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land, and not crops which have been severed, as in the present case. The learned Counsel, who appeard on the oppostite side, does not contend that the provisions of section 145 can properly be applied to such properties.

It follows that the order which has been made by the Deputy Magistrate in the present case attaching the cut crops, which were the subject-matter of dispute between the parties, cannot stand. The Rule is accordingly made absolute and the order is set aside.

30 C. 110=6 C. W. N. 881.

Rule made absolute.

30 C. 112 (=6 C. W. N. 417).

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MANINDRA CHANDRA NANDI *v.* BARADA KANTA CHOWDHRY.*
[26th 27th and 28th February, 1902].

Jurisdiction—Criminal Procedure Code (Act V of 1898) s. 145—Magistrate, power of to stay proceedings and cancel order passed by him under s. s. (1)—Revision—High Court, interference by.

A Magistrate has jurisdiction to cancel an order passed under s. s. (1) of s. 145 of the Criminal Procedure Code and to stay proceeding if he becomes satisfied, whatever the source of information may be, that the state of things does not exist, which alone would give jurisdiction to proceed with the inquiry.

Where therefore a Magistrate, having instituted proceedings and passed an order under s. s. (1) of s. 145 received information, which he believed, that there no longer existed a dispute likely to cause a breach of the peace, and, before any written statement had been filed by either side cancelled his order and stayed the proceedings.

Held, that the High Court could not interfere, as the Magistrate has not acted without jurisdiction.

Tarini Charan Chowdhury v. *Amulya Ratan Roy* (1) referred to; *Hurbulclubh Narain Singh* v. *Luchmeshwar Prosad Singh* (2) distinguished.

[**Ref.** 17 C. P. L. R. 133; **Appr.** 17 Cr. L. J. 138=33 I. C. 314.]

ON the 10th June 1901 the Subdivisional Magistrate of Kurigram drew up proceedings under s. 145 of the Code of Criminal Procedure making Maharaja Manindra Chandra Nandi, Zemindar of Bahirband, the first party and Gopal Das Roy Chowdhry and others of Bahirband the second party. On the 27th June the first party applied for and obtained fifteen days' time to file his written statement and an Amin was ordered to measure the *chur* in dispute.

On the 24th July the Magistrate passed the following order:—

"Put up after disposal of the police case under ss. 144 and 379 of the Penal Code."

[113] On the 5th August, before either party had filed any written statement, the Magistrate passed the following order:—

"It transpired in the course of the trial of the case of Asir Mahmud *v.* Kandura Sardar and others under ss. 144 and 379 of the Indian Penal Code, that the tenants of Bhitarband ploughed the disputed *chur* and destroyed the crops standing thereon, on the 6th Falgoon last, *i.e.*, the day that the Civil Court Amin delivered possession,

* Criminal Revision No. 1009 of 1901, against the order passed by Babu G. C. Dutt, Subdivisional Officer of Kurigram, dated the 5th of August 1901.

(1) (1893) I. L. R. 20 Cal. 867. (2) (1898) I. L. R. 26 Cal. 188.

and Bahirband tenants took no steps to recover possession. It also transpired in evidence that the tenants of Bahirband left the *chur* after the Amin delivered possession. Thus the entire *chur* is now in possession of the tenants of Bhitarband, and it is unnecessary to institute any proceedings under s. 145 of the Criminal Procedure Code ; so the case is struck off."

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30 C. 112=6 C. W. N. 417.

In revision it was *inter alia* contended by the first party that the Magistrate had no jurisdiction to strike off the proceedings after having once instituted them, and that it was incumbent upon him to peruse the statements, if any, put in by the parties, to hear the parties, to receive the evidence produced by them, to consider the effect of such evidence, and then to decide whether any and which of the parties was at the date of the institution of the proceedings in possession of the subject-matter of dispute.

The Advocate General (Mr. *J. T. Woodroffe*), Babu *Pramatha-Nuth Sen*, Babu *Jyoti Prasad Sarbadhikari* and Babu *Tarak Chandra Chakravarti* for the petitioner.

Babu *Surendra Chunder Sen* for the opposite party.

