

1914

BALDEO DAS
v.
GOBIND DAS.

become immoral, and Bihari Das moral, and the latter was once more appointed to the office which he held up to the time of his death. These appointments and re-appointments were not calculated to bring credit on the Darbar, but they are comparatively speaking ancient history. But even the recent appointments cannot be regarded as satisfactory. Bihari Das died in the year 1899. The defendant, who appears to have had the approval of the other *mahants* and who would have been not an unnatural successor to Bihari Das, has remained *de facto mahant* up to the date of the institution of the suit. It is true that he was called upon in the year 1900 to appear before the Darbar and make good his claim, and that apparently he did not do so. Nevertheless he was allowed to remain in possession until the present suit was instituted on the 5th of December, 1911. We feel sure that in future when the vacancy occurs in this *mahantship*, the Darbar will take care to appoint a fit and proper person to exercise the functions of *mahant* as soon as such an appointment can reasonably be made and so avoid disputes and scandal.

We think that the decree of the court below ought to be varied in one particular. That court has awarded mesne profits to be ascertained in execution. We think, considering that the defendant was allowed to remain in possession in the way we have mentioned, there ought to be no profits save from the date of this judgement. We are informed by both parties that possession has already been given. This being so, the decree of the court below will be varied by dismissing the claim for mesne profits. We affirm the remainder of the decree. The appellant must pay the costs of this appeal.

Decree modified.

REVISIONAL CRIMINAL.

1913
December, 22.

Before Justice Sir George Knox and Mr. Justice Tudball.

BASHIR HUSAIN v. ALI HUSAIN AND OTHERS.*

Criminal Procedure Code, section 192—Transfer—Case transferred by District Magistrate to the Court of a Sub-Divisional Magistrate—Further transfer by Sub-Divisional Magistrate ultra vires.

Held that when a District Magistrate has referred a case for trial to a Sub-Divisional Magistrate the latter has no power to transfer it to any other Magistrate subordinate to him.

* Criminal Revision No. 671 of 1913.

THE facts of this case appear from the following order of reference.

KNOX, J.—This case was called up on a perusal of the quarterly statement. The offences charged were offences under sections 426 and 323 of the Indian Penal Code and section 24 of Act I of 1871. The case was instituted upon a complaint in writing in the Court of Thakur Hanuman Singh, magistrate of the first class, who at the time was Sub-Divisional Magistrate of Amroha. He examined the complainant, and by virtue of the powers vested in him under section 192, clause (1) of the Criminal Procedure Code, he transferred the case for trial to Babu Bir Narain Singh, magistrate of the second class, subordinate to him. Before Babu Bir Narain Singh could try the case he was transferred, and under orders of the District Magistrate, dated the 30th of November, 1912, all cases pending before him went back to the court of the Sub-Divisional Magistrate of Amroha. There is nothing on the record to show under what powers this order of transfer was made. The officer in charge of the sub-division of Amroha was at this time Mr. Panna Lal, who transferred the case for trial to Chaudhri Dharam Singh, Special Magistrate of Kanth, a magistrate subordinate to the officer in charge of the sub-division of Amroha. An important question arises here, whether Mr. Panna Lal had powers to make this order of transfer. It appears that he was not empowered by the District Magistrate to transfer the case to any other specified magistrate in his Sub-Division. Orders of transfer have of late been frequent in the District of Moradabad. In a previous case, Criminal Revision No. 635 of this year, I had before me a case in which transfers were made no less than nine times from court to court before it was decided. The question is of some importance, and I direct that the papers be laid before the Hon'ble the Chief Justice in order that the question may be considered and determined by a Bench of two Judges. It is a case in which the Public Prosecutor should appear on behalf of the Local Government.

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

KNOX and TUDBALL JJ.:—In this case the accused came first before the Court of Thakur Hanuman Singh, who at the time was the Sub-Divisional Magistrate of Amroha. Thakur Hanuman Singh took cognizance of the case and then transferred it for trial to Babu Bir Narain Singh, a magistrate subordinate to him. Before Babu Bir Narain Singh could try the case he was transferred. There is no formal order on the record, but we are told that on Babu Bir Narain Singh's transfer the District Magistrate, under an order dated the 30th of November, 1912, transferred all cases pending before the court of Babu Bir Narain Singh, which had ceased to exist, to the court of Mr. Panna Lal, who at the time was the Sub-Divisional Magistrate of Amroha. Among the cases so transferred was the present case. Mr. Panna

1913

BASHIR
HUSAIN
v.
ALI HUSAIN.

1913

BASHIR
HUSAIN
v.
ALI HUSAIN.

Lal in an explanation furnished by him says that as the case was a petty one he transferred it for trial to Chaudhri Dharam Singh, Special Magistrate of Kanth, and a magistrate subordinate to the Sub-Divisional Magistrate of Amroha. When this case first came before this Court it seemed doubtful whether Mr. Panna Lal had power to make this last order of transfer. We asked the Public Prosecutor to appear in the case, and after hearing him we are confirmed in the opinion that this last order of transfer was an order *ultra vires*. When a District Magistrate has referred a case for trial to a Sub-Divisional Magistrate, the latter has no power to transfer it to any other Magistrate who may happen to be subordinate to him. This case was especially called up because frequent cases of transfer from other districts and specially from this district have lately come before this Court, and in some cases transfers have been so frequent and have caused such extraordinary delay as to amount practically to a denial of justice. We might have set aside the proceedings before the Special Magistrate of Kanth as void, but we do not think it necessary to exercise our powers in this particular case and therefore we make no further orders. Let the record be returned.

Record returned.

APPELLATE CRIMINAL.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir George Knox.
EMPEROR v. GHURE*

Statute 24 and 25 Vict., C. 104, sections 1 and 2—Power of Crown to appoint a sixth Puisne Judge—Criminal Procedure Code, section 417—Appeal from acquittal—Procedure.

Held, on a construction of sections 1 and 2 of the Letters Patent of the High Court for the North-Western Provinces, that it was competent to the Crown to appoint by means of its Letters Patent a sixth Puisne Judge to the said High Court.

Held also, following the decision in *Queen-Empress v. Prag Dat* (1), that in the Code of Criminal Procedure there is no apparent distinction between the right of appeal against an acquittal and the right of appeal against a conviction. *Queen-Empress v. Robinson* (2) referred to.

THIS was an appeal by the Local Government from an order of acquittal passed by the Sessions Judge of Aligarh. The facts

*Criminal Appeal No. 827 of 1913 by the Local Government from an order of A. Sabonadiere, Sessions Judge of Aligarh, dated the 26th of September, 1913.

(1) (1608) I.L.R., 20 All., 459. (2) (1894) I.L.R., 15 All., 212

1914
January, 18.