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PRASAD.

The remarks which the learned Chief Justice has made as to the duty of practitioners in the districts, have my full concurrence, and I hope that those practitioners will bear them in mind.

STUART, J.—While I am still of opinion that the rule as laid down by JAMES, L. J., in the *International Financial Society v. City of Moscow Gas Company* (1) and again in *In re Helsby* (2) is the rule which I should like to see enforced in this Court, I am convinced upon the reasoning of the Chief Justice that the time has not yet come when it would be wise to enforce this rule. I, therefore, concur in the order passed.

By THE COURT:—Our order, therefore, is that we extend the time for the filing of these two appeals and declare the appeals admitted. Let a date be fixed under Order XLI, rule 11, of the Code of Civil Procedure for hearing.

*Appeal admitted.*

## REVISIONAL CRIMINAL.

1922  
April, 5.

*Before Mr. Justice Stuart.*

EMPEROR v. SUNDAR LAL.\*

*Criminal Procedure Code, section 476—Jurisdiction—Powers of court which has partly heard a case subsequently transferred to another court.*

The circumstance that a case has passed out of the hands of a court, as, for instance, by an order of transfer, after it has been partly heard, does not deprive the first court of its jurisdiction to take proceedings against a witness under section 476 of the Code of Criminal Procedure, nor is that jurisdiction taken away by the circumstance that the second court may have formed a different opinion as to the veracity of the witness. *King-Emperor v. Zalim Singh* (3) and *Girwar Prasad v. King-Emperor* (4) referred to.

THE facts of this case are fully set forth in the judgment of the Court.

Babu *Satya Chandra Mukerji*, for the petitioner.

The Assistant Government Advocate (Mr. *R. Malcomson*), for the Crown.

STUART, J.:—The facts out of which this application for revision has arisen, are as follows:—Mr. Parmanand Singh, Tahsildar of Basti, as Magistrate of the third class, tried in 1921 a criminal case in which Adhar Singh made a complaint against Devi Bakhsh Singh under the provisions of section 352/447 of the Indian Penal Code. In the course

\* Criminal Revision No. 112 of 1922, from an order of J. F. Sale, District Magistrate of Basti, dated the 2nd of March, 1922.

(1) (1877) L. R., 7 Ch. D., 241.

(2) (1894) 1 Q. B., 742.

(3) Weekly notes, 1901, p. 177.

(4) (1909) 6 A. L. J., 392.

of the trial, Sundar Lal, patwari, gave evidence. As a result of the examination of this evidence, Mr. Parmanand Singh came to the conclusion that Sundar Lal was not telling the truth in his evidence, and that he had falsified certain of his records. Mr. Parmanand Singh did not complete the decision of the case, for, after he had heard practically all the evidence, the case was transferred for decision to the court of Mr. Sarju Prasad, Honorary Magistrate, by an order of the District Magistrate of Basti. There is nothing before me to show why the order of transfer was passed. Such order was, however, passed and the case left Mr. Parmanand on the 3rd of September, 1921. Mr. Sarju Prasad decided it on the 7th of October, 1921. He acquitted the accused persons and found that the patwari, Sundar Lal, was telling the truth, and that the entries in his records were correct. Mr. Parmanand then proceeded to make a preliminary inquiry into the truth of the patwari's statements in the case in question, and into the nature of the entries in the patwari's records to which I have already referred. He appears to have lost no time in sending for the patwari and to have made a careful inquiry, in which the patwari was given every opportunity of meeting the charges. He finally passed an order under section 476 of the Code of Criminal Procedure and sent Sundar Lal, patwari, to the District Magistrate to be tried on certain charges. This order is dated the 25th of January, 1922. Sundar Lal applies in revision to have the order set aside.

The points taken by the learned counsel who represents Sundar Lal, are :—That Mr. Parmanand Singh having ceased to be seized of the case on the 3rd of September, 1921 had no jurisdiction to pass the order which he passed, and that, on the merits, the offences suggested have clearly not been committed upon the finding of Mr. Sarju Prasad.

The plea raises a question which, as far as I know, has not been decided by any court so far. If a court is of opinion that there is ground for inquiry into any offence referred to in section 195 of the Code of Criminal Procedure committed before it in the course of a judicial proceeding, even if the case has passed out of the hands of that court and been decided by another court, it cannot be held that the first court's powers under section 476 of the Code of Criminal Procedure came to an end.

