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plaintiff a *prima facie* right to recover." Anybody who was conversant with the language of Statutes would put the same construction on the provisions of Act V of 1866, and would put the same construction upon the provisions of section 532. But the Legislature did not apparently understand what Mr. Justice Phear was aiming at, and apparently not understanding the meaning of the language, inserted the explanation, which, so far as I am able to construe, conveys absolutely no meaning. The object apparently of the draughtsman was to negative what Mr. Justice Phear had stated, and with that object the explanation was put in, which seemingly contradicts Mr. Justice Phear's *dictum*, and goes no further. It does not explain what class of cases the section applies to. It only says: "This section is not confined to cases in which the bill, hundi, or note sued upon, together with mere lapse of time, is sufficient to establish a *prima facie* right to recover." As it stands, speaking with all respect, it is wholly unintelligible and meaningless, and stultifies the substantive provisions of the section.

In my opinion the plaintiff is not entitled to recover interest on this action, no interest having been specified in the note.

Mr. Chatterjee, on behalf of the plaintiff, has applied that, that being my opinion, he might be allowed to proceed under Chapter V of the Code. That course was ordered by Mr. Justice Phear in the case referred to, and I propose to allow the plaintiff to adopt that course, and I will give him the summons under Chapter V. The order will be drawn up in the same way as in that case.

Attorney for the plaintiff: J. C. Dutt.

30 C. 449.

[449] CRIMINAL REVISION.

RADHABULLAV ROY v. BENODE BEHARI CHATTERJEE.*

[10th July, 1902.]

Jurisdiction—Transfer of criminal case to Subordinate Magistrate—District Magistrate, power of, to pass order relating to case not on his own file—Criminal Procedure Code (Act V of 1898) ss. 190, 192, 435.

When a case is once made over for disposal to a Subordinate Magistrate by the District Magistrate, the latter is not competent to pass any order relating to it other than an order such as might be made by him under Chapter XXXII of the Code of Criminal Procedure.

Moul Singh v. Mahabir Singh (1) and Golapdy Sheikh v. Queen-Empress (2) referred to.

[Ref. 32 Cal. 783=9 C. W. N. 810; Dist. 33 Cal. 119=18 Cr. L. J. 493=15 I. C. 65.]

RULE granted to the petitioners, Radhabullav Roy Chowdhuri and another.

This was a Rule calling upon the District Magistrate of Maldah to show cause why the order made on the 5th April 1902 directing the prosecution of the petitioners should not be set aside, on the ground that the order was one which was not within his jurisdiction to make.

On the 18th December 1901, the complainant, Benode Behari Chatterjee, lodged a complaint before the senior Deputy Magistrate of Maldah who was in charge of the station, during the absence of the District Magistrate, charging the petitioners and one Panchanand Das with an offence punishable under s. 504 of the Penal Code. The senior Deputy

*Criminal Revision No. 443 of 1902.

(1) (1899) 4 C. W. N. 242.

(2) (1900) I. L. R. 27 Cal. 979.

Magistrate made the complaint over to another Deputy Magistrate for inquiry and report; that Deputy Magistrate, after inquiry, reported that there was no case except against Panchanand Das.

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On the 22 January 1902, the District Magistrate, who had then returned to the station, ordered that Panchanand Das should be summoned under s. 504 of the Penal Code, and [450] on the 4th February, he made over the case for disposal to a Deputy Magistrate who tried and convicted Panchanand Das. Thereupon the complainant applied to the trying Deputy Magistrate that the other persons named in his complaint might be summoned before the Court and tried. That application was rejected by the Deputy Magistrate on the 20th March 1902. The case was then called for by the District Magistrate under s. 435 of the Criminal Procedure Code, who on the 5th April recorded the following order:—

“ I now order the prosecution of the Police Sub-Inspector Soshi Chowdhuri, and Sub-Manager, Radhabullav Roy Chowdhuri, under section 504 of the Indian Penal Code.”

