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preliminary decree. In this view it is unnecessary to consider whether order XXII, rule 10, applies to execution proceedings. It was held by this Court that section 372 of the old Code of Civil Procedure did not apply to execution proceedings. It is unnecessary to decide whether order XXII, rule 10, which has taken the place of that section, does or does not apply to execution proceedings. It is sufficient for the present case to say that the suit was still pending when the appellants' application to be made plaintiffs was made.

The only other question is whether there has been a devolution of interest which entitles the present appellants to be made plaintiffs in the suit. The sale-deed executed by Musammat Maminna Khatun transfers the whole of the mortgaged property to the appellants and recites that a part of the price has been left in their hands in order that they may proceed to redeem the property. The sale-deed in fact comes very near being a transfer of the preliminary decree. It is quite clear from the terms of the deed that the parties considered that the purchasers of the property would be entitled to redeem the property in the suit in which the preliminary decree had been passed. Without holding that there had been a definite transfer of the decree, we have no doubt whatever that there has been a devolution of interest which entitles the appellants to be made plaintiffs in the suit. In our opinion the appellants' application should have been allowed. We, therefore, allow this appeal, set aside the order of the court below and direct that the names of the appellants be entered as plaintiffs in the place of Musammat Maminna Khatun. The respondents must pay the appellants' costs.

*Appeal allowed.*

## REVISIONAL CRIMINAL.

*Before Mr. Justice Piggott.*

EMPEROR v. RAJA SINGH AND OTHERS. \*

*Criminal Procedure Code, sections 106 and 32—Security to keep the peace—Powers of Sub-divisional Magistrate.*

A Sub-divisional Magistrate is, as such, competent to pass an order under section 103 of the Code of Criminal Procedure binding over a person to keep the

\* Criminal Revision No. 1203 of 1914, from an order of Durga Dat Joshi, Sessions Judge of Azamgarh, dated the 11th of September, 1914.

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peace for period exceeding six months, notwithstanding that, but for his being a Sub-divisional Magistrate, he would have only second class powers.

A Sub-divisional Magistrate of the district of Azamgarh, who was a second class Magistrate, having convicted four persons of an offence under section 323 of the Indian Penal Code, passed an order binding them over to keep the peace for the period of one year, and in default, each was to undergo simple imprisonment for one year. The persons so bound over applied in revision to the Sessions Judge to set aside the Magistrate's order upon the ground that it was in excess of the Magistrate's jurisdiction. The Sessions Judge, however, dismissed the application, holding that, as the Magistrate in question was a Sub-divisional Magistrate, he had power to pass the order complained of. The applicants accordingly came in revision to the High Court.

Mr. *R. K. Sorabji*, for the applicants.

The Assistant Government Advocate, (Mr. *R. Malcomson*), for the Crown.

PIGGOTT J.—I must take it from the learned Sessions Judge, who had better opportunity of satisfying himself on the point than this Court can have, that the trying Magistrate, Mr. A. G. Ausan, was a Sub-divisional Magistrate in the district of Azamgarh at the time when this order was passed. The question raised by this application, therefore, is whether a Magistrate of the second class, who is also a Sub-divisional Magistrate, can pass an order under section 106 of the Code of Criminal Procedure binding over a person to keep the peace for a period exceeding six months. The suggestion is that, as such order carries with it an alternative sentence of imprisonment in case security is not filed, the powers of a Magistrate of the second class, even though he may be a Sub-divisional Magistrate, are limited as regards the period of imprisonment by the provisions of section 32 of the Code of Criminal Procedure. I am clearly of opinion that the provisions of section 106 of the Code of Criminal Procedure cannot be limited in this way. The powers therein referred to are conferred upon the court of a Sub-divisional Magistrate, and all that such court does under that section is to require the person convicted to execute a bond with or without sureties for keeping the peace during such period not

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exceeding three years as the court may think fit. If the period in question should exceed one year, the provisions of section 123, clause (2), of the Code of Criminal Procedure necessitate a reference to the Sessions Judge; but otherwise detention in prison until the prescribed period expires, or until within such period the required security is furnished, follows under the provisions of clause (1) of the same section, independently of the powers of the Magistrate. So long as the order requiring the applicant in this case to furnish security was passed by a court which had authority to do so under the provisions of section 106 of the Code of Criminal Procedure, and the period for which security was required did not exceed one year, the liability of the applicant to be detained in prison unless he furnished security is something independent of the powers of the Magistrate in the matter of passing substantive sentences of imprisonment. I dismiss this application.

*Application dismissed.*

## APPELLATE CIVIL.

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*Before Mr. Justice Chamier and Mr. Justice Pigott.*

AFZAL SHAH (DEPENDANT) v. MUHAMMAD ABDUL KARIM  
KHAN (PLAINTIFF).\*

*Act No. XII of 1887 (Bengal, North-Western Provinces and Assam Civil Courts Act), section 22, clause (3)—Act (Local) No. II of 1901 (Agra Tenancy Act), section 197—Transfer of an appeal in a suit cognizable by a Revenue Court to Subordinate Judge—Powers exercisable by the latter.*

*Held* that where, under section 22, clause (1) of Act No. XII of 1887, a District Judge transfers an appeal to a Subordinate Judge, the latter may, if the section be applicable, exercise any of the powers vested in an appellate court by section 197 of the Agra Tenancy Act., *Babu Nandan Prasad v. Changur* (1) followed.

In this case a Munsif, holding that a suit pending before him was not cognizable by a Civil Court, had dismissed it. The plaintiff appealed to the District Judge, who transferred the appeal to a Subordinate Judge for disposal. The Subordinate Judge was of opinion that the suit was cognizable by a Civil Court, and accordingly, acting under section 197 of the Agra Tenancy Act, 1901,

\* First Appeal No. 108 of 1914 from an order of Shams-ud-din Khan, first Additional Subordinate Judge of Aligarh, dated the 15th of April, 1914.

(1) (1894) I. L. R., 16 All., 363.