STEVENS AND HARINGTON, JJ. On the 10th June 1901 the Subdivisional Magistrate of Kurigram drew up a proceeding under the provisions of section 145 of the Code of Criminal Procedure, setting forth that between the present petitioner, Maharaja Manindra Chandra Nandi of Bahirband, and certain other persons residents of Bhitarband, a dispute existed likely to cause a breach of the peace concerning certain land, and calling upon them to attend before him on the 27th June and to put in written statements of their respective claims as regards the actual possession of the land in question. Maharaja Manindra Chandra Nandi was made the first party in the proceedings, and the other persons were made the second party.

Time was asked for by the first party to enable him to prepare his written statement, and his application was granted. In the [114] meantime an Amin was sent to measure the land which was supposed to be the subject-matter of the dispute. On the 24th July the Magistrate recorded the following order :—" Put up after disposal of the police case under ss. 144 and 379 of the Indian Penal Code."

Finally, on the 5th August 1901, the Sub-divisional Magistrate passed the following order :—" It transpired in the course of the trial of the case of Asir Mahmud *v.* Kandura Sardar and others under ss. 144 and 379 of the Indian Penal Code that the tenants of Bhitarband ploughed the disputed *chur* and destroyed the crops standing thereon, on the 6th Falgoon last, *i.e.*, the day that the Civil Court Amin delivered possession, and Bahirband tenants took no steps to recover possession. It also transpired in evidence that the tenants of Bahirband left the *chur* after the Amin delivered possession. Thus the entire *chur* is now in possession of the tenants of Bhitarband, and it is unnecessary to institute any proceedings under s. 145 of the Criminal Procedure Code ; so the case is struck off."

We may mention that at the time when this final order was passed no written statement had been filed by either party.

The first party then proceeded to present to this Court the petition on which the Rule now before us was issued. Objection was made to the final order of the Subdivisional Magistrate mainly on three grounds, *first*, that he had no jurisdiction to strike off the proceedings after having once instituted them, and that it was incumbent upon him to peruse the

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statements, if any, put in by the parties, to hear the parties, to receive the evidence produced by them, to consider the effect of such evidence, and then to decide whether any and which of the parties was at the date of the institution of the proceedings in possession of the subject-matter of dispute; *secondly*, that the Sub-divisional Magistrate acted illegally in importing into the proceedings under section 145 and in relying upon evidence taken in another case, to which neither of the present parties was a party; and, *thirdly*, that the Sub-divisional Magistrate took an erroneous view as to what constituted possession under section 145 of the Code of Criminal Procedure. The petitioner prayed that this Court [115] would set aside the order of the Sub-divisional Magistrate, dated the 5th August 1901, and direct him to proceed according to law.

This Court has in effect been asked to set aside the order whereby the Sub-divisional Magistrate struck off the proceedings which were pending before him, and to direct him to re-open the proceedings and to proceed to the inquiry as to possession provided for in sub-section (4) of section 145.

Now, it appears to us that the application of the petitioner is based upon an erroneous conception of the nature of a proceeding under section 145 and of the position of the parties to such a proceeding. The procedure provided by section 145 is intended solely for the purpose of preventing a breach of the peace where a dispute exists concerning any land, or water, or the boundaries thereof, which dispute, if no proceedings were taken, would be likely to cause a breach of the peace. The institution of such proceedings is a matter entirely within the discretion of the Magistrate. The existence of a dispute likely to cause a breach of the peace is a condition precedent absolutely necessary to give the Magistrate jurisdiction to enter upon an inquiry as to possession. There is a current of rulings of this Court by which it has been held that it is a necessary preliminary condition to proceedings under section 145, that a Magistrate, acting under the provisions of that section, shall record an order stating the grounds of his being satisfied that a dispute likely to cause a breach of the peace in fact exists. Any inquiry as to possession that is made under the provisions of that section is made, not for the purpose of strengthening the position of the one party or of the other party in the dispute between them, but because such an inquiry is necessary for the making of an order under sub-section (6) declaring the party in possession to be entitled to retain possession, until evicted from the property in due course of law, and forbidding all disturbance of such possession, until such eviction. Accordingly, sub-section (5) provides that nothing in the section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute exists or has existed, and in such case the Magistrate shall cancel the said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

