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my learned brother, the condition requiring the collateral who claims succession to have shared in the cultivation is a disqualification which disentitles the nearest collateral if he has not fulfilled the condition. But it does not confer any right of succession to the occupancy-tenure on a more remote collateral, even though he may have shared in the cultivation. For these reasons I concur in the order of my learned brother setting aside the judgment of the two lower Courts and giving plaintiff a decree as prayed for in his plaint.

Appeal decreed.

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August 7.

FULL BENCH.

Before Mr. Justice Knox, Mr. Justice Blair, and Mr. Justice Burkitt.

QUEEN-EMPRESS *v.* FAZL AZIM.

Criminal Procedure Code, s. 531—Sessions Court—Jurisdiction—Appeal presented within, but heard outside the local limits of the jurisdiction of a Sessions Court.

A criminal appeal was presented to the Sessions Judge of the Bijnor-Budaun Division at Bijnor within the said Sessions division, but was heard by the said Judge at Moradabad, at which place he was empowered to exercise civil but not criminal jurisdiction. *Held* that the trial of the appeal at Moradabad was an irregularity, but, no failure of justice being shown to have been occasioned thereby, the irregularity was covered by s. 531 of the Code of Criminal Procedure and did not render the trial of the appeal a nullity.

THE facts of this case sufficiently appear from the judgment of the Court.

Mr. *D. Banerji* for the applicant.

The Public Prosecutor (for whom Mr. *W. K. Porter*) for the Crown.

KNOX, BLAIR and BURKITT, JJ.—This is an application calling upon us to set aside an order passed by the Sessions Court of Bijnor-Budaun dismissing an appeal presented by one Fazl Azim who was convicted of offences under ss. 265 and 266 of the Indian Penal Code. The main contention urged upon our notice was that the order of the Sessions Judge was a nullity, it having been passed at Moradabad, a place outside the local limits of the Sessions division known

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as the Bijnor-Budaun Sessions Division. It appears from the record that the appeal was presented at Bijnor, and there can therefore be no doubt whatever that the learned Sessions Judge had jurisdiction to entertain the appeal. The question therefore remaining for our decision is whether the order dismissing the appeal was a valid order or a nullity.

The Sessions division of Bijnor-Budaun was constituted by an order of Government, No. 545, dated the 12th of May 1880. Under that order and under s. 13 of Act No. X of 1872, the Local Government, from the 15th of May 1880, withdrew the district of Bijnor from the Moradabad Sessions Division and the district of Budaun from the Bareilly and Sháhjahánpur Sessions Divisions, and constituted the two districts thus withdrawn a new Sessions division to be called the Bijnor-Budaun Division. By a subsequent order a Sessions Judge was duly appointed to this division under s. 16 of Act No. X of 1872, and the Sessions division thus constituted continues to exist up to the present time.

It is an undisputed fact that Moradabad is situated without the local area of the Sessions division, and it is also undisputed that this appeal, though presented at Bijnor, was heard and orders on it passed at Moradabad. We have no hesitation in saying that the Sessions Judge did commit an irregularity in hearing the appeal outside the local area which constitutes his Sessions division, for it is a general and well-known rule that all judicial acts exercised by persons whose judicial authority is limited as to locality should be done within the locality to which such authority is limited. It is an irregularity which should not be allowed to recur. The further question which now arises is whether we are obliged by law to set aside the proceedings on the trial of the appeal, and the order on the appeal, as absolutely void by reason of that irregularity. The case *Empress of India* v. *Jagan Nath* (1) was cited to us as an authority for holding that the proceedings are void. It is a precedent which has been followed by several other cases decided by this Court, but, with all due deference to the learned Judge who decided that case, it appears to us that

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his judgment involved a confusion between ss. 70 and 33 of Act No. X of 1872, sections which have now been replaced by ss. 531 and 532 of the present Code. Our attention was also called to the case of *Queen-Empress* v. *James Ingle* (1), in which we think the law has been very correctly laid down by Mr. Justice Farran in the following words :—

Referring to s. 531 that learned Judge said :—

"This section, I think, must be read as complete in itself and not as in any way cut down or limited by the proviso contained in the latter part of s. 532. Section 531 applies solely to cases in which there is no jurisdiction by reason of the inquiry, trial or other proceeding being held in the wrong local area; but s. 532 seems to refer to cases in which the Magistrate is competent to deal with the offences as having taken place within the local limits of his jurisdiction but has no power to commit to the High Court or Court of Sessions, either because he is only a second class Magistrate, or for some reason other than that of local jurisdiction."

We understand that the meaning of the learned Judge is that s. 531 refers to irregularities arising out of the fact that the finding, sentence or order had been passed outside the geographical area of its jurisdiction by a Court otherwise competent, whilst s. 532 refers to a personal disability irrespective of area of jurisdiction. We have no doubt that the trial of this appeal in the Court of Sessions and the order dismissing it passed by the Sessions Judge come within the words "inquiry, trial or other proceeding". The present case therefore falls within s. 531, and under that section no finding, sentence or order should be set aside unless it appears that the error occasioned a failure of justice. It is not contended in the present application that any failure of justice was caused. No other point was pressed upon us; and we therefore order that this application stand dismissed.

The order admitting Fazl Azim to bail will therefore be discharged, and Fazl Azim will be committed to prison to work out the rest of the sentence passed upon him on the 31st of March 1894.

(1) I. L. R., 16 Bom., 200.