

REVISIONAL CRIMINAL.

1914
May, 27.*Before Mr. Justice Piggott.*

EMPEROR v. NATHI MAL.*

Criminal Procedure Code, section 528—Transfer—Effect of appointment of a Magistrate to be chairman of a municipal board.

Held that when a magistrate is appointed to the post of chairman of a municipal board and has taken over charge, he thereby becomes divested of his ordinary functions as a magistrate, or if he retains any, he is no longer a 'magistrate subordinate to the District Magistrate,' within the purview of section 528 of the Code of Criminal Procedure.

AN officer who had been a magistrate exercising first class magisterial powers in the district of Cawnpore, was appointed by Government to be chairman of the Cawnpore municipal board. After his appointment the District Magistrate, purporting to act under section 528 of the Code of Criminal Procedure, transferred to him a criminal case against one Nathi Mal pending in the court of another magistrate of the district. Against this order of transfer Nathi Mal applied in revision to the High Court.

Mr. *E. A. Howard*, for the applicant, submitted that the provisions of section 528 of the Code of Criminal Procedure had been distorted to meet the wishes of the District Magistrate. "Magistrate" is defined as a magistrate who is exercising the powers of a magistrate. Mr. Williamson who was exercising no magisterial powers was not a magistrate under the Code of Criminal Procedure. Even assuming that Mr. Williamson was a magistrate, he certainly was not a Magistrate subordinate to the District Magistrate.

The Assistant Government Advocate (Mr. *R. Malcolmson*) contended that Mr. Williamson having been invested with first class powers under section 12 of the Code of Criminal Procedure, his transfer to the chairman of the municipality could not divest him of the powers.

PIGGOTT, J.—The District Magistrate of Cawnpore has for certain reasons given in his order transferred a criminal case pending in the court of Mr. J. N. G. Johnston, Joint Magistrate of Cawnpore, for trial by Mr. R. H. Williamson, chairman of

* Criminal Revision No. 810 of 1914 from an order of H. G. S. Tyler, District Magistrate of Cawnpore, dated the 21st of April, 1914.

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municipal board, Cawnpore. I have no doubt that when Mr. R. H. Williamson was gazetted to the office of chairman of the municipal board, and took charge of that office, he was thereby divested of his territorial jurisdiction as magistrate, 1st class, attached to the Cawnpore district. Even if it could be contended that Mr. Williamson continued to be a magistrate of some sort while holding the office of chairman, municipal board, I am quite clear that he is not a magistrate subordinate to the District Magistrate. The order complained of cannot be sustained. It is therefore set aside.

Order set aside.

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APPELLATE CIVIL.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Tudball.

DEBI SABAN TIWARI v. GUPTAR TIWARI (OPPOSITE PARTY)

(APPLICANT).*

Pre-emption—Suit decreed—Pre-emptive price enhanced on appeal by vendee, but no time fixed for payment—Practice.

The appellate court in a pre-emption suit enhanced the amount decreed to be payable by the pre-emptor in the first court, but omitted to fix any time within which the enhanced amount should be payable.

Held that the plaintiff pre-emptor was entitled to a reasonable time within which to pay in the amount decreed, and that having regard to the enhanced amount (Rs. 801) the time within which it was in fact paid (one month and one day after the decree) was reasonable, and the plaintiff was entitled to execute his decree.

THE plaintiff in this case obtained a decree for pre-emption of certain property on payment of Rs. 999, which sum was deposited in court within the time prescribed by the decree. The vendee, however, appealed as to the amount of consideration, and the appellate court directed the plaintiff pre-emptor to pay in a further sum of Rs. 801, but omitted to fix any time within which this further sum was to be paid. The plaintiff paid in the further amount a month and a day from the date of the decree and asked for possession of the property. This application was, however, dismissed and the order of dismissal was confirmed on appeal. The plaintiff thereupon appealed to the High Court.

Mr. *M. L. Agarwala*, for the appellant.

The Hon'ble Dr. *Tej Bahadur Sapru*, for the respondent.

* Second Appeal No. 1390 of 1913, from a decree of Hidayat Ali, Subordinate Judge of Gorakhpur, dated the 22nd of August, 1913, confirming a decree of Raj Rajeshwar Sahai, Munsif of Basti, dated the 17th of May, 1913.