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The circumstance that a case has passed out of the hands of a court, in so far as an effective order regarding its disposal is concerned, does not deprive the court of its jurisdiction under section 476 of the Code of Criminal Procedure, according to the view taken in this Court. In *King-Emperor v. Zalim Singh* (1), KNOX, A. C. J., decided that a Subordinate Judge was competent to take proceedings under section 476 of the Code of Criminal Procedure after another court had finally decided the case. In a decision of a Bench in *Girwar Prasad v. King-Emperor* (2), an order under section 476 of the Code of Criminal Procedure, passed considerably after the matter had left the hands of the court passing the order, in so far as its final determination of the matter before it was concerned, was upheld. The views enunciated by the Madras High Court in *Rahimadulla Sahib v. Emperor* (3) and *Aiyakannu Pillai v. Emperor* (4), were not accepted in their entirety by that Bench. The view which I take is that under the provisions of section 476 of the Code of Criminal Procedure, proceedings can undoubtedly be taken by a court after the decision in the substantive case has been delivered and the court is *functus officio* in respect of the decision of the substantive case. There can, I think, be no doubt on this point on the plain reading of the section. The further point remains: does the circumstance that another court has arrived at a different conclusion on the merits, take away this jurisdiction? I do not see how any finding by another court can take away this jurisdiction; so my opinion is that Mr. Parmanand had jurisdiction to pass this order.

I would not, however, leave the matter there. This Court has decided that it is the duty of the High Court, when matters such as these are brought to its notice, to satisfy itself that there has been no unreasonable delay, that the orders are not vexatious and that the charges are not of a flimsy nature, and I consider it necessary to examine the order of Mr. Parmanand Singh from these points of view. There has certainly been no unnecessary delay in this matter. Mr. Parmanand Singh was well advised in awaiting the decision of the case before he proceeded with the section 476 (Criminal Procedure Code) proceedings, and it appears that, once the

(1) Weekly Notes, 1901, p. 177.

(2) (1909) 6 A. L. J., 392 (398).

(3) (1907) I. L. R., 31 Mad., 140.

(4) (1908) I. L. R., 32 Mad., 49.

case had been decided, he put the inquiry through as expeditiously as he could. I am perfectly ready to examine the matter upon its merits. For obvious reasons—largely in the interests of the applicant himself—I do not propose to arrive at a definite conclusion. If I were satisfied with Mr. Sarju Prasad's reasons for believing the patwari to be telling the truth and for believing the entries made in the patwari's records to be correct and genuine entries, or considered his reasons of such weight as practically to conclude the matter, I should have had no hesitation in setting aside this order, and if I were satisfied that Mr. Parmanand Singh had passed the order under section 476 of the Code of Criminal Procedure for insufficient reasons, I should have been ready, apart from anything which Mr. Sarju Prasad had said, to set aside that order. But upon the merits I do not find Mr. Sarju Prasad's reasons convincing, and I find Mr. Parmanand Singh's proceedings to have been most careful and his order to have been well thought out. It would be unfair to the applicant to carry the matter further. For the above reasons, I dismiss this application.

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*Application dismissed.*

## REVISIONAL CIVIL.

*Before Mr. Justice Gokul Prasad.*

RAM SAHAI, CHHIDDA LAL (PLAINTIFFS) v. THE EAST INDIAN RAILWAY COMPANY (DEFENDANT).\*

1922  
April, 19

*Act No. IX of 1890 (Indian Railways Act), section 77—Suit against a railway—Notice of suit—Notice to be served on the Agent of the defendant railway.*

The notice required by section 77 of the Indian Railways Act, 1890, as a condition precedent to the institution of a suit for damages against a Railway Company must be served on the Agent, and cannot be replaced by a notice served on the Divisional or General Traffic Manager. *Great Indian Peninsula Railway Company v. Chandra Bai* (1) and *Great Indian Peninsula Railway Company v. Ganpat Rai* (2) referred to.

THE facts of this case, so far as they are necessary for the purposes of this report, appear from the judgment of the Court.

*Munshi Panna Lal*, for the petitioner.

*Pandit Ladli Prasad Zutshi*, for the opposite party.

GOKUL PRASAD, J. :—The plaintiff applicant despatched

\* Civil Revision No. 151 of 1921.

(1) (1906) I. L. R., 28 All., 552.  
(2) (1911) I. L. R., 33 All., 544.