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proceedings are taken to enquire into the pauperism, which are delayed by varius orders of the Court, after the plaintiff had been already bendied about from one Court to another, until a very considerable period of time has elapsed. Then pending that enquiry the plaintiff by paying the amount of stamp fees [433] into Court admits that he is no longer desirous to sue as a pauper, and gives up so much of the prayer of his petition as asks to be allowed so to sue, but no more. The defendant, so far from being a sufferer by that change, is benefited, as both parties will go on with the litigation on equal terms. Is there, then, anything in the Act which requires that in such a state of things the petition of plaint shall be rejected altogether, and the plaintiff he compelled to commence *de novo*? Their Lordships do not see their way to the middle course followed by the Court in holding that the petition was coverted into a plaint from the date of the payment of fees. To be logical, the Court should have rejected it altogether. The petition of plaint was placed upon the file and numbered on the 19th July 1873, and this is the plaint that is allowed to go on."

These are remarks that fully apply to the facts of this case, and, it must be held in this case, as was held by their Lordships in *Skinner* v. *Orde* (1), that the suit must be taken to have been instituted on the day when the application for leave to sue as a pauper was filed.

With reference to the case of *Abbasi Begam* v. *Nanhi Begam* (2) I will add that one of the cases on which that case is based, namely, *Balkaran Rai* v. *Gobind Nath Tewari* (3) has been dissented from by this Court in two cases, *Moti Sahu* v. *Chhatri Das* (4) and *Huri Mohun Chuckerbutti* v. *Naimuddin Mohamed* (5), which go to support the view I take.

Appeal allowed; *case remanded.*

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[434] CRIMINAL REVISION.

Before Mr. Justice Ameer Ali and Mr. Justice Pratt.

REILY (*Petitioner*) *v.* THE KING-EMPEROR (*Opposite Party*).*

[26th April, 1901.]

Offences committed before Court of Session by person—Committal of such person by Court of Session for trial before itself—Charge—Proceedings to be drawn up on day of committal—Charges of perjury and forgery—Specific statements as to such charges—Code of Criminal Procedure (Act V of 1898), ss. 195 and 477—Penal Code (Act XLV of 1860), ss. 193, 466 and 471.

If a Court of Session proceeds to take action under s. 477 of the Code of Criminal Procedure it must, in the first instance, frame a charge so as to enable the accused to know the exact nature of the offence he is alleged to have committed. A charge is a precise formulation of the specific accusation made against a person, who is entitled to know its nature at the earliest stage. After the accusation has been formulated in the shape of a charge the Sessions Court may then either commit the accused for trial before itself upon the charge so framed, or admit him to bail for the same purpose.

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* Criminal Revision No. 316 of 1901, made against the order passed by A. P. Pennoll, Esquire, Sessions Judge of Noakhali on the 16th February 1901.

(1) (1879) I. L. R. 2 All. 241; L. R. 6 I. A. 126.
(2) (1896) I. L. R. 18 All. 206.
(3) (1890) I. L. R. 12 All. 129.
(4) (1892) I. L. R. 19 Cal. 780.
(5) (1892) I. L. R. 20 Cal. 41.

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R. was examined as a witness by the Sessions Judge in a case. On the 15th of February the Sessions Judge delivered judgment in that case, and on the same day purporting to act under s. 477 of the Code of Criminal Procedure, had *R.* arrested and committed to jail on charges under ss. 193, 466 and 471 of the Penal Code. The 25th of February was fixed for commencing the preliminary inquiry. No proceeding was drawn up or charges framed on the 15th. On the 16th of February an order was recorded by the Sessions Judge as follows:—

"In the course of the Sessions trial decided yesterday, I came to the opinion, for reasons stated in my judgment then delivered, that *R.* has committed offences under ss. 193, 466 and 471 of the Penal Code, and that it is my duty to hold an inquiry preliminary to committing him to the High Court to be tried for those offences. *R* was yesterday arrested and committed to jail. There was then no time owing to the lateness of the hour to draw up this formal proceeding. He will be produced before me, as directed in the warrant, on the 25th of February, when evidence will be taken."

Held, that the proceeding of the 16th of February contained no particulars of the statements made and acts done by *R.* upon which perjury [435] and forgery were charged against him and was not in any sense a charge or order of commitment and was not warranted by law.

