

1894 answers to the fifth and sixth questions. The costs of this reference will be
 JULY 20. costs in the case to be taxed on the original side of this Court.

ORIGINAL Attorneys for the plaintiffs :—Messrs. *Little, Smith, Nicholson and Bowen.*

CIVIL. Attorneys for the defendants :—Messrs. *Bhaishankar and Kanga.*

18 B. 570=
 Chitty's
 S. C. C. R.
 409.

18 B. 581.

[581] CRIMINAL REVISION.

Before Mr. Justice Candy and Mr. Justice Fulton.

In re DEVJI VALAD BRAVANI AND ANOTHER.* [11th September, 1893.]

Criminal Procedure Code (Act X of 1882), ss. 478 and 195—Civil Procedure Code (XIV of 1882), ss. 278, 279—Inquiry into claim to attached property—Civil Court's power to commit the party making such claim or his witness on a charge of forgery and perjury—Subsequent civil suit by claimant to establish his right to the property—Stay of Criminal proceedings pending civil litigation.

It is not an invariable rule that criminal proceedings should be stayed during the pendency of civil litigation regarding the same subject-matter.

Certain property was attached in execution of a decree. Thereupon accused No. 1 applied to have the attachment raised, on the ground that he had purchased the property from the judgment-debtor under a sale-deed executed long before the date of the attachment. In the summary inquiry which was made under s. 278 of the Code of Civil Procedure (Act XIV of 1882), he produced the sale-deed, and accused No. 2 was called as his witness and supported his claim. The Subordinate Judge found that the deed was a forgery, and rejected the claim. Proceeding then under s. 478 of the Code of Criminal Procedure (Act X of 1882) he held the inquiry directed by that section, and committed both the accused to the Sessions Court on charges of perjury and forgery. During the pendency of the inquiry under s. 478, the accused No. 1 filed a civil suit to establish the genuineness of the sale-deed and set aside the attachment. He also applied to the High Court to quash the commitment or stay the criminal proceedings pending the disposal of the civil suit.

Held, refusing the application, that the mere fact that a regular suit was filed to establish the genuineness of the sale-deed was not a sufficient ground for quashing the commitment, or for adjourning the trial pending the hearing of the civil suit.

Held, also, that the power given to a Civil Court under chap. XXXV of the Code of Criminal Procedure (Act X of 1882) to take action regarding "any offence referred to in s. 195" is not ordinarily restricted, in regard to offences relating to documents, to such offences only when committed by a party to the proceeding in which the document was given in evidence. It extends also to such offences when committed by a witness of the party.

[F., 1 Bom. Cr. Cas. 212=14 Bom. L.R. 968=13 Cr. L.J. 848=17 Ind. Cas. 720; R., 26 B. 785 (790); 23 C. 610 (613, 620); 31 C. 858 (861); 34 C. 848=6 C.L.J. 531=11 C.W.N. 712 (714)=5 Cr.L.J. 430; 37 C. 250=10 C.L.J. 564=14 C.W.N. 330=11 Cr.L.J. 37=4 Ind. Cas. 710; 32 M. 49 (57)=9 Cr.L.J. 41=19 M.L.J. 42=4 M.L.T. 404; 15 C.W.N. 565=12 Cr. L.J. 101=9 Ind. Cas. 577; D., 30 M. 226 (227)=6 Cr. L.J. 131.]

THIS was an application under s. 435 of the Code of Criminal Procedure (Act X of 1882).

Certain property was attached in execution of a decree. Thereupon Devji valad Bhavani (accused No. 1) applied, under s. 278 of the Code of Civil Procedure, to have the attachment raised, alleging that the property attached had been previously sold [582] to him by the judgment-debtor by a deed of sale dated 10th September, 1892.

* Criminal Revision No. 214 of 1893.

In the summary inquiry which followed, accused No. 2 was examined as witness for Devji (accused No. 1). He stated that he had attested the sale-deed, and also passed a receipt for part of the purchase-money on behalf of the others (the judgment-debtors).

