

Bijnor certainly looked into the case, and apparently carefully. He came to the conclusion that more convincing proof of bad livelihood of the worst description could not be adduced. He accordingly, as Magistrate of the District, instituted fresh proceedings under section 110; and he did not purport to act under section 437 of the Criminal Procedure Code. He evidently looks upon the record as information sufficient to justify his taking action. He took fresh evidence. I have been asked to refer the case to two Judges in order that there may be an authoritative decision upon the point. I do not, however, think it necessary to delay passing orders. Even if the District Magistrate should require security, his proceedings can, if they are proceedings held without jurisdiction, be afterwards set aside. I do not for one moment go into the evidence one way or the other, but it is easy to conceive that a man who is a terror to the neighbourhood might work a good deal of mischief while or until this case could be decided; and up to the present, with the exception of one reported case of *Queen-Empress v. Ahmad Khan*, so far as I know, his power to do so has never been questioned in this Court. As I have shown in *Queen-Empress v. Ahmad Khan*, the Magistrate purported to act under section 437. In this case the Magistrate does not profess to have so acted.

I dismiss the application.

Before Mr. Justice Aikman.

KING-EMPEROR v. MUNNA.*

Criminal Procedure Code, sections 107(2), 192—Security for keeping the peace—Transfer—Power of District Magistrate to transfer proceedings instituted by him against a person not within his district.

Held that it was competent to a District Magistrate who had initiated proceedings under section 107(2) of the Code of Criminal Procedure against a person not at the time within the limits of his jurisdiction to transfer such proceedings at a later stage to a Magistrate subordinate to himself, though such Magistrate was not competent to initiate such proceedings.

THIS was a reference made under section 438 of the Code of Criminal Procedure by the Sessions Judge of Gorakhpur, arising out of the following facts. One Munna Tiwari, a resident of the Gorakhpur district, had been called upon by the District

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Magistrate of Basti, acting under section 107, clause (2) of the Code of Criminal Procedure, to show cause why he should not furnish security to keep the peace. After proceedings had been thus instituted by the District Magistrate of Basti, he, professing to act under section 192 of the Code, transferred those proceedings to one of his subordinates, a Magistrate of the first class, who completed them, making an order for security against Munna Tiwari. On an application for revision of this order, the Sessions Judge of Gorakhpur, being of opinion that such proceedings initiated under the circumstances above described could not be transferred, submitted the record to the High Court for orders.

AIKMAN, J.—In this case one Munna Tewari was called on to furnish security for keeping the peace. It appears that he is a resident of the Gorakhpur district. Proceedings were taken against him by the District Magistrate of Basti under the provisions of section 107, sub-section (2) of the Code of Criminal Procedure, he not being then within the local limits of that Magistrate's jurisdiction. After taking proceedings under that section the District Magistrate, professing to act under the provisions of section 192 of the Code of Criminal Procedure, transferred the case of which he had thus taken cognizance to a Magistrate of the first class subordinate to him, who passed the order for security. In the referring letter of the learned Sessions Judge the question is raised as to whether the District Magistrate, after instituting proceedings under section 107 (2), had any power to transfer the case. This question is not altogether free from difficulty. But after consideration, I am of opinion that the intention of the Legislature was to limit the jurisdiction in regard to institution of proceedings in cases like the present to a Chief Presidency or District Magistrate; but that when such Magistrate has, in the exercise of his discretion, directed institution of proceedings, there is nothing in the law to prevent him from transferring the case to a Magistrate otherwise qualified to complete the proceedings. In this case it appears that a previous application for revision had been made to the District Magistrate. The learned Sessions Judge ought therefore, with reference to the provisions of section 435, sub-section (4), to have referred the applicant to this Court. As, however,

the proceeding has come to my knowledge, I have dealt with it under section 439, sub-section (1) of the Code of Criminal Procedure. For the reasons set forth above I am of opinion that the Magistrate of the first class had jurisdiction to make the order which he did, and I direct that the record be returned.

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Before Mr. Justice Know and Mr. Justice Blair.

NIADAR (DEFENDANT) v. BARU MAL AND OTHERS (PLAINTIFFS).*

Act No. XII of 1881 (N.-W. P. Rent Act), sections 93, 95—Act No. XIX of 1873 (N.-W. P. Land Revenue Act), section 102—Jurisdiction—Civil and Revenue Courts—Suit to eject as a trespasser a person who claimed to be entitled to the holding of a deceased occupancy tenant—*Res judicata*.

Upon the death of an occupancy tenant, a person who alleged that he was entitled to succeed to the deceased's occupancy holding, obtained from the revenue authorities, by means of an application under section 102 of the N.-W. P. Land Revenue Act, mutation of names in his favour, and also got into possession of the holding. The zamindars thereupon brought a suit in a Civil Court for his ejection, on the allegation that he was a mere trespasser, who had no right whatever to succeed to the holding of their late occupancy tenant. Held that such suit was properly brought in a Civil Court, and could not have been instituted in a Court of Revenue, and the decision of the Revenue authorities allowing mutation of names in the defendant's favour could not operate as *res judicata* in respect of such suit. *Subarni v. Bhagwan Khan* (1) distinguished.

THE facts out of which this appeal arose were as follows. One Gulzara, an occupancy tenant, died in November 1899. Thereupon Niadar, the present appellant, applied to the revenue authorities under section 102 of Act No. XIX of 1873 for the entry of his name in respect of Gulzara's occupancy holding. An order was made for the entry of Niadar's name on the 11th of February, 1900, and he obtained possession of the holding. Upon this the zamindars brought a suit in the Civil Court to eject Niadar and recover possession of the holding on the ground that Niadar was a mere trespasser who had no right whatever to the land as the successor of Gulzara. The Court of first instance dismissed the suit, holding that it was not cognizable by a Civil

* Appeal No. 17 of 1901 under section 10 of the Letters Patent.

(1) (1896) I. L. R., 19 AL., 101.