

1879

IN re THE
NEW FLEMING
SPINNING &
WEAVING
COMPANY
(LD.) IN
LIQUIDATION.

of the company. For these reasons we think that the learned Judge was right in holding that, in order to make the company liable, it must appear on the face of the bill, or note, that it was intended to be drawn, accepted, or made, on behalf of the company, and, therefore, in refusing the claim of the Bank of Bombay, to prove against the estate of the company for the amount of the bill in question, as the question involves the construction of an Act, which, in our opinion, has not been the subject of a distinct judicial decision, both parties should, we think, pay their own costs of appeal.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Mr. Justice Pinhey and Mr. Justice F. D. Melwill.

IMPERATRIX v. POPAT NATHU.*

December 17.

The Code of Criminal Procedure (Act X of 1872), Secs. 471, 474—Power of Civil Court to commit.

The power of a Civil Court to commit a case to the Court of Session, after completing the preliminary inquiry, is given by section 474 of the Code of Criminal Procedure, and is restricted to the class of cases provided in that section, viz., where offences, exclusively triable by a Court of Session, are committed before the Civil Court.

Section 471 deals with a more extended class of cases, viz., all those mentioned in sections 467, 468 and 469, in which not merely a Civil Court but any Court, civil or criminal, and whether possessing or not possessing the power to commit to the Court of Session, is of opinion that there is sufficient ground for holding an inquiry; and it enacts the procedure to be followed by the Court, which may elect to adopt one of two courses, that is to say, it may either commit a case to the Court of Session, if and where it has the power to do so, or, if it has not that power or is not disposed to exercise it, it may send the case to a Magistrate having power to try or commit for trial the accused person for the offence charged.

THIS was a reference, under section 296 of the Code of Criminal Procedure (Act X of 1872), by S. H. Phillpotts, Session Judge of Ahmedabad.

It arose out of a civil suit in which one Nathu, the father of the accused, was plaintiff and one Bulákhí was defendant in the Court

*Criminal Reference, No. 188 of 1879.

1879

IMPERATRIX
v.
POPAT NATHU

of Ráo Sáheb Lálshankar, Subordinate Judge of Dhandhuka. The suit was for money due on a balance of account in which the accused, who had written an account book, was called on to produce it and give his evidence. The defendant impugned the book as a forgery, and the Subordinate Judge, after holding and completing an inquiry under section 474 of the Code of Criminal Procedure, committed both the father and the son to take their trial before the Court of Session at Ahmedabad. The case of the father, Nathu, is not material for the purposes of this report. The son was committed and tried on five charges of forgery under section 463 of the Indian Penal Code, and one charge, under section 471, of uttering a forged document; and on all these charges he was acquitted. On the first five charges the Session Judge held that the Subordinate Judge had no power to commit, the offences of forgery not having been committed before the said Subordinate Judge's Court within the meaning of section 474 of the Code of Criminal Procedure; and on the sixth, that the accused Popat, not being a party to the suit within the meaning of section 469, was not amenable under section 471. The Session Judge was of opinion that the committal was not merely irregular, but bad. He, therefore, submitted the case in order that the High Court should annul the commitment, and direct a new committal by a competent authority.

Jardine, with *Shántáráim Náráyan*, in support of the reference.—The question for determination is whether the Subordinate Judge had power to commit the accused. He has professedly acted under section 474 of the Code. That section requires two conditions to be fulfilled before a Civil Court acquires jurisdiction to commit a criminal case: the offences must be exclusively triable by a Court of Session, and they must have been committed in view of the Civil Court. In this case the former condition is satisfied, but not the latter. Section 471 is not applicable. The charges of forgery are those which fall within section 469, which contemplates offences relating to documents committed by a party to proceedings in a Civil Court, and requires that a sanction shall be given by the Court before the party can be proceeded against. Section 471 provides that in any such case where the Court thinks that there is sufficient ground for inquiry it may commit the case—

1879

IMPERATRIX
v.
POPATNATHU.

when the case is one committable by virtue of the power given to a Civil Court by section 474, but not otherwise, or it may send the case for inquiry to a Magistrate.

