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at a number of persons, holding it in such a way that one of them is mortally wounded in the heart, is to do a thing so imminently dangerous that the person doing it must have known that he would probably cause death, or such bodily injury as would be likely to cause death. According to the respondent's statement the shooting of Bandhu was accidental, and he had simply intended to fire off the gun over the heads of the gipsies for the purpose of frightening them, but his hand trembled, and the shots miscarried. This defence, however, is altogether disbelieved by the Sessions Judge, and so far, we may say, we entirely concur with him. In reference to this point, however, it may be observed that the ground upon which the Sessions Judge passed his order of acquittal was never taken by the accused himself, either in the Magistrate's Court or in the Court of Session.

The case is one of very grave public importance, and while we are fully sensible of the necessity for affording the fullest protection to police officers in the discharge of their duty, it is equally incumbent upon us to take care that the public are protected from extortion and violence at their hands. Money presents to the police of the kind mentioned in this case are only made under threats and compulsion and are grossly irregular and improper. Their unavoidable accompaniments are violence and coercion, and their inevitable consequences most injurious to the interests of justice. The conduct of the respondent Abdul Hakim was altogether gross and indefensible. We convict him of murder and direct that he be transported for the term of his natural life.

Appeal allowed.

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October 27.

Before Mr. Justice Pearson.

EMPRESS OF INDIA *v.* JAGAN NATH.

Irregular Commitment—Place of inquiry and trial—Act X of 1872 *(Criminal Procedure Code), ss.* 33, 63.

S. 33 of Act X of 1872 contemplates the contingency of a case which has been inquired into at the proper place, as indicated by s. 63 of that Act, being committed to the proper Court of Session by a particular Magistrate not duly empowered by law to make such commitment; and not of a case which has been inquired into in a district in which it was not committed, being committed to the

proper Court of Session as indicated by that section, by a particular Magistrate duly empowered by law to make such a commitment. Consequently, where a Magistrate inquires into and commits for trial an offence which has not been committed in his district, and the Court of Session for that district accepts such commitment because the prisoner has not been prejudiced thereby, and tries him for such offence, the proceedings in such case are illegal *ab initio*.

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JAGAN NATH was committed for trial before the Sessions Judge of Banda by a Magistrate of the Hamirpur district, upon the charge of kidnapping a female minor, an offence punishable under s. 363 of the Indian Penal Code. The offence with which the accused person was charged took place and was completed, according to a statement by the Sessions Judge contained in his judgment, in the Fatehpur district. The Sessions Judge, Mr. G. E. Knox, made the following observations in his judgment, with reference to this fact:—"It is a pity that this case was ever committed to this Court; the real offence, the offence upon which the prisoner stands charged by the lower Court, took place and was completed in the Fatehpur district; the prisoner, however, is not prejudiced by the commitment; and I have, therefore, no choice but to accept the commitment: I would, however, draw the committing officer's attention to the extreme carelessness with which the charge sheet is drawn up, and request that further care be observed in future: kidnapping is not a continuing offence; it is complete as soon as the link between the person kidnapped and the possession of the lawful guardian is severed; in this case, that is said to have happened in the Fatehpur district, certainly not at Sisolar in this district."

The Sessions Judge having convicted Jagan Nath of the offence charged against him, he appealed to the High Court from such conviction.

Mr. *Niblett*, for the appellant.

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

PEARSON, J.—The offence which is the subject of the present trial took place and was completed in the Fatehpur district. It should therefore have been inquired into by a Magistrate of that

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district and committed for trial to the Court of Session to which commitments from that district are made. The Sessions Judge of Bánda, in accepting the commitment of the case made to him by a Magistrate of Hamírpur for the reason that the prisoner was not prejudiced thereby, has apparently relied on the provisions of s. 33 of the Procedure Code, which appear to me to be inapplicable under the circumstances. That section contemplates the contingency of a case which has been inquired into at the proper place, as indicated by s. 63, being committed to the proper Court of Session by a particular Magistrate not duly empowered by law to make such a commitment. In the present instance none of the Hamírpur Magistrates had jurisdiction to inquire into the offence. The proceedings in the case were illegal *ab initio* and are accordingly quashed. The prisoner must be released and made over to the Fatehpur authorities to be dealt with by them according to law.

Conviction quashed.

FULL BENCH.

1880
June 17.

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

BANSIDHAR (DEFENDANT) *v.* BU ALI KHAN (PLAINTIFF).*

Promissory Note—Act XVIII of 1869, *s.* 3, (5), (25) *and sch.* ii, *No.* 11—*Bond—Agreement—Interest—Penalty.*

The defendant, having borrowed fifty rupees from the plaintiff, gave him on the 9th November, 1878, an instrument which was in effect as follows:—"*B* (defendant) writes this "*rukka*" in favour of *A* (plaintiff) for Rs. 50, cash received, to be repaid on the 13th November, 1878: in the event of default, he shall pay interest at one rupee per diem." *Held* (STUART, C. J., dissenting) that such instrument was a "promissory note," within the meaning of the Stamp Act of 1869, and not a "bond" or "an agreement not otherwise provided for," within the meaning of that Act.

Held also that, looking to the whole instrument, it was equitable to hold that the term "interest" was not intended to mean interest in the strict sense of that term, but a penalty, and the amount of interest should be so treated, and a reasonable amount only be allowed. The observations of Pontifex, J., in *Bichook Nath Panday* v. *Ram Lochun Singh* (1) concurred in.

* Reference, under s. 617 of Act X of 1877, by R. G. Currie, Esq., Judge of Aligarh.

(1) 11 B. L. R., 135.