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description, by reducing the twelve years' term to a term of one year. It has been ruled by my brothers Brodhurst and Tyrrell in effect that it does not, and I believe this to be a sound view.

All I understand those last paragraphs of sections 84 and 148 to say is, that when an intervenor has succeeded in a revenue suit in convincing a Revenue Court that he has been in receipt and enjoyment of certain rent distrained for or claimed, or *vice versâ*, that the plaintiff or the unsuccessful intervénor may go to the Civil Court with a suit to have it declared that he had a title to receive that particular rent, which the Revenue Court refused to give him, and that if he does institute such a suit, he must do so within one year from the date of the Revenue Court's decision. I cannot hold that by the terms of either of those paragraphs, the period of limitation provided for a suit for a declaration of title to and possession of immoveable property, in the limitation law, is thus summarily abridged. Such being the view I take, it follows that this appeal should succeed, and that the question of the proprietary title to the land should be determined upon the merits by the lower Court. I accordingly decree the appeal, and, reversing the decision of the Subordinate Judge, direct him to restore the appeal to his file of pending appeals and to dispose of it according to law. Costs hitherto incurred will be costs in the cause.

Cause Remanded.

REVISIONAL CRIMINAL.

1888
January 25.

Before Mr. Justice Mahmood.

QUEEN-EMPRESS *v.* AJUDHIA SINGH AND OTHERS.

Limitation—Sanction to prosecution—Application for such sanction—Criminal Procedure Code, s. 195—*Act XV of* 1877 *(Limitation Act), sch. ii. art.* 178.

Rules of limitation are foreign to the administration of criminal justice, and it is only by express statutory provision that any rule of limitation could be made applicable to criminal cases.

Article 178, sch. ii., Limitation Act (XV of 1877), must be construed with reference to the wording of the other articles, and can relate only to applications *ejusdem generis*.

A suit was instituted for possession of certain land on which stood a factory. In proof of the claim the plaintiffs filed in court a *sarkhat* or lease, which was pronounced by the Munsif to be a forgery. Plaintiffs appealed up to the High Court, where, on the 24th June, 1886, the Munsif's decree was affirmed. Defendants then

applied to the Munsif for sanction to prosecute the plaintiffs for the offence of using a forged document knowing the same to be forged. Munsif refused to sanction the prosecution prayed for; but on application to the Sessions Judge such sanction was granted. On application to revise the Sessions Judge's order granting sanction, it was contended that, after the lapse of nearly three years, sanction to prosecute should not have been granted.

Held; that there is no fixed period of limitation for making applications for sanction under section 195 of the Criminal Procedure Code.

THIS was an application under section 489 of the Criminal Procedure Code to revise the order of the Officiating Sessions Judge of Gorakhpur, granting sanction to prosecute the petitioners for an offence punishable under section 471 of the Indian Penal Code. The facts under which the application was made are stated in the judgment of the Court.

Mr. *Niblett*, for the petitioners.

The *Government Pleader* (Munshi *Ram Prasad*), for the Crown.

MAHMOOD, J.—This is an application which invokes the interference of this Court, in the exercise of its revisional jurisdiction, on behalf of the petitioners, in respect of whom permission was given by the learned Sessions Judge to the opposite party for prosecuting the petitioners under section 471 of the Indian Penal Code. The petitioners produced in a former litigation a document which has been held by both the lower Courts to be a forgery, and that litigation came to an end on the 24th June, 1886, by a decision of this Court which was adverse to the interests of the present petitioners. Then, on the 6th November, 1886, the present application was made for a sanction to prosecute, such as is contemplated by section 195 of the Criminal Procedure Code, but the Munsif declined to give permission. The learned Sessions Judge, in the exercise of the powers of a Court of appeal, has, however, granted the sanction prayed for, and in disputing the propriety of this order, Mr. *Niblett* has relied mainly upon two points. In the first place, the learned pleader contends that there was such unreasonable delay as to bar the application, and, in the next place, he argues that under section 195 of the Criminal Procedure Code it was important for the Court granting sanction to obey strictly the provisions as to the specification of the circumstances as to the place where and the time when the offence was committed.

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As to the first of these points, I am not aware of any rule of law which subjects such applications to any period of limitation. Mr. *Niblett* relies on the general provisions of article 178 of the second schedule of the Limitation Act (XV of 1877) and contends that the clause gives indications of a period of three years within which such application should be made. I cannot accept this contention, because rules of limitation are foreign to the administration of criminal justice, and it is only by specific legislation that periods of limitation can be rendered applicable to criminal proceedings.

For instance in the second division of schedule II of the Limitation Act specific provision as to the period of limitation is made in respect of criminal appeals, and, it is no doubt, by reason of those express provisions that limitation is applicable to such appeals. But supposing no such provisions existed, I should probably have been inclined to hold that even in the case of appeals arising out of criminal proceedings, no period of limitation was applicable on general principles of the law; and the result of such a view would, no doubt be, to render it possible for a person convicted of a criminal offence to appeal at any time, at least during the continuance of the sentence passed upon him.

