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sentence, and direct the prisoner to be tried before a Court of competent jurisdiction.

We think we ought to add that, in order properly to carry out the intention of the Legislature, a Court of Session for a Sessions Division, including Perim, remains to be created, and a Judge appointed thereto by the Local Government. We notice that, in enacting section 7 of the Code of Criminal Procedure (Act X of 1882), the words "excluding the Presidency towns" were inserted; and it is probable that, if the peculiar jurisdiction of the Court of the Resident and the complete provisions made in Act II of 1864 for the Aden settlement had been brought to notice at the time, a similar exclusion of Aden might have been made, so as to make the meaning of the second clause of section 1 of the Code more readily apparent as regards the local jurisdiction.

Conviction and sentence reversed, and re-trial ordered.

APPELLATE CRIMINAL.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

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Order of transfer—Powers of the High Court—The Code of Criminal Procedure (Act X of 1882), Sec. 526—The Scheduled Districts Act XIV of 1874, Secs. 3, 5, 6—The Aden Act II of 1864.

Per BIRDWOOD, J. :—The High Court cannot, under section 526 of the Criminal Procedure Code (Act X of 1882), any more than under section 25 of the Civil Procedure Code (Act XIV of 1882), direct the transfer of a case, which is not properly before a Subordinate Court of competent jurisdiction to receive and try it.

Peary Lall Mozoomdár v. *Komal Kishore Dassia*(1) followed.

Queen-Empress v. *Thaku*(2) distinguished.

Under section 5 of the "Scheduled Districts Act XIV of 1874" the Local Government cannot, by extending an Act which is of necessarily restricted application, make its provisions applicable to an entirely new subject-matter, *viz.*, the litigation of a new local area.

Accordingly where the Government of Bombay issued the following notification No. 823 of 1886:—"In exercise of the powers conferred by section 5 of the

* Criminal Application, No. 63 of 1886.

(1) I L. R., 6 Calc., 30. (2) I, L, R., 8 Bom., 312

Scheduled Districts Act XIV of 1874, the Governor of Bombay in Council is pleased, with the previous sanction of the President in Council, to extend to the island of Perim the whole of Act II of 1864 of the Governor General in Council, with the exception of sections 2, 17 and 23. The Governor in Council is further pleased, in exercise of the powers conferred by section 6 of the Scheduled Districts Act XIV of 1874 and by any other enactment, to direct that the Resident at Aden shall be Sessions Judge and Court of Session for the island of Perim, and shall exercise the same jurisdiction and powers in respect of the administration of civil and criminal justice in the said island, and in respect of the trial of persons committed for trial by the Court of Session for offences committed in the said island as are vested in him in Aden by the said Act."

Held, that the provisions of the Aden Act II of 1864, which (as appears from the preamble) deals with the litigation of Aden alone, could not be extended to Perim, without enlarging the subject-matter of the Act.

Held, also, that the appointment of the Political Resident at Aden as a Sessions Judge and Court of Session for the island of Perim, made under clause (*a*) of section 6 of the Scheduled Districts Act XIV of 1874, was valid and effectual with reference only to the provisions of the Criminal Procedure Code, and that that portion of the notification which regulates the exercise by the Resident of his powers with reference to Act II of 1864 should be treated as surplusage.

A prisoner charged with having committed murder at Perim was committed by the Magistrate there on the 26th August, 1885, for trial before the Political Resident at Aden, by whom he was convicted and sentenced to death on the 14th September, 1885. On the 25th January, 1886, the High Court of Bombay reversed the conviction and sentence on the ground that the Court of the Resident had no jurisdiction over the island of Perim, and that the Resident, not having been appointed a Judge of a Court of Session for that island, was not competent to try the prisoner. The High Court ordered a retrial before a competent Court. On the 10th February, 1886, the Government of Bombay issued the notification. (No. 823), above set forth. On the 11th March, 1886, an application was made to the High Court of Bombay for the transfer of the case to another Court of Session or to the High Court for trial.

Held, that Perim is a Sessions Division, and that, after the establishment, under the Code of Criminal Procedure, of a Court of Session for the Perim Sessions Division and the appointment of the Resident at Aden as Sessions Judge of that Court, the accused stood properly committed to a Court of Session. The High Court, therefore, could transfer the case from that Court, under section 526 of the Code, to any other Court of equal or superior jurisdiction, or to the High Court of Bombay.

