Burdhan zemindar contended that each party was entitled to take the tolls in so much of the *hat* as lay in his zemindari. The Tagore zemindars, on the other hand, contended that each party was entitled to take half the tolls of the entire *hat*.

The police having reported that a likelihood of a breach of the peace existed owing to such dispute, proceedings under s. 145 of the Code of Criminal Procedure were taken by the Subdivisional Magistrate of Gaibandha, and Mr. Dunne, who had been appointed Receiver of the Tagore estates by the High Court, and who raised no objection, was made the first party and the zemindars of the Burdhan estate, Kumar Chandra Kisore and others, the second party.

On the 8th July 1902 the Subdivisional Magistrate made an order declaring the second party to be in possession, and forbidding the first party to disturb such possession.

The *Advocate-General* (Mr. *J. T. Woodroffe*), Babu *Mohini Mohan Chakravarti* and Babu *Hara Prosad Chatterjee* with him), for Kumar Chandra Kisore and others, showed cause. No doubt, that when the Court has appointed a Receiver and the Receiver is in possession, his possession is the possession of the Court, and it may not be disturbed without the leave of the Court ; and a person who disturbs or interferes with the possession of a Receiver is guilty of contempt, and is liable to be committed (Kerr on Receivers, pp. 158 and 171). But that relates to interference by private persons, and does not apply to this case. Here the party interfering with the Receiver is the Magistrate, and this Court cannot be expected to send him to prison for contempt of Court. There is nothing in the law excluding the Receiver from the operation of [595] s. 145 ; and to hold that he is so excepted will be to read into the Statute an exception which it does not contain. The Courts will not

(1) (1875) L. R. 20 Eq. 282.
(2) (1850) 8 Mac. & G. 104.
(3) (1855) 20 Beav. 332.
(4) (1884) I. L. R. 10 Cal. 1014.

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protect a sheriff because under the writ of *fieri facias* he becomes the agent of the party.

Section 145 of the Code of Criminal Procedure deals with possession, and where the Court has put a Recevier into possession it can hardly be said that the Court is the person taking part in the dispute. No objection was taken in the lower Court by the Receiver to his being made a party to the proceedings; if it had been, the Magistrate would have applied for leave to deal with the matter: see s. 537 of the Criminal Procedure Code. It must also be shown that the Receiver was put in possession of the land.

Mr. *Jackson* (Mr. *Caspersz*, Babu *Nilmadhub Bose* and Babu *Mukund Nath Roy* with him) for the petitioner. The police report is insufficient; it only contains a general statement that there is a possibility of a breach of the peace: there are no details regarding the dispute. The first and second party are in joint possession of the *hât*, so no proceedings under s. 145 could be taken. The possession of the Receiver is the possession of the Court, and no one can disturb it without the leave of the Court: see *Aston* v. *Heron* (1). The Court below knew my client was a Receiver appointed by the High Court, and he was made a party as such Receiver. S. 537 of the Code does not apply to this case. Consent cannot give jurisdiction, nor can the fact that I raised no objection before the Magistrate give him jurisdiction.

A Court will not permit its Receiver to be interfered with or dispossessed of property without an application being first made to it for leave: see *Ames* v. *The Trustees of the Birkenhead Docks* (2), *William Russell* v. *The East Anglian Railway Company* (3). It is well established that a Receiver cannot be sued without the leave of the Court appointing him, yet here he has been made a party to a *quasi*-civil proceeding under s. 145, and divested of the possession of all the land of which the Court had put him in possession; and he has no remedy. If the Receiver be appointed after the order of the Magistrate under s. 145 is made, that would not affect the question of jurisdiction: see **[596]** *Sri Mohan Thakur* v. *Narsing Mohan Thakur* (4), but here the Receiver was appointed before these proceedings were instituted. The Receiver cannot be said to be a party concerned in the dispute. The Court will not allow attachment, as it is an interference with the Receiver's possession: *Jogendara Nath Gossain* v. *Debendra Nath Gossain* (5).

The Court will not tolerate interference with a Receiver either civilly or criminally. If a Receiver does a criminal act, he cannot be indicted *qua* Receiver, but as a man: see *Miller* v *Ram Ranjan Chakravarti* (6).

HARINGTON AND BRETT JJ. In this case a Rule was obtained calling on the District Magistrate and opposite party to show cause why an order made under section 145 of the Code of Criminal Procedure should not be set aside as made without jurisdiction. The dispute which gave rise to these proceedings relates to the collection of tolls at a *hât* which is alleged to be situated on the boundaries of the Burdhan and Tagore estates, the contention of the Burdhan zemindar being that each party is entitled to take the tolls in so much of the market as lay in his own zemindari, and the contention of the Tagore zemindar being that each party is entitled to take half the tolls of the entire market. There

(1) (1834) 2 Myl. & K. 390.
(2) (1855) 20 Beav. 332.
(3) (1850) 3 Mac. & G. 104.
(4) (1899) I. L. R. 27 Cal. 259.
(5) (1898) I. L. R. 26 Cal. 127.
(6) (1884) I. L. R. 10 Cal. 1014.

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being a likelihood of a breach of the peace, proceedings under section 145 were taken, the Receiver of the Tagore estate and others being made first party and the zemindar of the Burdhan estate and others being the second party, and an order was made declaring the second party to be in possession and ordering the first party not to disturb such possession.

In support of the Rule to set aside the order, three objections were taken:—

(*a*) There is no jurisdiction to make such an order against the Receiver.

(*b*) The police report is insufficient: and

(*c*) The first and second party are in joint possession of the *hát*, and so proceedings cannot be had under section 145.

