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was not the representative of the first adopted son, and that the suit was not barred by limitation. The appeal, therefore, must be dismissed with costs.

COYAJEE, J.:—I am of the same opinion.

Appeal dismissed.

R. R.

CRIMINAL REVISION.*

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Coyajee.

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February 11.

In re BHAU VYANKATESH CHAKORKER*.

Criminal Procedure Code (Act V of 1898), section 195 (c)—Document produced or given in evidence—Production either by a party to a proceeding or by any one else—Forged document.

In section 195 (*c*) of the Criminal Procedure Code, the phrase "a document produced or given in evidence", means a document produced or given in evidence either by the party who is alleged to have committed the offence or by any one else.

THIS was an application under Criminal revisional jurisdiction against an order passed by D. B. Unde, First Class Magistrate at Pandharpur, confirmed by D. B. Cooper, Additional Sessions Judge of Sholapur.

Prosecution for forgery.

Petitioner No. 2 owned a house at Pandharpur which he sold by a registered sale-deed on October 28, 1920, to one Ibrahim, younger brother of the complainant, Shahabuddin. On March 28, 1921, Ibrahim brought a suit (No. 295 of 1921) against petitioner No. 2 in the Court of the Second Class Subordinate Judge at Pandharpur for possession of a portion of the house purchased by him. Petitioner No. 2 by his written statement contended that before the passing of the aforesaid sale-deed he had passed a kararnama, dated December 11, 1919, by which he had given the house in

* Criminal Application for Revision No. 403 of 1924.

dispute to his wife, Chandrabhagabai, for her maintenance. The kararnama was written by petitioner No. 1, and was attested by petitioners Nos. 3 and 4. On September 14, 1921, Chandrabhagabai filed an application in the case, through her pleader, that she might be brought on the record as a co-defendant.

Sometime thereafter proceedings were instituted against petitioner No. 1 under section 110, Criminal Procedure Code, in the Court of the Sub-Divisional Magistrate at Pandharpur. The kararnama was produced and marked Exhibit 18 in the case.

In Suit No. 295 of 1921 a summons was issued by the Subordinate Judge at Pandharpur to the Sub-Divisional Magistrate to produce the kararnama, and the latter sent it on January 22, 1923. Another summons in respect of the kararnama was issued by the same Court and the Sub-Divisional Magistrate again sent the kararnama on July 26, 1923, when it was exhibited in the suit proceedings.

On July 18, 1923, the complainant, Shahabuddin, filed a complaint in the Court of the First Class Magistrate at Pandharpur against petitioners Nos. 1 to 4, charging them with offences under sections 465 and 467 of the Indian Penal Code, alleging that the kararnama was forged. The petitioners presented an application to the Magistrate contending that the case was governed by section 195 (*c*), Criminal Procedure Code, and that, therefore, he could not take cognizance of the alleged offences in absence of a complaint in writing under section 476 of the Code.

The application was rejected.

The petitioners applied to the Additional Sessions Judge for the revision of the order passed by the Magistrate. The learned Judge rejected the application on the ground that a complaint under section 476,

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Criminal Procedure Code, was not necessary, since the kararnama was not produced or given in evidence within the meaning of section 195 (*c*), Criminal Procedure Code, either in Suit No. 295 of 1921 or in the proceedings under section 110, Criminal Procedure Code.

The petitioners applied to the High Court.

P. B. Shingne, for the petitioners.

D. R. Manerikar, for the complainant.

S. S. Patkar, Government Pleader, for the Crown.

MACLEOD, C. J. :—The four petitioners apply to this Court for revision of an order passed on April 23, 1924, by the First Class Magistrate of Pandharpur holding that it was competent to him, on the complaint of the opponent, Shahabuddin Babaji, to take cognizance of some of the offences referred to in section 195 (*c*) of the Code of Criminal Procedure, and that a complaint in writing under section 476 was unnecessary. The Additional Sessions Judge rejected the petitioners' application for revision on October 13, 1924.

