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DAMBAR  
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SINGH.

property to be sold and stating the amount which is to be recovered from the property including costs. In a recent Full Bench case it was decided that the High Court's decree in a mortgage suit is the decree which is to be subsequently made absolute, and not the decree of the court below. We wish also to say that we do not desire to be understood as holding that it is not open to the court in mortgage suits to provide in its decree, under special circumstances, that costs are to be paid personally by a party instead of being recovered as part of the mortgage-debt. We allow the appeal, set aside the orders of both the courts below and dismiss the application for execution with costs in all courts.

*Appeal allowed.*

## REVISIONAL CRIMINAL.

*Before Justice Sir George Knox.*

EMPEROR v. KHUSHALI RAM \*

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November, 19.

*Criminal Procedure Code, sections 476 and 478—Commitment made by a Munsif in the United Provinces to the court of a Sessions Judge in the United Provinces in respect of offences alleged to have been committed in Bengal—Jurisdiction.*

Where in the course of a judicial proceeding before the Munsif of Fatehabad in the district of Agra certain offences under sections 193, 209, 210, 467 and 471 of the Indian Penal Code, which appeared to have been committed in Bengal were brought under the notice of the court, and the Munsif committed the person suspected of such offences for trial to the court of Session at Agra, Held that the court had jurisdiction under section 478 read with section 476 of the Code of Criminal Procedure to make the commitment.

THIS was a reference, made under section 185 of the Code of Criminal Procedure by the Sessions Judge of Agra, in the matter of a commitment made to his court by the Munsif of Fatehabad in that district. The following is the order of reference:—

“Khushali Ram has been committed to this court by the Munsif of Fatehabad in the Agra district on charges under sections, 467, 471, 193, 209 and 210 of the Indian Penal Code. The offence under section 467 is alleged to have been committed at Sirajganj in Bengal and the other offences are alleged to have been committed in the court of the Munsif of Sirajganj. It is pleaded by the accused that this court has no jurisdiction to try

\* Criminal Reference No. 872 of 1917.

the case. I have considered the point carefully and it seems to me that upon a literal interpretation of sections 476 and 478 of the Criminal Procedure code, when the commission of any offence specified in section 195 is brought to the notice of a court in the course of judicial proceeding, any first class magistrate of the same district, or, if the case is triable exclusively by the court of session, the court of session within the limits of whose jurisdiction the court making the preliminary inquiry is situate, is competent to try the case. As, however, it is possible to entertain some doubt as to whether this can be held to have been the real meaning of the Legislature in regard to an offence committed in a totally different court in a different province, and as the accused's pleader informs me that, if I rule against him, his client intends to go up in revision against such order, I think it is advisable, in order to settle the point once and for all and avoid waste of time, to refer the matter to the Hon'ble High Court. I therefore make this reference under section 185 of the Criminal Procedure Code to the Hon'ble High Court for instructions as to which court is competent to try this case.

"I may note that the Hon'ble High Court's order passed in Civil Revision No. 12 of 1917 is not on the record and does not appear to have been received here, and I am therefore not in a position to know whether the question of the jurisdiction of this court was discussed or determined in that order or not."

The Government Advocate (Mr. *A. E. Ryves*), for the Crown.

Mr. *J. M. Banerji*, the opposite party.

KNOX, J.—I have read the order of the Sessions Judge of Agra, dated the 15th of October, 1917. That order sets out that the Munsif of Fatehabad in the Agra district was of opinion that there was ground for inquiring into offences supposed to have been committed under sections 467, 471, 193, 209 and 210 of the Indian Penal Code. The offence under section 467 was alleged to have been committed at Sirajganj in Bengal and the same remark applies to the other offences. The accused was committed for trial to the Court of Session at Agra, the court to which the Munsif of Fatehabad could commit the accused person. The accused pleaded that the court of the Sessions Judge of Agra had no jurisdiction to try the case. The latter court acting under

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the provisions of section 185 of the Criminal Procedure Code has asked this Court to decide whether the offence shall be tried by that court or by some court having jurisdiction in the province of Bengal. The learned counsel who appears for Khushali Ram in this Court contends that the offence was committed within the province of Bengal and, as it is an offence referred to in section 195 of the Code of Criminal Procedure, it cannot be inquired into except with the previous sanction or on the complaint of the court before which the offence was committed in Bengal or of some other court to which such court is subordinate. I am unable to accede to this contention. Section 476 of the Code of Criminal Procedure contemplates not merely offences committed before the Munsif of Fatehabad but also offences brought under the notice of the Munsif in the course of a judicial proceeding. This was a judicial proceeding before the court of the Munsif of Fatehabad and the offences were brought to the notice of the Munsif in the course of that proceeding. Ordinarily, the Munsif would have under section 476 to send the case under such circumstances for inquiry or trial to the nearest Magistrate of the first class. He certainly would have no jurisdiction to send the case for inquiry or trial to any court within the province of Bengal, and, under section 478, he had jurisdiction to commit the accused to take his trial before the Court of Session, obviously the court of the Sessions Judge of Agra.

The words "referred to in section 195" which have found a place in section 476 of the Code of Criminal Procedure are merely words descriptive of the class of offences with which the Munsif can deal. They do not mean that section 195 governs section 476 to any extent other than that just mentioned.

Let the record be returned to the Sessions Judge of Agra who will proceed to deal with the case according to law.

*Record returned.*