APPELLATE CIVIL—FULL BENCH.

Before Sir John Wallis, Kt., Chief Justice, Mr. Justice Ayling and Mr. Justice Kumaraswami Sastri.

1918, September 23, October 1, and 1919, February 17.

In re PADMANABHA HEBBARA (THIRD ACCUSED—TRANSFEREE PLAINTIFF), PETITIONER.*

Criminal Procedure Code (V of 1898), sec. 476—Close of judicial proceedings—Knowledge of commission of offence after—Order under sec. 476 of Criminal Procedure Code, validity of.

Held by the Full Bench: Even where the facts of a judicial proceeding are fresh in the mind of a Judge, he cannot take action under section 476 of Criminal Procedure Code if the commission of an offence during the course of that proceeding is discovered by him only after the close of the proceeding.

Per *Kumaraswami Sastri, J.*—In such cases it is open to the Court to act under section 195, Criminal Procedure Code, and direct an officer to file a complaint.

Aiyakannu Pillai v. *Emperor*, (1909) I.L.R., 32 Mad., 49 (F.B.), applied.

PETITION under section 476 of the Criminal Procedure Code and section 115 of the Civil Procedure Code to revise the order of BALAJI RAO, the District Munsif of Koondapoor, in Disposal No. 2294 of 1917 in Small Cause Execution Petition No. 714 of 1917.

This petition coming on for hearing, the following

ORDER OF REFERENCE TO A FULL BENCH was made by

PHILLIPS, J. PHILLIPS, J.—This is a petition to revise the order of the District Munsif of Coondapoor directing the prosecution of the petitioner for offences under sections 193, 463, 466, 468 and 471 of the Indian Penal Code. The order was made under section 476 of the Criminal Procedure Code. The offences are alleged to have been committed with reference to a decree used as genuine in Small Cause Execution Petition No. 714 of 1917 before the District Munsif which decree is found by the District Munsif in this order to be a forgery. Those proceedings had terminated on 11th September 1917 in an order on the footing that the decree was genuine. The District Munsif states in the order under review that "within a few days of the closing of the above execution proceedings" the fact of the forgery of the

* Civil Revision Petition No. 150 of 1918.

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decree was discovered and the present proceedings were instituted by him to ascertain if there was a *prima facie* case against the persons concerned. In the result he passed this order. It is argued before us that the proceedings having terminated he had no jurisdiction to pass the order. It has been finally decided by a Full Bench of this Court in *Aiyakannu Pillai* v. *Emperor*(1) that these orders must be passed in the course of the judicial proceeding or so shortly thereafter as to make it the continuation of the same proceeding, and if this proposition was intended by the Full Bench to be of universal application the petitioner's contention must succeed. But we have doubts whether this view is correct. The reference to the Full Bench in *Aiyakannu Pillai* v. *Emperor*(1) was whether, 'on the facts stated before us, the order was made without jurisdiction.' The facts were (*vide* page 50 of the report) that judgment was delivered on October 8 that the District Judge acting *suo moto* issued notice on October 29 and that the record gave no reason for his not taking action between October 8 and October 29. The offence came to his notice during the proceedings terminating on October 8. In the present case no offence was brought to the notice of the District Munsif until after the proceedings terminated and the reason for not taking action before is therefore apparent. This state of facts was not therefore before the Full Bench and the actual ruling does not in terms apply, though the dicta of the learned Judges are wide enough to cover this case. The possibility of a case of necessary delay seems to have been suggested by the (present) learned Chief Justice in *Rahimadulla Sahib* v. *Emperor*(2), but he is there dealing with English practice, and the actual facts of this case were imagined by MILLER, J., in *Aiyakannu Pillai* v. *Emperor*(3), and he was of opinion that an order might be passed but as he was the dissentient Judge his opinion cannot be treated as authoritative. The principle underlying the Full Bench decision not applying we see no reason why an order under section 476 of the Criminal Procedure Code should not be passed in these circumstances, but in view of the language of some of

(1) (1909) I.L.R., 32 Mad., 49 (F.B.). (2) (1908) I.L.R., 31 Mad., 140, at p. 146.
(3) (1909) I.L.R., 32 Mad., 49, at p. 54 (F.B.).

