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right to collect the rents of the shops which were built by them and of which they are the owners:

Such being the pleadings, it was, we think, wrong to hold that the suit falls within the terms of s. 539. The suit is not one against trustees, but by trustees against persons who are alleged to be wrongfully in possession of the trust property. The suit does not, therefore, fall within the scope of s. 539, and no such decree is asked for as is mentioned in any of the clauses of that section. Assuming that the defendants are found to be trustees of the temple, the plaintiffs do not seek to remove them from that trust; they only assert a right to collect the [152] rents of certain property which they allege is temple property. Even if it was a case of contest as to who are the lawful trustees of the temple, the suit would not be one falling within s. 539. We do not, however, see that the defendants make any claim to be the trustees of the temple; they claim the shops as the owners thereof, and they deny that the plaintiffs are the managers of the temple entitled either to collect the rents of the shops or to interfere with their collecting the rents.

The questions at issue in the suit are really very simple, *viz.*, (1) whether the plaintiffs are the managers of the temple, (2) whether, as such, they are entitled to collect the rents of the shops in suit. The issues framed by the Subordinate Judge are well suited to bring these questions to trial. If these questions are found in the affirmative, the plaintiffs will be entitled to a decree. If found in the negative, their suit will have to be dismissed. There is nothing in s. 539 which takes away the jurisdiction of the Subordinate Judge to hear and determine these questions and pass a decree in the suit.

We reverse the orders of the lower Courts and direct the Subordinate Judge to accept the plaint and dispose of the suit on the merits in accordance with law. Costs hitherto incurred to be costs in the cause and to be apportioned in the final decree.

Order reversed and case remanded.

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CRIMINAL REFERENCE.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

IN THE MATTER OF HUCHAPA AND SHIVAGANGAVA.*
[24th September, 1890.]

Criminal Procedure Code (Act X of 1882), s. 145—Time at which Magistrate is to determine who was in possession.

Under s. 145 of the Code of Criminal Procedure (Act X of 1882) a Magistrate is required to decide which of the parties between whom a dispute exists is in possession of the subject of the dispute *at the time* when the Magistrate decides the question of possession, and not at any time *previous* thereto.

[F., 18 M. 41 (42).]

[153] THIS was a reference, under s. 438 of the Code of Criminal Procedure (Act X of 1882), by J. L. Johnston, Sessions Judge of Dharwar.

* Criminal Reference, No. 64 of 1890.

The material portions of the reference were as follows :—

“ On the report of the chief constable, Dharwar Taluka, that there was a likelihood of a breach of the peace between Huchapa *bin* Gangapa and Shivagangava *kom* Gangapa in regard to the possession of a house and valuable property contained therein, Mr. Wiltshire (Magistrate, First Class) commenced inquiry, and called for a report from the Mamlatdar and 2nd Class Magistrate of Dharwar. Meanwhile Huchapa, the alleged adopted son of Gangapa, deceased, husband of Shivagangava, made an application to the District Magistrate that the police had improperly interfered with his possession of the said property, whereupon the District Magistrate ordered the Mamlatdar to make a personal inquiry and a list of the property, and to report thereon. The Mamlatdar accordingly went to the house and, finding two rooms locked up and the keys with Huchapa, required him to produce them, and made a list of the property in the house, except that alleged to be underground, and forwarded it with his report and the keys, &c. On a further application of Huchapa the District Magistrate referred the matter to Mr. Wiltshire for disposal.

“ Mr. Wiltshire some time after issued notices to the parties to show cause why the keys and the property in dispute should not be returned to the persons from whom they were received. He then joined the two matters together, *viz.*, the inquiry under s. 145 of the Criminal Procedure Code on the report of the chief constable as regards tangible immovable property and the inquiry on the applications of Huchapa as regards the keys and the valuable moveable property alleged to have been attached by the police out of the custody and possession of Huchapa, though this procedure was objected to by the pleader for Huchapa.