Per JARDINE, J. :—After the High Court had annulled the proceedings in the Court of the Resident at Aden as without jurisdiction, the case could not be treated as still pending in his Court; and as there was no Court of Session in existence at the time of the commitment, it necessarily followed that the case remained in the Magistrate's Court.

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But, whether the case was considered as pending in the Court of a Magistrate, or of a Resident, or of a Sessions Judge, the High Court has the power to transfer it, and that under the circumstances the case should be transferred to the High Court for trial.

THIS was an application by the Government of Bombay, under section 526 of the Criminal Procedure Code (Act X of 1882), praying that the case of *Queen-Empress* v. *Private Mangal Tekchand* (see *supra*, p. 263) be transferred to another Court of Session or to the High Court for trial.

In this case on the 25th January, 1886, the High Court (Birdwood and Jardine, JJ.,) reversed the conviction and sentence recorded by the Resident at Aden, on the ground that the Court of the Resident, established under Act II of 1864, had no jurisdiction over the island of Perim, and that the Resident not having been appointed a Judge of a Court of Session for that island, was not competent to try the prisoner. Accordingly, the prisoner was ordered to be re-tried before a Court of competent jurisdiction. Thereupon the Government of Bombay, in exercise of the powers conferred by sections 3, 5 and 6 of the Scheduled Districts Act (XIV of 1874), issued the following notifications on the 10th February, 1886:—

"Government Notification No. 822[1].—In exercise of the power conferred by section 3 of the Scheduled Districts Act XIV of 1874, the Governor of Bombay in Council is pleased, with the previous sanction of the President in Council, to declare that the said Act is in force in the island of Perim."

"Government Notification No. 823[1].—In exercise of the powers conferred by section 5 of the Scheduled Districts Act, XIV of 1874, the Governor of Bombay in Council is pleased, with the previous sanction of the President in Council, *to extend to the island of Perim the whole of Act II of 1864* of the Governor General in Council, with the exception of sections 2, 17 and 23. The Governor in Council is further pleased, in exercise of the powers conferred by section 6 of the Scheduled Districts Act XIV of 1874 and by any other enactment, to direct *that the Resident at Aden shall be Sessions Judge and Court of Sessions*

(1) *Vide Bombay Government Gazette* dated 11th February, 1886, Part I, page 105.

for the island of Perim, and shall exercise the same jurisdiction and powers in respect of the administration of civil and criminal justice in the said island, and in respect of the trial of persons committed for trial by the Court of Session for offences committed in the said island, as are vested in him in Aden by the said Act."

On the 3rd March, 1886, the application for a transfer of the case was made on behalf of the Crown, on the ground that the witnesses for the prosecution had left Aden after the conclusion of the trial in the Court of the Resident, and were at present at Mhow.

Latham, (Advocate General), with *Pándurang Balibhadra*, Acting Government Pleader, moved in support of the application:—The Government notification of the 10th February, 1886, extends the Aden Act II of 1864 to the island of Perim. But it is open to question, whether an Act, which regulates the litigation of a particular area, can be extended to another area. It is difficult to perceive how the extension of the Act can have any practical effect without enlarging the subject-matter of the Act. The difficulty would have been obviated, if the definition of Aden had been enlarged so as to include Perim.

Independently of the notification, I contend that the case should be treated as still pending in the Resident's Court, although he had no jurisdiction to try the case. The prisoner was, indeed, committed to a wrong Court, but the commitment should not be set aside, unless there has been a failure of justice—*Queen Empress* v. *Thaku*[1]. On the authority of this case, I ask that the case be transferred to the Sessions Court at Násik, as the witnesses for the prosecution are now at Mhow.

BIRDWOOD, J.:—This is an application by the Government of Bombay, praying that the case of *Queen Empress* v. *Mangal Tekchand* "be transferred to another Court of Session or" to the High Court "for trial." The application does not state in what Court of Session the case is now pending; but we have been asked by the learned Advocate General, who appears for the Government, to consider the case as one standing committed to the Court of

(1) I. L. R., 8 Bom., 312.

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the Resident at Aden. The witnesses for the prosecution are now at Mhow, and the case, if transferred to a Court of Session, could be conveniently tried at Násik. If we have the power to order the transfer, the case is one in which we ought to exercise that power, for the reason stated.

