

1910
 PANCHANAN
 BOSE
 v.
 CHANDI
 CHARAN
 MISRA.
 JENKINS
 C.J.

admissible in evidence. The result of that view is that the decree of the lower Appellate Court cannot be sustained. We, therefore, set aside that decree and the plaintiffs undertaking to execute the requisite *kabuliyat*, we direct defendants Nos. 1 and 2 to execute a *patta* in respect of two annas share of the whole *mauza* in accordance with the terms of the *solehnama*, and that the plaintiffs do thereupon recover from the defendants possession of the property; liberty will be reserved to the plaintiffs to apply to us in case any difficulty arises in getting the *patta* executed or otherwise.

Defendants Nos. 1 and 2 will pay the plaintiff's costs throughout.

Doss J. I agree.

s. M.

Appeal allowed.

CRIMINAL REVISION.

Before Mr. Justice Harington and Mr. Justice Teunon.

ANU SHEIKH

v.

EMPEROR.*

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Magistrate, transfer of—Inquiry—Continuance of inquiry by another Magistrate without the examination of the witnesses de novo—Criminal Procedure Code (Act V of 1898) ss. 145, 350.

Section 350 of the Criminal Procedure Code applies to an inquiry under section 145.

Where a Magistrate, who has commenced such an inquiry, is transferred, and the District Magistrate has made over the case to another Magistrate, the latter has power, under section 350 of the Code, to proceed with it without examining the witnesses *de novo*.

MOTION.

A dispute having arisen between the petitioner, Anu Sheikh, the first party, and Jitu Sheikh and others, second party,

*Criminal Motion No. 625 of 1910, against the order of Nagendra Chandra Sen, Deputy Magistrate of Mynensingh, dated March 14, 1910.

regarding the possession of a certain plot of land, the former filed an application, under section 107 of the Criminal Procedure Code, on the 16th July 1909, against the members of the second party, before the District Magistrate of Mymensingh. On the same day the latter, however, cut and removed the crop on the disputed land, whereupon the petitioner instituted criminal proceedings against them under sections 426 and 447 of the Penal Code. On the 26th August the District Magistrate called for a report from the police under section 145 of the Criminal Procedure Code. The Sub-Inspector of Muktagacha thana accordingly submitted a report which was sent for disposal by the District Magistrate, on the 6th September, to Babu J. M. Das, a Deputy Magistrate, who, on the 17th, drew up a proceeding under section 145 of the Code against the parties and attached the land. On the 2nd October the District Magistrate transferred the case to Babu S. C. Sinha, another Deputy Magistrate, before whom the trial under the Penal Code was pending. He took up the section 145 proceeding first, and after receiving the written statements of the parties, examined ten witnesses for the petitioner on the 11th and 20th December, and adjourned the case to the 25th January 1910 for the examination of the witnesses of the second party. In the meantime Babu S. C. Sinha was transferred from the district, and the District Magistrate made the case over to Babu N. C. Sen, a Deputy Magistrate, on the 10th February. Babu N. C. Sen proceeded to examine the witnesses of the second party without holding an inquiry *de novo*, and by his order, dated the 14th March, declared them to be in possession. The petitioner, thereupon, moved against the said order and applied for a rule to set it aside.

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Babu Sarat Chandra Roy Chowdhry and Babu Charu Chandra Bhattacharji, for the petitioner.

HARINGTON AND TEUNON JJ. The first point taken is that this proceeding, having begun before one Magistrate and continued and ended by another, is without jurisdiction, because the second Magistrate had no jurisdiction to make the

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order. But section 350 of the Code of Criminal Procedure provides: "whenever any Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein, and is succeeded by another Magistrate who has, and who exercises, such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself; or he may re-summon the witnesses and re-commence the enquiry or trial." Now, it is argued that that section does not apply. But that section is in its terms wide enough to cover every trial or inquiry under the Code of Criminal Procedure, and the proceeding under section 145 is, we think, an inquiry, because in it the Magistrate's duty is to enquire who is in possession of the disputed area. We think, therefore, that the terms of section 350 apply wherever a Magistrate has ceased to exercise jurisdiction therein. Now, in the present case the Magistrate who began ceased to exercise jurisdiction because he was transferred, that is to say his office, *quâ* the exercise of jurisdiction in this particular case, was vacated and the case was transferred to the file of another Magistrate, who then became the successor of the Magistrate who had vacated the office, in the sense that he exercised the jurisdiction over the case which had been exercised by the Magistrate who had begun the case. We think, therefore, that the second Magistrate came within section 350 of the Criminal Procedure Code.

Then, with regard to the other point, the Magistrate has found that the other party has been in possession for two months, and that brings him precisely within the proviso of clause (4) of section 145 of the Criminal Procedure Code. We cannot, therefore, say that the order was made without jurisdiction. For these reasons, the order must stand. This application is accordingly refused.

Application refused.