The second petitioner owned a house at Pandharpur which was sold by a registered sale-deed on October 28, 1920, to one Ibrahim Babaji, younger brother of the complainant. On March 28, 1921, Ibrahim Babaji brought a suit (No. 295 of 1921) against the second petitioner in the Court of the Subordinate Judge at Pandharpur, for possession of a portion of the house. The second petitioner put in a written statement, stating that the house was given by him to his wife, Chandrabhagabai, for maintenance during her life-time by a kararnama, dated December 11, 1919. The kararnama was written by petitioner No. 1, and was attested by petitioners Nos. 3 and 4. In the same proceeding Chandrabhagabai appeared by a pleader

and applied that she should be made a party to the suit. The petitioners contend that the effect of what then happened was that the kararnama was produced in these proceedings by Chandrabhagabai's pleader and shown to the presiding Judge. Sometime thereafter proceedings were instituted against petitioner No. 1 under s. 110, Criminal Procedure Code, in the Court of the Sub-Divisional Magistrate at Pandharpur; the kararnama was produced there and marked as Exhibit 18 in the case. In Suit No. 295 of 1921 a summons was issued by the Subordinate Judge at Pandharpur to the Sub-Divisional Magistrate to produce the kararnama in Court on December 7, 1922; it was accordingly sent with a clerk to the Subordinate Judge's Court on January 22, 1923; and it bears an endorsement of the clerk. In obedience to another summons of the Subordinate Judge's Court the Sub-Divisional Magistrate again sent the kararnama to that Court on July 26, 1923, and the Court subsequently ordered it to be exhibited. On July 18, 1923, Shahabuddin Babaji filed a complaint in the Court of the First Class Magistrate at Pandharpur, and charged the petitioners with offences under ss. 465 and 467, Indian Penal Code, alleging that the kararnama was forged. The petitioners thereafter presented an application to the First Class Magistrate contending in effect that the case was governed by s. 195, Criminal Procedure Code, and that he could not take cognizance of the alleged offences in the absence of a complaint in writing under s. 476. The application was dismissed. The learned Additional Sessions Judge was, thereupon, moved by two separate petitions; he dismissed one of them for default, and decided the other on the merits, holding that a complaint under s. 476 was not necessary.

The main ground on which the petitioners' pleader argued the case before us was that the kararnama was

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produced in the proceedings under s. 110, Criminal Procedure Code, and consequently, the first petitioner, who was a party to that proceeding, could not be prosecuted for having forged the document except on the complaint of the Sub-Divisional Magistrate. We agree with the Additional Sessions Judge that the document was not "produced or given in evidence" within the meaning of the terms of s. 195 (*c*), Criminal Procedure Code, in Suit No. 295 of 1921. But we do not agree with him that the document was not "produced" in the proceedings under s. 110, Criminal Procedure Code. The kararnama was produced and marked there as Exhibit 18 and was, therefore, given in evidence in those proceedings. Section 195 (*1*) (*c*) is as follows :—

"No Court shall take cognizance of any offence described in section 463 or punishable under section 471, section 475 or section 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate."

The Government Pleader would have us read into the section some such words as "by such party or by a witness on his behalf". On this point the Additional Sessions Judge said :—

"This brings me to the necessity of investigating how the kararpatra found its way on the record of the Sub-Divisional Magistrate in the enquiry held under section 110, Criminal Procedure Code, and how it came to be marked as Exhibit 18. The evidence of the above mentioned pleader (Mr. Dharurkar) makes the situation quite clear. It is an indisputable fact that Exhibit 18 was not produced by any of the applicants. By a process almost similar to the one mentioned in *Janardhan Thakur* v. *Baldeo Prasad Singh*[1], Exhibit 18 came on the file of the Court of the Sub-Divisional Magistrate, Pandharpur. And the aforesaid ruling lays down that a document so coming into Court is not one produced under section 195 and hence no sanction under clause (*c*) is necessary."

[1] (1920) 5 Pat. L. J. 135.