The case was committed for trial by Captain Snell, Magistrate (First Class) at Perim, on the 26th August, 1885. It was tried by the Political Resident at Aden on the 14th September, 1885. He convicted the accused, on his own plea, of murder, and sentenced him to death. The case was referred to us under section 28 of Act II of 1864. We annulled the conviction and sentence on the 25th January last, on the ground that the Court of the Resident, established under Act II of 1864, had no jurisdiction over the island of Perim, and that the Resident had never been appointed a Judge of a Court of Session for that island. He had, therefore, no jurisdiction to try the prisoner, whose trial we, accordingly, ordered before a Court of competent jurisdiction.

After we had so disposed of the case, the Government of Bombay, in exercise of the powers conferred by sections 3 and 5 of the Scheduled Districts Act, XIV of 1874, and with the previous sanction of the Government of India, declared that Act to be in force in the island of Perim, and extended to the island "the whole of Act II of 1864, with the exception of sections 2, 17, and 23." At the same time, "in exercise of the powers conferred by section 6 of the Scheduled Districts Act XIV of 1874 and by any other enactment," the Government, (without specifying any other enactment), directed that the Resident at Aden should be "Sessions Judge and Court of Session for the island of Perim," and that he should "exercise the same jurisdiction and powers in respect of the administration of civil and criminal justice in the said island, and in respect of the trial of persons by the Court of Session for offences committed in the said island as are vested in him in Aden by the said Act." The notifications under sections 3, 5, and 6 of the Scheduled Districts Act XIV of 1874 are dated the 10th February, 1886; and it may be taken to have been the intention of the Government that, from that date, the civil and criminal litigation of the island of Perim should be subject to those

provisions of Act II of 1864 which have been extended to the island. We have received no communication from the Government with reference to these notifications; but we are probably not wrong in assuming that their issue was due to our decision, in this case, of the 25th January last, and that the immediate object of the Government was to create a Court which should have jurisdiction to accept the commitment made by Captain Snell on the 26th August, 1885, and to try the prisoner. If that object has been accomplished, there would be no difficulty, I think, in holding that the new Court is now legally seized of the case, and in ordering the transfer applied for.

The island of Perim having become a scheduled district on the 10th September, 1884, as pointed out in our judgment of the 25th January, and the notification under section 3 of the Scheduled Districts Act XIV of 1874 having been published in the *Gazette of India* and the local Gazette, that Act is now in force, "according to the tenor of the notification," which, under section 4 of the Act, is "binding on all Courts of law." Section 5 of the Act enables the Government to extend to a scheduled district "any enactment which is in force in any part of British India at the date of such extension." Act II of 1864, which is in force in Aden, has, accordingly, with the exception of three sections, been extended to Perim. A doubt was suggested by the Advocate General, at the hearing of the present application, as to the possibility of extending with any practical effect an Act which deals with the litigation of a particular area only to another area. He preferred, therefore, to treat the case as one still pending before the Court of the Resident at Aden, even though the Resident, as Judge of a Court of Session for Aden, might have no jurisdiction to try it; and argued, on the authority of the *Queen Empress* v. *Tháku*[1], that, as the commitment to that Court could not be set aside unless a failure of justice had been occasioned, this Court could even now transfer the case to another Court of Session. But if the doubt, which has thus been raised, be well-founded, as I think it is, then, clearly, the case stands unaffected by the recent notification under section 5 of the Scheduled Districts Act XIV of 1874, though

(1) I. L. R., 8 Bom., 312.

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it may be affected by the notification under section 6 and "any other enactment." We have already found that the Resident's Court had no jurisdiction to try it. If jurisdiction has not been conferred on him by the notification, extending certain provisions of Act II of 1864 to Perim, the case is not properly before his Court; and *Peary Lall Mozoomdár* v. *Komal Kishore Dassia*[1] is an authority for holding that a transfer of a case can only be directed "from a Court having jurisdiction to receive and try it." That was a case under section 25 of the Code of Civil Procedure (XIV of 1882); but the principle of the decision would apply also to criminal cases. No doubt, in the case of *Queen Empress* v. *Thaku*[2], West and Nánábhái, JJ., actually ordered the transfer of a case which had been wrongly committed by a Magistrate, who had no territorial jurisdiction, to a Court of Session, which had no territorial jurisdiction, to another Court, to which it ought to have been in the first instance committed by a Magistrate having jurisdiction; but the judgment of this Court contains no decision as to the legality of such a transfer; and the case was not argued; and, moreover, what was really ruled in that case was that, under section 531 of the Code of Criminal Procedure (X of 1882), the order of commitment could not be set aside. In the present case, the conviction recorded by the Resident has already been set aside; and, unless he is empowered by the recent notifications to resume the trial *ab initio*, the effect of our decision is to bar his cognizance of the case entirely, and to prevent our holding that it is before him in any sense at all.