THE petitioner, the District Superintendent of Police at Noakhali, was cited as a witness for the defence in a certain case. He was, however, called by the Sessions Judge of Noakhali on the 16th of January 1801 and was examined by him. On the 7th of February the petitioner was ordered to enter into recognizances for his appearance in the Sessions Court on the 11th of February, and on any subsequent date to which the case might be adjourned. On the 15th of February the Sessions Judge delivered his judgment in the case, and on the same day he had the petitioner arrested and committed to jail on charges under ss. 193, 466 and 471 of the Penal Code, and fixed the 25th for commencing the preliminary inquiry. On the 15th of February no proceeding was drawn up, but on the following day, the 16th of February, the Sessions Judge recorded an order in the following terms: "In the course of the Session's trial of *King-Emperor* v. *Sadak Ali* (1) decided yesterday, I came to the opinion, for reasons stated in my judgment then delivered, that W. Y. Reily, Superintendent of Police of this district, has committed offences under ss. 193, 466 and 471 of the Penal Code, and that it is my duty to hold an inquiry preliminary to committing him to the High Court to be tried for those offences. Mr. Reily was yesterday arrested and committed to jail. There was then no time owing to the lateness of the hour to draw up this formal proceeding. He will be produced before me as directed in the warrant on the 25th of February, when evidence will be taken."

The petitioner applied to the High Court and obtained a Rule calling on the District Magistrate to show cause, why the proceedings instituted against him by the Sessions Judge of Noakhali on the 16th of February should not be set aside.

Mr. *Henderson* (with him Babu *Kritanta Kumar Bose*) for the petitioner.

The judgment of the Court (AMEER ALI and PRATT, JJ.) was as follows:—

This proceeding arises out of the case of the King-[436] Emperor against Sadak Ali and others disposed of by us on the 17th instant. The petitioner, who was holding at the time the office of District Superintendent of Police at Noakhali, appears to have been cited as a witness for the defence in that case. He was, however, called by the Sessions

(1) Unreported case. Criminal Appeal No. 173 of 1901.

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Judge himself on the 16th of January and was examined for three consecutive days. On the 7th of February he was ordered to enter into recognizances for appearance in the Sessions Court on the 11th following, and on any subsequent date to which the case may be adjourned. On the 15th of February the Sessions Judge delivered his judgment in the case, and on that day he had the petitioner arrested and committed to jail on charges under ss. 193, 466 and 471 of the Indian Penal Code. The 25th was fixed for commencing the preliminary inquiry. No proceeding was drawn up on that date (the 15th), the order now before us being recorded only on the following day, namely, the 16th of February. That order is in these terms: "In the course of the Sessions trial of *King-Emperor* v. *Sadak Ali* and three others decided yesterday, I came to the opinion, for reasons stated in my judgment then delivered, that W. Y. Reily, Superintendent of Police of this district, has committed offences under ss. 193, 466 and 471 of the Indian Penal Code, and that it is my duty to hold an inquiry preliminary to committing him to the High Court to be tried for those offences. Mr. Reily was yesterday arrested and committed to jail. There was then no time owing to the lateness of the hour to draw up this formal proceeding. He will be produced before me, as directed in the warrant, on the 25th of February, when evidence will be taken." After the disposal of the case in this Court, the petitioner applied for and obtained the present Rule, calling upon the Magistrate of the District to show cause, why the proceedings instituted against him under those sections by the Sessions Judge of Noakhali, on the 16th of February, should not be aside; *first*, on the ground that they are not warranted by law, as there was no proceeding drawn up on the day that he was committed to jail; *secondly*, on the ground that no specific statements are set out in the proceedings drawn up on the 16th, upon which the petitioner is charged with having committed perjury; *thirdly*, on the ground that [437] there are no statements in the said proceedings showing the character of the forgery charged against him under the sections referred to above, and, *fourthly*, on the ground that otherwise there is no foundation for the proceedings against him. The Sessions Judge has purported to act under s. 477 of the Code of Criminal Procedure, which provides that "subject to the provisions of s. 444 the Court of Session may charge a person for any offence referred to in s. 195 and committed before it or brought under its notice in the course of a judicial proceeding, and may commit or admit to bail and try such person upon its own charge." It is an empowering section and authorises a Court of Session, when an offence referred to in s. 195 of the Code of Criminal Procedure has been committed before it or brought under its notice as mentioned in the section, to charge the offender and to commit, or admit to bail and try him upon its own charge. We observe that the Sessions Judge in one part of his judgment thinks the word "may" ought to be read as "must." There is no warrant, however, for that view. Having regard then to the phraseology of the law, it appears to us, that, if a Court of Session proceeds to take action under s. 477, it must, in the first instance, frame a charge, so as to enable the accused to know the exact nature of the offence he is alleged to have committed. A charge is a precise formulation of the specific accusation made against a person, who is entitled to know its nature at the earliest stage. After the accusation has been formulated in the shape of a charge, the Sessions Court may then either