The Subordinate Judge, who investigated the claim, under s. 278, was of opinion that the sale-deed was a fabrication, and that it was fabricated for the purpose of saving the property from being taken in execution. He, therefore, on 28th June, 1893, disallowed the claim, and at once proceeded to hold an inquiry, under s. 478 of the Code of Criminal Procedure (X of 1882), as to whether the accused should be committed for trial on the charge of forgery, &c.

Pending this inquiry, Devji (accused No. 1) on 3rd July, 1893, filed a suit, under s. 283 of the Code of Civil Procedure (XIV of 1882), to establish his title to the attached property, relying on the sale-deed of the 10th September, 1892.

On the 5th July, 1893, the Subordinate Judge completed the inquiry under s. 478 of the Criminal Procedure Code, and committed the accused to the Court of Session,—accused No. 1 on charges framed under ss. 467, 468, 471, 114, 193 and 207 of the Indian Penal Code (XLV of 1860), and accused No. 2 under s. 467 and 193 of the Penal Code.

Thereupon both the accused applied to the Sessions Court to quash the order of committal in respect of the charges under ss. 467, 468 and 114 of the Penal Code, and to stay further proceedings in respect of the other charges pending the disposal of the Civil suit which accused No. 1 had filed under s. 283 of the Code of Civil Procedure. This application was rejected by the Sessions Judge.

The accused then applied to the High Court under its revisional jurisdiction.

The High Court sent for the record and proceedings of the case.

[583] *Inverarity* (with him *M. B. Choubal*), for the accused :—The lower Court ought to have stayed all criminal proceedings against the accused till the decision of the Civil suit which is brought by accused No. 1. To carry on criminal proceedings during the pendency of the civil suit has the effect of intimidating witnesses. And this Court has often acted on the principle that criminal proceedings should not go on during the pendency of the civil litigation—*In re Shri Nana Maharaj* (1). The Subordinate Judge was mistaken in framing charges under ss. 467, 468 and 471 of the Penal Code. There was really no forgery. Execution of the sale-deed is admitted. The allegation is that the sale is a colourable transaction intended merely to secure the property from attachment. That does not make the deed a forgery. As regards accused No. 2, he was not a party to the investigation under s. 278 of the Code of Civil Procedure. He was only a witness in that proceeding. Chapter XXXV of the Code of Criminal Procedure (X of 1882) is not, therefore, applicable in his case. Section 476 of the Code authorizes a Court to make an inquiry into those offences only which are referred to in s. 495. And s. 195, cl. (c), refers to offences in respect of documents which are committed by a "party to any proceeding." The word "party" does not include a witness in such proceedings. It is, therefore, clear that with respect to accused No. 2 the Subordinate Judge had no authority to hold an inquiry under s. 478 of the Code of Criminal Procedure, or commit him to the Sessions Court on a charge of forgery.

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Rao Saheb Vasudev J. Kirtikar, Government Pleader, for the Crown :—The civil proceedings out of which the present prosecution has arisen, had come to an end before the inquiry under s. 478 of the Code of Criminal Procedure was begun. Pending this inquiry, the suit was brought under s. 283 of the Code of Civil Procedure. The object of this suit is simply to frustrate the criminal prosecution. Under s. 478 of the Code of Criminal Procedure the Subordinate Judge had jurisdiction to hold a preliminary inquiry into the charges of perjury and forgery against both the accused. If the Judge [584] was satisfied that either the parties to the proceeding or their witnesses had committed perjury or any other offence against public justice, he was justified in directing a criminal prosecution—*In the matter of Mutty Lall Ghose* (1). When a Judge directs a criminal prosecution, the High Court has no power to set it aside—*Queen Empress v. Bachappa* (2). Nor should it stay the criminal proceedings pending the final decision of the civil suit—*In the matter of the petition of Ramprasad* (3). The word *forgery* is used as a generic term in s. 463 of the Indian Penal Code. It is used in a comprehensive sense in s. 195 of Act X of 1882, so as to embrace all species of forgery including the offence under s. 467 of the Penal Code. The order of committal on charges under ss. 467, 468 and 471 of the Code was, therefore, proper.

