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RAM PHAL
THAKUR
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PAN MATI
PADAIN.

bandhu, and in the absence of any other heir he is entitled to succeed to the estate of the last owner. The plaintiff in that case was the son of the daughter's daughter of one Sheo Narain and our learned brothers observe:—"He is clearly a *sapinda* of Sheo Narain within the meaning of the *Mitakshara*, and being a *bhin-nagotra sapinda*, who claims through a female belonging to the family of Sheo Narain, namely, his daughter Chaura; he is Sheo Narain's *bandhu*. In the absence of any other heir he is entitled to succeed to the estate of Sheo Narain. It is urged that he, being the son of Sheo Narain's daughter's daughter, cannot be regarded as a *bandhu*. In the Tagore Law Lectures for 1882, the descendant of a daughter's daughter of the same family to which the deceased belonged is specifically mentioned as a *bandhu* of the deceased (see p. 688), and on page 707 the daughter's daughter's son is specified in the list of the man's own *bandhu*. Having regard to the definition of a *bandhu* as understood in the *Mitakshara*, we must hold the plaintiff, who is the daughter's daughter's son of Sheo Narain, the last owner, is his *bandhu* and, as such, the heir to his estate." Applying the ruling in that case to the present, Sundar Pande and Ram Piare Pande being the sons of a daughter's daughter of Beni are, as such, in the absence of other heirs, the heirs to his estate. We dismiss the appeal with costs.

Appeal dismissed.

MISCELLANEOUS CRIMINAL.

Before Mr. Justice Tudball.

EMPEROR v. WAHID ALI KHAN.*

Criminal Procedure Code, sections 526 ; 107, 117, 118—Security for keeping the peace—Transfer—Jurisdiction.

Section 526 of the Code of Criminal Procedure enables the High Court to transfer criminal proceedings initiated under section 107 of the Code, once they have been properly instituted, to any other criminal court of equal or superior jurisdiction (and which otherwise would have no jurisdiction) and the order of the High Court will give jurisdiction to the court to which the case has been so transferred to make an inquiry under section 117 and to pass an order under section 118. *In the matter of the petition of Anar Singh* (1) not followed.

THIS was an application under section 526 of the Code of Criminal Procedure asking that certain proceedings which had

* Criminal Miscellaneous No. 99 of 1910.

(1) (1898) I. L. R., 16 ALL, 9.

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been instituted by the District Magistrate of Fatehpur against the applicant under section 107 of the Code might be transferred to some other district. The facts out of which these proceedings arose are immaterial for the purposes of this report, but at the hearing a preliminary objection was taken that the High Court had no power to direct the transfer of proceedings taken under section 107 of the Code of Criminal Procedure to any court outside the district in which, having regard to the provisions of Code, such proceedings might lawfully be instituted.

Mr. G. W. Dillon, for the applicant.

The Government Advocate (Mr. W. Wallach), for the Crown.

TUDBALL, J.—This is an application for transfer of certain proceedings pending in the court of the District Magistrate of Fatehpur against the applicant, under section 107 of the Code of Criminal Procedure to some other competent court outside the Fatehpur district for trial. Certain facts have been alleged in the affidavit filed with the application. To that affidavit there is a reply by the District Magistrate himself. It is quite clear to me after reading this reply that the case is one which for the ends of justice should be transferred to some other court for disposal. The District Magistrate's letter shows that he has taken a keen personal interest in the matters which have led up to the present case, and that he has even taken part in the inquiry and has himself on his own information instituted the present proceedings and is more or less convinced of the applicant's guilt. This quite sufficient to arouse in the mind of the applicant a reasonable apprehension that he may not receive that impartial inquiry to which he is under the law entitled. There can be no doubt whatsoever that the District Magistrate is moved by the very best of intentions and desires to maintain the peace of his district and to see that wrongdoers are punished. The case has apparently aroused very great interest and commotion locally, and it is in my opinion expedient that it should be tried in an atmosphere which is free from all those local influences which must exist in Fatehpur itself. It has been urged that the case is one of such a nature that it cannot be transferred to any other court outside the district of Fatehpur. My attention has been called to the ruling *In the matter of the*

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petition of Amar Singh (1). That was a case in which Mr. Justice BURKITT held that proceedings under section 110 of the Criminal Procedure Code cannot be transferred to any court outside the district within which such proceedings had been originally instituted. With due respect to the learned Judge who decided that case I find myself unable to accept the reasoning of his judgement. I fail to see anything in section 117 or section 118 of the Code of Criminal Procedure which prevents a Magistrate to whose court proceedings have been transferred by an order passed under section 526 of the Code of Criminal Procedure, from coming to a decision as to whether or not the person in respect of whom the inquiry is made should execute a bond. No doubt, a Magistrate cannot take action under section 110 unless the person against whom the action is taken, is one within the local limits of his jurisdiction. But once action has been taken, the inquiry and the final order are made under the powers conferred by section 117 and section 118 of the Code. Section 526 of the Code clearly enables this Court to transfer a criminal case of this description, once it has been properly instituted, to any other Criminal Court of equal or superior jurisdiction (and which otherwise would have no jurisdiction), and the order of this Court will give jurisdiction to the court to which the case has been so transferred to make an inquiry under section 117 and to pass an order under section 118. I do not think that the powers of transfer given to this Court by section 526 are in any way limited by the terms of section 110 or section 107 of the Code. In my opinion the ends of justice demand that this case be transferred to another district. I therefore transfer it to the court of the District Magistrate of Allahabad with power to try the case himself or to transfer it to some other first class Magistrate of the Allahabad district who may be competent to try it. At the same time the applicant will execute a bond with sureties for the amount of Rs. 500, that he will, if bound over to keep the peace, pay the costs of the prosecution.

Application allowed.

[See also *In the matter of the petition of Gudar Singh* (I. L. R., 19 All., 291) and *Emperor v. Mahendra Singh* (I. L. R., 30 All., 47)—Ed.]