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be shown as in the case of another person by the disposition he makes of his property.

Upon the construction which I think I must put upon this will, the point taken by the Counsel for the respondent, the plaintiff, that the property being the gift of a husband to his wife was inalienable, and on her death would descend to the heirs of the husband, does not arise. The husband has given to his wife an absolute power of disposing of the property which she has exercised. This was not an ordinary gift by the husband to his wife to which the authorities cited might apply.

I think, therefore, that the decree should be reversed, and the suit must be dismissed with costs on scale No. 2, including the costs of the appeal.

Appeal allowed.

Attorneys for the appellant: Messrs. *Swinhoe, Law* and Co.

Attorney for the respondent: Baboo *Bhoobun Mohun Doss*,

APPELLATE CRIMINAL.

Before Mr. Justice Phear and Mr. Justice Ainslie.

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THE QUEEN *v.* TARUCKNATH MOOKERJEE.*

Criminal Procedure Code (Act X of 1872), s. 296—Powers of a Sessions Court to order Committal of Accused discharged by a Magistrate.

An order by a Judge, under s. 296 of Act X of 1872, directing a Magistrate to commit an accused person, who has been discharged at a preliminary enquiry, to take his trial in a Court of Session, must specify the particular act constituting the offence charged. The Judge cannot direct a committal for offences with which the accused was in no way charged before the Magistrate.

ONE Tarucknath Mookerjee was charged before the Magistrate of Howrah with having committed an offence punishable under s, 200 of the Indian Penal Code. The warrant of arrest only specified this offence. One Allabux, in a suit under Act X of 1859 before the Deputy Collector of Howrah, execut-

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ed an instrument called an agentnamah, which was filed in that case. In this document the accused was described as "a mookhtear and attorney of the High Court," and on the reverse side were the initials of the accused. There was another document likewise called an agentnamah filed by the said Allabux in the appeal before the Collector. In this second document, the accused was described simply as "vakeel," and on the reverse side was the accused's signature in full below the words "we acknowledge and accept the power conveyed by this agentnamah." Both these documents were tendered in evidence for the prosecution at the preliminary enquiry. Evidence was given to show that the accused employed Counsel to conduct the Act X case for Allabux. The evidence also showed that neither the plaintiff Allabux, in the Act X case, who had instituted his suit as *paik* (1) of his master Issurchunder Ghose, zemindar, nor his master, were ever induced by the accused to consider him (accused) to be an attorney of the High Court or a vakeel, or to pay the accused any sum of money for his services as an attorney of the High Court or a vakeel. The Magistrate, on the 17th December 1872, discharged the accused, holding that the evidence was not sufficient *primâ facie* to establish an offence either under s. 200 or any other section of the Penal Code. In the same month a person, whom the Sessions Judge described as one "who had no apparent interest in the matter, but was evidently actuated by some private ill-will" through a vakeel moved the Court of Session in December 1872, under s. 435 of Act XXV of 1861, to consider the case which had been dismissed, and order a committal of the accused. The case came on for hearing before the Judge in January 1873 after Act X of 1872 came into operation. The Judge, acting under s. 296, ordered the Magistrate to commit the accused to the Court of Session, to take his trial for having committed offences punishable under ss. 465, 468, and 471 of the Penal Code, without specifying wherein the forgery lay.

He agreed with the Magistrate that there was no offence made out upon the evidence already on the record punishable under s. 200, but he thought "that the evidence on the record,

(1) Subordinate collector of rents or Shanbogue.

together with other facts not disputed, but which are not but should be made legal evidence, raise a strong *primâ facie* case, such as would justify any Magistrate in committing a case for trial at the Court of Sessions."

Mr. *Sandel* for the accused applied to the High Court (Phear and Ainslie, JJ.) for, and obtained, a rule calling on the Government Prosecutor to show cause why the order of the Sessions Judge should not be set aside.