[597] The second and third points can be briefly disposed of.

As to the police report, it is true that the expression used in it by the reporting officer is "there is a possibility of the breach of the peace." It is argued that this is insufficient, but when the whole report is read, it is found that the Inspector gives a very explicit account of the quarrel, and states facts which show that there was a likelihood of a breach of the peace.

This objection, therefore, to the order fails.

We do not think there is any foundation for the third point, *viz.*, that the parties were in joint possession. One party was alleging an exclusive right to collect the entire toll from one partitioned half of the market, the other party denied this right; under these circumstances we see no ground for saying that proceedings under section 145 could not be had.

The remaining point which was taken, *viz.*, that the Receiver of the High Court could not be made a party to these proceedings simply in his capacity of Receiver, is more important and more substantial.

In support of the Rule it is argued that the Receiver is made a party not because he has, as an individual, interested himself in a dispute likely to cause a breach of the peace, but merely in his capacity of Receiver, that the possession of the Receiver is the possession of the Court whose officer he is, and that the Court will not tolerate an interference with its officer.

The Advocate-General in showing cause against the Rule replied that the objection that the proceedings could not be taken against the Receiver was not taken before the Magistrate, and that to hold that the Receiver is excepted from the operation of section 145 will be to read into the Statute an exception which it does not contain. The latter of these two arguments we do not think well founded. The Crown, for example, is not expressly excepted, but it could hardly be said that the Crown was liable to be made a party.

The former argument has more weight. We agree that the Receiver ought to have objected that he was not a party concerned in the dispute and to have refused to take any step from which it could be said he had submitted himself to the jurisdiction of the Magistrate, but we do not think his failure to take that course **[598]** precludes the Court from setting aside the order against him, if we should be of opinion that such order could not be made.

When a Receiver is appointed by the Court, his possession is the

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possession of the Court, and he cannot be interfered with except with the leave of the Court: see *Ex-parte Cochrane* (1).

The Receiver can neither sue nor be sued without the leave of the Court: see *Miller* v. *Ram Ranjan Chackravarti* (2). He is the officer through whom the Court exercises its powers of management. In our opinion such an officer cannot be correctly described as a "party interested in a dispute likely to cause a breach of the peace."

But even if the officer of the Court could be so described, we think there would be no jurisdiction in the Magistrate to make any order on him under section 145 without the sanction of the Court. The order directs that the Receiver shall not disturb the possession of the second party; in other words, the Magistrate is assuming a jurisdiction to interfere with the officer of this Court, as such, without the sanction of this Court, and it is well settled law that the Court will not, without its leave, permit its officer to be interfered with: see *William Russell* v. *The East Anglian Railway Company* (3) and *Ames* v. *The Trustees of the Birkenhead Docks* (4).

For these reasons the order under section 145 must be set aside.

The Rule is made absolute.

Rule absolute.

30 C. 599 (=7 C. W. N. 766.)

[599] FULL BENCH.

DEBENDRA NARAIN ROY *v.* RAMTARAN BANERJEE.*

[13th, 16th February & 3rd March, 1903.]

Mortgage—Suit by puisne mortgagee—Right of sale by puisne mortgagee—Decree on first mortgage to which puisne mortgagee was not a party—Transfer of Property Act (IV of 1882) s. 85—Civil Procedure Code (Act XIV of 1882) s. 287—Indian Registration Act (III of 1877) s. 17.

A puisne mortgagee is entitled to a sale of the property secured by his mortgage, subject to the rights of the first mortgagee, even after the property has been sold in execution of a decree obtained by the first mortgagee in a suit to which the puisne mortgagee was not a party.

Durga Churn Mukhopadhya v. *Chandra Nath Gupta Chowdry* (5) overruled.

[**Cons.** 28 B. 153=5 Bom. L. R. 892; **Ref.** 31 C. 737; 1 C. L. J. 531; (F. B.) 29 A. 385=4 A. L. J. 278=A. W. N. (1907) 97; 27 I. C. 960. 7 C. L. J. 1; 8 C. L. J. 478; 37 C. 796; 62 I. C. 445; 25 C. W. N. 253 F. B. **Dist**: 31 M. 425=18 M. L. J. 298; 3 M. L. T. 397; 21 M. L. J. 213=9 M. L. T. 431=(1911) 1 M. W. N. 165=9 I. C. 513; **Doub.** 34 A. 323; **Foll.** 38 B. 24.]

REFERENCE to a Full Bench in Second Appeal by the defendants, Debendra Narain Roy and others.

The suit was instituted by the plaintiffs, Ramtaran Banerjee and others, for the recovery of Rs. 779-15 on a mortgage bond executed by the defendant No. 1, dated the 7th September 1887, hypothecating the mortgagor's interest in properties A and B described in the schedule to the plaint. The plaintiffs alleged that they were informed on inquiry that property A had been purchased by one Narendra Narain Roy Chowdhry deceased, that father of the defendants Nos. 2 to 6, and by the defendant

* Reference to Full Bench in Appeal from Appellate Decree No. 2245 of 1899.

Full Bench: Sir Francis W. Maclean, K. C. I. E., Chief Justice, Mr. Justice Prinsep, Mr. Justice Sale, Mr. Justice Stevens and Mr. Justice Geidt.

(1) (1875) L. R. 20 Eq. 282.
(2) (1884) I. L. R. 10 Cal. 1014.
(3) (1850) 3 Mac. & G. 104.
(4) (1855) 20 Beav. 332.
(5) (1899) 4 C. W. N. 541.