

The cases on this point are, we observe, contradictory, and if it really arose we should feel bound to refer the matter for settlement by a Full Bench; but on examination of the record we find no valid ground for this objection. The Magistrate refers to a Police report which clearly sets out the probability of a breach of the peace, and we must regard that report as forming part of, and incorporated with, the Magistrate's proceeding.

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 &  
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 CHARAN DE.

We accordingly see no sufficient grounds for interfering as a Court of Revision.

The rule is discharged.

*Rule discharged.*

P. O'K.

*Before Mr. Justice O'Kinealy and Mr. Justice Agnew.*

ANUND MOYI DABIA (PETITIONER) *v.* SHURNOMOYI (OPPOSITE PARTY.)\*

1886  
 June 28

*Criminal Procedure Code, s. 145—Julkur right—Tangible immoveable property—Dispute regarding a julkur.*

A dispute concerning a *julkur* right is not a dispute concerning "tangible immoveable property" within the meaning of s. 145 of the Code of Criminal Procedure, and cannot be inquired into by a Magistrate under the provisions of that section.

IN this case the petitioner, Rani Anund Moyi Dabia, and the Maharani Shurnomoyi each claimed to be in possession of the fishery of a *chora* or abandoned bed of the river Dhurla, which is commonly called the *Dasherhat chora*. The Maharani based her claim on a decree which she had obtained against the predecessors of the petitioner in the year 1867, and on the fact that in 1282 B.S. she had leased the fishing to her jotedar Baboo Lukhi Kanto Sirkar, who had all along remained in possession. Rani Anund Moyi Dabia claimed to be in possession of the fishery by her *ijaradar* Chandro Canto Manjhi. The Deputy Magistrate of Kurigram held a proceeding under s. 145 of the Criminal Procedure Code, and having come to the conclusion on the evidence that the Maharani Shurnomoyi was in possession passed the following order on the 10th of March 1886:—

\* Criminal Revision No. 220 of 1886, against the order passed by T. J. Mendes, Esq., Deputy Magistrate of Kurigram, dated the 10th of March 1886.

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“Under these circumstances,” (referring to the evidence of the disputes between the parties), “it appearing to me on the grounds duly recorded that a dispute, likely to induce a breach of the peace, existed between Maharani Shurnomoyi, zemindar of Pergunnah Bahirbond, and Rani Anund Moyi, zemindar of Pergunnah Pangah, concerning the fishery known as the *Dasherhat chora* situate within the local limits of my jurisdiction, all the said parties were called upon to give in a written statement of their respective claims as to the fact of actual possession of the said fishery, and being satisfied by due inquiry had thereupon, without reference to the merits of the claim of either of the said parties to the legal right of possession, that the claim of actual possession by the said Maharani Shurnomoyi from Kowalipara Ghât down to the river Dhurla as marked in the plan is true, I do decide and declare that she is in possession of the said fishery from G. to H. marked in the plan, and entitled to retain such possession until ousted by due course of law, and do strictly forbid any disturbance of her possession in the meantime.”

Rani Anund Moyi Dabia presented a petition to the High Court under s. 439 of the Criminal Procedure Code, to set aside the order of the Deputy Magistrate.

Mr. *Evans* (Baboo *Grija Sunkur Mozoomdar* with him) for the petitioner contended that the subject of dispute, being merely the right to a fishery and not the right to possession of tangible immoveable property, the Deputy Magistrate had no jurisdiction to pass any order under s. 145 of the Code of Criminal Procedure. He referred to *Promotha Bhusana Deb Roy v. Doorga Churn Bhattacharjee* (1) and to *Krishna Dhone Dutt v. Troilokia Nath Biswas* (2).

Baboo *Srinath Das* for the opposite party.

The judgment of the Court (O’KINEALY and AGNEW, JJ.) was delivered by

O’KINEALY, J.—We are of opinion that this rule should be made absolute.

The only point that we have to decide is whether the Deputy Magistrate, in dealing with the case, dealt with it merely as a

(1) I. L. R., 11 Calc., 413.

(2) I. L. R., 12 Calc., 539.

case of dispute regarding a julkur right, or a case of dispute for possession of land covered with water. If it were a case of possession of land covered by water, and the right to fish was the ordinary right of a person who owned the land, clearly the Magistrate would have jurisdiction. On the other hand, if what he has decided was merely the right to fish and nothing more, the cases in this Court go to show that the Magistrate could not decide the case. Therefore, as I have already said, what we have to decide is, whether the Magistrate tried this as a case for possession of land covered with water, or simply as a dispute about the right to fish.

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The Magistrate says: "I do decide and declare that she is in possession of the said fishery from G. to H." \* \* \* \*; and there is nothing to show that the Magistrate tried this case as for possession of land covered with water.

That being so, we must set aside the order of the Deputy Magistrate.

*Order set aside.*

P. O'K.

## PRIVY COUNCIL.

DHARANI KANT LAHIRI CHOWDHRY (PLAINTIFF) v: KRISTO  
KUMARI CHOWDHRANI AND ANOTHER (DEFENDANTS).

[On appeal from the High Court at Calcutta.]

P. C \*  
1886  
February  
7 & 18.  
March 6.

*Benami transaction.—Purchase in the name of Hindu wife.*

The question for decision was whether a purchase in 1842, in the name of a Hindu wife, of an interest in part of her husband's ancestral estate, was for herself, or for her husband, her name being used *benami* for him.

The High Court, at the hearing in appeal, considered certain previous decisions in cases arising out of *benami* transactions. But in arriving at its conclusion, which was that the property was the wife's, it proceeded entirely on the evidence in the particular case. The judgment of the Judicial Committee, which also went upon the evidence, was, on the contrary, that the husband was, in fact, the purchaser, the purchase being *benami*, in his wife's name.

\* *Present*: LORD BLACKBURN, LORD MONKSWELL, LORD HOBHOUSE and SIR R. COUCH.