Mr. *Sandel* contended that the High Court, under s. 297 of Act X of 1872, had power to revise orders passed by any Subordinate Criminal Court in any judicial proceeding for any "material errors" whether of law or fact. Section 294 did not apply to the present matter, as it referred to "any case tried." "Trial" is defined in s.3. The Judge could not pass such an order under s. 296, because, first, the charge on which he committed the accused for trial was different from that in respect of which the preliminary enquiry had been held; secondly, there was no evidence on the record of the offences described by the Judge; and, thirdly, because the Judge must act upon the evidence received by the Magistrate at the preliminary enquiry, and not be influenced by facts not upon record, and therefore not evidence in the cause.

The *Junior Government Pleader* (Baboo *Juggudanund Mookerjee*) showed cause. He contended that the High Court had no jurisdiction under Act X of 1872 to entertain the present application: s. 294 did not apply to the present case as the order of the Judge was not passed in a case "tried." The words, "material error in any judicial proceeding," in s. 297, were not used in a general way, but were limited to particular proceedings enumerated in the latter part of the same section. The order of the Judge in the present case did not come within any of the proceedings mentioned in that section,

He further contended that the two documents described as agentnamahs and filed in the Act X case were forgeries, for the accused by endorsing his name on the back of the documents had adopted the description of himself in the body of the docu

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ments, which was false, and had thereby committed a fraud on the public generally and on the Court.

Mr. *Sandel* was not called upon to reply.

The judgment of the Court was delivered by

PHEAR, J.—It appears that in this case, Tarucknath Mookerjee was, in consequence of some knowledge or information obtained by the Magistrate, brought before the Magistrate under a warrant to answer a charge therein specified as a charge made under s. 200 of the Indian Penal Code. After taking evidence, the Magistrate was of opinion that that charge was not made out, and that the evidence did not justify his framing any other charge against the accused. Accordingly he discharged him from custody.

The Judge, exercising the powers given to him by s. 296 of the new Criminal Procedure Code, has directed the Magistrate to commit Tarucknath Mookerjee for trial for forgery. I think that this order of the Judge is bad for two reasons.

In the first place, it is too vague and indefinite for the Magistrate to act upon. It should have specified the document which the Judge considered to have been forged, and also the particular in regard to which it was forged; otherwise I do not understand how the Magistrate, who in this matter will have to act in a ministerial capacity only, can properly frame his commitment upon any specific charge at all; and I must further say that having regard to the evidence which was before the Magistrate, and which has come up to us on this occasion, I cannot perceive in what way any charge of forgery of a document can be made out at all.

And, secondly, I think the order is bad, because it directs that Tarucknath Mookerjee be committed for trial for having committed the offence of forgery, that being an offence of which he had not been in any form accused before the Magistrate. The section, or that portion of the section (296) which is applicable to the present matter, runs thus:—"Provided that, in Session cases, if a Court of Session or Magistrate of the dis-

trict considers that a complaint has been improperly dismissed, or that an accused person has been improperly discharged, by a Subordinate Court, such Court or Magistrate may direct the accused person to be committed for trial." I read this to mean, may be committed for trial upon that matter of which he has been, in the opinion of the Judge, wrongfully discharged by the Magistrate; in other words, committed for trial for some offence with which he was substantially charged in the complaint, or which was specified in the warrant, or which was framed as a formal charge by the Magistrate at the preliminary hearing. Unless the powers of the Judge under this section to commit for trial be thus limited, it seems to me that a very strange result would follow namely, that a man might be committed by the Judge for trial of an offence of which he had never been accused, or never even heard a word, as indeed would have happened here, until he was apprehended under the Judge's commitment. And as the Criminal Procedure Code seems to have been carefully framed with a view to provide that no one shall be committed for trial without having previously had a fair opportunity of meeting the charge upon which he is to be committed, I think this result I have mentioned can hardly have been contemplated by the Legislature; and I do not think the words when reasonably read with the context do give the Judge so extensive a power as that which is now sought for him.

For these two reasons I think the order of the Judge should be set aside.

Rule absolute.