

It seems to us that Article 29 referred to by the learned Vakil contemplates a very different class of cases from the case with which we are concerned. He has, however, called our attention to the case of *Jaggivan Jawherdas v. Gulam Jilani Chaudhri* (1), but we regret we are unable to follow it. The result is that the appeal is dismissed with costs.

1902
JULY 2.

APPELLATE
CIVIL.

30 C. 440=7
C. W. N. 520.

Appeal dismissed.

30 C. 443 (=7 C. W. N. 174.)

[443] CRIMINAL REVISION.

SUKRU DOSADH v. RAM PERGASH SINGH.*

[10th July, 1902.]

Jurisdiction—Criminal Procedure Code (Act V of 1898) ss. 107, 145—Proceedings under s. 145 of the Code, initiation of—Security for keeping the peace.

The making of a formal order under sub-section (1) of s. 145 of the Criminal Procedure Code is absolutely necessary to give the Magistrate jurisdiction to initiate proceedings under that section.

Where a notice was issued on the parties under s. 107 of the Criminal Procedure Code to show cause why they should not execute a bond to keep the peace; and the Magistrate at the hearing recorded an order wherein he stated that it appeared to him that, on the facts, the case was one for the application of s. 145 of the Code, and not s. 107, and he then proceeded to "bind down" the first party under sub-section (6) of s. 145:

Held, that the expression "bind down" was not correct, and that the order was entirely bad.

[Fol. 25 All. 587; 27 All. 296.]

RULE granted to the petitioners, Sukru Dosadh and others.

This was a Rule calling upon the District Magistrate of Patna to show cause why an order purporting to have been made under sub-section (6) of s. 145 of the Criminal Procedure Code should not be set aside on the ground that such order was made without jurisdiction, inasmuch as no preliminary order had been passed under the provisions of sub-section (1) of s. 145.

In this case a notice under s. 107 of the Criminal Procedure Code was issued on the parties to show cause why they should not execute a bond to keep the peace for one year.

When the case came on for hearing the Subdivisional Magistrate of Barh recorded the following order:—

"It appears to me quite obvious that, on the facts, the case is one for the application of s. 145 and not s. 107 of the Criminal Procedure Code.....in the absence of direct proof that the first party has been unlawfully evicted from possession during the two preceding months, I feel bound to bind down the first party under sub-section (6), s. 145 of the Criminal Procedure Code."

[444] *Babu Atulya Charan Bose* for the petitioners. Both sides in this case were called upon under s. 107 to show cause why they should not execute a bond to keep the peace. After the matter was heard out, the Magistrate came to the conclusion that s. 107 did not apply, but that s. 145 did, and he proceeded to bind down the first party under sub-section (6). It has been repeatedly held that before a Magistrate has jurisdiction to

* Criminal Revision No. 390 of 1902, against the order passed by V. C. Ramsav. Esq., Subdivisional officer of Barh, dated the 30th of January 1902.

(1) (1888) I. L. R. 8 Bom. 17.

1902
JULY 10.
CRIMINAL
REVISION.
30 C. 443=7
C. W. N. 174.

initiate proceedings under s. 145 he must make a formal order under sub-section (1) of that section. No such order has been made in these proceedings. The Magistrate has no power to bind any one down under sub-section (6). The Magistrate has converted a proceeding commenced under s. 107 into one under s. 145, and this he has no right to do. The order is therefore bad, and without jurisdiction.

Babu *Jogesh Chunder Dey* for the opposite party. The Magistrate acted on information when he called upon the parties to show cause under s. 107 of the Criminal Procedure Code, just as he would have done, if he had wished to draw up proceedings under s. 145. Although the Magistrate did not make a formal order under sub-section (1) of s. 145 the notice calling upon the parties to show cause under s. 107 may be read in place of that formal order. The making or not of a formal order under sub-section (1) of s. 145 is, I submit, a question of procedure, and does not in any way affect the jurisdiction of the Magistrate.

STEVENS AND MITRA, JJ. The Rule in this case was issued to show cause why an order purporting to have been made under sub-section (6) of section 145 of the Code of Criminal Procedure should not be set aside on the ground that such order was made without jurisdiction, inasmuch as no preliminary order had been passed under the provisions of sub-section (1) of section 145.

It is quite clear to us that this Rule must be made absolute. There is a long current of decisions of this Court to the effect that the making of a formal order under sub-section (1) of section 145 is absolutely necessary to give the Magistrate jurisdiction to initiate proceedings under that section. In the present case a notice was issued on the parties under section 107 of the Code of Criminal Procedure to show cause why they should not execute a [446] bond to keep the peace for one year. When the case came on for hearing, the Sub-divisional Officer recorded an order, in the course of which he stated that it appeared to him quite obvious that, on the facts, the case was one for the application of section 145 of the Code of Criminal Procedure, and not of section 107. He thereupon proceeded at once to do what he called "bind down" the first party under sub-section (6) of section 145. The expression of course was not correct, and what is of more importance, the order itself was entirely bad.

The Rule is therefore made absolute, and the order made by the Sub-divisional Officer on the 30th January 1902 is set aside.

Rule made absolute.

30 C. 446 (=7 C. W. N. 412.)

[446] ORIGINAL CIVIL.

BHUPATI RAM v. SOURENDRA MOHUN TAGORE.*

[13th February, 1903].

Interest—Agreement to pay interest—Evidence, admissibility of—Promissory note—Civil Procedure Code (Act XIV of 1882), Chapter XXXIX, s. 532.

In a suit instituted under Chapter XXXIX of the Civil Procedure Code (Act XIV of 1882) the plaintiff is not entitled to recover any interest unless such interest is specified in the promissory note itself, or to give evidence regarding any agreement to pay interest.

Remfry v. Shillingford (1) referred to.

[Dist. 17 M. L. J. 290. Not foll. 2 Pat. L. J. 451.]

*Original Civil Suit No. 863 of 1902.

(1) (1876) I. L. R. 1 Cal. 180.