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thus Rs. 27-8-0. There was consequently a deficiency of Rs. 10, which the plaintiffs must supply.

We set aside the order of the District Judge rejecting the plaint, and remand the case to his court with the direction that he should fix a time within which the deficiency should be made good, and, in case of the plaintiffs' failure to supply the deficiency within the time fixed, he should proceed in the manner provided by section 54 of the Code of Civil Procedure. Costs here and hitherto will abide the event.

Appeal decreed and cause remanded.

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MISCELLANEOUS CRIMINAL.

Before Mr. Justice Banerji and Mr. Justice Aikmas.

FARZAND ALI (APPLICANT) v. HANUMAN PRASAD (OPPOSITE PARTY).^{*}
Criminal Procedure Code, section 526—Transfer of Criminal case—Grounds upon which transfer may be granted.

What the court has to consider in the case of an application under section 526 of the Code of Criminal Procedure is not merely the question whether there has been any real bias in the mind of the presiding Magistrate against the accused, but also the further question whether incidents may not have happened, which, though they may be susceptible of explanation and may have happened without there being any real bias in the mind of the Magistrate, are nevertheless such as are calculated to create in the mind of the accused a reasonable apprehension that he may not have a fair and impartial trial. *Dupeyron v. Driver* (1) followed.

In this case a complaint was laid against the applicant in the court of the District Magistrate of Mirzapur by one Hanuman Prasad, the mukhtar-a'am of the Rája of Bijaipur, charging the applicant with offences under section 417, section 421 and section 424 of the Indian Penal Code. After examination of the complainant on the 14th of April 1896, the District Magistrate ordered a summons to issue for the appearance of the applicant on the 21st of April. The applicant applied to the High Court for the transfer of the proceedings so instituted against him, and these proceedings

^{*} Miscellaneous Application No. 135 of 1896.

(1) I. L. R., 23 Calc., 495.

were in consequence of such application suspended until the 2nd of May 1896, when the High Court made an order rejecting the application for transfer. Subsequently, on the 16th of May 1896, on the deposition of the complainant, to the effect that in his belief the accused was not likely to appear in answer to a summons, the District Magistrate directed a warrant to issue for the arrest of the applicant and fixed the 20th of May for the hearing. On the 20th of May, after recording a further deposition of the complainant respecting an attempt made to serve the warrant issued on the 16th, the District Magistrate directed a proclamation to issue under section 87 of the Code of Criminal Procedure for the appearance of the complainant on the 24th of June 1896, at the same time attaching, under section 88 of the Code, all the movable and immovable property of the applicant. In August 1896 the applicant presented this present application under section 526 of the case pending against him in the Court of the District Magistrate of Mirzapur.

Mr. *Amir-ud-din*, and Mr. *H. T. Coleman* for the applicant.
Mr. *C. Dillon* for the opposite party.

BANERJI and AIKMAN JJ.—This is an application under section 526 of the Code of Criminal Procedure, 1882, for the transfer from the Court of the District Magistrate of Mirzapur of a case now pending in that Court, in which one Hanuman Prasad is the complainant and the applicant is the accused. It is urged that an order for the transfer would be expedient in the ends of justice.

It appears that an application for the transfer of the same case was previously made and rejected for reasons stated in the judgment of this Court dated the 2nd May 1896. We declined to permit the applicant to urge in support of his present application any ground which had been or could have been put forward on the previous occasion.

We must observe that in the affidavit now filed by the applicant reasons have been assigned as justifying the transfer, some of which are futile and some baseless. The affidavit does not satisfy us that the Magistrate has prejudged the case or that there is the

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slightest ground for supposing that he will not try and decide the case with impartiality, nor is there anything to show that he is biassed against the accused. But, as was observed by the Calcutta High Court in a recent case (*Dupeyron v. Driver*) (1), what the Court has to consider in an application like this is "not merely the question whether there has been any real bias in the mind of the presiding Magistrate against the accused, but also the further question whether incidents may not have happened, which, though they may be susceptible of explanation and may have happened without there being any real bias in the mind of the Magistrate, are nevertheless such as are calculated to create in the mind of the accused a reasonable apprehension that he may not have a fair and impartial trial. We approve of this view. We have to consider whether any such incidents have happened in the present case.

