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that the direction of this Court as to the repayment of the fines should be given effect to. It is doubtful even whether in a Civil Court they would have any remedy against Mani Ram, as it was from the Magistrate, and not from the applicants, that Mani Ram received the money. I set aside the Magistrate's order and direct him to call upon Mani Ram to refund the applicants' money which was paid to him. If he refuses, the Magistrate will take action in the manner directed in section 547 of the Code of Criminal Procedure, and, when the money had been recovered, if it is recovered, will repay it to the applicants.

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Before Mr. Justice Banerji and Mr. Justice Aikman. -

BALWANT AND ANOTHER (APPLICANTS) v. KISHEN (OPPOSITE PARTY). *
Jurisdiction—Transfer of Magistrate—Order passed by a Magistrate after his successor had entered upon his appointment—Criminal Procedure Code, section 12.

By an order of the Local Government Babu Dila Ram, a Magistrate exercising jurisdiction in the Meerut district, was transferred from that district "on the arrival of Kunwar Kamta Prasad."

Held by Banerji, J. that the effect of the order of transfer so expressed was that Babu Dila Ram ceased to have jurisdiction as a magistrate within the Meerut district from the time when Kunwar Kamta Prasad commenced work as a magistrate in that district.

Held by Aikman, J. that the effect of the said order was that Babu Dila Ram ceased to have jurisdiction on the arrival of Kunwar Kampta Prasad; but whether such arrival was his arrival within the limits of the district or at headquarters was not clear from the order.

Empress of India v. Anand Sarup (1) referred to.

THIS was a reference under section 438 of the Code of Criminal Procedure made by the Sessions Judge of Meerut. The facts of the case are fully stated in the judgment of Banerji, J.

The Public Prosecutor (Mr. E. Chamier) for the Crown.

BANERJI, J.—This case has been referred by the learned Sessions Judge of Meerut under the following circumstances. On the 9th of June 1896 Babu Dila Ram, a magistrate of the first class, granted sanction under section 195 of the Code of Criminal

* Criminal Revision No. 426 of 1896.

(1) I. L. R., 3 All, 568.

Procedure, 1882, for the prosecution of Balwant and Tika for offences punishable under sections 211 and 193 of the Indian Penal Code. It was contended on behalf of Balwant and Tika that Babu Dila Ram had ceased to have jurisdiction in the district of Meerut on the date above mentioned and was not competent to make the order of sanction. By notification of Government dated the 7th of May 1896, Babu Dila Ram was transferred from Meerut to Ballia, "on the arrival of Kunwar Kamta Prasad." I presume that this must be taken to mean — on the arrival of Kunwar Kamta Prasad in Meerut, and the assumption by him of the office of Deputy Collector in that district. We have no information as to the date of the arrival of Kunwar Kamta Prasad at Meerut, but he took over charge of his duties on the 26th of May 1896, a fortnight before the date on which Babu Dila Ram passed the order complained of. The question which arises in this case is whether, after the arrival of Kunwar Kamta Prasad at Meerut and the assumption by him of the charge of his duties as magistrate, Babu Dila Ram ceased to have any jurisdiction in the district of Meerut. By section 12 of the Code of Criminal Procedure the Local Government may from time to time define local areas within which a magistrate may exercise all or any of the powers with which he may be invested. Babu Dila Ram's competency to exercise his powers as a magistrate in the district of Meerut was derived from the order of the Local Government posting him as a magistrate to that district. His jurisdiction to exercise his powers in the district ceased as soon as the order for his transfer to another district came into effect. The notification of Government to which I have referred declared that Babu Dila Ram was to be regarded as transferred from Meerut to Ballia on the arrival of Kunwar Kamta Prasad. In my opinion that notification should be read with the notification which precedes it, *viz.*, that Kunwar Kamta Prasad was to be posted "on return from leave" to the Meerut district; and, placing a reasonable construction on the notification relating to the transfer of Babu Dila Ram, I am of opinion that the words "on arrival of Kunwar Kamta Prasad" in that notification should be construed

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to mean—on the assumption by Kunwar Kamta Prasad of his duties as magistrate. The continuance of Babu Dila Ram to exercise his powers in the Meerut district depended, according to the notification of Government, upon the happening of a particular event, namely, the assumption of his duties by Kunwar Kamta Prasad. Babu Dila Ram therefore ceased to have jurisdiction in the Meerut district from the 26th of May, on which date Kunwar Kamta Prasad took over charge of his duties. From that date he could exercise no jurisdiction in the Meerut district as a magistrate. This case is within the principle of the ruling of the Full Bench in *Empress of India v. Anand Sarup* (1). In that case it was held that Mr. Mulock ceased to retain his jurisdiction as a magistrate in the district of Meerut on being relieved by Mr. Fisher. That was the case of a District Magistrate who held a specific office and who ceased to hold that office as soon as he was relieved of his duties by another officer. The case of a Deputy Collector exercising the powers of a magistrate is no doubt different. Any number of such officers may be appointed by Government to a particular district, and the assumption of the office of Deputy Collector by one officer in a district does not necessarily lead to the result that another Deputy Collector who has been performing the duties of a magistrate in that district ceases to have jurisdiction in the district. The jurisdiction of each officer within a specific area depends, as I have said, upon the orders of Government appointing him to exercise jurisdiction within that area. In this case the notification of Government to which I have referred, worded as it was, had the effect of transferring Babu Dila Ram from the Meerut district as soon as Kunwar Kamta Prasad took over charge of his duties in that district, and he no longer continued to be a magistrate in the Meerut district. That being so he had no jurisdiction on the 9th of June 1896 to make the order complained of. Had the notification of Government transferring Babu Dila Ram from Meerut not been worded in the way in which it was worded, and had it been to the effect that

(1) I. L. R., 3 All., 563.