Babu Joy Gopal Ghosh for the petitioners. In the first instance there was a complaint against Panchanand and the petitioners. The District Magistrate ordered Panchanand only to be prosecuted, and made the case over to a Deputy Magistrate who tried and convicted him. The complainant, thereupon, asked the Deputy Magistrate to summon and try the petitioners. This, however, he declined to do. The District Magistrate, purporting to act under s. 435 of the Criminal Procedure Code, called for the case and ordered the prosecution of the petitioners. This he could not do, and the order is illegal. Under s. 435 the District Magistrate can only call for a case and refer it to a higher tribunal: he has no power to order a prosecution. If the District Magistrate wished to deal with the case himself, he should have withdrawn it to his own file under s. 523 of the Code, but this he has not done: see *Moul. Singh v. Mahabir Singh* (1) and *Golapdy Sheikh v. Queen-Empress* (2).

STEVENS AND MITRA, JJ. This Rule was issued calling upon the District Magistrate to show cause why the order made on the 5th of April last directing the prosecution of the petitioners should not be set aside on the ground that the order was one which was not within his jurisdiction to make.

The circumstances of the case are as follows. On the 18th December 1901, a complaint was made against the petitioners and against one Panchanand Das, charging them with [451] an offence punishable under section 504 of the Indian Penal Code. The complaint was made to the senior Deputy Magistrate in charge, in the absence of the District Magistrate from the station. The senior Deputy Magistrate made the complaint over to another Deputy Magistrate for careful inquiry, and report. The second Deputy Magistrate, after inquiry, reported that there was no case except against Panchanand Das. The District Magistrate had evidently returned to the station, for the next two orders made in the case were by him. The first of these, namely, that of the 22nd January 1902, was that Panchanand should be summoned under section 504 of the Indian Penal Code. The second was dated the 4th February, and made the case over to a

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third Deputy Magistrate for disposal. The case was then tried by the last-named Deputy Magistrate as against Panchanand Das and ended in the conviction of that person. Thereupon, the complainant applied to the trying Deputy Magistrate that the other persons named in his complaint might be brought before the Court and tried also; but the application was rejected by the Deputy Magistrate on the 20th of March 1902. The District Magistrate afterwards called for the case, as he says, under the provisions of section 435 of the Code of Criminal Procedure. After referring to the record and making certain criticism on the judgment of the Deputy Magistrate who had tried the case, he recorded the following order on the 5th of April 1902:—

"I now order the prosecution of the Police Sub-Inspector, Soshi Chowdhuri, and Sub-Manager, Radhabullav Roy Chowdhuri, under section 504 of the Indian Penal Code."

It is this last order with which we are now concerned. It has been urged before us on the part of the petitioners that the Magistrate acted without jurisdiction, inasmuch as there was no case before him in which he could pass the order in question. The District Magistrate has submitted in his explanation that the case was before him, inasmuch as he had taken it upon his file on the 22nd of January, and he submits that the order now in question was but a supplementary order to that which he made on that date for the summoning of Panchanand Das.

We think that when once the District Magistrate made the case over for disposal to the Deputy Magistrate, it was out of his [452] hands and he was not competent to pass any order relating to it other than an order such as might have been made by him under Chapter XXXII of the Code. That the case was not in fact upon his own file was indicated by his own action in sending for the record, as he says, under section 435.

We may refer to the case of *Moul Singh v. Mahabir Singh* (1) and the case of *Golapdy Sheikh v. Queen-Empress* (2) of the same volume as having some bearing on the present case.

We think that the order of the District Magistrate cannot stand, and we therefore make this Rule absolute, and set it aside.

We may mention that we have just set aside the conviction in the case of Panchanand Das on the ground that the facts proved do not constitute an offence punishable under section 504 of the Indian Penal Code.

30 C. 453(=7 C. W. N. 402.)

[453] APPELLATE CIVIL.

FAZLUR RAHIM ABU AHMED v. DWARKA NATH CHOWDHRY.*

[18th Feb. and 4th March, 1903.]

Jurisdiction—Munsiff, jurisdiction of—Rent, suit for—Bengal Tenancy Act (VIII of 1885) s. 144—Civil Procedure Code (Act XIV of 1882) ss. 15 and 17—Civil Courts Act (XII of 1887), s. 19—Cause of action—Pecuniary limitation—Second appeal.

* Appeal from Order No. 211 of 1901, against the order of W. Teunon, Esq., District Judge of Murshidabad, dated the 3rd April 1901.

Appellate Bench: Sir Francis W. Maclean, K. C. I. E. Chief Justice, Mr. Justice Sale and Mr. Justice Stevens.

(1) (1899) 4 C. W. N. 242.

(2) (1900) I. L. R. 27 Cal. 379.