

1895
 KESHAB
 CHUNDER
 ROY
 v.
 AKHIL
 METEY.

Sham Chand Roy, the master of Rajani Bagdi, and of Akhil Metey and Loke Nath Roy, to whose party Keshab's brother Purna belongs; that Purna having refused to join Sham Chand's party, Sham Chand with a large band of servants and dependants, among whom was the complainant Akhil, went to *loot* Purna's house; that while Akhil was attempting to snatch an ornament from the arm of Purna's wife, Purna struck him with a *banti* and that Keshab had no interest in the house of Purna, nor was he present at the occurrence. [Their Lordships after dealing with the evidence in the case continued.]

* * * * *

Weighing, therefore, the evidence for the defence against that adduced for the prosecution, and bearing in mind the material discrepancies in the evidence for the prosecution, we must say that the evidence does not warrant the conviction of Keshab Chunder Roy, and that it would be wrong to allow the conviction to stand.

The result is that the conviction and sentence must be set aside and the petitioner acquitted and released.

S. C. B.

Conviction set aside.

Before Mr. Justice Macpherson and Mr. Justice Banerjee.

1895
 June 25.

AKHIL CHANDRA DE AND ANOTHER (PETITIONERS) v. THE QUEEN-
 EMPRESS (OPPOSITE PARTY)*

*Commitment—Criminal Procedure Code (Act X of 1892), sections 195, 478—
 Ferged documents filed in Court—Order of commitment for trial—“Any
 such offence” in section 478, meaning of.*

Certain documents were filed annexed to a petition in a suit pending before a Munsif, but were not given in evidence. The Munsif on suspicion that they had been tampered with held an enquiry and committed the petitioners for trial by the Court of Session. *Held*, that it was a proper commitment under section 478 of the Criminal Procedure Code.

The words “any such offence” in that section means an offence referred to in section 195 of the Code, and not an offence referred to in that section qualified by the circumstances under which it is committed.

* Criminal Revision No. 362 of 1895, against the order passed by Babu Mohendra Lal Das, Additional Munsif of Chittagong, dated the 21st of May 1895.

THE accused No. 1, Akhil Chandra Sen, brought a suit against one Boloram for the recovery of a certain sum of money held in deposit at the Collectorate. Subsequently he applied to amend his plaint by a verified petition, and annexed to it some documents. A few days after it was brought to the notice of the Court that the said documents had been tampered with. On examining those documents the Munsif suspected that they had been tampered with. Thereupon he himself held an enquiry under section 478 of the Criminal Procedure Code, and came to the conclusion that the accused No. 1 should be committed to take his trial before the Court of Session for offences under sections 467 and 471 and other sections of the Penal Code and accused No. 2 for abetting those offences.

Mr. *Henderson* (with Mr. *Percival*) appeared for the petitioners.

Mr. *Henderson*.—The Munsif had no jurisdiction to commit the accused under section 478 of the Criminal Procedure Code. The words “any such offence” in that section mean one of the several offences referred to in section 195 of the Code, and in the case of any of the offences mentioned in clause (c), *vis.*, an offence described in section 463, or punishable under section 471, section 475, section 476 of the Indian Penal Code, it must also be committed by a party to any proceeding in any Court in respect of a document given in evidence in such proceeding. See *Abdul Kadar v. Meera Sahib* (1). Here the documents in question were filed in a suit pending before the Munsif, and were not given in evidence.

The judgment of the High Court (MACPHERSON and BANERJEE, JJ.) was as follows :—

We can only quash this commitment on a point of law. The petitioner has been committed by a Munsif to the Sessions Court at Chittagong on charges under sections 467 and 471, as well as other sections of the Penal Code. It is contended that, under section 478 of the Criminal Procedure Code, the Munsif had no jurisdiction to make the commitment, because the offence charged, though referred to in section 195 of the Code, was not an offence

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described in clause (c) of that section. The words "any such offence" in section 478 mean an offence referred to in section 195 and not (in the case of the offences mentioned in clause (c), section 195) an offence referred to in that section qualified by the circumstances under which it is committed, *i. e.*, committed by a party to any proceeding in any Court in respect of a document given in evidence in such proceeding, as described in clause (c) of the section. We have no doubt that the former is the right construction, and that the offences referred to in section 478 of the Code of Criminal Procedure are the offences mentioned in section 195. If the latter construction is correct it is difficult to give any meaning to the words in section 478, * * * "or brought under the notice of any Civil or Criminal Court in the course of a judicial proceeding."

It appears that in the present case the document, which has been made the subject of the charge, was filed in a civil suit pending before the Munsif, and was intended to be used as evidence in that suit, although it may not have been actually put in evidence, and the offence which is said to have been committed in respect of it was brought under his notice in the course of a judicial proceeding. We think, therefore, that there is no point of law on which we can quash the commitment. The application must, therefore, be rejected.

S. C. B.

Rule discharged.

Before Mr. Justice Macpherson and Mr. Justice Banerjee.

QUEEN-EMPRESS v. SITANATH MANDAL (ACCUSED).*

1895
 July 16.

Criminal Procedure Code (Act X of 1882), section 238 and section 307—Minor offence," Conviction of, without formal charge—Penal Code (Act XLV of 1860), sections 365, 366, 376.

An offence under section 365 of the Penal Code is, within the meaning of section 238 of the Criminal Procedure Code, a minor offence as compared with offences under section 366 and section 376 of the Penal Code; and the High Court in dealing with a case under section 307 of the Criminal Procedure Code can convict an accused of the former offence without a formal charge having been framed.

* Criminal Reference No. 15 of 1895, made by F. F. Handley, Esq., Additional Sessions Judge of 24-Pergunnahs, dated the 8th June 1895.