

the only remedy which it was intended to give to the auction-purchaser, that is, to recover the purchase-money with or without interest. By s. 312 no suit will lie to set aside, on the ground of irregularity in publishing or conducting, a sale which has been confirmed under s. 312, and it seems unreasonable to suppose that it was intended that a suit should lie on the part of the auction-purchaser to confirm a sale which has been set aside on the ground of irregularity in publishing or conducting it. I would make the same order that I formerly proposed, for dismissing the suit with costs.

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STRAIGHT, J.—I entirely concur in the views expressed by my honorable colleague Mr. Justice Pearson, and agree with him that this suit is properly maintainable. The appeal should be dismissed with costs.

Appeal dismissed.

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Spankie, Mr. Justice Oldfield, and Mr. Justice Straight.

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 March 10

EMPRESS OF INDIA *v.* ANAND SARUP AND OTHERS.

Transfer of Magistrate while trying a case—Jurisdiction to complete Trial.

Mr. *M* was appointed by the Local Government, under s. 37 of Act X of 1872, a Magistrate of the first class, under the designation of Joint Magistrate, in the district of Meerut. He was subsequently appointed to officiate as Magistrate of the district of Meerut during the absence of Mr. *F* or until further orders. While so officiating he was appointed by a Government Notification dated the 10th July, 1880, to officiate as Magistrate and Collector of Gorakhpur "on being relieved by Mr. *F*." He was relieved by Mr. *F* in the forenoon of the 23rd July, 1880; and in the afternoon of that day, under the verbal order of Mr. *F*, he proceeded to complete a criminal case which he had commenced to try while officiating as Magistrate of the district of Meerut. All the evidence in this case had been recorded, and it only remained to pass judgment. Mr. *M* accordingly passed judgment in this case, and sentenced the accused persons to various terms of imprisonment. *Held* (SPANKIE, J., dissenting) that Mr. *M* retained his jurisdiction in the district of Meerut so long as he stood appointed by the Government to that district and no longer, and the effect of the order of the 10th July, 1880, was to transfer him from the district of Meerut from the moment he was relieved by Mr. *F* of the office of Magistrate of that district, and from that moment he no longer stood appointed to that district and could exercise no jurisdiction there as a Magistrate of the first class; and that therefore the convictions of such accused persons had been properly quashed on the ground that Mr. *M* had no jurisdiction.

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THIS was a case called for by the High Court at the instance of the Local Government. It appeared that on the 21st July, 1880, Mr. H. P. Mulock, a Magistrate of the first class, the then Officiating Magistrate of the Meerut District, began a magisterial inquiry into an offence alleged to have been committed by one Anand Sarup and certain other persons. Some further evidence was taken on the 22nd July, and on the 23rd Mr. Mulock made over charge of the Meerut District to Mr. Fisher, having by Government Notification No. 2150, dated the 10th July, 1880, been gazetted to officiate as Magistrate and Collector of Gorakhpur when relieved by Mr. Fisher. The exact words of that Notification were as follows: "Mr. Mulock, Officiating Magistrate and Collector of Meerut, to officiate as Magistrate and Collector of Gorakhpur, on being relieved by Mr. Fisher." After making over charge, Mr. Mulock, by Mr. Fisher's verbal order, proceeded to complete the cases which he had previously been trying as Magistrate and Collector. Among these was the case of Anand Sarup, in which all the evidence had been recorded, and it only remained to pass judgment, which Mr. Mulock accordingly did, and on the afternoon of the 23rd July sentenced the accused persons to various terms of imprisonment. The accused persons appealed to the Sessions Judge of Meerut, Mr. H. G. Keene, who quashed the convictions on the ground that Mr. Mulock, having made over charge of the Meerut District to Mr. Fisher, had no jurisdiction in that District. In bringing the case to the notice of the High Court and requesting that it would call for the record of the case and pass suitable orders thereon, the Local Government expressed its opinion that the order of the Sessions Judge was opposed to the spirit of the Criminal Procedure Code, and that Mr. Mulock, though gazetted to officiate as Magistrate of Gorakhpur, still retained his powers as a Magistrate of the first class in the district in which he was working for the time being. The High Court having called for the record of the case, the case was laid before Stuart, C. J., and Straight, J., who referred it to the Full Court.

Messrs. *Colvin and Hill*, for the accused.

Mr. *Ross* and the *Junior Government Pleader* (*Babu Dwarka Nath Banarji*), for the Crown.

