

I think, the intention of the Act that the Court should bind parties by the result of a private arbitration when the arbitrators themselves plainly showed that they doubted the correctness of their decision. That, it appears to me, was an extremely strong and valid objection to the finality of the award, one which tended to show that the award was no valid award and therefore it was a matter which the lower Appellate Court could consider on appeal. I think, therefore, the Judge of the Court below was not in error in the decision which he arrived at in this case, and that this appeal ought to be dismissed with costs.

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Appeal dismissed.

APPELLATE CRIMINAL.

Before Mr. Justice Ainslie and Mr. Justice McDonell.

THE EMPRESS ON THE PROSECUTION OF MICHELL *v.* JOGGESSUR
MOCHI.*

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Jan'y. 24.

Government Currency Note, Theft of—Title of Original Owner—Appeal-able Order—Criminal Procedure Code (Act X of 1872), ss. 418 & 419—Cashing a Currency Note—Sale—Contract Act, ss. 74, 76, and 108.

A Government currency note was stolen from *A*, and cashed by *B* in good faith for *C*. On the conviction of *C* for theft, the Magistrate ordered the note to be given to *B*. *A* appealed to the Sessions Judge, who was of opinion that he was not competent to interfere as a Court of appeal under s. 419 of the Criminal Procedure Code; but submitted the case for the orders of the High Court.

Held, that the case could be disposed of by the Judge under s. 419 of the Criminal Procedure Code, and that the words "Court of appeal" in that section are not necessarily limited to a Court before which an appeal is pending.

Held further, that the provisions of s. 76 of the Contract Act did not apply, as the change of a currency note for money is not a contract of sale, and that as the note came honestly into the hands of *B*, the order of the Magistrate was right.

THE facts of this case appear sufficiently from the memoran-

* Criminal Reference, No. 223 of 1877, by H. T. Prinsep, Esq., Sessions Judge of the 24-Pergunnahs, dated the 13th of December 1877.

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dum of reference made by the Sessions Judge, which ran as follows :

“ This is an application questioning the propriety of an order
“ passed by the Joint Magistrate under s. 418 of the Code of
“ Criminal Procedure, by which a currency note of Rs. 100, found
“ to have been stolen from Captain Michell, has, on conviction of
“ the thief, been given to Subal Chunder Poddar, with whom it was
“ cashed by the thief, rather than to its original owner. When
“ this application was first made to me, I thought that, having
“ regard to the terms of s. 419, the petitioner had the right of
“ appeal; but, on reconsideration, I am of opinion that no appeal
“ lies *only* from such an order. There is no express provision of
“ law allowing an appeal only against an order under s. 418, and
“ therefore it would seem that, under s. 286, no appeal can be
“ entertained. The terms of s. 419 would seem to refer to a
“ case in which an appeal has been lawfully made against an order
“ of conviction or acquittal, and an order under s. 418 being a
“ part or consequence of such order, thus comes under consider-
“ ation by the ‘ Court of appeal, reference or revision,’ who are
“ empowered to order that order to be ‘ stayed, or may modify,
“ alter or reverse it.’ In this view of the law, as the application
“ made to me concerns only the matter dealt with under s. 418,
“ I am of opinion that I am not competent to interfere as a Court
“ of appeal; but as I am also of opinion that the order of the
“ Joint Magistrate is contrary to law, I submit the case for the
“ orders of the Honorable High Court.

“ As far as the evidence goes, there is no reason to doubt the
“ honesty of the *Poddar* with whom the currency note was cashed
“ by the thief. The question is, whether the *Poddar* should be
“ allowed to retain it as against its original owner from whom it
“ was stolen. It seems to me that this is a matter which can
“ properly be dealt with by a Magistrate; but that the order
“ passed by the Joint Magistrate, though it is in accordance with
“ the principles of the law of England, is not in accordance with
“ s. 108 of the Contract Act. Currency notes would seem to be
“ ‘ goods’ within the definition given in s. 76 of that Act, and
“ therefore this case is similar to that given in illustration (a)
“ to s. 108.

“ I think it right, however, to state that the case of the *Collector of Salem* (1) would seem to lay down a different view of our law; but in that case the position of Government was alone under consideration, and the judgment seems to have proceeded on the ground that, under the law, the Government treasury officer was bound to cash a currency note, and that therefore the Government was protected against any claim if it should happen that a note so cashed was a stolen note. In the present case there was no such obligation on the *Poddar*, and though the result of an order directing him to give it up to the person from whom it was stolen would seem to be somewhat unreasonable, it is in my opinion in accordance with our law in India, and therefore I feel bound to submit the matter for the orders of the Honorable High Court.”

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No one appeared upon the hearing of the reference, and the judgment of the Court was delivered by

AINSLIE, J.—We think that the Sessions Judge might have disposed of this case under s. 419, Criminal Procedure Code, without a reference to this Court.

The words “ Court of appeal ” in that section are not necessarily limited to a Court before which an appeal is at the moment pending. It may very often happen, as in this case, that the question of the propriety of an order under s. 418 for the disposal of any property produced before the Court may in no way concern the convicted person; and we think it unreasonable to put such a construction on s. 419 as shall make the power of the Judge to modify, alter or annul a Magistrate’s order affecting one, contingent on the accident whether another person has or has not chosen to appeal.

S. 286, by the words “ except in the cases provided for by this Act ” must include cases in which the power to alter or annul the order of a Magistrate is expressly given.

We are further of opinion that the case does not call for our interference. It is admitted in the order of reference that the note came honestly into the hands of the *Poddar*, to whom it has

(1) 7 Mad., 233.

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been returned by the Magistrate. The Sessions Judge refers to s. 108 of the Indian Contract Act, and to the definition of 'goods' in s. 76 of the same Act, in which, for the purposes of that particular chapter dealing with contracts of sale, the word is defined.

No one has appeared to argue the points raised before us. As at present advised, we are of opinion that the provisions of the Contract Act do not apply to this case. The change of a Government currency note for money is no more a contract of sale than the payment of the same note over the counter of goods is a sale of the note for the goods. In this last case the note is paid as money being "legal tender" for the amount expressed therein under s. 15, Act III of 1871. S. 77 of the Contract Act defines 'sale' to be the exchange of property for a price, but this is the exchange of money in one form for money in another form. Either form being legal tender, it is impossible to say that one is the price of the other. If we are to look to s. 76 of the Contract Act, we must read it with s. 77, and this latter section shows that the provisions of that Act do not apply in this case.
