1905
MAY 26.

CRIMINAL. REVISION.

32 C. 793=2 Cr. L. J. 760.

"I may submit that the likelihood of a breach of the peace is a future contingency inferable from the circumstances of a particular case, and, in my humble opinion, in the case under notice such circumstances existed, when the accused persons committed the offence of disobedience of the District Magistrate's order of which they have been convicted, &c."

Mr. *Jackson* (Babu *Atulya Charan Bose* with him) for the petitioners. In a prosecution under s. 188 of the Penal Code [795] for disobedience of an order issued under s. 144 of the Code of Criminal Procedure, a breach of the peace cannot be inferred (as the Deputy Magistrate seems to have done), but there must be evidence on the record that there was a likelihood of a breach of the peace; otherwise an order under s. 144 of the Criminal Procedure Code would be improper and illegal. There being no such evidence in this case to show that there was a likelihood of a breach of the peace, the order under s. 144 of the Code was not a proper one, and there could not therefore be any prosecution under s. 188 of the Penal Code for disobedience to it: see *Brojo Nath Ghose* v. *Empress* (1) and *Empress* v. *Surjanarain Dass* (2).

No one appeared to shew cause.

PARGITER AND WOODROFFE JJ. In this case a Rule was granted on the District Magistrate to shew cause why the convictions of these applicants and sentences passed on them under section 188, Indian Penal Code, should not be set aside on the ground that there are no sufficient materials upon which the Magistrate could have found that the disobedience to his order issued under section 144, Criminal Procedure Code, was likely to cause a breach of the peace.

No one has appeared to show cause against the Rule; but the Magistrate has submitted an explanation, and that leaves the matter very much where it was at the trial.

As far as we can see, there is no definite evidence on the record that the disobedience to this order was likely to cause a breach of the peace, and, therefore, according to the ruling *Brojo Nath Ghose* v. *Empress* (1), the conviction is not right in the absence of such evidence. However obvious it would seem that the dispute between rival zemindars concerning two *hâts* close to each other is likely to lead to a breach of the peace, the decided cases require that some evidence should be taken to prove that fact. That appears to have been overlooked in this case.

For these reasons we make the Rule absolute and set aside the conviction and sentence. The fine, if paid, will be refunded.

Rule absolute.

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32 C. 796 (=2 Cr. L. J. 761.)

[796] CRIMINAL REVISION.

Before Mr. Justice Henderson and Mr. Justice Geidt.

GULRAJ MARWARI *v.* SHEIK BHATOO.*

[28th March, 1905.]

Jurisdiction—Criminal Procedure Code (Act V of 1898), ss. 145, 146—Possession given by Civil Court—Practice.

* Criminal Revision No. 111 of 1905, against the order of M. N. Roy, Deputy Magistrate of Bhagalpore, dated Dec. 22, 1904.

(1) (1900) 4 C. W. N. 226. (2) (1880) I. L. R. 6 Cal. 88.

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CRIMINAL. REVISION.

32 C. 796=2 Cr. L. J. 761.

Where the petitioner had eight days before the institution of proceedings under s. 145 of the Criminal Procedure Code been put in possession of a portion of the disputed plots of land by the Civil Court in execution of a decree establishing his rights to the same.

Held, it was the duty of the Magistrate in the proceedings under s. 145 of the Code of Criminal Procedure to find possession of that portion in accordance with the decree of the Civil Court.

The order so far as it directs the attachment of the disputed land covered by that decree is without jurisdiction.

[Ref. 33 Cal. 33=10 C. W. N. 257=2 Cr. L. J. 670=2 C. L. J. 271: Dist. 31 Mad. 416 =4 M. L. T. 189=8 Cr. L. J. 392: Dis. 1914 M. W. N. 798=24 I. C. 967=16 M. L. T. 52=15 Cr. L. J. 559: Ref. 53 I. C. 936=30 C. L. J. 123=23 C. W. N. 982=20 Cr. L. J. 840.]

RULE granted to Gulraj Marwari, the second party to a proceeding under s. 145 of the Code of Criminal Procedure.

The facts are briefly these:—The subject matter of dispute was with regard to certain contiguous plots of land in the town of Bhagalpore. One of those plots was purchased by the petitioner, Gulraj Marwari, at a sale in execution of a decree of the Civil Court against one Kali Mahara and was put in possession thereof, some eight days before the institution of these proceedings. There were, however, several places in different parts of this plot, which were alleged to have for a long time been in possession of the public, *e.g.*, there was an *Imambara* where *tazzias* and flags were prepared and kept, and prayers said, by the local Mahomedans at the time of the *Moharrum* festival; an *akhra* in the shape of a brick-built platform used both by the Hindus and Mahomedans for athletic exercises; and there were also some graves. Sheikh Bhatoo and others (the 1st party) were in charge of these places on behalf of the public.