It may be remarked that, if Act II of 1864 can be extended with practical effect to any territorial area beyond the limits of Aden, it does not necessarily follow that by its recent extension to Perim it would be in force there in the same way that it is in force in Aden. It was already in force in Aden before the present Code of Criminal Procedure (X of 1882) became law. Under section 1 of the Code, it is, therefore, unaffected at Aden by the provisions of the Code. But, as the saving clause in section 1 as to special and local laws applies only to such laws as were in force when the Code became law, and as Act II of 1864 was extended to

(1) I. L. R., 6 Calc., 30. (2) I. L. R., 8 Bom., 312.

Perim only in February last, it will, if practically in force at all, be affected there by the provisions of the Code. The Code and the Act will be in force side by side, and the Act having been enacted before the Code, though it was extended to the island after the Code was in force there, it might be a question whether the one or the other was to be regarded as the later expression of the will of the Legislature, to which effect was to be given, whenever the provisions of the two laws came in conflict. But I do not discuss any such question, as I am of opinion that the *recent extension of Act II of 1864 to Perim must be practically inoperative.* We have already remarked, in our judgment of the 25th January, that the Act contains in itself no provision for its extension. The subject-matter for which it makes provision is the litigation in certain Courts constituted for a certain local area. It is not possible, by extending an Act, which is of necessarily restricted application, to make its provisions applicable to an entirely new subject-matter, *viz.*, the litigation of a new local area. The limited scope of the Act is indicated by its preamble, which cannot be read except in connection with the litigation of Aden itself. Something more is required, therefore, than the mere extension of the Act to Perim. Its bare provisions as to procedure cannot be dissociated from the subject-matter with which they deal, and the subject-matter is incapable of transfer. But, if the extended procedure has nothing to operate on, it becomes ineffectual. It is necessary, then, to enlarge the subject-matter of the Act, as well as to extend its provisions. In the present case, this might, perhaps, have been done, as suggested by the Advocate General, by enacting a new definition of the term "Aden," so as to make it include Perim. The desired object has not, in my opinion, been obtained by the means actually adopted. If this view be correct, it follows that the Code of Criminal Procedure is still in full force at Perim, unaffected by Act II of 1864, just as it was before the recent notifications were issued.

It remains, however, to consider whether effect can be given to that part of the notifications which purports to be issued under "section 6 of the Scheduled Districts Act XIV of 1874"

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and "any other enactment," and which appoints the Resident at Aden "Sessions Judge and Court of Session for the island of Perim." Such an appointment could be made under clauses (*a*) and (*c*) of section 6 of the Scheduled Districts Act XIV of 1874 and the Code of Criminal Procedure. It could not be made under Act II of 1864, which does not empower the Government to appoint Sessions Judges. It was, indeed, the apparent intention of the Government not to appoint a Sessions Judge for Perim with the ordinary powers of a Court of Session under the Code, for the notification expressly contemplates the exercise by the Resident of the same jurisdiction and powers in respect of litigation at Perim as are vested in him in Aden by the Act. But if the Act is not in force in Perim in any real sense, so much of the notification as is issued with reference to the Act may be treated as surplusage, and effect must be given, if possible, to the remainder. Can the Resident, then, be regarded as the Sessions Judge of Perim under the Code? I think that he can be so regarded; for, as the Scheduled Districts Act (XIV of 1874) is now in force in Perim, the Government is empowered to "appoint officers to administer * * criminal justice * * within the Scheduled District" of Perim; and as the Code of Criminal Procedure is also in force there, the Government is empowered to "direct by what authority any jurisdiction, powers, or duties incident to the operation of" the Code shall be executed or performed. By appointing the Resident at Aden to be "Sessions Judge" for Perim, the Government makes an appointment under clause (*a*) of section 6 of the Scheduled Districts Act XIV of 1874. That portion of the notification which regulates, presumably under clause (*c*) of the section, the exercise by the Resident of his powers with reference to Act II of 1864 is ineffectual. The appointment made under clause (*a*) of the section must be held to be effectual with reference only to the provisions of the Code.

