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 v.  
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 PRASAD.

and guardians *ad litem*. As against infant parties, however, who may or may not have attained years of discretion, the exercise of these powers would necessarily depend on the facts of each case. I must refuse this application.

Attorneys for the applicants : Messrs *Dignam & Co.*

Attorney for the infant defendant : Babu *A. T. De.*

C. E. G.

## CRIMINAL REVISION.

*Before Mr. Justice Macpherson and Mr. Justice Gordon.*

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 June 21.

SATISH CHANDRA PANDAY (PETITIONER) v. RAJENDRA NARAIN BAGCHI (OPPOSITE PARTY.) \*

*Criminal Procedure Code (Act X of 1882), chapter XII, section 145—Power of a District or Sub-Divisional Magistrate to transfer or withdraw cases, sections 192 and 528—Their applicability to proceedings under section 145.*

A proceeding under chapter XII of the Criminal Procedure Code, is an "enquiry" within the meaning of section 4 of the Code. The general power conferred by sections 192 and 528 of the Code upon a District or Sub-Divisional Magistrate to transfer or withdraw any case for enquiry or trial by any Magistrate subordinate to him is not taken away or cut down by anything in section 145. The words of section 192 are wide enough to include cases under chapter XII.

The proceedings in connection with this case under section 145 of the Criminal Procedure Code were instituted by the Magistrate of the district. The subject-matter of dispute consists of a *chur* and a *dhab* (dried up bed of a river). Two huts were built on the *chur* previously, to the institution of the proceedings, and indigo and mustard seeds were sown on portions of it. Each party claimed to have built the huts and sown the seeds, and charged the other with having destroyed the huts. Two cases of unlawful assembly arose out of this disputed possession, and there was a serious case of rioting. Each party engaged *burkundases* for the purpose of using force and claimed the exclusive possession of the *chur* as against the other. These and other circum-

\* Criminal Revision No. 241 of 1895, against the order passed by Babu Girish Chundra Nag, Deputy Magistrate of Maldah, dated the 6th of April 1895.

stances induced the District Magistrate to believe that a dispute likely to cause a breach of the peace existed, and so the proceedings under section 145 of the Criminal Procedure Code were instituted, and the parties concerned were directed to attend the Court of the Deputy Magistrate and to put in written statements of their respective claims to the land in dispute. The Deputy Magistrate, to whom the case was made over, was a Magistrate of the first class, empowered to make an order under sections 145, 146 and 147 of the Criminal Procedure Code. After a prolonged enquiry, in which a great deal of evidence was taken, the Deputy Magistrate was unable to satisfy himself as to which of the parties was in possession of the *chur*, and made an order attaching it under section 146 of the Criminal Procedure Code until a competent Civil Court had determined the rights of the parties thereto; and with regard to the *dhab* (dried up bed of a river) he declared that the second party was entitled to retain possession of it. The first party made an application to the High Court and obtained a rule.

Mr. C. P. Hill and Babu *Jogesh Chunder Dey* appeared for the petitioner.

Babu *Saroda Churn Mitter* appeared for the opposite party.

Mr. Hill.—The District Magistrate who initiated the proceedings should have held the enquiry and made the order. The Deputy Magistrate had no jurisdiction, inasmuch as he was not the Magistrate who made the initial order and who was satisfied of the existence of a dispute such as would justify proceedings under section 145 of the Criminal Procedure Code. My contention is that the Deputy Magistrate who held the enquiry had no competent jurisdiction, and not that there has been a mere irregularity. See Madras High Court Proceedings, Appellate Side, 13th November 1868 (1); *Sufferuddin v. Ibrahim* (2). Section 192 is wholly inapplicable to section 145; the former section applies only to criminal cases, as it occurs in a chapter dealing with offences. Then, again, there has been made out no sufficient and reasonable ground for apprehending a breach of the peace. It is that which is the basis of jurisdiction. See *Anundee Kooer v. Sooneet Kooer* (3), *Munglo v. Durga Narain Nag* (4),

(1) 4 Mad. H. C., App., 20.

(2) I. L. R., 3 Calc., 754.

(3) 9 W. R. Cr., 64.

(4) 25 W. R. Cr. 74.

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*In the matter of Kunund Narain Bhoop (1), Damglar Mohapatro v. Shyamanund Dey (2), Dhanput Singh v. Chatterput Singh (3).*

Babu Saroda Churn Mitter, *contra*.—Section 192 does apply to section 145. See chapter XLIV of the Criminal Procedure Code, section 528, also chapter XLV, section 529, clauses (f) and (i), and also section 537. These cases under section 145 are frequently transferred. If the Magistrate who initiates proceedings are the proceedings to commence *de novo*? [MACPHERSON, J.—You need not trouble about the point as to whether there was an apprehension of the breach of the peace].