[116] It has been contended by the learned Advocate-General for the petitioners that it is not open to the Magistrate to cancel an order made under sub-section (1) and to stay proceedings, unless one of the parties, or some other person interested, has shown that the supposed dispute does not exist or has not existed. But we are unable to understand why there should be any such limitation of the power of the Magistrate to stay his hand, if he has become satisfied, whatever the

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source of his information may have been, that the state of things does not exist which alone would give him jurisdiction to proceed with the inquiry. When once he has such information before him, the whole object of the proceeding ceases and any inquiry that he might make would become a mere inquiry in a civil dispute—an inquiry of a kind which is not ordinarily within the jurisdiction of a Magistrate.

30 C. 112=6 C. W. N. 417.

We may refer to the case of *Tarini Charan Chowdhry* v. *Amulya Ratan Roy* (1) as recognising that a Magistrate may stay his hands when it appears to him that there is a cessation, even for the time being, of any likelihood of a breach of the peace. In that case, after written statements had been filed in the ordinary course, the parties presented petitions, asking for an opportunity, either to have their boundaries demarcated or to settle their dispute by arbitration. The Magistrate passed an order striking off the case under s. 145. We may quote the following passage at page 868 of the judgment of this Court in that case: "Now the first question which arises is the effect of an order striking off proceedings under s. 145 of the Code of Criminal Procedure. As Mr. Woodroffe has told us, there is a series of decisions with regard to the effect of striking off the file of a Court applications in civil matters; but we think that those stand on an entirely different footing from proceedings of a *quasi*-criminal description. The section itself provides for a case, where a Magistrate can cancel his order. Those are cases where parties show him that no dispute exists, and if the likelihood of a breach of the peace has ceased to exist before the proceedings under section 145 have terminated, it follows that there can be no necessity for a continuation of such proceedings. The result [117] of those applications which were sanctioned by the Magistrate practically amounted to cessation, at any rate, for the time being, of any likelihood of a breach of the peace. That must have been the view which the Magistrate took of it, as he considered it unnecessary to proceed, at any rate then, with those proceedings. We think that, unless it can be shown that there is a legislative enactment, giving a power to that effect, cessation by the order of the Magistrate of any criminal proceedings must, until that order is set aside, operate not only as staying the proceedings, but destroying them."

The learned Advocate-General has cited the case of *The Empress* v. *Ganpat Kalwar* (2) as an authority for the proposition that the Magistrate is bound to hear the evidence adduced by the parties in a case under section 147 of the Code, as in a matter under section 145. What the Magistrate had done in that case was to make an order under section 147, adverse to one of the parties on a mere inspection of the locality without taking evidence, and this Court held that it was not in his power to dispose of the case in that manner on such materials. The case does not go further than that.

We think it clear that a party to a proceeding under section 145 is not in the position of a plaintiff in a civil suit who has set the Court in motion and has a right to require a decision upon the questions raised by him. If a Magistrate either refuses to make an order, under sub-section (1) of section 145, or, having made such an order subsequently cancels it on the ground that a dispute does not exist likely to cause a breach of the peace, no private person has any *status* in our opinion to contest the propriety of his refusal to make an inquiry into the question of possession.

(1) (1899) I. L. R. 26 Cal. 867. (2) (1900) 4 C. W. N. 779.

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Another question of very great importance raised by the present rule is, whether this Court has jurisdiction to interfere with such an order as that which has been made by the Subdivisional Magistrate in this case. The law regulating the powers of this Court to interfere on revision with orders of the present kind has been altered by sub-section (3) of section 435 of the Code of Criminal Procedure. It was held by this Court in the case [118] of *Hurbullubh Narain Singh* v. *Lachmeswar Prosad Singh* (1) that the effect of this alteration in the law was to place matters under Chapter XII of the Criminal Procedure Code, that is, under section 145, amongst other sections, in the same category as orders under section 143 and section 144. It was pointed out that in regard to an order under section 143 or section 144, it had been held in many cases, so as to have become settled law, that though the powers of a Court of Revision under the Code could not be exercised, still if an order was challenged to be without jurisdiction, that is to say, if it be outside the section, the mere fact of the order purporting to be so passed would not bring it within the section, so as to debar the exercise of the powers under section 15 of the Charter Act to set it aside as null and void and without jurisdiction.