Section 7 of the Code assumes the existence of a Sessions Division in every part of British India, where the Code is in force, outside the Presidency towns. It does not contemplate *the constitution of Sessions Divisions by the Local Governments*, which can only *alter the limits* of Divisions, or, with the previous sanction

of the Governor General in Council, the number of Divisions. Every Province is, by operation of law, a Sessions Division or consists of Sessions Divisions. There is no place, therefore, which escapes the pervading force of the section. Every place in the Presidency or Province of Bombay, outside the Presidency town, is a Sessions Division or a part of a Sessions Division. The island of Perim, therefore, is a Sessions Division; and as it is competent to the Government, under section 9 of the Code, to establish a Court of Session for every Sessions Division and to appoint a Judge of such Court, the appointment of the Resident at Aden to be Sessions Judge and Court of Session for Perim must be regarded as effectual under section 9 of the Code. As Perim is a Sessions Division, it is also a District under section 7 of the Code. By Notification No. 471 of the 19th January, 1885, (*Bombay Government Gazette*, 1885, p. 99), Captain Snell, commanding the detachment at the island of Perim, was "appointed to be a Magistrate of the First Class under section 12 of Act X of 1882." The notification does not specify the District in which he is appointed a Magistrate of the First Class. In notifications under section 12 of the Code, the District is generally specified, and it clearly ought to be specified. But I would not hold the notification to be bad for uncertainty; for, Perim being a District, and Captain Snell being described as the officer "commanding the detachment at the island of Perim," it may be held that the Government has appointed him to exercise magisterial powers in the Perim District. I would hold the appointment, therefore, to be valid. The commitment of the case of *Empress* v. *Mangal Tekchand* by Captain Snell, on the 26th August, 1885, to the Court of Session was, therefore, also valid. There was, at that time, no Court of Session for Perim; but such a Court has now been established, and is, therefore, competent to accept any legal and subsisting commitment. As soon as a Court of Session was established and a Sessions Judge appointed on the 10th February last, the commitment may be held to have been accepted; and the case being now properly before a Criminal Court subordinate, under the Code, to the authority of this Court, we can legally transfer it, under section 526 of the Code, to any

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other such Criminal Court of equal or superior jurisdiction, or to this Court.

I would order that the case be transferred to, and tried by, this Court.

JARDINE, J. :—I concur in making the order; but for different reasons, which, I think, I ought to state. The offence of murder, with which the prisoner was formerly charged, is triable, under section 28 of the Code of Criminal Procedure (Act X of 1882), by the Court of Session. Captain Snell, who committed the case, signed the charge as a Magistrate of the First Class, Perim Division, declared the offence to be "within the cognizance of the Court of Session," and added the following direction :—

"And I hereby direct that you be tried by the said Court on the said charge."

No question has been raised by either the Crown or the prisoner as to the competency of the Magistrate to hold the inquiry or to make the commitment; and without full argument, I am not prepared to question its validity.

The record contains a letter, dated the 26th August last, from Captain Snell to the address of the "Session Judge of Aden," intimating that he had that day committed the prisoner to take his trial before the "Court of Session." We may presume that this letter was received by the Resident at Aden, who held the trial and convicted the prisoner of murder, and sentenced him to death.

For the reasons given in our judgment of the 25th January last, we annulled the conviction and sentence, and directed the prisoner to be tried before a Court of competent jurisdiction.

We have been moved by the Advocate General to direct the case to be transferred for trial to a Court of Session or to this Court, as the general convenience of the witnesses will thus be promoted, thirteen of them being now at Mhow with their regiment. The Sessions Court at Násik has been suggested as convenient.

We have, therefore, to consider clauses 29 and 38 of the Amended Letters Patent and section 526 of the Code of Criminal Procedure (X of 1882).

Under section 526 this Court may order :—

"(1). That any offence be inquired into or tried by any Court not empowered under sections 177 to 184 (both inclusive), but in other respects competent to inquire into or try such offence;

"(2). That any particular criminal case or appeal, or class of such cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

"(3). That any particular criminal case or appeal be transferred to and tried before itself; or

"(4). That an accused person be committed for trial to itself or to a Court of Session."