Babu Dila Ram was to be transferred from Meerut to Ballia on being relieved of his duties in the Meerut district, I should have had no hesitation in holding that he had jurisdiction to make his order of the 9th of June, as he was not relieved of his duties in the Meerut district until that date. Such a notification would have attained the object contemplated in the letter of Government dated the 23rd April 1896, to which the learned Public Prosecutor drew our attention. Having regard, however, to the terms in which the order for the transfer of Babu Dila Ram was made, I must hold that he ceased to have jurisdiction in Meerut as soon as Kunwar Kamta Prasad assumed charge of his duties in that district. I would set aside the order made by Babu Dila Ram on the 9th June 1896.

AIKMAN, J.—I concur with my brother Banerji in thinking that the order made by Babu Dila Ram on the 9th of June 1896 was without jurisdiction and must be set aside. I consider that we must be guided in this case by the principle laid down in the decision by the majority of this Court in the Full Bench case, *Empress of India v. Anand Sarup* (1). In that case the Government notification appointed Mr. Mulock, who was then officiating Magistrate and Collector of Meerut, to officiate as Magistrate and Collector of Gorakhpur on the happening of a certain event, *i. e.*, on his being relieved by Mr. Fisher. It was held in that decision that on the happening of that event Mr. Mulock ceased to exercise any jurisdiction in the Meerut district. In the present case the effect of the Government notification is to declare that Babu Dila Ram on the happening of a certain event ceased to have any jurisdiction in the Meerut district. If that event happened before the order in this case was made, that order was made by a magistrate who had no jurisdiction to make it. The event in this case, the happening of which determined the jurisdiction of Babu Dila Ram in the Meerut district, was the arrival of another magistrate named Kunwar Kamta Prasad. That arrival had undoubtedly taken place two weeks before the order complained of was

(1) I. L. R., 3 All. 563.

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passed. I feel bound to express my opinion that the form of the order of transfer is open to objection. It is not clear whether the arrival was the arrival within the Meerut district or the arrival at the head-quarters of that district. In either case the exact time of the arrival might be unknown to the officer whose transfer depended upon it, and he might in consequence pass an order when his jurisdiction had ceased. The learned Public Prosecutor endeavoured to support the order on two grounds. The first ground was that the notification of Babu Dila Ram's transfer referred to him only as Deputy Collector and did not refer to him as magistrate. He therefore contended that, notwithstanding this notification and the arrival of Kunwar Kamta Prasad, Babu Dila Ram might still be able to exercise jurisdiction as magistrate. In my opinion this contention is untenable. Babu Dila Ram was invested with powers of a magistrate and these powers are exercised by him in any district to which he may be posted. Even if the contention could be sustained, it lands us in a worse dilemma, for it would follow that Babu Dila Ram is still a magistrate of the Meerut district and all the orders passed by him as magistrate in the Ballia district would be without jurisdiction. The next ground on which the learned Public Prosecutor endeavoured to support the order was a letter of Government No. 1007 dated the 23rd of April 1896. In paragraph 3 of this letter it is directed that in the case of transfers Magistrates and Deputy Commissioners should examine the files of any subordinate whose transfer is impending and arrange so that the officer shall so far as possible clear his file before making over charge of his office. With the object which the Government had in view in issuing this letter I most cordially sympathize. There is no doubt that the departure of a magistrate either on leave or transfer leaving cases partially heard results not only in great delay in the disposal of cases but in additional expense and inconvenience to the parties. By cl. (a) of section 350 of the Code of Criminal Procedure an accused is entitled when a magistrate takes up a case partially heard by his predecessor to demand that the witnesses be resummoned and reheard. If the design of Government in the letter referred to

be carried out, it would obviate the delay and expense which arise from the exercise of the privilege thus given to the accused by law. But the power of a District Magistrate to allocate work is confined to the allocation of work amongst magistrates who are for the time being his subordinates. If the effect of a Government order is to transfer a magistrate from a district, the District Magistrate of that district has no longer any authority to make any arrangement in regard to the work of the magistrate so transferred. Whilst there can only be one District Magistrate, the number of other magistrates in a district is only limited by the discretion of the Local Government, inasmuch as it may appoint as many persons as it thinks fit, besides the District Magistrate, to be Magistrates in a district. There would be a difficulty in providing that any magistrate subordinate to the District Magistrate should be transferred on his making over charge of his office inasmuch as there is no particular office of which he can make over charge. If, as suggested by my brother Banerji, the notification of Government were to run—"on being relieved of his duties"—the difficulty would, I think, be obviated, and the object which the Local Government had in view in issuing the letter of the 23rd of April 1896, would be capable of being attained. I concur in thinking that the order made by Babu Dila Ram on the 9th of June must be quashed.

By THE COURT.

The order of the Court is that the order of Babu Dila Ram, dated the 9th of June 1896, is set aside.

APPELLATE CRIMINAL.

Before Sir John Edge, Kt., Chief Justice and Mr. Justice Blennerhassett.

QUEEN-EMPRESS v. BHADU.*

Practice—Pleading—Qualified plea of guilty—Evidence to be taken.

In capital cases where there is any doubt as to whether an accused person fully understands the meaning and effect of a plea of guilty it is advisable for the Court to take evidence and not to convict solely on the plea of the accused.

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* Criminal Appeal No. 1078 of 1896.