We think that the present case does not come within the rule of the reportad case to which we have just referred. It is, no doubt, the case that this Court has, from time to time, ever since the enactment of the present Criminal Procedure Code Act V of 1898, interfered to set aside bad orders made under section 145 affecting a party to the proceeding; but it seems to us that there is a very obvious distinction between such an order and an order of the nature now before us, in which the Magistrate does not make any order affecting either of the parties, but refuses to make such an order at all. Had the order now before us purported to declare the possession of the one party or of the other and to forbid disturbance of such possession under the provision of sub-section (6) of section 145, it might well have been that our interference might have been called for.

It has been contended by the learned Advocate-General that, inasmuch as the Subdivisional Magistrate states that according to the information before him possession lies with the Bhitarband tenants, the order practically amounts to one under sub-section (6). But we are unable to accede to this proposition. It appears to us that the order has not and cannot have any such legal effect. The legal position in our view is precisely what it would have been, if no proceedings under section 145 had been instituted at all. [119] What the Subdivisional Magistrate in effect says is that he had at the time of making that order information before him which was not available to him when he made the order under sub-section (1) of section 145; and that had the information been available to him at that time, he would not have drawn up an order stating that he was satisfied that a dispute likely to cause a breach of the peace existed, and he has accordingly cancelled the original order. The order striking off the proceedings does not amount to an adjudication of the question of possession for the purposes of sub-section (6) of section 145.

It has not been shown to us that either before or since the passing of the Act of 1898 this Court has ever directed the institution of proceedings under section 145, or the revival of such proceedings, when

(1) (1898) I. L. R. 26 Cal. 188.

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they have been stayed by the Magistrate. On the contrary, in the case of *Ekram Singh* (1), where it was contended that proceedings had been wrongly had under section 107 of the Code of Criminal Procedure, and that proceedings ought to have been instituted under section 145, it was distinctly held by this Court that it was incompetent to direct proceedings to be taken under section 145.

The learned Advocate-General has referred us to the case of *Dolegobind Chowdhry* v. *Dhanu Khan* (2), in which it was held that where a dispute existed likely to cause a breach of the peace concerning land, proceedings ought to be instituted under section 145 and not under section 107. But in that case all that this Court did was to set aside the order which had been made under section 107 on the ground that it was binding on one party and left the other party free without any adjudication as to possession; but no order was made by this Court directing the institution of proceedings under section 145.

Only one case has been cited to us in which this Court has directed the Magistrate to take any action by way of completing proceedings under section 145, that is the case of *Kefatullah* v. *Feruzuddin Miah* (3). In that case, however, the proceedings had not been stayed by the Magistrate. An order had been passed summarily without evidence adversely to one of the parties, who had [120] failed to file a written statement. This Court set aside that order and directed that the case must be tried in accordance with law.

We may mention another case which has been cited for the petitioner as showing that this Court has interfered in proceedings of this nature. That is the case of *The Katras-Jherriah Coal Company* v. *Sibkrishta Daw and Company* (4). There it was held that an order which had been made under section 145 had been improperly made, and this Court substituted an order of attachment under section 146. That case was thus one of a wholly different character from the case before us, and, moreover, it was decided before the present Code of Criminal Procedure Act V of 1898, came into force.

In the views which we have expressed with reference to the powers of the Magistrate, the *status* of the parties and the jurisdiction of this Court, it is unnecessary for us to notice more particularly the second and third of the objections which we have stated above, namely, that effect was given in the present case to evidence which had been taken in another case, and that the view of the Sub-divisional Magistrate as to what constituted possession was erroneous.

For the reasons which we have stated we must decline to interfere, and we accordingly discharge the Rule.

Rule discharged.

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(1) (1899) 3 C. W. N. 297.
(2) (1897) I. L. R. 25 Cal. 559.
(3) (1900) 5 C. W. N. 71.
(4) (1894) I. L. R. 22 Cal. 297.