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32 C. 759=9 C. W. N. 520 =2 Cr. L. J. 259.

"The fifth ridge below the right delta ends abruptly, also the seventh ridge ends at the same point as the fifth ridge, the third ridge bores a little way and then stops."

I am able to follow these features in Exhibit 4, but cannot distinguish them in Exhibit 1 (*d*) or in Exhibit 2. I need not go in detail through the other distinguishing marks: it is sufficient to say that, though I can often perceive them in one [770] impression (generally Exhibit 4, in which the ridges stend out the clearest), I am unable to say that they exist in the other impressions.

The Sub-Inspector is a person who failed for his B. A. Examination, and has been only a little more than a year in the Police. Considering the difficulty I have in perceiving the marks which lead him to say that the impression marked Exhibit 4 is made by the same person as Exhibits 1 (*d*) and 2, I cannot say that the Jury were wrong in declining to regard him as an expert, whose opinion they were bound to accept without the corroboration of their own intelligence as to the reasons which guided him to his conclusion.

In making these observations I desire to throw no doubt on the science of finger impressions, or on the validity of the conclusions which may be established from a similarity in their marks. But in the present case I am of opinion that the similarity of the two sets of finger impressions has not been established; and as the remaining evidence is far from cogent, I would refuse to disturb the verdict of the Jury.

Verdict upheld.

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32 C. 771 (=9 C. W. N. 621=2 Cr. L. J. 342.)

[771] CRIMINAL REVISION.

Before Mr. Justice Henderson and Mr. Justice Geidt.

NITTYANAND ROY *v.* PARESH NATH SEN.*

[8th March, 1905.]

Jurisdiction of Magistrate—Dispute relating to a kutchery—Initiatory Order—Omission to state the grounds of the apprehension of a breach of the peace—Reference to information obtained in a local inquiry not recorded—Order as to costs—Criminal Procedure Code (Act V of 1898), ss. 145, cl. (1), 148.

If the Magistrate omits in the initiatory order under s. 145, cl. (1) of the Criminal Procedure Code to state the grounds of his being satisfied as to the likelihood of a breach of the peace, the final order is without jurisdiction.

Where therefore, the initiatory order merely referred to some information, which was obtained during the course of a local inquiry held by himself, but had not been reduced into writing:—

Held that the proceedings under s. 145 were bad in law.

In a case initiated upon a police report or other information, which has been reduced into writing, reference can be made to the materials upon which the magistrate acted, to ascertain whether there were in fact grounds upon which he might have acted, but even then it is his duty to state the grounds, upon which he was satisfied that there was a likelihood of a breach of the peace.

Queen-Empress v. *Gobind Chandra Das* (1); *Dhanput Singh* v. *Chatterput Singh* (2); *Mohesh Sowar* v. *Narain Bag* (3); and *Jagomohan Pal* v. *Ram Kumar Gope* (4), referred to.

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* Criminal Revision No. 39 of 1905, against the order of B. R. Mehta, Sub-divisional Magistrate of Chandpur, dated September 24th, 1904.

(1) (1893) I. L. R. 20 Cal. 520.
(2) (1893) I. L. R. 20 Cal. 513.
(3) (1900) I. L. R. 27 Cal. 981.
(4) (1901) I. L. R. 28 Cal. 416.

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[Ref. 33 Cal. 352=9 C. W. N. 1065=2 C. L. J. 259 (F.B.) ; 36 Mad. 275=23 M. L. J. 499=12 M. L. T. 439=1912 M. W. N. 1154=17 I. C. 65=13 Cr. L. J. 753 ; 32 All. 132.]

RULE granted to Nittyanund Roy and others, first party.