“ Mr. Wiltshire, Magistrate, First Class, found that Shivagangava was in possession of the house, and declared her entitled to retain it, with the property in it, until ousted in due course of law, and forbade all disturbance of her possession in the meantime. [154] He ordered also that the keys should be returned to those from whom they were received, *viz.*, Huchapa and Shivagangava.

“ The procedure adopted by the Magistrate, First class, in joining the two matters of inquiry mentioned above and in passing a joint order on them under a section which only partially applies, is illegal and irregular, especially when the notice referred to the keys and the keys alone, as I understand it.

* * * * *

“ Besides the possession which the Magistrate was legally bound to find on and support was possession at the time of the institution of the proceedings, and not at the time to which he went back and inquired into, at a time four months previous to the institution of the proceedings in any Court.

“ I have stayed execution of Mr. Wiltshire's orders, and leave the matters in *statu quo* pending the orders of the High Court.”

Branson (with him *Manekshah Jahnagirshah*), for Huchapa.

Lang (with him *Ganesh Ramchandra Kirloskar*), for Shivagangava.

Shantaram Narayan, Government Pleader, for the Crown.

Branson.—The Magistrate ought to have decided which of the parties was in possession at the time he entered upon the inquiry under s. 145 of

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1890 the Criminal Procedure Code and not at any time previous thereto. The
SEP. 24. wording of the section is clear and unambiguous.

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PER CURIAM.—In his order of the 9th June last, the Magistrate says :
"Ouster by one person of another lawfully in possession of property
confers no rights on the former which I can recognise. I must refer back
to a time previous to the quarrel, when sole possession was peacefully
enjoyed by one or other of the disputants. My enquiry must be directed
to the question as to which party was in possession of the subject in
dispute before any proceedings in the Courts had taken place in the matter."
In so ruling, the Magistrate has followed the decision of the Calcutta High
Court in *Re Mohesh Chunder Khan* (1). But that was a ruling under
s. 530 of Act X of 1872, the provisions of which [155] have been modified
in the corresponding section (s. 145) of the present Code of Criminal
Procedure, under which the Magistrate is required to decide which of the
parties between whom a dispute exists is in possession of the subject of the
dispute at the time when the Magistrate decides the question of possession.
As the Magistrate omitted to comply with the requirements of the law, we
reverse his order, and we direct that, if he finds that a dispute likely to
cause a breach of the peace still exists concerning the house to which his
order relates, he should decide the question of possession according to law.

Magistrate's order reversed and case remanded.

15 B. 155 (P.C.) = 18 I.A. 6 = 15 Ind. Jur. 35 = 5 Sar. P.C.J. 639.

PRIVY COUNCIL.

PRESENT :

*Lord Hobhouse, Lord Macnaghten, Sir B. Peacock, Sir R. Couch
and Lord Shand.*

*[Petition for Special leave to appeal from a decree of the High Court,
Bombay.]*

RAHIMBHOY HABIBBHOY (*Petitioner*) v. C. A. TURNER,
(OFFICIAL ASSIGNER AND ASSIGNEE OF THE ESTATE OF ALLADINBHOY,
AN INSOLVENT) (*Respondent*). [15th November, 1890.]

*Privy Council, leave to appeal to—Prerogative right of Crown to admit appeal where
leave to appeal refused by High Court—Final decree—Meaning of "final" in s. 595
of Civil Procedure Code (Act XIV of 1882)—S. 601 of Code—Practice—Procedure.*

Where a decree directing the taking of accounts which the defendant contends
ought not to be taken at all, decides, in effect, that, if the result should be found
to be against the defendant, he is liable to pay the amount, the decree is final
within the meaning of s. 595 of the Civil Procedure Code (Act XIV of 1882) for
the purpose of appeal.

On the ground that a decree for an account was not final within that section,
the High Court refused, under s. 601, to grant the defendant a certificate.

On his application for special leave to appeal to Her Majesty in Council, not
by way of an appeal from the local Court's refusal, but asking for the exercise
of the prerogative right to admit an appeal:

(1) 4 C. 417.