

having regard to the language of s. 6, sub-section (3), and s. 12 of Act XI of 1865, the plaintiff's suit should have been instituted in the Small Cause Court. By his plaint he in clear terms alleged, and by distinct and positive evidence proved, actual pecuniary damage to the extent of Rs. 25, as the direct consequence of the wrongful act of the plaintiff. This claim therefore was in respect of a personal injury from which actual and ascertained pecuniary damage had resulted and it clearly fell within the terms of s. 6, sub-section (3) of Act XI of 1865. He was therefore bound by the provisions of that Act to bring his suit in the Small Cause Court, which, the condition precedent to giving it jurisdiction under the head of "actual pecuniary damage" being satisfied, necessarily had the power to entertain and dispose of the general question of damage raised under the other head. This view has been expressed in two Calcutta rulings—*Gunga Narain v. Gudadhur Chowdhry* (1) and *Brojo Soondur v. Eshan Chunder* (2)—and in the opinions therein enunciated we coincide

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We must accordingly allow this application for revision and set aside all the proceedings hitherto had as having been held without jurisdiction. The plaint will be returned to the respondent, Hanuman Upadhyas, in order that he may present it in the Small Cause Court. Each party will pay his own costs on this application.

Application allowed.

CRIMINAL JURISDICTION.

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April 12,

Before Mr. Justice Straight.

IN THE MATTER OF THE PETITION OF UMRAO SINGH v. FAKIR CHAND.

*Magistrate of the District—Power to withdraw or refer cases—Act X of 1872
(Criminal Procedure Code), s. 47.*

Magistrates of Districts should exercise the powers conferred on them by s. 47 of Act X of 1872 only when it is absolutely necessary for the interests of justice that they should do so; and when one of the parties to a case applies to have it withdrawn from the Magistrate inquiring into or trying it and referred to another Magistrate, the Magistrate of the District should give the other party notice of such application, and an opportunity of showing cause why such application should not be granted.

(1) 13 W. R. 434. (2) 15 W. R. 179.

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Where the accused in a criminal case applied to the Magistrate of the District, after the evidence of the complainant and his witnesses had been taken, to withdraw such case from the Subordinate Magistrate trying it and to try it himself, such application not containing any sufficient reason justifying the granting of the same, and the Magistrate of the District, without giving the complainant notice of such application or opportunity of showing cause against it, and without stating any reason, withdrew such case from the Subordinate Magistrate trying it and referred it to another for trial, the High Court set aside the order of the District Magistrate and of the Magistrate to whom such case was referred for trial, and directed the Magistrate from whom it had been withdrawn to proceed with it.

THIS was an application to the High Court for the exercise of its powers of revision under s. 297 of Act X of 1872. The petitioner, Umrao Singh, preferred a charge of mischief against one Fakir Chand before Maulvi Kadir Ali exercising the powers of a Magistrate of the first class in the district of Meerut. After the evidence of the complainant and his witnesses had been taken, and a date fixed for the examination of the witnesses for the accused, a petition on behalf of the accused was preferred to the Magistrate of the District, praying for the transfer of the case. This petition contained the following statements:—"That the case mentioned above is pending in the Court of Maulvi Kadir Ali, Deputy Collector: that Umrao Singh, the so-called complainant, is the husband's brother's son of Dakho, the wife of Ishq Lal: that the said lady is the real complainant, inasmuch as the house to which it is alleged mischief has been done belongs to her: that she has been for a long time on terms of enmity with the accused, and every day there is something to refer to the Court: that moreover that said lady is in affluent circumstances, and is always plotting to ruin the accused: that, as your honor knows well, owing to cases coming before you, the circumstances of this enmity, there is no other means of escape except by your tendering a helping hand: that the tahsildar, who went to make a local inquiry, was biased in favour of the complainant, and omitted to investigate facts which required investigation: petitioner now prays that you will transfer this case from that Court into your own and decide it yourself: that it is necessary that you should inspect the locality; so that you may learn all the facts: that if the case be not transferred, you will direct the said Maulvi not to pass final orders in this case merely on the tahsildar's report, without a local inquiry:

further that, as the counsel on both sides are Europeans, it would be proper for your honor to decide the case yourself." The Magistrate of the District, on the 19th November, 1880, made the following *ex-parte* order on this application:—"This case is transferred to" the Joint Magistrate's "Court." On the 22nd November, 1880, the Joint Magistrate dismissed the complaint, and referred the complainant to the Civil Court, remarking that the case "was manifestly one which ought never to have been entertained in a Criminal Court."

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The grounds upon which the complainant sought revision of the orders of the 19th and 22nd November, 1880, were, amongst others, (i) that the order of the 19th November was a wrong and improper exercise by the Magistrate of the District of his discretion and authority, regard being had to the grounds upon which the application for the transfer of the case was made, and to the circumstance that the Magistrate before whom the case was pending, who had recorded considerable evidence on the charge, was in no wise shown by that application to be unfit or incompetent to dispose of the charge, by passing a final order on the complaint as required by law; and (ii) that the order of the 22nd November was made directly in contravention of law, s. 147 of Act X of 1872, under which it was made, being applicable to cases in which the complaint is dismissed without evidence for the prosecution being recorded and witnesses for the defence being summoned.

Mr. Howard, for the petitioner, Umrao Singh.

Mr. Simeon, for Fakir Chand.

The Junior Government Pleader (Babu Dwarka Nath Banarji),
 for the Crown.

STRAIGHT, J.—I am of opinion that, in passing his order of the 19th November, 1880, the Magistrate unwisely and improperly exercised the discretion given him by s. 47 of the Criminal Procedure Code. The petition upon which it was based disclosed no adequate or satisfactory grounds for the removal of the case from the Deputy Magistrate, and to withdraw the matter from his cog-

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nizance upon such ridiculous grounds as those urged by Fakir Chand was to pass a reflection upon the judicial qualifications and impartiality of the Deputy Magistrate, for which I can find neither justification nor excuse. It is true that the powers given by s. 47 are very large, but for this very reason they should be most carefully exercised, and Magistrates of Districts should use the extensive discretion given them to divert the course of procedure from its ordinary channel, only when it is absolutely necessary for the interests of justice that they should do so. Moreover, when an application is made to the Magistrate of a District for the withdrawal or removal of a case from the Court of a Subordinate Magistrate by one of the parties to such case, notice of such application should be given to the opposite party, and an opportunity should be afforded him, if desirous of doing so, to show cause against its being granted. Nothing of this kind was done in the present instance; on the contrary, altogether ignoring any objections the complainant Umrao Singh might have had to urge, and without stating any grounds or reasons for his decision, the Magistrate, although the whole of the statements of the complainant and his witnesses had been taken and recorded by the Deputy Magistrate, summarily transferred the case to the Court of the Joint Magistrate for disposal. It appears to me that, in taking this course, the Magistrate acted wholly without adequate or sufficient reason, if he accepted the grounds urged in the petition of Fakir Chand as justifying him in granting that person's application; and that if he did not act upon these, the least he could have done would have been to record the reasons that induced him to make his order at so late a stage of the Deputy Magistrate's proceeding. In considering the question of revision by this Court, I express no opinion, one way or the other, upon the merits of the charge of mischief instituted by Umrao Singh against Fakir Chand, and I simply confine myself to the points urged by the applicant upon the question of procedure. The orders of the Magistrate dated 19th November, 1880, and of the Joint Magistrate of the 22nd November, 1880, will be set aside and the case will be restored to the file of the Deputy Magistrate, for him to proceed with the inquiry and pass such orders as may to him appear proper.