The first of these clauses would probably apply to cases like *Queen Empress* v. *Thaku* [1], so as to enable this Court to order the trial in the Court to which the commitment has been made when that Court has no territorial jurisdiction over the offence. In the case of *Empress of India* v. *Jagannáth* , decided under the Code of 1872, (of which section 70 nearly corresponds to section 531 of the present Code), the proceedings were held to be illegal *ab initio*, and were quashed on that ground, no order having, apparently, been made previously by the High Court under that part of section 64 of the older Code, which corresponds more or less with clause 1 of section 526. It is not suggested, however, that we should authorize the Resident at Aden to try the prisoner a second time; but the learned Advocate General has remarked on *Queen Empress* v. *Thaku* [2], as authority for our treating the present case as one at present in contemplation of law in the Court of the Resident at Aden under Captain Snell's commitment, and so capable of being transferred from that Court.

I am unable to accept that view. In our previous judgment, we held that the requirements of the Code of Criminal Proce-

(1) I. L. R., 8 Bom., 312. (2) I. L. R., 3 All., 258.

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dure as regards Perim had not been satisfied. Referring to that Code, sections 7 and 9, we said that "a Court of Session for a Sessions Division, including Perim, remains to be created, and a Judge appointed thereto by the Local Government." When, therefore, Captain Snell made out the commitment, there was no Court of Session established, nor Sessions Judge appointed, by the Local Government. There was no jurisdiction in existence at Perim competent to try the prisoner. The case has thus arisen, which Mr. J. D. Mayne, in his Commentary on section 4 of the Indian Penal Code, suggests as possible, *viz.*, "where a crime is committed inland within the British territories, but in a place where no Court has jurisdiction"(1). The present circumstances differ from those in *Reg.* v. *Gaji*(2), where there was a Court with jurisdiction over the offence, although the sole Judge was incapable of holding the trial. It was held, however, that, in committing the prisoner to be tried by that Court, there was no error in law on the part of the Magistrate. The tendency of the decisions is to uphold commitments; and as the subsequent letter to the Sessions Judge of Aden need not be treated as affecting the formal charge containing the proper direction about the trial, I would look to the latter document alone. I would add that as we have annulled the proceedings in the Court of the Resident at Aden as without jurisdiction, we cannot now treat the case as being in his Court; but as there was no Court of Session in existence to which the Magistrate could send the case, it necessarily follows that the case remained in the Magistrate's Court. In order to carry out the order of this Court, the Magistrate had a duty to perform, under section 218 of the Code of Criminal Procedure (Act X of 1882), namely, to present the case before a competent Court, and, under section 220, the prisoner must have been in custody under his warrant in the interval.

Under the view which I take of the subject, it is unnecessary to consider what is the effect of the notification extending to Perim the Act II of 1864, with the exceptions of sections 2, 17, and 23. I perceive nothing in the remaining portions of that Act or in Act XIV of 1874 to affect the power of transfer of the

(1) Mayne's Indian Penal Code, 12th ed., p. 15. (2) I. L. R., 1 Bom., 311.

case which this Court possesses. I assume that no action has been taken by the committing Magistrate since this Court annulled the conviction and sentence and passed its direction.

It was faintly suggested by the Advocate General that our previous order was open to review, and that section 531 made the proceedings of the Resident valid. But we cannot now reinstate the conviction and sentence; and we observe that section 531 was not relied upon at the hearing. As a prisoner convicted by the Resident is deprived of the appeal which lies from Courts of Session to this Court, the prisoner over whom the Resident wrongly assumes jurisdiction may be seriously prejudiced by the deprivation of a right regarded by both the Legislature and the Courts as essential to justice. See *The Empress* v. *Tsit Ooe*[1] and *Reg.* v. *Vyankatsvámi*[2] which illustrate the gravity of the question. These remarks do not apply to a trial in the High Court; and we must now consider whether we should not transfer the case for trial by the High Court in order to obviate objections to inferior jurisdictions. If the case be considered as pending in the Magistrate's Court, these objections do not arise; but if it were ultimately to be held that a Court with powers similar to those possessed by the Court of the Resident at Aden under Act II of 1864 has been established for Perim, and has become legally seized of the case, it might be objected that such a unique Court is superior to a Court of Session, and that an order transferring to a Court of Session was outside the powers conferred by section 526. Being of opinion that, under any circumstances, this Court has the power of transfer, whether the case be pending in a Court of a Resident or of a Sessions Judge or of a Magistrate, I think the proper order to be made is an order under clause 3, transferring the case to be tried in this Court.

Transfer of the case ordered.

(1) I. L. R., 4 Calc., 667.

(2) 2 Bom. H. C. Rep., Cr. Ca., 106.