A. I. R. 1917 Lahore 35 (1)

CHEVIS, J.

Nur Bakhsh and *others*—Petitioners.

v.

Emperor—Respondent.

Criminal Revn. No. 100 of 1917, decided on 27th April, 1917, from the Order of Dist. Magte., Ferozepore, dated 6th December, 1916.

Criminal Procedure Code (5 of 1898), S. 145—Omission to pass preliminary order or to serve it is not fatal—Requirements are satisfied when matter is explained to parties on appearance.

The omission to frame an order in writing as required by S. 145 (1) of the Criminal Procedure Code or to serve a copy of the order on the parties as required by S. 145 (3) does not necessarily invalidate proceedings under S. 145. A.I.R. (1914) Lah. 295; A. I. R. (1917) Lah. 35, foll and 32 Cal. 552, not foll.

Where, therefore, the parties appeared before a Magistrate who explained matters to them fully and they evidently understood everything that was requisite.

Held, that there was no sufficient cause for interference.

Sohan Lal and *Ram Rakha Mal*—for Petitioners

Muhammad Iqbal—for Respondent.

Judgment.—There are two points, (1) whether the omission to frame an order in writing as required by S. 145 (1) as the initiation of proceedings, and the omission to serve a copy of the order on the parties as required by S. 145 (3) are such flaws as to necessitate this Court's setting the proceedings aside, and (2) whether the Magistrate is justified in holding that there was danger of a breach of the peace.

As to (1), *pace Banwari Lal Mukerje* v. *Hriday Chakravarti* (1) and other rulings, we have two clear rulings of this Court, *Muhammad Sharif* v. *Dhanpat Rai* (2) and *Sajad Hussain* v. *Nanak Chand* (3). In the present case the parties appeared before the Magistrate and he explained matters fully to them, and they evidently understood everything that was requisite.

As to (2), there is evidence. Counsel urges that witnesses do not depose that there was danger of breach of the peace. When a witness does so depose he is merely expressing his own opinion. It is for the Magistrate after hearing the evidence to form his own opinion.

I see no sufficient cause to interfere. Dismissed.

R.M./R.K.

Revision rejected.

(1) (1905) 32 Cal. 552.
(2) A. I. R. (1914) Lah. 295=23 I. C. 487.
(3) A. I. R. (1917) Lah. 35=39 I. C. 301.

A. I. R. 1917 Lahore 35 (2)

SHADI LAL J.

Sajad Hussain and *others*—Petitioners.

v.

Nanak Chand and *others*—Respondents.

Criminal Revn. No. 2059 of 1916, decided on 24th March, 1917, from the Order of Magte., 1st Class, Ambala, dated 13th November, 1916.

(a) Criminal P. C. (5 of 1898), S. 145—Requirements and procedure under S. 145, stated.

In order to give jurisdiction to a Magistrate to take proceedings under S. 145, Criminal Procedure Code, it is essential that he should be satisfied that a dispute likely to cause a breach of the peace exists, and such dispute must refer to land or water or the boundaries thereof lying within his local jurisdiction. If such a dispute exists, the Magistrate is entitled to exercise his jurisdiction, and the first step is the recording of the initial order, the contents of which are specified in the first clause of S. 145. 33 Cal. 352, ref to. [P. 36, C. 1.]

(b) Criminal P. C. (5 of 1898), Ss. 145 and 537—Omission to draw up preliminary order is not fatal.

But the mere omission to record the preliminary order is not a fatal defect, if no prejudice has been caused thereby A. I. R. (1914) Lah. 295 foll. 22 P. R. 1916 Cr. expl. [P 36, C. 1.]

(c) Criminal P. C. (5 of 1898), S. 145—Property—Trees severed is not immovable property within S 145.

Trees which have been severed from the land do not come within the purview of S. 145, sub-S. (2), and no order under S. 145 can be made with respect to them. [P. 36, C. 2.]

Muhammad Iqbal—for Petitioners.

Gokal Chand Narang for *Duni Chand*—for Respondents.

Judgment.—This is an application for revision of an order passed by the Magistrate under S. 145, Criminal Procedure Code, and the grounds, upon which the order is sought to be revised, are:—

1. That the Magistrate did not pass an order in writing as required by sub-S. 1 of S. 145;

2. that there was no dispute likely to cause a breach of the peace;

3. that no order could be made respecting the trees which had been cut and severed from the land.