The following judgments were delivered by the Full Court :—

OLDFIELD, J., (PEARSON, J., and STRAIGHT, J., concurring).—The Local Government has authority under s. 37, Criminal Procedure Code, to appoint as many other persons besides the Magistrate of the District, as it thinks fit, to be Magistrates of the first, second or third classes in the District. Mr. Mulock was in this way appointed a Magistrate of the first class, under the designation of Joint Magistrate, in the District of Meerut. He was subsequently appointed to officiate as Magistrate of the District of Meerut during the absence of Mr. Fisher or until further orders, and by Government Notification dated 10th July, 1880, No. 2150, he was appointed to officiate as Magistrate of Gorakhpur. The Notification is as follows :—“Mr. Mulock, Officiating Magistrate and Collector of Meerut, to officiate as Magistrate and Collector of Gorakhpur, on being relieved by Mr. Fisher.” He was relieved by Mr. Fisher of the office of Magistrate of Meerut on the forenoon of the 23rd July, 1880. Mr. Mulock retained his jurisdiction in the District of Meerut so long as he stood appointed by the Government to that District as a first class Magistrate but no longer, and it seems to us that the effect of the order of the 10th July was to transfer him from the Meerut District from the moment he was relieved of the office of Magistrate, and from that moment he no longer stood appointed to the Meerut District and could exercise no jurisdiction in it as a first class Magistrate. The language of the order is plain enough; Mr. Mulock is directed to officiate as Magistrate of Gorakhpur on being relieved by Mr. Fisher; the order does not direct that he shall revert to the post of Joint Magistrate or continue to remain appointed in any capacity to the District of Meerut. The order appears to us to have contemplated Mr. Mulock's immediate transfer from the District of Meerut on being relieved of the office of Magistrate by Mr. Fisher, and the severance of his connection with the Meerut District. The Judge's view therefore that Mr. Mulock had no jurisdiction appears to us to be right.

STUART, C. J.—I am entirely of the same opinion, and am glad to observe that the Judge took a correct view of the question of jurisdiction. But I do not think he exercised a sound discretion

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in ordering the discharge of the accused. There was clearly a case for inquiry on the merits, and instead of ordering the accused to be discharged he should have directed them to be detained for a new trial before the proper officer. I may add that the suggestion of the Government that the Judge's order was opposed to the spirit of the Criminal Procedure Code appears to have been based upon a misconception of Mr. Mulock's position on being relieved by Mr. Fisher. The law on the subject, including the Government's own Notifications, is too clear, in spirit as well as in letter, to admit of the least doubt on the subject.

SPANKIE, J.—Mr. Mulock made over to Mr. Fisher the office of Magistrate of the District of Meerut. He himself had been officiating in that capacity. But he appeared to have been what is called the Joint Magistrate of that District. In reality he was a Magistrate of the first class in the Meerut District, and when he made over the office of Magistrate of the District he did not, I think, necessarily surrender his powers as a Magistrate of the first class in that District. It is true that he had been nominated to officiate as Magistrate and Collector of Gorakhpur, but it is a mistake to assume that he had jurisdiction there before he had reached the place and had taken charge of the office. The substantive pay of an Officiating Magistrate of a District who has not yet become a full Magistrate of a District is what he draws as a Magistrate of the first class, and until he leaves the District in which he was attached as a Joint Magistrate of the first class, I cannot perceive that he may not exercise the powers that belong to that office. There is no such Court as that of the Magistrate of the District. Magistrates are either Magistrates of the first class or of the second, or of the third class, and in every District there shall be, according to s. 35, Criminal Procedure Code, a Magistrate of the first class, who shall be called the Magistrate of the District, and he shall exercise throughout his district all the powers of a Magistrate. But when he calls up a case he does so with the powers of a Magistrate of the first class, and when Mr. Mulock ceased to be called the Magistrate of the District of Meerut, he nevertheless retained, as long as he remained there, by order of the Magistrate of the District, his powers as a first class Magis-

trate, and it was only right and for the good of the public service that he should complete his work. The accused cannot be said to have been prejudiced, and indeed in the memorandum of appeal the objection as to the want of jurisdiction was not taken. It is quite according to the spirit of the Act that each Magistrate should pass sentence on proceedings recorded by himself, as appears from the proviso to s. 328 of the Code.

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APPELLATE CIVIL.

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Before Mr. Justice Pearson and Mr. Justice Oldfield.

AJUDHIA NATH AND OTHERS (DEFENDANTS) v. SITAL (PLAINTIFF).*

Landholder and Tenant—Hypothecation of trees.

A tenant with a right of occupancy can only make a valid hypothecation of the trees on the land he holds for the term of his tenancy; with his ejection from such land and the cessation of his tenancy such an hypothecation ceases to be enforceable (1).

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of the High Court.

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

Babu Sital Prasad Chattarji, for the respondent.

The judgment of the Court (PEARSON, J., and OLDFIELD, J.) was delivered by

OLDFIELD, J.—The plaintiff holds a bond dated the 15th October, 1874, executed by Alopi, defendant, by which he hypothecated to him certain trees growing in a garden in his occupancy as a right-of-occupancy tenant and a dwelling-house. The appellants before us represent Alopi's landlord, who held Revenue Court decrees against Alopi for rent and ejected him from his holding; and, putting up to sale his rights in the holding, became its purchaser. The object of this suit is to enforce against the appel-

* Second Appeal, No. 1031 of 1880, from a decree of Rai Mukhan Lal, Subordinate Judge of Allahabad, dated the 3rd July, 1880, affirming a decree of Babu Pramoda Charan Banarji, Munsif of Allahabad, dated the 8th March, 1880.

(1) See also *Ram Baran Ram v. Salig Ram Singh*, I. L. R., 2 All. 896.