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SECRETARY
OF STATE
FOR INDIA
IN COUNCIL.
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and these findings are sufficient to dispose of the case in the plaintiff's favour and he was rightly given a decree. I would dismiss the application.

Application dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Lindsay.

EMPEROR *v.* RAMESHWAR LAL.*

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April, 22.

Criminal Procedure Code, sections 476 and 478—Order of Civil Court committing accused to Court of Session—Criminal Procedure Code, section 195 (1) (c)—“Produced”—Civil Procedure Code, order VII, rule 17.

Held. (1) that a civil court, after starting proceedings under section 476 of the Code of Criminal Procedure and then acting under section 478 is in no way debarred from committing a person who seems to have committed an offence before it to the Court of Session, by reason of the fact that no appeal lies from such an order; (2) that a document, e.g., an account book, is none the less “produced” before a court, within the meaning of section 195(c), because it is brought into court for the purpose of verifying an extract therefrom made in the plaint according to the provisions of order VII, rule 17, of the Code of Civil Procedure.

THIS was an application in revision against an order of a Munsif passed under section 478 of the Code of Criminal Procedure, committing the applicant to the Court of Session on charges under sections 196, 467 and 471 of the Indian Penal Code. The facts of the case, so far as they are necessary for the purposes of this report, appear from the judgement of the Court.

Sir Charles Ross Alston, Mr. A. P. Dube and Babu Indu Bhushan Banerji, for the applicant.

* Criminal Revision No. 215 of 1927, from an order of Muhammad Junsid, Munsif of Saidpur, dated the 7th of March, 1927.

The Assistant Government Advocate (Dr. *M. Wali-ullah*), for the Crown.

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LINDSAY, J. :—This is an application in revision directed against an order purporting to be passed under section 478 of the Code of Criminal Procedure by the Munsif of Saidpur in the Ghazipur district.

I need not refer in any detail to the facts. It is sufficient to say that the applicant before me, Rai Saheb Rameshwar Lal, was the plaintiff in a civil suit in one of the courts at Ghazipur. After that suit had been disposed of, proceedings were started against Rameshwar Lal under the provisions of section 476 of the Code of Criminal Procedure, it being considered apparently that there were reasons for supposing that Rameshwar Lal, in the course of the civil suit just referred to, had been guilty of the offences punishable under sections 196, 467 and 471 of the Indian Penal Code. It is admitted before me that the Munsif was competent to deal with this case when it started under section 476. After the case had been thus initiated in the Munsif's court a successful application was made to the District Judge to transfer the proceedings to the court of the Subordinate Judge of Ghazipur. An application was made to this Court against the order of the District Judge, with the result that the District Judge's order was reversed and the proceedings were sent back again to the court of the Munsif of Saidpur. After the resumption of the proceedings in the court of the Munsif, so far as I understand, evidence was taken on behalf of the opposite party, and from one order of the Munsif I gather that Rameshwar Lal was invited to produce evidence before the Munsif to rebut the evidence which had been given on the other side. A statement was made to the Munsif by the learned counsel for Rameshwar Lal that he declined

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to put forward any evidence by way of rebuttal of the evidence which had been produced by the opposite party. Thereupon the Munsif proceeded to make an order under section 478 of the Code of Criminal Procedure directing the accused person, Rameshwar Lal, to be committed to the Court of Sessions for trial on the offences mentioned above.

It is now sought before me to attack this order of the Munsif on various grounds. It has been argued, in the first place, that the proceedings having started in the court of the Munsif under section 476 of the Criminal Procedure Code, the Munsif was bound to continue the proceedings under that section and to do everything which that section required him to do. In other words, it is contended that the Munsif, in the circumstances, had no option, if he found there was a *prima facie* case against Rameshwar Lal, but to send a complaint to a Magistrate. It is argued that having started proceedings under section 476 the Munsif had no authority to proceed under section 478 and make an order of commitment. In my opinion this argument is altogether untenable. In support of the argument it is pointed out that where a court takes action under section 476 and directs a complaint to be laid before a Magistrate there is an appeal against the order directing the complaint to be made. On the other hand, it is argued that if the procedure adopted by the Munsif in this case is allowed and it is competent to him to pass an order under section 478, then the right of appeal, which the person affected would have, had the proceedings been taken under section 476, is taken away.