We find that on the 14th of April last the Magistrate, although the charges against the accused were such as would have justified the issue of a warrant in the first instance, and although he was moved by the complainant to issue a warrant, directed a summons only to issue. This certainly was not a circumstance which could be regarded by the accused as indicating the existence of any bias against him in the mind of the Magistrate. Before the date fixed in the summons for the appearance of the accused the first application for transfer had been made to this Court and proceedings in the Magistrate's Court were stayed. When, after the disposal of that application, the case came before the Magistrate, he on the 16th of May 1896 made an order for the issue of a warrant for the arrest of the accused. The Magistrate assigns the following reasons why on this occasion he issued a warrant instead of a summons:—"It is the general belief that Maulvi Farzand Ali will do all he possibly can not to appear in answer to this charge. Rumours are widely current that he is contemplating a pilgrimage to Mecca, or as an alternative that he will cause his death to be given out. It is my belief that a summons will not

(1) I. L. R., 23 Calc., 495.

suffice to secure his attendance." It is true that before making the order he examined the complainant, who said:—"It is the general belief that the accused will not appear." But in the examination of the complainant there is no reference to the rumours mentioned by the Magistrate in his order. In the affidavit which has been filed by the Magistrate he refers as his authority for the rumours to information which had reached him from sources which he believed to be reliable. We infer from this that that information was information which the Magistrate had got out of Court. If this is so, not only did he permit rumours relating to the accused in a case pending before him to reach him out of Court, but he allowed his mind to be influenced by such rumours. The order for the issue of a warrant was, as we have said, passed on the 16th of May 1896. Although the accused was said to be residing in another district, the case was set down for hearing on the 20th of May 1896. That date, we may mention, had been directed by the Government of India to be kept as the birthday of Her Majesty the Queen-Empress. On the 20th of May the Magistrate, without waiting for the return of the warrant, directed the issue of a proclamation under section 87 of the Code of Criminal Procedure, and at the same time ordered the attachment of the whole of the accused's property, movable and immovable. Such an order for attachment, we may observe, cannot be made until after the proclamation is issued.

Without for a moment attributing to the Magistrate any desire to act otherwise than in strict accordance with law, and giving him every credit for a wish to act impartially, we feel constrained to say that the hasty procedure of the Magistrate, coupled with his allusion to the rumours referred to above, are incidents which may reasonably create in the mind of the accused an apprehension that his case may not be impartially dealt with by the Magistrate. These incidents have taken place in connection with this very case since the dismissal of the first application for transfer. We therefore think that this is a case in which it is expedient for the ends of justice that an order of transfer should be made.

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We accordingly direct that the case be transferred from the court of the District Magistrate of Mirzapur to that of the District Magistrate of Allahabad.

APPELLATE CIVIL.

Before Mr. Justice Aikman.

SHAM LAL (DEFENDANT) v. CHOKHE (PLAINTIFF).

Act No. XII of 1881 (N.-W. P. Rent Act), section 42—Assessment of price of crops belonging to an evicted tenant—Effect of such assessment.

Held that where a land-holder having ejected a tenant upon whose holding there are growing crops, applies under section 42, cl. (c) of Act No. XII of 1881 for assessment of the price, he is bound by the assessment which the Revenue Court may make and cannot afterwards refuse to pay the price fixed.

IN this case the plaintiff sued as the representative of a non-occupancy tenant who had been evicted from his holding under section 36 of the N.-W. P. Rent Act, 1881, to recover a sum of Rs. 236-11 with interest, alleged to be due by the zamindár on account of crops standing on the land at the time of his father's eviction, which had been taken at a valuation under the provisions of section 42 of the Act.

The zamindár-defendant pleaded that he had never accepted the valuation and had appealed against it, and that he had never taken the crop.

The court of first instance (Deputy Collector of Sháhjahánpur) found that the zamindár-defendant had never taken possession of the crop and had refused to accept the estimate of the price made by the Tahsildár, and, holding that the plaintiff remained owner of the crop until the compensation was paid and possession delivered, dismissed the suit.

On appeal by the plaintiff the lower appellate court (District Judge of Sháhjahánpur) decreed the appeal and the plaintiff's suit, holding that when once the landlord had applied under section 42 for an estimate he was bound by it and had no option of refusal.

Second Appeal No. 1019 of 1894 from a decree of H. B. Finlay, Esq., District Judge of Sháhjahánpur, dated the 18th August 1894, reversing a decree of Syed Abdullah Khan, Deputy Collector of Sháhjahánpur, dated the 11th June 1894.