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commit the accused for trial before itself upon the charge so framed, or admit him to bail for the same purpose. In the matter before us the Sessions Judge had framed no charge, when he had the petitioner arrested and sent to jail, nor was his proceeding of the 16th of February in any sense a charge or order of commitment. It contains no particulars of the statements made and acts done by the petitioner, upon which perjury and forgery are charged against him. In our opinion the proceeding of the 16th of February was not warranted by law. The order states that "Mr. Reily was yesterday arrested and committed to jail. There was then no time, owing to the lateness of the hour, to draw up this formal proceeding. [438] He will be produced before me, as directed in the warrant, on the 25th of February, when evidence will be taken." So that, the petitioner, against whom no definite accusation had been formulated up to that time, and in whose case, according to the Sessions Judge himself, a preliminary inquiry was necessary, was to be kept in jail for nine days, before even the matter could be inquired into. A preliminary enquiry is necessary for the purpose of determining, whether there is a *prima facie* case against the person accused. As the Sessions Judge did not charge the petitioner, as he was empowered to do, and as he considered a preliminary enquiry necessary, it seems to us that, until then, in the opinion of the Sessions Judge, there was not even a *prima facie* case against the petitioner. In view of these facts we cannot help regarding the action of the Sessions Judge with the strongest disapproval.

Apart from the illegality of the order as already mentioned, and dealing with the merits of the case, we are of opinion that there is no foundation for the proceeding. We have already expressed our opinion in the judgment in the main case respecting the allegations of perjury made against the petitioner. We do not desire to repeat our observations. We may add, however, that we have again gone through the judgment of the Sessions Judge, and beyond surmises and assumptions we find nothing to justify the view, that the petitioner wilfully perjured himself or intentionally gave false evidence in Court.

There is less ground even for the charge of forgery. On the 15th of September the petitioner had visited the village and had a sketch map prepared of the locality by the writer, Head Constable Mohim Chunder. A fair copy was made afterwards and both the draft and the fair copy were produced at the trial and are marked respectively as Exhibits *Aa* and A. Exhibits A bears the signature of the petitioner, and the date 15th September. The learned Sessions Judge thinks that Exhibit A could not have been prepared on the 15th, and he therefore comes to the conclusion that the petitioner had purposely antedated his signature, "because he did not want Mr. Ezechiel to know that Exhibit A was a copy. He wanted Mr. Ezechiel to believe that [439] it was a plan made by himself on the 15th, instead of being, as it really is, a copy made after the 15th of a plan made partly in and in great part (and that the most important part) out of Mr. Reily's presence on the 14th, 15th and possibly subsequent dates." It is worthy of note that not a single question was put to the petitioner to enable him to explain the circumstances, under which he came to put the date on the map as the 15th September. Again, it appears that there are two pencil marks on exhibit A*a*, which the petitioner states were intended to indicate two breaks on one of the roads. These two pencil marks are not shown on Exhibit A. The petitioner explains the absence of those marks

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by saying : "It might be an omission on the part of Mohim Chunder." The Sessions Judge, however, thinks that the petitioner tampered with Exhibit A*a*. after it had been prepared. We must quote here the Judge's own language. Referring to the draft he says as follows :—

"The rough map is Exhibit A*a*. Mr. Reily admits that he had it in his hand two days before Tarak Babu examined him, *i.e.*, on the first day of his examination. He had, therefore, the opportunity of tampering with it. And it is very significant that Bharat Babu, who says in cross-examination that he saw the draft as it was made, declared, even without taking it into his hand, that he did not see Exhibit A*a* the plan Mr. Reily swears is the draft, and when pressed says that he cannot say for certain whether or not it is the draft. I think most likely it is the draft, but that Bharat Babu knows it has been added to and does not want to be asked about the additions. Both Exhibit A and A*a* are the work of the Head Constable Mohim Chunder Mozumdar. And as Exhibit A has nothing of Mr. Reily's, but his signature and the date, so Exhibit A*a* has nothing of his, but certain pencil marks shortly to be noticed. Both the entries are false documents within the meaning of s. 464 of the Indian Penal Code ; for in each case Mr. Reily's intention, when he made the entry, was to make people (in the first case Mr. Ezechiel, in the second this Court) believe that the entry was made at a time at which he knew that it was not made, and as the documents purported to be made by a public servant in his official capacity, Mr. Reily, by making them, appears to have committed offences under s. 466 of [440] the Indian Penal Code, and by using them, as genuine, to have committed offences under s. 471." In page 127 occurs this remarkable passage : "I now come to the draft Exhibit A*a*. Mohim Chunder Mozumdar, who made this draft, says, he did not show any break in it at all, that he was never told to, and did not think it necessary to. But Mr. Reily points to two pencil marks at the place marked in Exhibit A*a* and says he made these to indicate the break, and so I have no doubt he did make them, but I have equally little doubt that he made them on the 16th of January 1901, and not on the 15th of September 1900. Mr. Reily explains the absence of any such marks from Exhibit A by saying it might be an omission on the part of Mohim. But the far more obvious explanation is that Mr. Reily was unable to tamper with Exhibit A."