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the Judges on the scope of the section we decide to refer to a Full Bench the following question :—

Where the commission of an offence has been discovered by a Court after the judicial proceedings have terminated but at a time when the facts were fresh in the mind of the Judge, can he pass an order under section 476 of the Criminal Procedure Code?

ON THIS REFERENCE—

K. Annaji Rao for the petitioner relied on *Aiyakannu Pillai* v. *Emperor*(1), and contended that the order was illegal as the order sought to be revised was passed long after the close of the previous judicial proceedings.

E. R. Osborne, Public Prosecutor.—Though the ruling in *Aiyakannu Pillai* v. *Emperor*(1) does not in terms apply, action can be taken under section 476 of the Criminal Procedure Code if two conditions are satisfied: (1) if the offence is committed during the course of the judicial proceedings and (2) if under the circumstances of the case the subsequent proceedings can be considered as part of the original proceedings. In this case a forged decree was used as genuine by the assignee of the decree when he applied for execution. About a week after the close of the execution, it was discovered that the decree was a forged one. Acquisition of knowledge of the offence committed during the judicial proceedings, very soon thereafter will make the subsequent proceedings part of the previous proceedings.

WALLIS, C.J.

WALLIS, C.J.—In this case the facts first came to the notice of the Court after the judicial proceedings before it had terminated, but that I think is not enough to take the case out of the authority of the Full Bench decision of five Judges in *Aiyakannu Pillai* v. *Emperor*(1), confirming the earlier ruling in *Rahimadulla Sahib* v. *Emperor*(2). I would answer the question in the negative.

AYLING, J.

AYLING, J.—If the matter were *res integra* I should concur in the view expressed by MILLER, J., in *Rahimadulla Sahib* v. *Emperor*(2), and *Aiyakannu Pillai* v. *Emperor*(1). But, sitting as

(1) (1909) I.L.R., 32 Mad., 49 (F.B.).
(2) (1908) I.L.R., 31 Mad., 140, at p. 146.

a member of the present Bench, I feel bound by the opinion of the Full Bench of five Judges in the last-named case. I do not think the order in the present case can be treated as a valid one within the spirit of these rulings.

In re PADMANABHA HEBBARA — AYLING, J.

I therefore agree to the answer proposed.

KUMARASWAMI SASTRI, J.—I agree with my Lord and would add that in cases like the present it is open to the Court to act under section 195 of the Criminal Procedure Code and direct an officer to file a complaint.

KUMARASWAMI SASTRI, J.

N.R.

APPELLATE CIVIL—FULL BENCH.

Before Sir John Wallis, Kt., Chief Justice, Mr. Justice Ayling and Mr. Justice Kumaraswami Sastri.

MUTHIRULANDI POOSARI AND ANOTHER (DEFENDANTS), APPELLANTS,

v.

SETHURAM AIYAR AND ANOTHER (PLAINTIFFS), RESPONDENTS.*

1918, November 15 and 20, 1919, February 17 and 18.

Survey and Boundaries Act (Madras Act IV of 1897), sec. 11—Decision of Survey officer, on dispute as to boundary, not set aside on appeal or by suit within one year, effect of—Continued possession of unsuccessful party, effect of.

A decision of a Survey officer passed under section 11 of the Madras Survey and Boundaries Act (IV of 1897) on a dispute arising between two parties as to the boundary of a certain property is final and conclusive as to the rights of the parties if not set aside either on appeal or by a suit brought within one year and it is none the less so, because the unsuccessful party who was in possession on the date of the order was not subsequently ousted from possession.

Krishnamma v. *Achayya*, (1880) I.L.R., 2 Mad., 306, distinguished.

SECOND APPEAL against the decree of F. A. COLERIDGE, the District Judge of Madura, in Appeal No. 274 of 1916, preferred against the decree of K. W. RAMA RAO, the Additional District Mansif of Madura, in Original Suit No. 312 of 1913.

This was a suit for a permanent injunction to restrain the defendants from interfering with a lane situated between the houses of the plaintiffs and the defendants. Plaintiffs alleged that, in Original Suit No. 302 of 1900 brought against them by

* Second Appeal No. 1822 of 1917