1909, and notice was given to the public that the rules would be taken into consideration by the local Government on or after the 15th of May, 1909, and in pursuance of that notice after considering all criticism the rules as already mentioned were published in the official Gazette of these provinces on the 30th of July, 1910, which gave the power of hearing the petitions questioning the validity of an election to a competent court. The publication, therefore, was a valid publication of the rules, and the rules published in the official Gazette of these provinces on the 30th of July, 1910, no doubt, have the force of law.

The second question is as to which court is a competent court within the meaning of rule 42, published on the 30th of July, 1910. We have no doubt that the expression "competent court" within the meaning of that rule means a Civil Court of competent jurisdiction with reference to the valuation given by the petitioner on his petition.

The question of the validity of the election is purely a civil question and the words "District Magistrate" have been intentionally replaced by the words "competent court."

The result is that we dismiss the appeal with costs.

Appeal dismissed.

REVISIONAL CIVIL.

1912.
March 11.

Before Mr. Justice Banerji.

IN THE MATTER OF THE PETITION OF NAWAL SINGH.*

Criminal Procedure Code, section 476—"Court"—Civil Procedure Code (1908), *section* 115—*Revision—Inexpediency of order no ground for revision on the civil side.*

The word "court" in section 476 of the Code of Criminal Procedure includes the successor of the Judge before whom the alleged offence was committed. *Bahadur* v. *Eradatullah Mallick* (1) followed.

Whether a particular order is expedient or not is not a ground on which the High Court can interfere in revision under section 115 of the Civil Procedure Code.

One Sumat Prasad brought a suit against Nawal Singh and others on two promissory notes. This was suit No. 200 of 1906. In answer to the claim Nawal Singh denied the genuineness of one of the promissory notes and pleaded payment of the other and produced a receipt. As regards both the promissory notes the

* Civil Revision No. 145 of 1911.

(1) (1910) I. L. R., 37 Calc., 642.

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court of first instance held the defendant's pleas to be false and found in favour of the plaintiff. The decree of the first court was made on the 15th of April, 1908. On the 15th of May, 1908, the plaintiff applied to the court for sanction to prosecute the defendants to the suit for falsely verifying their written statement and for committing forgery in respect of the receipt produced. Meanwhile the defendants preferred an appeal to the High Court on the 12th of May, 1908. Thereupon, it appears, the Subordinate Judge refused to take action and directed the application to be shelved, giving leave to the plaintiff to renew his application after the decision of the appeal. The appeal was dismissed on the 19th of January, 1910. The plaintiff thereupon asked the Court to take his application for sanction into consideration. The application was rejected on the 13th of February, 1911; but on that date the successor of the Subordinate Judge who had originally tried the suit made an order directing an inquiry to be held under section 476 of the Code of Criminal Procedure. This Subordinate Judge was in turn transferred, and the case was heard by his successor, who, on the 16th of November, 1911, ordered the prosecution of Nawal Singh for offences under sections 193 and 471 of the Indian Penal Code. Nawal Singh thereupon applied to the High Court for revision of this order.

Mr. *A. H. C. Hamilton* and Mr. *W. Wallach*, for the petitioner.

Mr. *A. E. Ryves*, for the Crown (opposite party).

BANERJI, J.—This is an application for the revision of an order made by the Subordinate Judge of Saharanpur, directing the prosecution of the applicant for the offences mentioned in that order. It appears that one Sumat Prasad brought a suit against the applicant and others on two promissory notes. This was suit No. 200 of 1906. In answer to the claim, the applicant denied the genuineness of one of the promissory notes and pleaded payment of the amount of the other and produced a receipt. As regards both the promissory notes the court of first instance held the defendant's pleas to be false and found in favour of the plaintiff. The decree of that court was made on the 15th of April, 1908. On the 25th of May, 1908, the plaintiff, Sumat Prasad, made an application to the court for sanction to prosecute the defendants to the suit for