The judgment of the Court (MACPHERSON and GORDON, JJ.) was as follows :—

This is a case under section 145 of the Criminal Procedure Code. The District Magistrate made the initial order stating that he was satisfied of the existence of a dispute likely to cause a breach of the peace, and directed the parties concerned in it to attend the Court of a Subordinate Magistrate and to put in written statements of their respective claims to the land which was the subject of dispute.

The Magistrate to whom the case was made over was a Magistrate of the first class empowered to make an order under sections 145, 146 and 147, and he, after a prolonged enquiry in which a great deal of evidence was taken, being unable to satisfy himself as to which of the parties was in possession, made an order under section 146 attaching the property until a competent Civil Court had determined the rights of the parties thereto.

On a rule obtained by the first party, Rajah Satish Chandra Pauday, Mr. Hill contends, first, that the Magistrate who held the enquiry directed in section 145 and made the order under section 146 had no jurisdiction, as he was not the Magistrate who made the initial order and who was satisfied of the existence of a dispute such as would justify proceedings under section 145. In other words, that the jurisdiction to make an order under sections 145 and 146 is personal to the Magistrate who initiates the proceedings : second, that the initial proceeding under section

(1) I. L. R., 4 Cal., 650.

(2) I. L. R., 7 Cal., 385.

(3) I. L. R., 20 Cal., 513.

145 is defective, inasmuch as it does not set out any reasonable or sufficient ground for the belief that a breach of the peace was imminent if proceedings under the section were not taken; third, that the *dhab*, concerning which the Magistrate has made an order maintaining the possession of the second party, was not included in the land in dispute, and concerning which the parties were directed to put in written statements.

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The first contention is, we think, erroneous. Section 530 declares that if a Magistrate, not duly empowered by law, makes an order under chapter XII his proceedings shall be void; but this we think clearly refers to a Magistrate who is not a District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class. The Code contains provisions for the transfer by a District or Sub-Divisional Magistrate of any case of which he had taken cognizance for enquiry or trial to any Subordinate Magistrate duly empowered to deal with it (section 192); for the withdrawal by a District or Sub-Divisional Magistrate of any case which he had made over to any Magistrate for enquiry or trial, and the making over of such case to any other competent Magistrate for enquiry or trial (section 528); for the inquiry into, or trial of, any case in which the Magistrate who has heard the whole or part of the evidence ceases to exercise jurisdiction and is succeeded by another Magistrate (section 350). The general power conferred upon a District or Sub-Divisional Magistrate to transfer or withdraw any case for enquiry or trial is not, we think, taken away or cut down by anything in section 145. A proceeding under chapter XII is an enquiry within the meaning of section 4 of the Code, nor can we see any reason for putting upon section 145 the narrow construction contended for. If that construction is right, it would follow that if the Magistrate who made the initial order died, or was transferred, or was incapacitated from any cause for going on with the enquiry, the proceeding must drop. This would frustrate the whole object of the section, which is to prevent a breach of the peace by determining, if possible, the fact of actual possession at the time when the order for enquiry was made. The power of transfer conferred upon Magistrates and Sub-Divisional Magistrates is a general power, and unless cases under chapter XII are expressly excluded, it

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must extend to them also. It is argued that section 192 applies only to criminal cases, as it occurs in a chapter which deals with offences, and the preceding section relates to the cognizance of offences. The words are, however, quite wide enough to include cases under chapter XII. We may observe also that in the Code of 1872, section 44, which is the section corresponding to section 192, provided only for the transfer of "criminal cases." By the amending Act XI of 1874 the word "criminal" was struck out, and it has been omitted from all the subsequent enactments.

As regards the second point we think it unnecessary to refer to all the cases which have been cited, as we think that the Magistrate in his preliminary order under section 145 set out ample grounds to justify proceedings under that section. Neither party showed, or even alleged, that the Magistrate had been misled in the information on which he acted, and that there was no danger of a breach of the peace arising from the dispute. The third contention has no solid foundation, and the objection is not the one which coming from the petitioner we can listen to. The proceeding itself leaves it doubtful whether the *dhab* was included in the disputed land, but the map which the Magistrate attached to it showed that it was included. In the course of the enquiry the second party objected to the inclusion of the *dhab*, but the first party insisted that it was part of the land in dispute and covered by the proceeding, and it was so treated in the enquiry. Now that possession has been proved to be with the second party, the first party brings forward this objection, which under the circumstances we cannot but call impudent.

It has also been urged that the Magistrate ought to have found on the evidence that the first party was in possession. This is a matter which we decline to go into. The Magistrate has criticised the whole evidence on both sides, and says he cannot satisfy himself as to which party is in possession. Under these circumstances he has made the order which the law empowers him to make. The rule is discharged.

S. C. B.

*Rule discharged.*