In the case of *Janardhan Thakur* v. *Baldeo Prasad Singh*[1] there was a dispute as to the possession of immoveable property between an auction-purchaser and another claimant to the land. The latter produced a certain document before the police officer who was inquiring into the dispute. The officer filed it with his report and subsequently referred to it in his deposition. The party who had produced the document withdrew from the proceedings and the Magistrate, without referring to the document, recorded a finding that the possession was with the auction-purchaser. The latter moved the Magistrate to impound the document and to sanction the prosecution of his opponent. The opponent resisted the application on the ground that sanction was not necessary. The auction-purchaser thereupon filed a complaint against him under sections 463, 471, and 476, Indian Penal Code. The accused pleaded that sanction was necessary, but process was issued. The accused moved the High Court without having moved the Sessions Court, when it was held that it would be a strain of ordinary language to say that the document, which came into Court merely because it was attached to the police report prior to the proceedings was "produced" in the proceeding. Assuming, however, that it was "produced", the prosecution of the accused, who had no hand in its production, was not barred by reason of the absence of sanction. Mr. Justice Foster said (p. 138) :—

"I do not see how the prosecution of a party who had no hand in its production, is barred by the absence of the sanction of the Court. We have been taken through a number of authorities, but in every case the party was criminally implicated, directly or by abetment, in the production."

Further on he says (p. 139) :—

"In the present case the Court had no grievance against the petitioner. He neither produced the false document nor abetted its production. So in no way did he abuse the authority of the Court."

[1] (1920) 5 Pat. L. J. 135.

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The Additional Sessions Judge then refers to *Re. Parameswaran Nambudri*[1] where Mr. Justice Tyabji said (p. 681) :—

"Clauses (*b*) and (*c*) agree in some respects, but differ in this—that the offence is identified in clause (*b*) by reference to the fact that it has a direct connection with some proceedings in Court, viz., having been (i) committed in or (ii) in relation to the proceeding; whereas in clause (*c*) the offence has to be connected not with the proceeding, but (i) with a document produced or given in evidence in the proceeding; and (ii) by the fact that the document has been produced or given in evidence by a party to the proceeding."

We think that s. 195 (*c*) is wide enough to include any document produced or given in evidence in the course of a proceeding whether produced or given in evidence by the party who is alleged to have committed the offence or by any one else, and that the intention of the Legislature in the framing of the section, as it stands now, was to give authority only to the Court in which a proceeding was pending to file a complaint in respect of documents which were produced or given in evidence before it. If there had been any intention to limit the provisions of the section to a document produced or given in evidence by a party to the proceeding, then it would have been a simple matter to insert words to make that intention clear. These words are not there. We can only construe the section as it stands. We think the Additional Sessions Judge was wrong in holding that the kararnama had not been produced or given in evidence in the proceedings before the Sub-Divisional Magistrate within the meaning of s. 195 (*c*), so that it was not necessary that he should make a complaint under section 476 before a Court could take cognizance of the offence charged against the petitioners. The Rule is made absolute by setting aside the order of the lower Court.

COYAJEE, J. :—I agree in holding that neither the language of section 195, Criminal Procedure Code, nor

[1] (1915) 39 Mad. 677.

the object of that enactment, requires us to restrict its operation in the manner contended for by the opponents in this case.

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Rule made absolute.

R. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Coyajee.

SHRIPAD DATTATRAYA KAMAT (ORIGINAL PLAINTIFF), APPELLANT *v.* VITHAL VASUDEOSHET PARKER AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS*.

1925. *February* 23.

Hindu law—Adoption—Widow—Husband's brother.

Under Hindu law a widow can adopt her husband's brother.

THIS was an appeal against the decision of C. C. Dutt, District Judge at Ratnagiri, confirming the order passed by G. H. Salvi, Subordinate Judge of Deogad.

Suit to recover a sum of money.

The defendants' father had passed a mortgage in favour of one, Damaji Raghunath. After the death of Damaji his widow, Anandibai, adopted Dattatraya. On Dattatraya's death his widow adopted the plaintiff, brother of her deceased husband, Dattatraya.

The plaintiff on May 11, 1921, filed the present suit against the defendants to recover money on the mortgage by sale of the mortgaged property. The defendants contended *inter alia* that the plaintiff had no right to maintain the suit as he could not validly be adopted by Dattatraya's widow. The trial Court upheld the defendants' contention on the ground that the Dattaka Mimansa expressly forbade the adoption by a widow of her husband's brother and dismissed the suit. The District Judge summarily dismissed the plaintiff's appeal.

* Appeal No. 700 of 1923 from Appellate Decree.