

words which were discretionary, the order passed under section 107 of the Code of Criminal Procedure when there was a dispute relating to land was an order which should be set aside. I find, however, in the case of *Sheoraj Roy v. Chatter Roy* (1), the learned Judges of the same High Court held that, where a dispute relating to possession of land is likely to cause a breach of the peace, a magistrate has a discretion to proceed either under section 107 or under sections 144 and 145 of the Criminal Procedure Code.

In *Emperor v. Ram Baran Singh* (2) a learned Judge of this Court held that a magistrate under similar circumstances might legally take action under section 107 of the Code of Criminal Procedure. With that view I entirely concur.

It is a matter of experience that cases coming under section 145 are, as a rule, cases long drawn out, and in the interval it is more than probable that owing to the hot blood excited over the matter a breach of the peace might occur. The magistrate often does well to take action under section 107. It is open to the petitioners in the present case to move the magistrate having jurisdiction to take action under section 145 if they make out a proper case. I have no doubt that the magistrate will take the necessary steps.

I find no cause for interference and dismiss the application.

Application dismissed.

Before Mr. Justice Sir George Knox.

EMPEROR v. GANGA.*

Criminal Procedure Code, section 177—Jurisdiction—Effect of place of commission of offence ceasing to be British territory.

An offence was committed in March, 1910, at a place which was then part of the Mirzapur district. Subsequently one of the persons alleged to have taken part in the commission of such offence was arrested in Bengal and sent to Mirzapur, where he was committed by the Joint Magistrate to take his trial before the Court of Session. In the meanwhile the place where the offence was committed had ceased to be British territory. *Held* that this fact did not oust the jurisdiction of either the Magistrate or the District Judge of Mirzapur.

An offence was committed on the 18th of March, 1910, at a place which was then within the jurisdiction of the courts of the

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* Criminal Revision No. 140 of 1912 by the Local Government from an order of W. R. G. Moir, Sessions Judge of Mirzapur, dated the 15th of January, 1912.

(1) (1905) I. L. R., 32 Cal., 968. (2) (1906) I. L. R., 28 All., 406.

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Mirzapur district, and two persons were tried and convicted in respect thereof. A man of the name of Ganga, said to have been concerned in the same offence, absconded. He was after some months arrested in Bengal, transferred to Mirzapur, and there charged before the Joint Magistrate, who committed him to the Court of Session. The Sessions Judge referred the question of jurisdiction to the High Court, being of opinion that, inasmuch as the scene of the crime had since the 18th of March been transferred to the State of Benares and had ceased to be British territory, he had no jurisdiction to accept the commitment.

The Government Advocate (Mr. A. E. Ryves), for the Crown.

The accused was not represented.

KNOX, J.—The attention of the Court has been called by the learned Government Advocate to the case of *King-Emperor v. Ganga*, charged with an offence under section 392, read with section 75 of the Indian Penal Code.

The offence is said to have been committed on the 18th of March, 1910. Two men have already been convicted as having been concerned in the offence. Ganga was said at the time to have absconded and the case proceeded without his appearance in court.

So far as I can learn from the papers which have accompanied the record, he was arrested within the Bengal Presidency as being a person without any ostensible means of livelihood. He found his way to prison at Mymensingh. From this prison he was sent for, it does not appear by what authority, and produced before the Joint Magistrate of Mirzapur. The Joint Magistrate inquired into the case falling under section 392 of the Indian Penal Code. The inquiry began on the 6th of November, 1911, and ended in the committal to the Court of Session for trial on the 4th of December, 1911.

The Sessions Judge of Mirzapur, holding that the Joint Magistrate had no jurisdiction to inquire into the case, and that his court had no jurisdiction to try the case, directed that Ganga be returned to the custody of the District Magistrate and treated for the purpose of this charge as a prisoner of the Benares state in custody in British territory. It is with this order that the learned Government Advocate asks this Court to interfere.

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The attention of the learned Judge was directed to the case of *Mahabir v. King-Emperor* (1), also to the case of *Ram Prasad* (2), and lastly, to the case of *King-Emperor v. Lachmi* (3).

In all these cases this Court held that the British Court had jurisdiction to try the several cases concerned. The learned Judge, however, considered that those cases could be distinguished from the present on the ground that the cases above cited related to persons who had been committed to the Court of Session before the 1st of April, 1911, the date on which certain parganas of the district of Mirzapur were constituted a state and granted to the Raja of Benares. He doubts their force as precedents in the present case, where the accused was not arrested until the 8th of October, 1911, and the case was not instituted against him until same date. Section 177 of the Code of Criminal Procedure of 1898 enacts that every offence shall ordinarily be inquired into and tried by a court within the local limits of whose jurisdiction it was committed. The sections which follow, 178-189, do not take the present case out of section 177. At the time when the offence was committed by Ganga, it was an offence committed "within the local limits" of the jurisdiction of the Magistrate of the district of Mirzapur; and, as a necessary result upon the arrest, the case would, in the ordinary course, have been committed to the Court of Session at Mirzapur. It matters little to what place the offender betakes himself after he has committed the crime. To take an ordinary instance, an accused commits an offence within the jurisdiction of the District Magistrate of Mirzapur, he absconds, remains in hiding for a year or more, passes through several districts in the course of his flight and is eventually arrested for that offence within the district—say, of the 24-Pergunahs. Upon his arrest he is, as a matter of course, upon proper request made, transferred to the court of Mirzapur, his case investigated there, and if it is committed to the Court of Session that court proceed to try and pronounce judgement in the case. No question can arise as to jurisdiction.

In the present case the offence was an offence against British Indian law committed by Ganga at a time when he was a British Indian subject at a place which, at the time when the crime was

(1) (1911) I. L. R., 38 All., 578. (2) (1912) 9 A. L. J., 51.

(3) Reference No. 388 of 1911, made by the Sessions Judge of Mirzapur, to this Court.

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committed, was within the local jurisdiction of the Mirzapur courts. It has never been said that Ganga has at any time, since he committed the crime, ceased to be a British Indian subject. So far as the record goes, he has apparently since the crime resided in British territory up to the time he was produced before the courts of Mirzapur. The mere accident that from the 1st of April, 1911, the spot where he committed the crime has ceased to be British territory appears to me quite irrelevant.

Wheaton in his *Elements of International Law* says:—"The judicial power of every independent state extends to the punishment of all offences against the municipal laws of the state by whomsoever committed within the territory also to the punishment of all such offences by its subjects wheresoever committed" (Edition 1886, p. 179). To the same effect is Phillimore's *International Law*, 3rd Edition, Vol. I, p. 216. According to Mr. Mayne in his *Criminal Law*, 3 Ed., p. 956, "the jurisdiction of the *mo fusail* courts depends upon the offence having been committed within their local limits." See *Hursee Mahapatro v. Dinobundo Fa'ro* (1).

To hold otherwise would lead, it seems to me, to endless complications and might result in very serious miscarriages of justice.

So far as the present case is concerned, the jurisdiction of the Mirzapur courts which may be said to have commenced with the commission of the offence has neither been suspended nor unbroken.

I, therefore, set aside the order of the learned Sessions Judge of Mirzapur, and direct him to try at an early date the prisoner Ganga, who has been committed to him, for the offence for which he was committed.

Order set aside.

(1) (1882 I. L. J. R., 7 Calc., 523.