[797] As there was a likelihood of a breach of the peace in respect of these plots, proceedings were instituted by the Deputy Magistrate of Bhagalpore, under s. 145 of the Code of Criminal Procedure. Kali Mahara, who had been examined by the 1st party, admitted that he was never in possession of those places, which were used by the local Hindus and Mahomedans. But they were included within the boundaries of the land sold to the petitioner in execution of the Civil Court decree.

The petitioner expressed his willingness to keep the *Imambara* intact, to give it a frontage towards the main road, and to reserve some lands on all sides.

The Magistrate held that he had no jurisdiction to enter into these matters in a proceeding under s. 145 of the Code of Criminal Procedure, and he found that part of the land in dispute was in the possession of the petitioner as representative in interest of Kali Mahara, and part in the possession of the 1st party as representatives of the local Hindu and Mahomedan communities, and that it was difficult for him to arrive at a definite conclusion as to the exact quantity of land in possession of the disputants, and he accordingly directed that the whole of the disputed land be attached under s. 146 of the Code, until a Court of competent jurisdiction determined the rights of the parties thereto, relying upon the authority of *Katras-Jherriah Coal Company* v. *Sibkrishta Daw & Company* (1).

Against that order the petitioner moved the High Court and obtained this rule to shew cause why the aforesaid order under s. 146 of the Criminal Procedure Code should not be set aside.

Babu *Dasharathi Sanyal*, for the petitioner.

Maulvi *Mahomed Ishfak*, for the opposite party.

(1) (1894) I. L. R. 22 Cal. 297.

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32 C. 796=2 Cr. L. J. 761.

HENDERSON AND GEIDT JJ. In this case there was a dispute under s. 145 of the Criminal Procedure Code with regard to certain contiguous plots of land. It appeared that on the 4th October 1904, some eight days before the institution of the enquiry in this matter, the petitioner was put in possession of one of these plots in execution of a decree obtained by him in the Civil Court [798] establishing his right to such plot. Evidence of this decree and of the possession given under it, was placed before the Magistrate; but in spite of this, he made an order under s. 146 of the Code attaching all the plots including the plot covered by the Civil Court decree.

So far as the order has directed the plot covered by the decree to be attached it is without jurisdiction. It was the duty of the Magistrate to have found possession in accordance with the decree of the Civil Court.

A rule was granted with reference to this point and it must be made absolute and the order made by the Magistrate modified accordingly.

Rule absolute.

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32 C. 799 (=9 C. W. N. 443.)

[799] ORIGINAL CIVIL.

Before Mr. Justice Stephen.

CHANDRA KALI DABEE *v.* E. P. CHAPMAN.*

[13th, 14th, 16th, 19th December, 1904 and 14th February, 1905.]

Limitation—Limitation Act (XV of 1877) s. 10, art. 48—Negotiable Instruments Act (XXVI of 1881) ss. 9, 58—Fund in Court—Secretary of State and Court officers if trustees—Forged endorsement on Government Promissory notes—Holder in due course—Defect of title of holder.

By a consent decree dated 1829, certain Government promissory notes valued at Rs. 60,000 were paid into Court for the benefit of X and others.

X died in 1884, leaving two sons, both of whom afterwards died unmarried. Subsequently Y applied for a sub-division of the notes, which was done by the Registrar of the Sudder Dewani Adalut. Thereafter one of the notes was lost. Y died without issue, but left two widows, A and B.

In 1885 A and B brought a suit against the Registrar to recover the lost note, and the Registrar was directed to recover and retain the lost note. The Registrar then stopped the circulation of the note, and from an enquiry made at the Comptroller-General's office ascertained that the note stood in the name of C.

A subsequently died in 1894, and afterwards in 1898 B brought the present suit against the Registrar, Secretary of State, and C alleging fraud on the part of the servants of Comptroller-General's office.

Held, that the Government was not a trustee for B and that the negligence committed by the Comptroller-General in 1853 was barred by limitation.

Hunsraj v. *Ruttonji* (1) distinguished.

[Not Fol. 36 Cal. 289.]

This was a suit instituted by Rani Chandra Kali Dabee, the sole surviving widow of Bajpai Raja Gangesh Chunder Roy, deceased, to have it declared that the defendant, the Registrar on the Appellate side of the High Court, was entitled on behalf of the plaintiff to recover certain promissory notes No. 020176 of the year 1842 and 1843 for rupees 4,100, from the defendant Jeebun Kristo Roy, or an equivalent note, or the principal from the defendant the Secretary of State for India in Council, for the [800] purposes of the said trust, and that the defendant the Registrar was entitled to recover from the defendant the Secretary of State for India

* Original Civil Suit No. 892 of 1898.

(1) (1899) I. L. R. 24 Bom. 65.