

case, to prove the *mens rea*, or that the conviction, on the special facts of this case, is bad in law.

In re
ROWTHA-
KONNI.

Having regard, however, to the fact that it is not shown that this boat had been plying undermanned before this occasion, or if so, for how long, and in the absence of proof of any personal knowledge on the part of the owner that it had not its full complement, or that there were any special reasons for making an example in this case, we think that the fine, Rs. 25, being half of the maximum amount, is excessive, and we shall reduce the fine to Rs. 10, and direct that the difference be refunded, if the fine has been paid.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Brandt.

KUNHAMED, PETITIONER,

and

CHATHU, RESPONDENT.*

1886.
April 16.

Civil Procedure Code, ss. 315, 622.

Where an order was passed under s. 315 of the Code of Civil Procedure directing refund to a purchaser in execution of a decree in a suit in which a second appeal lay to the High Court :

Held, that under s. 622 of the Code of Civil Procedure the High Court could set aside the order because, the judgment-debtor having been found to have a saleable interest, the Lower Court had no power to order a refund.

APPLICATION under s. 622 of the Code of Civil Procedure to set aside an order passed by B. D'Rozario, District Munsif of Cannanore, under s. 315 of the Code of Civil Procedure.

In execution of the decree in suit 354 of 1880, Chathu Kurup purchased the equity of redemption of certain land, the property of the judgment-debtor in that suit for Rs. 970.

In 1883 he brought suit No. 153, to redeem the mortgage (kánam). It was held, however, that he was not entitled to redeem if the mortgagees elected to exercise their right of purchasing the equity of redemption, inasmuch as they were found to be otti and not kánam holders.

* Civil Revision Petition 16 of 1886.

KUNHAMED
v.
CHATHU.

In 1885 Chathu Kurup received from the mortgagees Rs. 600 under an order of the Court.

He now claimed under s. 315 of the Code to recover Rs. 370, the balance of the Rs. 970 he had paid in suit 354 of 1880, from Kunhamed, the decree-holder in that suit.

Kunhamed resisted the application on the ground that s. 315 of the Code did not apply to the case, inasmuch as the judgment-debtor had a saleable interest of Rs. 600 in the property sold.

The District Munsif held that there was nothing to prevent Chathu Kurup from recovering the sum claimed and that the objections raised by Kunhamed were frivolous and directed payment of Rs. 370 with interest at 6 per cent. from the date of the purchase by Chathu Kurup.

To set aside this order the present application was made.

Anantan Nayar for petitioner, Kunhamed.

Mr. Wedderburn for respondent, Chathu Kurup.

This Court has no jurisdiction, under s. 622 of the Code of Civil Procedure, to revise the order of the District Munsif. The order was passed in a suit in which an appeal lay to the High Court.

The word 'case' in s. 622 is a synonym for 'suit' (see ss. 617, 618, 619, 620, 621.)

The intention of Legislature apparently was that the High Court should have the power of revision in cases falling under s. 586 of the Code in which no second appeal is allowed.

Again, according to the decision of the Privy Council in *Amir Hassan Khan v. Sheo Baksh Singh*,⁽¹⁾ the Munsif had jurisdiction to determine whether a refund could be made. Bad law is not a material irregularity according to that decision.

Anantan Nayar.

This Court has interfered in similar cases.

Sivarama v. Ramu (2) and C.R.P. 294 of 1885.

The Court (Collins, C.J., and Brandt, J.) delivered the following JUDGMENT:—The respondent himself applied for refund of the sum of Rs. 370, being the difference between the value of the purchase-money paid by him and the sum of Rs. 600 paid to him under order of the Court by the otti-holder.

The District Munsif made an order for the refund accord-

(1) I.L.R., 11 Cal., 6.

(2) I.L.R., 8 Mad., 99.

ingly. That the judgment-debtor had some saleable interest in the property sold is then clear, and in that case the District Múnsif had no jurisdiction to make an order under s. 315 for refund of the purchase-money or any part thereof.

No appeal lay against the order passed by the District Múnsif; and following the decisions of this Court in *Sivarama v. Kámbi*(1) and Civil Revision Petition 294 of 1885,(2) we deal with the case in revision and set aside the order of the District Múnsif, dated 3rd October 1885, with costs throughout.

APPELLATE CRIMINAL.

Before Mr. Justice Parker.

GULAM MUHAMMAD SHARIF-ÚD-DAULAH, *in re.**

1886.
January 8.

Criminal Procedure Code, s. 197--Sanction to prosecute Judge for words uttered on the bench.

Where a Judge was charged with using defamatory language to a witness during the trial of a suit:

Held that, under s. 197 of the Code of Criminal Procedure, the complaint could not be entertained by a Magistrate without sanction.

THE facts of this case are set out in the judgment of the Court (Parker, J.)

The Acting Advocate-General (Mr. Shephard) for petitioner.

PARKER, J.—This is an application to direct the Presidency Magistrate of Black Town to entertain the complaint of petitioner against Mr. Ponnusámi Pillai, 3rd Judge of the Madras Court of Small Causes, charging him with defamation and insult under ss. 500 and 504 of the Indian Penal Code. The Presidency Magistrate has refused to entertain the complaint in the absence of the sanction of Government or the High Court under s. 197 of the Criminal Procedure Code.

The petitioner was a witness before the Small Cause Judge in a case tried before him, and the expressions complained of are alleged to have been used by the Judge in addressing the witness in the course of the trial. It is contended by the Advocate-

(1) I.L.R., 8 Mad., 99.

(2) Not reported.

* Criminal Miscellaneous Petition 105 of 1885.