

have purchased, or which, if they are the prior mortgagees, has been hypothecated to them as security for their mortgage-debt.

The result, therefore, is that we decree the appeal, set aside the judgment and order of the lower Appellate Court, and restore those of the Court of first instance with costs in all Courts. As the Court of first instance has not fixed the time within which the deposit is to be made by the present appellants, we think that the order should run as follows:— That the present appellants are entitled to deposit, within one month from the date of the arrival of the record in the Court of first instance, the sum which shall be found, on an account being taken by that Court, to be due to the second mortgagee in discharge of his mortgage-debt, with costs and interest up to the date of payment. On their failure to do so, execution of the decree of the opposite party will proceed.

*Appeal allowed.*

L. D. B.

1909  
BHARAHARI  
MAITI  
v.  
GAJENDRA  
NARAIN  
MAITI.

## CRIMINAL REVISION.

*Before Mr. Justice Stephen and Mr. Justice Carnduff.*

HARAN MANDAL

v.

MOHIM CHANDRA PRAMANIK\*.

1910  
Jan. 4.

*Dispute concerning land—Tenant interested in the subject of dispute—Addition of the tenant to the proceedings to show that there is no dispute likely to cause a breach of the peace—Criminal Procedure Code (Act V of 1898), s. 145, cl. (5).*

A person claiming to be interested in the subject of dispute as a tenant, who was not required to attend as a party, should be heard under s. 145 (b) of the Criminal Procedure Code in order to show that no dispute likely to cause a breach of the peace exists.

ON the report of the Sub-Inspector of Police of the Dracope thana, alleging an apprehension of a breach of the peace, the

\* Criminal Revision No. 1316 of 1909, against the order of H. P. Bhatta charjee, Deputy Magistrate of Khulna, dated Aug. 16, 1909.

1910  
 HARAN  
 MANDAL  
 v.  
 MOHIM  
 CHANDRA  
 PRAMANIK.

Deputy Magistrate of Khulna instituted a proceeding under section 145 of the Criminal Procedure Code in respect of a plot of land in Bajna *abad* against Mohim Chandra Pramanik and others, first party, and Jogendra Mandal and others, second party. On the day fixed for the filing of the written statements the petitioner, who had not been required to attend as a party, but was casually present in Court, filed an application before the Magistrate alleging that he was a tenant of a part of the land in dispute and praying to be added as a party. The Magistrate refused the application and proceeded with the case, holding, by his order dated the 16th August 1909, that the first party was in actual possession.

The petitioner then moved the High Court and obtained a rule to show cause why such order should not be set aside and the proceedings continued in order that the petitioner might be heard under section 145, sub-section (5) of the Code.

*Babu Narendra Kumar Bose*, for the petitioner.

No one for the opposite party.

STEPHEN AND CARNDUFF JJ. This is a rule to show cause why an order under section 145 of the Criminal Procedure Code should not be set aside and the proceedings continued in order that the petitioner may be heard under sub-section (5) of that section. The petitioner swears that he is interested in the land in dispute as a tenant of a part of it. There is nothing to show that this is not the case, although the Magistrate considered that his application to be made a party was a mere device on his part, acting as a creature of the second party. The petitioner seems to give reasons for supposing that this may not be true, and we consider that he should be allowed to show that there is no dispute under the fifth paragraph of the section. No one appearing to show cause, we make the rule absolute and order accordingly in terms of the rule.

*Rule absolute.*