Nánábhái Haridás, Government Pleader, *contra*.—Section 469 deals with the matter of sanction, and has no application to the question of jurisdiction. The case falls within section 471, although the Subordinate Judge has by a clerical error quoted section 474 in his order of commitment. These two sections must be read as independent of one another. So read, section 471 clearly gives the Subordinate Judge the power of committal which he has exercised in this case. The Session Judge says the word “commit” in that section does not necessarily mean ‘commit to the Court of Session’, but merely means “that instead of sending an order to the Magistrate to inquire into the case, the Court should commit, *i.e.* send the accused or hold him to bail to appear before the Magistrate.” This construction is evidently wrong. Section 471 completely meets the present case. [MELVILL, J.—Your construction leads to this anomaly: a Civil Court may commit a case to the Court of Session under section 471; but the Court of Session may not be bound to accept the committal under section 231, which mentions section 474, but not section 471.] That section as well as section 33 deals with commitments by duly-empowered Magistrates, not by Civil Courts, to whom the special provision contained in section 471 alone should be applied. Those sections do not say that there may not be valid commitments by others than Magistrates duly empowered in that behalf.

PINHEY, J.—Popat Nathu was committed by the Subordinate Court of Dhandhuka for trial before the Sessions Court at Ahmedabad on five charges of forgery, under section 463 of the Indian Penal Code, and one charge of fraudulently using as genuine a forged document under section 471 of the Indian Penal Code.

The Court of Session at Ahmedabad acquitted Popat Nathu on the charge under section 471 of the Indian Penal Code, but has referred the case to this Court for orders with reference to the charges of forgery, on the ground, that the committal of the accused on the charges by the Subordinate Court to the Court of Session was without jurisdiction, as the Subordinate Court, under section 471 of the Code of Criminal Procedure, could only have

1879

IMPERATRIX
 v.
 POPAT NATHU,

sent the case to a Magistrate for inquiry, and was not competent to make the committal under section 474 of the Code of Criminal Procedure, inasmuch as the offence charged was not committed before the Subordinate Court.

Section 469 of the Code of Criminal Procedure merely provides that no party to proceedings in a Civil or Criminal Court in which a document has been given in evidence shall be prosecuted for the forgery of that document under section 463 of the Indian Penal Code, nor, if the document be forged, for fraudulently using that document as genuine under section 471 of the Indian Penal Code, without the sanction of the Court in which the document was given in evidence, or of some other Court to which such Court is subordinate.

Popat Nathu was not a party to the proceedings before the Subordinate Court, and he was committed by the Subordinate Court itself. Therefore section 469 of the Code of Criminal Procedure need not be further noticed, and it has been necessary to notice it at all, only because of the reference to it in section 471 of the Code of Criminal Procedure to which it is necessary next to refer.

Section 471 of the Code of Criminal Procedure provides that when a Civil or Criminal Court is of opinion that there is sufficient ground for inquiry into any charge mentioned in section 469 (and other specified sections) of the Code of Criminal Procedure, such Court, after making such preliminary inquiry as may be necessary, may adopt one of two courses: (1) it may commit the case itself, or (2) it may send the case to the competent Magistrate. This section 471 of the Code of Criminal Procedure says nothing about the offences contemplated by its provisions being committed before the Court, and its reference to section 469 and other sections is clearly intended merely to indicate the offences in respect of which section 471 is intended to operate. The offence of forgery, defined in section 463 of the Indian Penal Code, is one of the offences mentioned in section 469 of the Code of Criminal Procedure, and is, therefore, one of the offences contemplated in section 471 of the Code of Criminal Procedure.

The Session Judge in sending up this case has expressed the opinion that the words "may either commit the case itself" in section 471 of the Code of Criminal Procedure, mean only that "the Court should commit, *i.e.*, send the accused, or hold him to bail to appear before the Magistrate." This argument, in his own words, is this: "The question now arises as to the word 'commit' used in section 471, it being contended for the accused Popat that the word commit does not necessarily mean 'commit to the Court of Session': and reference is made to section 474 of the same Code in which it is enacted that in any case triable by the Court of Session exclusively, any Civil Court, before which such offence was committed, may, instead of sending the case for inquiry to a Magistrate, complete the inquiry itself, and commit or hold to bail the accused person to take his trial before the Court of Session.

"I am of opinion that this contention is right; for, had the Civil Courts power to commit for trial to the Session Court under section 471, there would have been no reason to have again given them that power in some of the cases, as under section 474. Moreover, the power that is conferred on a Civil Court to act as a Magistrate under section 474 is not given under section 471. I, therefore, hold that the words 'commit, &c.' in section 471 merely mean that, instead of sending an order to the Magistrate to inquire into the case, the Court should commit, *i.e.*, send the accused or hold him to bail to appear before the Magistrate."