This was a proceeding under s. 145 of the Criminal Procedure Code arising out of a dispute relating to the possession of a kutchery situate within the old market at Chandpur. On the 10th March 1904, upon the application of one Kailash Chunder Ghose on behalf of the second party, the Joint-Magistrate of Chandpur passed an order under s. 144 of the Criminal Procedure Code directing certain *amlas* and peons of the first party, who had occupied the kutchery house, to vacate the same : but the order was [772] set aside by the High Court on the 27th May. Thereafter on the 13th September one Mohendra Kumar Bhattacharjee filed two petitions on behalf of the first party alleging that the second party was about to commit a breach of the peace by obstructing his taking possession of the kutchery, and praying for a local inquiry by the Joint-Magistrate personally after drawing up a proceeding under s. 144 of the Criminal Procedure Code. The Joint-Magistrate held a local inquiry on the 27th June, and issued an injunction under s. 144 of the Criminal Procedure Code on both parties not to go to the kutchery house or to disturb the peace for two months. On the next day he ordered proceedings under s. 145 to be drawn up, and directed both parties to file their written statements on the 4th July. On that date Mohendra Kumar Bhattacharjee filed his written statement urging, *inter alia*, that the zamindar proprietors had not been made parties, whereupon the Magistrate ordered fresh proceedings to be drawn up, and fixed the 19th instant for the hearing. The initiatory order, dated the 6th July, was drawn upon in these terms.

Whereas it appears from a local inquiry held by me on the 27th June 1904 that a dispute likely to cause a breach of the peace exists between the undermentioned parties concerning certain lands, the boundaries of which are given below, within the local limits of my jurisdiction, it is hereby directed that each of the said parties be asked to attend this Court on the 19th July, and to put in their written statements ; and the first party to produce evidence of his claim as respects the fact of actual possession of the subject of the dispute.

The parties filed their statements on the date mentioned in the above order, and the case was ultimately disposed of on the 24th September by an order in favour of the second party, who was further awarded Rs. 900 as costs under s. 148 (3) of the Criminal Procedure Code.

The first party then obtained this Rule on the District Magistrate and the opposite party to show cause why the order of the Joint-Magistrate, dated the 24th September 1904, should not be set aside on the ground that the order by which he instituted proceedings did not show the grounds on which he was satisfied that there was a likelihood of a breach of the peace arising out of a dispute, which he found to exist ; and why the order as to costs should not be set aside or modified on the ground that there was nothing to show on what basis they were assessed.

[773] Mr. *Jackson* (with him Babu *Atulya Churn Bose*) for the petitioner. The Magistrate is bound under s. 145, cl. (1) of the Code to state in the initiatory order the grounds upon which he is satisfied as to the likelihood of a breach of the peace : *Queen-Empress* v. *Gobind Chandra Das* (1), *Mohesh Sowar* v. *Narain Bag* (2), *Jagomohan Pal* v. *Ram Kumar Gope* (3). He has not stated in such order any specific grounds, but has

(1) (1893) I. L. R. 20 Cal. 530.
(2) (1900) I. L. R. 27 Cal. 981.
(3) (1901) I. L. R. 28 Cal. 416.

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referred to a local inquiry held by himself on the 27th June. There is, however, no record of the information obtained during the inquiry which can be referred to, in order to ascertain the grounds on which he based the proceedings under s. 145.

Mr. *Garth* (with him Mr. *B. M. Chatterjeee*, Babu *Preonath Sen* and Babu *Hem Chander Sen*) for the opposite party. The Magistrate has in his initiatory order referred to an inquiry held by him on the 27th June. This is a sufficient compliance with the section. He is not bound to particularize in such order the grounds upon which he is satisfied that there is a likelihood of a breach of the peace : *Dhanput Singh* v. *Chatterput Singh* (1). Moreover, he says in his explanation that from the numerous petitions filed by the first party it appears on their own showing that there was a likelihood of a breach of the peace.

Mr. *Jackson* in reply. Effect cannot be given to the explanation to supplement the judgment ; *Abhoy Charan Das* v. *Municipal Ward Inspector* (2).

HENDERSON and GEIDT, JJ. This case arises out of a proceeding under section 145 of the Criminal Procedure Code. The proceeding was instituted on the 6th July last by an order made under section 145 (1), which commenced thus : " Whereas it appears from a local inquiry held by me on the 27th June 1904 that a dispute likely to cause a breach of the peace exists, *etc.*"

It has been contended that this order is bad on the ground that the Magistrate has not set out in the order itself the grounds upon which he was satisfied that a breach of the peace was likely, and upon that ground a Rule was granted to show cause why the final order made in the proceedings should not be set aside.

[774] The section provides that the Magistrate may take action when he is satisfied, either from a police report or other information, that a dispute likely to cause a breach of the peace exists concerning land, *etc.* But it also directs that he must state the grounds of his being so satisfied.