It is needless to refer to the absence of sequence in the reasoning or the assumptions on which it proceeds. Taking it however that Exhibit A was purposely antedated to deceive Mr. Ezechiel, and that the pencil marks were put in Exhibit A*a* after it had been prepared, we fail to see how the petitioner could be charged under ss. 466 and 471 of the Indian Penal Code. S. 463 which defines the term "forgery" runs as follows : "Whoever makes any false document or part of a document with intent to cause damage or injury to the public or to any person, or to support any claim or title or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery." S. 464 then explains the expression "making a false document." The elements of fraud or dishonesty, as explained in the Penal Code, must be present in the mind of the person accused to bring his act under ss. 466 and 471 of the Indian Penal Code. In our opinion the charge against the petitioner of committing forgery or making use of a forged document, even upon

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the assumption of the Sessions Judge, cannot be sustained. But in our judgment there is no ground for the assumption of the Judge, that Exhibit A was purposely antedated. The inspection of the locality having unquestionably taken place on the 15th and the results noted in Exhibit A*a*, the fair copy, whenever prepared (and excepting the hypothesis of the Sessions Judge **[441]** there is nothing to show it could not have been prepared on that day) would naturally bear the date of the inspection, and any other date would misrepresent the fact.

As regards the pencil marks on Exhibit A*a*, there is absolutely no reason for suggesting them to be dishonest interpolations by the petitioner or for not accepting his explanations regarding their omission from Exhibit A. It was no doubt wrong on the part of the petitioner not to have insisted on the breaks being shown on the maps, and that error of judgment is deserving of censure, but in our opinion the imputation of forgery and of having used a forged document is not only groundless, but a straining of the law as well as the facts.

We may observe in this connection that the offence of giving false evidence, s. 193, is bailable, so also is the offence of using a forged document, s. 471, whilst forgery, s. 466, is non-bailable. It was unfortunate that the Sessions Judge applied s. 466 against the petitioner in the way he has done, as it gives colour to the suggestion made at the bar, that it was purposely used to deprive the petitioner of the right to bail.

We regret to observe that in dealing with this matter the Sessions Judge does not seem to have maintained a judicial balance of mind.

For these reasons we think that his order must be set aside, and we set it aside accordingly.

A copy of this judgment will be forwarded to the Local Government.

Rule made absolute.

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28 C. 441.

APPELLATE CIVIL.

Before Mr. Justice Rampini and Mr. Justice Gupta.

KISHEN DAI (*Petitioner*) *v.* SATYENDRA NATH DUTT AND OTHERS (*Opposite Party*).* [31st May, 1901.]

Probate—Caveat—Judgment—creditor—Fraudulent creditor—Probate and Administration Act (*V of* 1881), *s.* 69.

[442] The words "interest in the estate of the deceased" in s. 69 of the Probate and Administration Act mean "interest in the estate left by the deceased."

A judgment-creditor who, but for the will, would in execution of his decree have a right to seize the property or that share of it which should descend to his debtor, and who alleges that the will has been set up for the purpose of defrauding the creditors, is a person claiming an interest in the estate of the deceased, and has such as a *locus standi* in opposing the grant of probate of the will.

Umanath Mookhopadhya v. *Nilmoney Singh* (1) and *Nilmoni Singh Deo* v. *Umanath Mookerjee* (2) referred to.

AN application was made for probate of a will alleged to have been executed on the 25th of July 1897 by one Bal Kissen, who died on the 2nd of August 1897. The will purported to leave the testator's property

* Appeal from Original Decree No. 6 of 1899, against the decree of H. E. Ransome, Esquire, District Judge of Patna, dated the 25th of August 1898.

(1) (1880) I. L. R. 6 Cal. 429. (2) (1888) I. L. R. 10 Cal. 19.