

1914

BALDEO
PRASAD
v.
THE
COLLECTOR
OF Pilibhit.

It is clear that the plaintiff is not entitled to interest upon the entire amount of the second promissory note. This document can now only be used as an acknowledgment of the previous debt. We have gone into the account and we find that the sum which the plaintiff is entitled to is the sum of Rs. 1,810, for principal and interest up to the date of the suit. From the date of the suit until payment he will get 6 per cent. simple interest on this amount. Inasmuch as in all probability all the litigation was caused by the plaintiffs in the first instance entering into a contract with Pohkar Singh after the estate had been taken over, and bearing in mind also that in order to sustain the suit it was necessary that the plaint should be amended, we think that the parties should pay their own costs in all courts. We accordingly grant the plaintiff a decree for the sum of Rs. 1,810, principal and interest up to the date of the suit. From the date of the institution of the suit until payment he will receive interest at the rate of 6 per cent. per annum on the sum of Rs. 1,810, until payment.

Appeal decreed.

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July 19.

REVISIONAL CRIMINAL.

Before Mr. Justice Chamier.

EMPEROR v. GOVIND SAHAI AND ANOTHER.*

Criminal Procedure Code, sections 110 and 526—Security for good behaviour—Transfer—Jurisdiction—Powers of District Magistrate.

Where proceedings under section 110 of the Code of Criminal Procedure initiated before a Magistrate of the first class were transferred by the High Court to the District Magistrate with instructions to transfer them to some other magistrate subordinate to him, competent to try them, it was held that the District Magistrate had no power to transfer such proceedings to a Magistrate of the second class.

King Emperor v. Munna (1) distinguished.

IN this case proceedings under section 110 of the Code of Criminal Procedure were instituted against two persons by a magistrate of the first class. On an application for transfer the High Court transferred the case to the District Magistrate with instructions to make it over to some other magistrate, subordinate

* Criminal Revision No. 579 of 1914 from an order of J. R. Pearson, District Magistrate of Meerut, dated the 27th of May, 1914.

(1) (1901) I. L. R., 24 All., 151.

to him, who was competent to try it. The District Magistrate made over the case to a magistrate of the second class, who bound over the persons against whom the proceedings were instituted. They appealed to the District Magistrate, who dismissed their appeal, and they thereupon applied in revision to the High Court.

Mr. *G. P. Boys*, for the applicants.

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

CHAMIER, J.—This is an application for revision of an order of the District Magistrate of Meerut, dismissing an appeal against an order of a magistrate of the second class of the same district requiring the applicants to give security for their good behaviour for one year. The first point taken is that the second class magistrate had no jurisdiction to hear the case. It appears that the proceedings against the applicants were instituted by a magistrate of the first class, and that this Court, on application made to it, transferred the case from the Court of that magistrate to the District Magistrate with instructions to make it over to some other magistrate, subordinate to him, competent to try it. The District Magistrate then made over the case to Captain Noel, a magistrate of the second class. Under section 526 of the Code of Criminal Procedure this Court had power to transfer the case to another Criminal Court of equal or superior jurisdiction. This Court, therefore, could not have transferred the case to Captain Noel and what this Court could not do the District Magistrate could not do. The selection of the court was left to him, but the transfer was made by this Court. Further, it appears to me that Captain Noel is not one of the magistrates who is competent to conduct proceedings under sections 110 to 119 of the Code of Criminal Procedure. I was referred to the decision of Mr. Justice AIKMAN in the case of *King-Emperor v. Munna* (1), in which proceedings under section 107 (2) of the Code had been initiated by a District Magistrate who was competent to do so and had been transferred by him to a magistrate of the first class subordinate to him in the district. Mr. Justice AIKMAN held that when the District Magistrate had in the exercise of the discretion directed the institution of the proceeding,

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there was nothing in the law to prevent him from transferring the case to another magistrate otherwise qualified to complete the proceedings. There the transfer was to a Magistrate of the first class competent to conduct proceedings under section 107 (1) of the Code. I do not think that Mr. Justice AIKMAN would have held that the District Magistrate was competent to transfer the case to a Magistrate of the third class. On both these grounds I hold that Captain Noel had no jurisdiction to pass an order requiring the applicants to give security for their good behaviour. I, therefore, set aside all the proceedings of Captain Noel and of the District Magistrate. Let the record be returned.

Order set aside.

A PELLATE CIVIL.

*Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir
Pramada Charan Banerji.*

BASDEO (PLAINTIFF) v. ULFAT RAI AND OTHERS (DEFENDANTS).^{*}
Adverse possession—Right acquired by—Expropriatory tenancy.

Semble that although a lease-hold or an expropriatory interest can be acquired by adverse possession as against the person who is the lessee or the expropriatory tenant, yet where there never has been a lessee or an expropriatory tenant it is not possible to become such by adverse possession.

THIS was an appeal under section 10 of the Letters Patent from a judgement of a single Judge of the Court. The facts of the case are fully stated in the judgement under appeal, which was as follows :—

“ This is a Second Appeal arising out of the following facts :—One Manik Chand died possessed of considerable landed property including one entire *mahal* in village Sarai Imilia. He died leaving a widow who held the property for her life-time. On her death Salik Ram, brother of Manik Chand, took possession of the whole ; but litigation followed between the said Salik Ram and the sons of two other brothers. The suit was referred to arbitration and resulted in a decree on an award passed on the 30th of January, 1891. By this decree the entire property of Manik Chand in Sarai Imilia was assigned to Ishri Prasad, the son of a third brother of Manik Chand. Ishri Prasad obtained formal possession under the decree. The present suit relates to certain plots of *sir* land appertaining to the *mahal* in question in Sarai Imilia. The plaintiff is the son of Ishri Prasad, the first defendant is the grandson of Sahk Ram, and along with him are impleaded as defendants certain persons

^{*} Appeal No. 9 of 1914 under section 10 of the Letters Patent.