

REVISIONAL CRIMINAL.

Before Mr. Justice West and Mr. Justice Nánábhái Haridas.

QUEEN EMPRESS *v.* THÁKU, WIFE OF TUKA'RÁM.*

1884
February 21.

Commitment—Trial in a wrong Sessions Division—Jurisdiction—The Code of Criminal Procedure (X of 1882), Secs. 177, 531.

The order of a Magistrate committing a case to the Court of Session is an order of a Criminal Court within the meaning of section 531 of the Code of Criminal Procedure (X of 1882). If such an order, contrary to the requirements of section 177, directs the commitment to be made to a Court of Session which has no territorial jurisdiction, it is not to be set aside unless it appears that the error occasioned a failure of justice.

THE accused was charged before Mr. Morrieson, Magistrate (First Class) in the District of Násik, with the offence of having married again during the life-time of her husband, and was committed to the Court of Session at Násik for trial. On a perusal of the magisterial proceedings it appeared to Mr. Baker, the Session Judge, that the offence was committed in the territorial limits of the Sessions Court of Ahmednagar, and that he had no jurisdiction to try the case. He considered that section 532 of the Code of Criminal Procedure (X of 1882) did not authorize him to accept such commitment, and that he was bound to refer the case to the High Court, under section 215, for the commitment to be quashed. Mr. Baker accordingly made a reference to the High Court.

No one appeared in the High Court either on behalf of the accused or the Crown.

Per Curiam.—A commitment is an order of a Criminal Court under section 531 of the Code of Criminal Procedure (X of 1882) which cannot be set aside unless a failure of justice has been occasioned. It does not appear necessary to cancel the commitment, as no failure of justice has as yet arisen through such commitment. But as, under section 177, the offence ought to be tried within the Sessions Division in which it is said to have been committed, the Court will transfer the case to the Sessions Court at Ahmednagar, unless the Sessions Judge at Ahmednagar reports that this course will be attended with public inconvenience, or is likely in some way to defeat the ends of justice. In this last event it may be open to the Court to authorize a trial at Násik.

* Criminal Reference, No. 15 of 1884.

The Session Judge of Násik having reported that no inconvenience or failure of justice will be caused by the transfer of the case to Ahmednagar, the Court directs that the case be transferred for trial by the Sessions Court at Ahmednagar.

Order accordingly.

APPELLATE CIVIL.

FULL BENCH.

Before Sir Charles Sargent, Knight, Chief Justice, Mr. Justice Kemball, and Mr. Justice West.

PRABHA'KARBHAT, APPLICANT (ORIGINAL PLAINTIFF), *v.* VISHWA'M-BHAR PANDIT, OPPONENT (ORIGINAL DEFENDANT).*

January 28,
29; February
13, 26;
March 6.

Practice—Procedure—Return of plaint for presentation to proper Court—Jurisdiction—Construction—Civil Procedure Code Act VIII of 1859, Secs. 30 and 32—Civil Procedure Code Act XIV of 1882, Secs. 53 and 57.

Where, after a trial has begun, or even after it has concluded, it appears that the Court has not jurisdiction to hear the case, the plaint should be returned in order that it may be presented to the proper Court, and no additional Court fees are payable.

The pre-existing state of the law as recognized by the tribunals is one of the chief means of interpreting laws of procedure.

Jagjivandás Jávherdás Seth v. Magdum Ali(1) overruled.

THIS was a reference to a Full Bench by a Division Bench on an application made by Prabhákarbhat for the return of his plaint in Appeal No. 114 of 1882. The following are the facts of the case :—

Prabhákar brought a suit against the Secretary of State for India and Vishwámbar Pandit in the District Court of Belgaum, alleging that Bhavánibái, mother of Vishwámbar (defendant No. 2), on the 3rd April, 1878, executed to him a deed of gift in respect of certain lands; that Vishwámbar gave his consent to the deed on the 27th April, 1879; that Bhavánibái died on the 9th June following, leaving defendant No. 2 as her heir; that the deed was executed at Kolhápúr, beyond British India, and

* Civil Application, No. 52 of 1884.

(1) I. L. R., 7 Bom., 487.