As regards the *first* contention, it appears that though the Magistrate was satisfied from the information received by him that

a dispute likely to cause a breach of the peace existed concerning land, and that though he issued summons to the parties concerned requiring them to attend his Court, and put in written statements of their respective claims with regard to the fact of actual possession of the subject in dispute, he did not place upon the record an order contemplated by the said sub-section. It is, however, clear that the petitioners fully understood the nature of the proceedings against them, put in their written statements, and adduced witnesses in support of their claim. It further appears that on a subsequent date an order, which essentially complies with the aforesaid sub-section, was recorded and no prejudice whatsoever was caused to any party by the omission referred to above.

As pointed out in *Khosh Mahomed Sirkar* v. *Nazir Mahomed* (1), in order to give jurisdiction to a Magistrate to take proceedings under S. 145, it is essential that he should be satisfied that a dispute likely to cause a breach of the peace exists, and such dispute must refer to land or water or the boundaries thereof lying within his local jurisdiction. If such a dispute exists, the Magistrate is entitled to exercise his jurisdiction, and the first step is the recording of the initial order, the contents of which are specified in the first clause of S. 145. Indeed, it has been held by this Court that the omission to record the preliminary order is not a fatal defect if no prejudice has been caused thereby, *vide Muhammad Sharif* v. *Lala Dhanpat Rai* (2). The judgment in *Tara Chand* v. *Behari Lal* (3) does not dissent from that view, and proceeds upon the ground that the Magistrate did not record evidence as required by sub-S. 4 of S. 145. Following the former ruling, I hold that the defect in the procedure is, in the circumstances of the case, not a fatal one and does not vitiate the proceedings.

With respect to the *second* objection, it is sufficient to say that the Magistrate was fully satisfied that the cutting of the trees on the burning ground was likely to cause a breach of the peace, and all the circumstances of the case support that view. Indeed, he was so convinced of the probability of a breach of the peace that he considered that an immediate action was absolutely essential, and it appears that it was due to his prompt action that no breach of the peace took place.

As regards the *last* ground, upon which the order of the Magistrate is attacked, I agree with the learned Counsel for the petitioners that the trees, which have been severed from the land, do not come within the purview of S. 145, sub-S. 2, and that no order under S. 145 could be made with respect to the wood lying upon the ground. The order of the Magistrate does not, however, affect this wood, and no interference is, consequently, necessary. There can be no doubt that the petitioners, who are forbidden to disturb the possession of the respondents, have no means of access to the land and consequently to the wood lying there, and have no alternative but to get the dispute as to the title settled in a Civil Court. Mr. Muhammad Iqbal for the petitioners frankly admits that his clients do not dispute the factum of possession, and he has not, therefore, questioned the finding of the Magistrate on that point.

For the aforesaid reasons I confirm the order and dismiss the application for revision.

R.M./R.K.

Application dismissed.

(1) (1906) 33 Cal. 352.
(2) A.I. R. (1914) Lah. 295=23 I. C. 487.
(3) (1916) 22 P.R. 1916 Cr.=36 I. C. 868.

A. I. R. 1917 Lahore 36

BROADWAY, J.

Hari Ram—Plaintiff—Appellant.

v.

Mutsaddi and *others* — Defendants — Respondents.

Second Appeal No. 16 of 1917, decided on 12th July, 1917, from the Decree of Addl. Dist. Judge, Karnal, dated 11th May, 1916.

Evidence Act (1 of 1872), S. 90—Ancient document—Presumption—Period of thirty years should be reckoned from date when its genuineness or otherwise becomes subject of proof.

In applying the presumption allowed by S. 90 of the Evidence Act, the period of thirty years must be reckoned from the date on which the genuineness or otherwise of the document becomes the subject of proof. 5 C.L.R. 135, foll.

In a suit instituted on the 3rd July, 1915, for a declaration of the plaintiff's proprietary rights in certain land which had been entered by the Revenue Authorities as shamilat and of which the plaintiff claimed to be in possession, the plaintiff based his case on a deed of sale alleged to be executed in his favour on the 7th August, 1885, and the defendant's pleas were filed on the 9th August, 1915 in which the genuineness of the document was challenged: [P. 37, C. 2.]