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although it has been argued because the finding of fact in this case is that the agent was authorized to accept income-tax notices. As I have said, the finding is fully justified.

But it is necessary for the consideration of the second question in its present form

"whether the said notice served on a servant who was not authorised in that behalf was validly served."

COURTNEY TERRELL, C. J.

That question, which it is said would seem, having regard to the finding of fact, to be unnecessary in the case, was directed to be formulated by the Court and that is why I have referred to these considerations. If the authority can be implied from the nature of the work carried on by the agent on behalf of his principal it is good service and in the case of a recognized agent carrying on business in the name of the principal that would to my mind imply authority to accept notices of this kind, because the acceptance of notice is a matter which is connected with such trade or business.

I would, therefore, answer the first question in the negative, and the second question in view of the finding of fact does not arise. The assessee will pay Rs. 200 as costs.

JAMES, J.—I agree.

APPELLATE CRIMINAL.

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Dec. 8.

Before Wort and Khaja Muhammad Noor, JJ.

NARAYAN MEHER

v.

DHANA MEHER*

Code of Criminal Procedure, 1898 (Act V of 1898), sections 476, 476A and 476B—Additional District Judge, appellate order of, making complaint which the subordinate court had refused to do—appeal, whether lies to High Court.

* Criminal Appeal no. 4 of 1930, from an order of the Additional District Judge of Sambalpur, dated the 16th June, 1930.

An appeal lies to the High Court from an order of the Additional District Judge making a complaint on appeal under section 476B, Code of Criminal Procedure, 1898, when the subordinate Court had refused to do so under section 476.

Ranjit Narain Singh v. *Raja Rambahadur Singh* (1), followed.

Ahmadar Rahman v. *Dwip Chand Chowdhury* (2) and *Muhammad Idris* v. *The Crown* (3) dissented from.

The facts of the case material to this report are stated in the judgment of Wort, J.

S. N. Das Gupta, for the appellants.

C. M. Acharya, for the respondents.

WORT, J.—This is an appeal the facts of which arise out of a suit on a money bond which purports to have been executed on the 1st June, 1921. The suit was dismissed by the Subordinate Judge on the 22nd November, 1926. There was then an appeal to the Additional District Judge and the suit met the like fate before that Court. There was then an appeal to the High Court and in a short judgment by the learned Judges of that Court it was stated that the Courts below had come to the conclusion that the bond in question was fabricated with a view to saddle liability in the name of a dead person upon the contesting defendants who had nothing to do with the alleged loan or the execution of the bond. As a result of that there was an application by the respondents to this appeal to the Subordinate Judge to prosecute them for forgery. That application was dismissed and there was an appeal to the Additional District Judge. The Additional District Judge in the result reversed the decision of the Subordinate Judge. On the 16th June the case having come up before him there was a preliminary objection by the appellants and the substance of that objection was

(1) (1925) I. L. R. 5 Pat. 262.
(2) (1927) I. L. R. 55 Cal. 765.
(3) (1924) I. L. R. 6 Lah. 56.

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that no appeal lay to the District Court. That objection was overruled and in so doing the learned Additional District Judge stated that the appellants should take immediate steps to call from the registration office the original document which according to them contained an admitted thumb impression of Musst. Giridha since deceased. Then on the 18th June that document appears to have been produced before the Judge and on the 23rd June he made the order against which this appeal is preferred.

Although as I have stated the original document which bore the admitted thumb impression of Musst. Giridha had been produced before the learned Additional District Judge, he makes no mention of that fact nor makes any statement as to whether he considered the admitted thumb impression on the document so produced with the thumb impression on the document in dispute; and it is contended by the learned Advocate who appears in support of this appeal that without that decision this prosecution ought not to have been ordered. Now before dealing with that question I should mention two matters which come before us before the question which I have just mentioned comes to be decided: the first is a preliminary objection on behalf of the Crown that no appeal lies to this Court. The argument is based on a decision of the Calcutta High Court in *Ahmadar Rahman* v. *Dwip Chand Chowdhury*(1). In that decision the High Court construed section 476 and came to the conclusion that no appeal lay from the decision of the District Judge to the High Court in a matter of this kind. In that decision, that is to say, in the decision of the Calcutta High Court, two cases were considered, one, the case of *Muhammad Idris* v. *Crown*(2) which was a decision to the same effect as that to which the Calcutta High Court came, and the other, a decision of the Patna High Court, being the case of *Ranjit Narain Singh*

(1) (1927) I. L. R. 55 Cal. 765.
(2) (1924) I. L. R. 6 Lah. 56.

v. *Raja Rambahadur Singh*(1). The view of the Calcutta High Court was that the decision in this Court was wrong. The decision in *Ranjit Narain Singh* v. *Raja Rambahadur*(1) is to the effect that on the construction of section 476, a right of appeal is given to the High Court from the decision of the District Judge who first ordered the prosecution under section 476. At first it was contended that having regard to the state of the authorities this matter ought to be referred to a Full Bench of this Court, but it would seem that when reference is made to section 195 of the former Code of Criminal Procedure, it is difficult to believe that the Legislature in section 476 intended otherwise than as the learned Advocate for the appellants before us contends, namely, that where a Court orders a prosecution there is in law an appeal to this Court. In any event there seems to be no sufficient reason, having regard to the decision in *Ranjit Narain Singh's*(1) case to which I have referred, to refer this matter to a Full Bench of this Court.

There is a further contention by the learned Advocate on behalf of the appellants that the appeal to the Additional District Judge was not competent and, therefore, his order is illegal; but that point has not been pursued.

It becomes, therefore, necessary to decide the contention which he now puts forward as to whether the prosecution, on the facts ought not to have been ordered, is one that can not be maintained. The substance of the argument is that in looking at the decision of all the Courts with the exception perhaps of the High Court all that has been made out is that the plaintiffs have failed to prove their case; and I think, when reference is made to the decision of the learned Subordinate Judge, that contention is right.

(1) (1925) I. L. R. 5 Pat. 262.

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The learned Subordinate Judge in the course of his judgment states thus:

"In my opinion the evidence about the execution of the bond in suit by Musammat Giridha is of the flimsiest character. It is deserving of consideration that no thumb impression of Musammat Giridha was taken on the bond. Considering the evidence and not losing sight of the natural probabilities I am not disposed to hold that Musammat Giridha executed the bond in question."

It is contended that that is the substance of the judgment and although that may be sufficient to warrant the Court in dismissing the plaintiffs' claim in a civil suit, yet it was not enough to warrant a prosecution for forgery against those who put forward the document as part of their evidence.

There was at one time, and it is made clear by the petition of complaint of the Additional Judge himself, a suggestion that an expert witness should be called to compare the two thumb impressions, that is to say, the thumb impression on the bond in dispute and the admitted thumb impression on the document which was produced by the registration office and in the list of witnesses made by the learned Additional District Judge reference is made to that thumb impression expert. It is perfectly clear that if a Government expert be examined to examine the two thumb impressions, his evidence cannot fail to have a very material effect upon the prosecution; in other words, if his evidence or report be that the thumb impressions are the same, it is difficult to see how the prosecution in this case can succeed.

In my judgment, therefore, the reasons given by the Additional District Judge in ordering the prosecution are not sufficient. The case will go back for the Government thumb impression expert to be examined by the learned Additional District Judge after which he will make such order as in the circumstances is necessary.

KHAJA MOHAMAD NOOR, J.—I agree.

Appeal allowed.