It is quite plain to me that there is no right of appeal against an order passed under section 478. There can be no right of appeal unless the right is conferred by the Statute, and the only right of appeal

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which is to be found in this chapter XXXV is referred to in section 476B. That certainly gives a right of appeal against an order passed under section 476. There is no corresponding provision relating to the case of an order under section 478, and I am satisfied that there is no right of appeal. It appears to me to be impossible to argue that because the Munsif as a civil court has the option under section 478 of sending the case to a Magistrate under section 476 or of committing it direct to the Court of Sessions, he is debarred from the exercise of that option because by passing an order under section 478 he deprives the person accused of the offences of a right of appeal. It is not for me to speculate why no right of appeal has been given against an order passed under section 478. The fact remains that there is no right of appeal against such an order. I hold, therefore, that the order of the court below cannot be attacked on this ground. It is to be mentioned here that two out of the three offences imputed to the accused, namely, the offences punishable under sections 467 and 471 of the Indian Penal Code, are offences triable exclusively in the Court of Sessions.

Another point which has been raised is that in any case the offences now charged do not fall within the description of the offences specified in section 195 (1) (c) of the Code of Criminal Procedure. This argument is raised with reference to the two charges under sections 467 and 471 of the Indian Penal Code. It is suggested that it cannot be said that those offences were committed in respect of a document "produced or given in evidence in the civil court." In order to understand this plea it is necessary to state that the accused person here, Rameshwar Lal, was the plaintiff in the civil suit. He brought his suit on the basis of an entry in a book of account and the

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copy of the entry accompanied the plaint. Under order VII, rule 17, of the Code of Civil Procedure, when a plaintiff is suing upon an entry in a book of accounts, he has to file with his plaint a certified copy of the entry in the book and he has also to produce the book in court in order to have the copy verified either by the court or by an officer whom the court appoints. In this case the account book was produced in court in the usual way. The copy of the entry which was filed with the plaint was compared with the original by the Munsarim and after the Munsarim had checked the copy he marked the account book and returned it to the plaintiff in the ordinary way of procedure. The suggestion appears to be that because this book was only produced before the Munsarim for the purpose indicated in order VII, rule 17, there was no production in court. I must decline to entertain any argument of this kind. The account book was most certainly produced in court and, therefore, any offence committed in respect of this account book has certainly been committed in respect of a document produced in court. It may be that the book was never called to the court after it had been shown to the Munsarim. It seems that the case was decided on the oath of the defendant. That, however, makes no difference to the situation. The account book was clearly produced in court and, therefore, the offences under sections 467 and 471 are offences of the kind described in section 195(1) (c) of the Code of Criminal Procedure. These are the only points which arise for decision before me and I decide them both against the applicant.

Sir *Charles Ross Alston* informed me that his client desired me to hear something about the facts of the case, but I refused to go into the facts. It seems to me that there is no need for me to consider any facts

at all. The order which is passed by the Munsif and which is attacked here seems to me to be legally unassailable. I dismiss this application.

Application dismissed.

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APPELLATE CIVIL.

Before Justice Sir Cecil Walsh, and Mr. Justice Ashworth.

DEBI DAS (DEFENDANT) v. MAHARAJ RUP CHAND
(PLAINTIFF).*

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April, 25.

Civil Procedure Code, order XXI, rules 58 to 63—Attachment—Application by alleged mortgagee to have his mortgage notified—Dismissal of application—Suit by mortgagee—Limitation—Act No. IX of 1908 (Indian Limitation Act), schedule I, article 11.

A person who claimed to be the holder of a mortgage on some property which was the subject of an attachment, applied to the executing court and asked that his mortgage might be notified. The court, largely because the applicant gave it no assistance by supplying the necessary information, found that no mortgage was proved to exist, and dismissed the application.

Held, that rule 63 of order XXI of the Code of Civil Procedure applied and it became necessary for the applicant to sue within one year to establish his right as mortgagee. *Durga Prasad v. Mansa Ram* (1) and *Ganesh Krishna v. Damoo* (2), dissented from. *Venkataratnam v. Ranganayakamma* (3) and *Lakshumanan Chettiar v. Parasivan Pillai* (4), referred to.

Held, further (by ASHWORTH, J.), that headings to chapters of groups of sections—unlike marginal notes—can be looked at as a guide to the interpretation of the sections to which they relate.

* Second Appeal No. 349 of 1925, from a decree of Aghore Nath Mukerji, Additional Subordinate Judge of Bareilly, dated the 22nd of November, 1924, reversing a decree of Lakshmi Narain Misra, Additional Munsif of Bareilly city, dated the 31st of May, 1924.

(1) (1904) 1 A.L.J., 531. (2) (1916) I.L.R., 41 Bom., 64.

(3) (1918) I.L.R., 41 Mad., 985. (4) (1919) 37 M.L.J., 159.