In the present case it appears that the Magistrate held a local inquiry, but there is no record, as far as we can ascertain, of the information obtained by him in the course of that inquiry. Even where a Magistrate acts upon a police report or upon other information, he is still bound to state the grounds upon which he is satisfied that there is a likelihood of a breach of the peace. As authority for that proposition it is sufficient to refer to the following cases :—*Queen-Empress* v. *Gobind Chandra Das* (3), *Dhanput Singh* v. *Chatterput Singh* (1), *Mohesh Sowar* v. *Narain Bag* (4), and *Jagomohan Pal* v. *Ram Kumar Gope* (5).

Therefore, as the Magistrate has omitted in the initiatory order to state the grounds of his being satisfied as to the likelihood of a breach of the peace in the present case, we think the final order directing one of the parties to be retained in possession must be set aside ; for it does not appear that the case is one which comes within the section, and accordingly he had no jurisdiction to make it. In a case initiated upon a police report or other information, which has been reduced to writing, reference can be made to the materials upon which the Magistrate acted, to ascertain whether there were in fact grounds upon which he might have acted ; but even then it is the duty of the Magistrate to state the grounds upon which

(1) (1893) I. L. R. 20 Cal. 513.
(2) (1898) I. L. R. 25 Cal. 625, 626 ; 2 C. W. N. 289.
(3) (1893) I. L. R. 20 Cal. 520.
(4) (1900) I. L. R. 27 Cal. 981.
(5) (1901) I. L. R. 28 Cal. 416.

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he was satisfied that there was a likelihood of a breach of the peace. In the present case there being no record of the result of the local investigation made by the Magistrate himself, there is nothing to which reference can be made.

We, therefore, make the Rule absolute and direct that the final order of the Magistrate must be set aside. We think it must follow that the order as to costs must also be set aside, and we set it aside accordingly.

Rule absolute.

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32 C. 775 (=9 C. W. N. 807=2 Cr. L. J. 368=1 C. L. J. 469.)

[775] CRIMINAL REVISION.

Before Mr. Justice Henderson and Mr. Justice Geidt.

BABURAM RAI *v.* EMPEROR.*

[28th March, 1905.]

Cheating—Cheating by personation—Penal Code (Act XLV of 1860), ss. 415, 419—Personation—Minors.

On an application by the *kurta* of a joint Hindu family, in his representative character, to withdraw certain surplus sale-proceeds standing to their credit in the Treasury, the Collector directed him either to file a power of attorney or to cause all the other members to appear and admit his authority to sign on their behalf.

They all appeared in person before the sheristadar, except two minors who were personated by other persons, and signed receipts for the money and caused the personators to sign in the names of the minors.

Thereupon the Collector, after inspecting the signatures, issued a bill in their favour for the amount due, which they withdrew :

***Held* that upon the facts the offence of cheating was not made out.**

***Reg.* v. *Longhurst* (1) *In re Loothy Bewa* (2) referred to.**

[Ref. 2 C. L. J. 524=3 Cr. L. J. 160.]

RULE granted to Baburam Rai and six others.

The first six petitioners were, together with two other persons named Thakur Pershad Rai and Rajnarain Rai, the minor sons of a deceased recorded proprietor, members of a joint Hindu family, of which the petitioner, Ramdihal Rai, was the *kurta*. The seventh petitioner was one Jagdawan, who was alleged to have personated Rajnarain.

On the 24th September 1896 the shares of the first six petitioners and the minors in mouza Manhari Narhar were sold for arrears of revenue, and the surplus sale-proceeds deposited to their credit in the Treasury. On the 9th June 1899 an application signed by Ramdihal Rai, but purporting to have been made on behalf of all the members of the joint-family, was filed before the Collector of Darbhanga for the withdrawal of the surplus amount. After some preliminary office reports he was directed by the Collector either to file a power of attorney **[776]** empowering him to sign for the others, or to cause all of them to appear and admit his authority to sign on their behalf. On the 10th August an application was filed, purporting to be made by all the eight members of the joint family, in which they stated that Ramdihal signed with their

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* Criminal Revision No. 95 of 1905, against the order passed by E. P. Chapman, Sessions Judge of Tirhoot, dated January 18, 1905.

(1) Unreported. (2) (1869) 11 W. R. Cr. 24.