This opinion is not in accordance with the real meaning of the section. The committal contemplated in section 471 of the Code of Criminal Procedure is undoubtedly a committal for trial before the Court of Session; but the section merely prescribes the procedure, and does not confer on the Court the power of committal, and this is why section 474 was enacted. Consistent with this view is the provision of section 231 of the Code of Criminal Procedure, which requires a Court of Session to take cognizance of cases committed under section 474, but not under section 471.

Section 471, after prescribing two modes of procedure as stated above, immediately goes on to say what a Magistrate is to do if the case is sent to him, but says nothing as to what a Civil

1879

IMPERATRIX
v.
POPATNATHU

1879

IMPERATRIX
 v.
 POPATNATHU.

Court is to do, if it intends to commit the accused itself. To see what powers of committal a Civil Court has, we must refer to section 474, and there we have them distinctly stated, at the same time that they are limited to cases triable by the Court of Session exclusively, and to such cases only when the offence charged has been committed before the Civil Court itself. If the offence has not been committed before the Court itself, or if the offence be one not exclusively cognizable by the Court of Sessions, the Civil Court, which considers further inquiry necessary, cannot commit the case to the Court of Session, but must send it to a competent Magistrate.

In the present case, if Popat Nathu committed forgery, as the Subordinate Court of Dhandhuka considered, he did not commit the offence before the Court at Dhandhuka, and, therefore, that Court had no power to commit him for trial to the Court of Sessions on any such charge, and the committal on the charges 1 to 5 on the record of the Session Court must, therefore, be set aside and quashed.

Our order quashing the commitment of Popat is to be without prejudice to any further proceedings which may be taken against him with the sanction of the Subordinate Court at Dhandhuka.

F. D. MELVILL, J.—It is not disputed that section 474 of the Criminal Procedure Code cannot apply to the present case, which has been referred for the orders of the Court by the Session Judge, inasmuch as the offences charged were not committed before the Court which committed the case for trial. The only question, then, that we have to decide is, whether section 471 by itself gives to Civil Courts the powers of committal in the cases referred to in that section. My view is, that the section merely lays down the procedure that may be followed in certain cases, and does not confer any new jurisdiction on a Court. If this view is not correct, and if, as argued by the Public Prosecutor, the section does give Civil Courts powers to commit, then section 474 would seem to be superfluous, and the following anomaly exists, namely, that a Civil Court may commit a case for trial, while the Sessions Court cannot accept the commitment under section 231—section 471 not being included in the exceptions mentioned in that sec-

tion. But if we read section 471 as merely laying down the procedure that may be followed by the Court which may have jurisdiction to act in either one way or the other, then there is nothing in that section inconsistent with section 474, which lays down clearly the cases in which a Civil Court may commit itself, and specially gives it the necessary jurisdiction, which makes its committal of a case good, and one that can be accepted by a Session Court under section 231.

I am unable to concur with the Sessions Judge in his rendering of the words in section 471 "commit the case itself"; but, for the above reasons, I am of opinion that the Subordinate Judge had no power to commit the accused for trial on the charges concerning which the present reference has been made, and I would, therefore, annul the commitment.

Order accordingly.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice (Officiating), and Mr. Justice M. Melvill.

NYA'NCHANDRA (ORIGINAL PLAINTIFF), APPELLANT, *v.* NA'RA'YAN
(ORIGINAL DEFENDANT), RESPONDENT.*

1880
February 2

Practice—Appeal—Civil Procedure Code Act (VIII of 1859), Sec. 348.

Where the defendant does not appeal against or object to the amount awarded by the first Court to the plaintiff, it is not open to the Appellate Court to reduce it.

THIS was a second appeal from the decision of C. H. Shaw, Judge of the District Court of Belgaum, in appeal No. 26 of 1879, amending the decree of Chinto Náráyan, Subordinate Judge (Second Class) at Athni, in Original Suit No. 651 of 1878.

The plaintiff sued the defendant for Rs. 306, being principal and interest due on a mortgage bond executed by the defendant to the plaintiff on the 11th November 1873. The plaintiff prayed

* Second Appeal, No. 417 of 1879.