falsely verifying their written statement and for committing forgery in respect of the receipt produced. Meanwhile the defendants preferred an appeal to this court on the 12th of May, 1908. Thereupon, it appears, the Subordinate Judge refused to take action and directed the application to be shelved, giving leave to the plaintiff to renew his application after the decision of the appeal by this court. The appeal was dismissed by this court on the 19th of January, 1910. The plaintiff thereupon asked the court to revive the application for sanction and to grant him the sanction he had applied for. The application was rejected on the 13th of February, 1911. But on that date the successor of the Subordinate Judge, who had originally tried the suit, made an order directing an inquiry to be made under section 476 of the Code of Criminal Procedure. Unfortunately this Subordinate Judge was transferred from the district and the case was heard by his successor, who, on the 16th of November, 1911, ordered the prosecution of the applicant for offences under section 193 and 471, Indian Penal Code. It is the correctness of this order which is challenged in the application before me. One of the grounds of the application is that the Subordinate Judge had no jurisdiction to make the order passed by him. This ground is, in my opinion, untenable. The word "court" in section 476, includes, as was held by a recent Full Bench of the Calcutta High Court in *Bahadur* v. *Eradatullah Mallick* (1), the successor of the Judge before whom the alleged offence was committed. The learned Subordinate Judge, therefore, had jurisdiction to make an inquiry under section 476 and to pass an order under that section. It is next urged that on the ground of expediency and in view of the delay which has taken place in making the order, this Court ought to interfere. I am of opinion that this Court is unable to interfere with the order of the court below. In accordance with the rulings of this Court, the present application could only be preferred under section 115 of the Code of Civil Procedure. The case does not come within the purview of that section. The Court had jurisdiction to make the order and committed no illegality in passing it. Whether the order was expedient or not is not a ground on which this Court can interfere under the provisions of the section mentioned above. No doubt, action should be taken under section 476 as promptly as possible.

(1) (1910) I. L. R., 37 Calc., 642.

1912

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But there were circumstances in this case which might have justified the delay. However, I do not wish to go into that question inasmuch as, in my opinion, this Court cannot interfere in the matter. I dismiss the application but make no order as to costs.

Application dismissed.

APPELLATE CIVIL.

1912. *March* 11.

Before Mr. Justice Karamat Husain and Mr. Justice Tudball.

KHETPAL (DECREE-HOLDER) v. TIKAM SINGH (JUDGEMENT-DEBTOR).*

Civil Procedure Code (1882), *section* 230—*Execution of decree—Limitation—Application for transfer of decree—Subsequent application for execution not in continuation of application for transfer.*

Held that an application for execution can in no sense of the words be regarded as an application in continuation of an application for transfer of a decree from one court to another. In order that an application may be a continuation of another application, it is necessary that the two applications be of the same nature, and the application for transfer being an application of an entirely different nature from that for execution of a decree does not suspend the operation of section 230 of the Code of Civil Procedure, 1882. *Sundar Singh* v. *Boru Shankar* (1) applied. *Ram Sahai* v. *Nanni* (2) dissented from.

The facts of this case were briefly as follows :—

One Khetpal obtained a decree against the respondent on the 19th of December, 1896, at Agra. On the 15th of December, 1908, he applied for transfer of the decree for execution to Aligarh. On the 24th of February, 1909, an order was made granting this application. On the 23rd of March, 1909, an application was made for execution at Aligarh. The judgement-debtor objected that it was barred by limitation, as more than 12 years had elapsed since the passing of the decree. The court of first instance held that the present application was an application in continuation of the application for transfer, which was within time, and it dismissed the objection. The lower appellate court reversed this order on the ground that an application for transfer could not be said to be an actual demand for execution, though it might be a step in aid of execution. The decree-holder appealed.

Munshi *Benode Bihari* (with him Munshi *Gobind Prasad*), for the appellant, submitted that the application was within time, being merely in continuation of the application for transfer. He relied on *Ram Sahai* v. *Nanni* (2).

* Second Appeal No. 974 of 1911 from a decree of A. Sabonadiere, District Judge of Aligarh, dated the 19th of May, 1911, reversing a decree of Banke Behari Lal, Subordinate Judge of Aligarh, dated the 4th of January, 1910.

(1) (1897) I. L. R., 20 All., 78.

(2) Weekly Notes, 1886, p. 137.