JUDGMENT.

CANDY, J.—No doubt this Court has often acted on the principle that criminal proceedings should not go on during the pendency of civil litigation regarding the same subject-matter. But we do not think that this is an invariable rule. Under the circumstances of the present case as recited by the Subordinate Judge there was no course open to him but to make inquiries, under chap. XXXV of the Criminal Procedure Code, regarding the genuineness of the transaction put forward by the party who applied to raise the attachment. The fact that a regular suit has now been filed to establish the genuineness of that transaction is not sufficient to enable this Court to quash the commitment regularly made by the Subordinate Judge to the Sessions Court, or to direct the trial to be adjourned pending the hearing of the civil suit, and possibly of an appeal and second appeal.

The Sessions Court being thus seized of the case, we do not think it expedient to go into the merits, or express any opinion whether the offences recited in the charges as drawn up by the Subordinate Judge are those which *prima facie*, according to the facts of the prosecution, would be the most appropriate to include in the indictment. It will be for the accused to make an application [585] if so advised, to the Sessions Judge requesting that they may be released on bail.

With regard to the contention that the commitment of the accused No. 2 is illegal in regard to any offence relating to documents because he was not a party but only a witness to the proceeding in the Civil Court, we think that the power given to the Civil Court under chap. XXXV of the Criminal Procedure Code to take action regarding "any offence referred to in s. 185" is not ordinarily restricted, in regard to offences relating to documents, to such offences only when committed by a party to the proceeding in which the document was given in evidence. No doubt sanction is only requisite in such a case, prosecution of a witness for an

(1) 6 C. 308.

(2) 13 B. 109.

(3) B.L.R. Sup. Vol. 426.

offence relating to documents being permissible without sanction. But that would not invalidate a prosecution commenced on a sanction which included both a party and a witness. The offences referred to in s. 195 (c) are the offences described in s. 463 or punishable under ss. 471, 475 or 476 of the Indian Penal Code. The limitation that sanction only is necessary in regard to prosecution for these offences, when such offences have been committed by a party, does not limit the reference to the offences in s. 476, so as to make it legal for a Subordinate Judge to commit a party to the Sessions Court on charges of offences relating to documents, and illegal for him at the same time to commit a witness of the party on similar charges.

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Application rejected.

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[586] APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Bayley.

GANGADHARRAO VENKATESH AND OTHERS (*Original Plaintiffs*),
Appellants v. SHIDRAMAPA BALAPA DESAI AND ANOTHER (Original
*Defendants) Respondents.** [11th September, 1893.]

Limitation Act (XV of 1877), s. 19—Acknowledgment—“Signing,” what amounts to.

Certain letters admitting a debt were written by the authority of the debtor, who was a desai. The only words, however, of the letter which were actually in his own handwriting were the words “*guru samarth*” (the exalted preceptor or is strong) at the beginning of each letter and the words “*kalave, bahut kay lihine, lobh karava hi vinanti*” (let this be known. What more need be written. Keep regard; this is the representation) at the end. It was proved by evidence that this was the usual mode of signing and authenticating letters and informal documents among the class to which the defendant belonged.

Held, that, by analogy, the writing of specified words by desais at the top and bottom of letters, which was shown to be the usual way, amongst persons of that class, of authenticating letters, was a “*signing*” within s. 19 of the Limitation Act (XV of 1877) and that the letter was a valid acknowledgment.

The ground upon which it is held that the mark of an illiterate debtor is a sufficient signature, is that the signing in such a manner as is usually adopted

* Second Appeal, No. 636 of 1890.

† Section 19 of the Limitation Act (XV of 1877):—

19. *Effect of acknowledgment in writing.*—If, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a new period of limitation, according to the nature of the original liability, shall be computed from the time when the acknowledgment was so signed.

When the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but oral evidence of its contents shall not be received.

Explanation 1.—For the purpose of this section an acknowledgment may be sufficient, though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver or perform or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right.

Explanation 2.—In this section ‘signed’ means signed either personally or by an agent duly authorized in this behalf.