The present, however, is not a case of appeal, but only one of an application to obtain sanction for prosecution under section 195 of the Code of Criminal Procedure, and I have to consider whether article 178, schedule II, of the Limitation Act is applicable to the case. For the purposes of deciding this question, I need not determine "when the right to apply accrued" within the meaning of the third column of that article. The substantive portion of the article in describing the class of cases to which it is applicable runs as follows:—

"Applications for which no period of limitation is provided elsewhere in this schedule, or by the Code of Civil Procedure, section 230."

In order to interpret this clause, it is important to realize that the preamble of the Act itself, whilst making provision as to limitation governing "*suits*" and "*appeals*," expressly limits the scope of the enactment to "*certain applications*." In other words, the Act does not profess to provide for all kinds of applications what-

soever. This being so, it is important to notice that throughout the third division of schedule II of the Act no reference is made to any application arising out of proceedings under the Code of Criminal Procedure, and this circumstance taken with the language employed in the preamble of the statute, and also with the words of article 178 itself, leads me to the conclusion, that, that article is not applicable to applicaitions under section 195 of the Code of Criminal Procedure. This view proceeds upon the same principle as the ruling of Westropp, C J., in *Bai Manakbai* v. *Manakji Kavasji* (1), and of Wilson, J., in *Govind Chunder Goswami* v. *Rungunmoney* (2). The effect of those rulings is, that the general words of article 178 must not be read irrespective of the latter part of the article, which refers to the Code of Civil Procedure, and that the applications contemplated by the article must be taken to mean applications under that Code. Similar is the principle of the ruling of the Madras High Court in *Kylasa Goundan* v. *Ramasami Ayynr* (3), and of the Bombay High Court in *Vithal Janardan* v. *Vithojirav Putlajirav* (4), and of the Calcutta High Court in the case of *Ishan Chunder Roy* (5), where Tottenham, J., laid down the general rule that article 178 must be construed with reference to the wording of the other articles and can relate only to applications *ejusdem generis.*

As to the next part of Mr. *Niblett's* argument, I have to consider the effect of the following paragraph of section 195 of the Code of Criminal Procedure :—

"The sanction referred in this section may be expressed in general terms, and need not name the accused person ; but it shall, so far as practicable, specify the Court or other place in which, and the occasion on which, the offence was committed."

It seems to me that the terms in which the learned Judge gave sanction in this case complied sufficiently with the provisions of this clause, because it specifies the Court and the occasion on which the offence is alleged to have been committed. Mr. *Niblett's* argument seems to proceed upon the contention, that the learned Judge in giving sanction, should have specified the place and occasion on which the alleged forgery was committed. But this contention is

(1) I. L. R. 7 Bomb. 213. (3) I. L. R. 4 Mad. 172.
(2) I. L. R. 6 Calc. 60. (4) I. L. R. 6 Bomb. 586.
(5) I. L. R. 6 Calc. 707.

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clearly unsound, because the offence charged is that described in section 471 of the Indian Penal Code, which refers to the *use* of a forged document, and such an offence in a case like the present would take place in the Court where the document is used and not at the place where it has been forged.

For the purposes of this case, I am not required to enter into the merits of the case as to how far the prosecution, if instituted, is likely to succeed, and it is enough to say that Mr. *Niblett's* argument on the points of law raised by him having failed, I see no reason to interfere with the order of the learned Judge, in exercising the revisional jurisdiction of this Court.

The application is, therefore, rejected.

Application rejected.

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January 27.

APPELLATE CIVIL.

Before Mr. Justice Brodhurst and Mr. Justice Tyrrell.

ISHUR DAS AND ANOTHER (DEFENDANTS) *v.* KOJI RAM (PLAINTIFF).*

Question for Court executing decree—Money paid into Court by pre-emptor under Civil Procedure Code, s. 214—Suit for pre-emption dismissed on appeal—Suit for refund of money paid into Court—Civil Procedure Code, s. 244.

A suit for pre-emption was decreed conditionally on the plaintiff paying Rs. 1,595, which the Court determined was the amount of the sale-consideration. He paid the amount to the vendees and the payment was certified under s. 258 of the Civil Procedure Code. Subsequently the decree was modified on appeal by increasing the amount of sale-consideration to Rs. 1,995, which the plaintiff was required to pay as the condition of pre-emption. He never paid the difference between the amount fixed by the first Court and the sum fixed as the true price by the appellate Court and the suit consequently stood dismissed. He then assigned to the plaintiff in the suit his right to recover the amount, Rs. 1,595, from the vendees, who after unsuccessful application made to the Court of first instance, under s. 244 of the Civil Procedure Code, to recover the amount, instituted this suit.

Held; that the assignee was a representative of the plaintiff in the pre-emption suit, within the meaning of s. 244 of the Civil Procedure Code, and the suit was therefore barred under the provisions of that section.

One Balwant sold his right in Mauza Sakri to Kewal Ram and Ishur Das. Ram Lal brought a suit for pre-emption. On the

* Second Appeal No. 1765 of 1886 from a decree of M. S. Howell, Esq., District Judge of Aligarh, dated the 13th July, 1886, modifying a decree of Babu Abinash Chandra Banerji, Subordinate Judge of Aligarh, dated the 22nd May 1884.