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TAQL.

It was upon this principle that Mr. Justice Oldfield and myself in *Karamat Ali v. Inayat Husain* (1) held that the right of redemption cannot be considered as having been barred, and upon this ground we allowed execution, because the money had been deposited within the period allowed by the rule of limitation applicable to the decree, namely, the period awarded by the Limitation Act. Similar is the effect of the *ratio* upon which the judgment of my brother Straight and myself proceeded in *Hulas Rai v Pirthi Singh* (2).

Before leaving this point alone I desire to express as clearly and briefly as I can the reason why the limitations established by a decree are not to be placed upon the same footing as limitations as to time or otherwise imposed by the legislature for purpose of the audibility of causes, *ad litem ordinationem*. The reason is simple. One is the act of a Judge, the other is the act of the legislature, and it cannot be that any Judge by fixing one hour, or one day, or one month, or one year for obedience to his order would render it impossible for the party aggrieved to have his remedy by the ordinary procedure within the time allowed by the Legislature. This view is the principle of what I said in the Full Bench case of *Kodai Singh v. Jaisri Singh* (3).

For these reasons I think that upon the findings of the lower appellate Court this appeal is not sustainable. I therefore dismiss the appeal, but without costs, as the respondent is not represented.

Appeal dismissed.

APPELLATE CRIMINAL.

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February 22.

Before Mr. Justice Straight.

QUEEN EMPRESS v MAKHDUM.

Criminal Procedure Code, ss. 195, 476, 487—Act XLV of 1860, s. 193—False evidence—Jurisdiction—Sessions Judge.

A Sessions Judge who has directed the trial of a person for the offence of giving false evidence committed in the course of a judicial proceeding of a criminal nature before him cannot try the case himself. *Empress v. Gangá Din* (1) distinguished.

(1) Weekly Notes, 1884, p. 329.

(2) I. L. R. 9 All. 500.

(3) I. L. R. 13 All. 376.

The facts of this case sufficiently appear from the judgment of Straight, J.

Mr. *W. S. Howell* and Babu *Becka Ram Bhattacharji*, for the appellant.

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

STRAIGHT, J.—For the purpose of determining the question of law that arises before me in this appeal, it is only necessary that I should state the following brief facts. Upon the trial before the Sessions Judge of Jhāusi of one Wilayat Husain for the offence of giving false evidence contrary to the provisions of s. 193 of the Indian Penal Code, the appellant was examined as a witness and deposed to certain facts. The learned Sessions Judge being of opinion that in his depositions he had been guilty of giving false evidence under s. 476 of the Code of Criminal Procedure, adopted the procedure therein laid down, with the result that the appellant was committed to his Court to take his trial for an offence under s. 193 of the Indian Penal Code. The Sessions Judge has tried and convicted him and sentenced him to a term of 3 years' rigorous imprisonment. The initial objection taken to that decision is that by s. 457 of the Code of Criminal Procedure, the jurisdiction of the Sessions Judge was taken away, and that he had no power to enter upon the trial. A number of cases have been quoted in the course of the hearing of the appeal, among them *Sundriah v. The Queen* (2), *Regina v. Gaji Kom Ranu* (3), *Empress of India v. Kashmiri Lal* (4), *Empress v. Gaspar D' Silva* (5), *Empress v. Gauri Shankar* (6), *Empress v. Chait Ram* (7), *Queen-Empress v. Sarat Chandra Rukhit* (8). This last case is a Full Bench decision.

I am of opinion that the contention for the appellant must prevail. The offence of giving false evidence is one of those mentioned in s. 195 of the Code of Criminal Procedure. That offence was committed before the Sessions Judge and came under his notice

(1) Weekly Notes 1887, p. 139.

(2) I. L. R. 3 Mad. 254.

(3) I. L. R. 1 Bom. 311.

(4) I. L. R. 1 All. 625.

(5) I. L. R. 6 Bom. 479.

(6) I. L. R. 6 All. 42.

(7) I. L. R. 6 All. 103.

(8) I. L. R. 16 Calc. 706.

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in the course of a judicial proceeding, that is to say, upon the trial of Wilayat Husain.

As Sessions Judge he was the Judge of the Criminal Court, and it is not pretended that s. 477, s. 480 or s. 485 could have any application to the circumstances of this case. Accordingly I hold that there was a direct statutory prohibition to the Sessions Judge trying this case, and that in trying it he acted without jurisdiction, which condition of things no subsequent provision of the Criminal Procedure Code pretends to, or could, cure. I agree to this extent in the view expressed in the Full Bench ruling of the Calcutta Court that I have quoted, and it is not necessary for the purposes of this case to enter into other questions. I should have had no doubt as to the proper conclusion to arrive at upon the questions of law, but for the ruling of the learned Chief Justice reported in the *Empress v. Ganga Din* (1). It is deserving of notice in regard to that case that apparently the attention of the learned Judge was not directed to the terms of s. 487, but there is nothing, as far as I can gather, to show that in that particular case the trial which took place before the Sessions Judge in the first instance was in his character of Sessions Judge, and I am disposed to presume, until I am satisfied as to this, that the trial out of which the prosecution sprang was of a civil character. I allow this appeal, and setting aside the conviction and sentence, direct that the commitment be transferred to the Court of the Sessions Judge of Cawnpore for disposal according to law.

APPELLATE CIVIL.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Tyrrell.

HAIR GOBIND AND OTHERS (DEFENDANTS) v. NONI BAHU (PLAINTIFF).*

*Evidence—Document rejected as inadmissible but allowed to remain on the record—
Civil Procedure Code, section 142 A*

Where a document tendered in evidence in a Court of first instance was rejected as inadmissible but was nevertheless allowed to remain on the record of the case, *Held*

* Second Appeal No. 1194 of 1889 from a decree of G. L. Lang, Esq., Commissioner of Jhansi, dated the 20th August 1889, confirming a decree of Babu Baldeo Prasad, Deputy Collector of Jhansi, dated the 22nd June 1889.

(1) Weekly Notes 1887, p. 139.

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