Act VIII of 1869, a specification of the class of suits to which these special limitation provisions were applicable. Accordingly we find the words of cl. 6, s. 23 of Act X of 1859, "all suits to recover the occupancy [or possession] of any land, farm, or tenure from which a ryot, farmer, or tenant has been illegally ejected by the person entitled to receive rent for the same," used with the omission of the two words in brackets, in s. 27 of the Act of 1869. It appears to me reasonable to suppose that it was intended by the use of these words to make the one year's limitation provided by the Act of 1869 applicable to the same class of suits only to which cl. 6 of s. 23 of Act X of 1859 had been decided to be applicable, and to which the one year's rule of limitation was applicable under the same Act of 1859. I find that the same view has been taken by a former learned Judge of this Court (Phear, J.) in the case of *Nistarini* v. *Kali Pershad Dass Chowdhry* (1).

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Morris and Mr. Justice Tottenham.

IN THE MATTER OF POONA CHURN PAL.

1881
August 1.

Sanction to Prosecute—Presidency Magistrates' Act (IV of 1877), ss. 41, 42, 43, and 168—General and Specific Sanction—Order of Discharge—Superintendence of High Court—Charter Act (24 & 25 Vict., c. 104), s. 15.

The only course to be pursued where it is sought to set aside an order of discharge made by a Presidency Magistrate, is that laid down in s. 168 of Act IV of 1877, and as by that section there is no appeal allowed to a complainant, who is a private individual, it is not open to him, by invoking the aid of the High Court under s. 15 of the Charter, to obtain under the Court's extraordinary powers that which he might obtain had he a right of appeal.

ON the 2nd May 1881, Poona Churn Pal obtained liberty, under the provisions of ss. 41 and 42 of Act IV of 1877,

* Criminal Rule, No. 190 of 1881, against an order of F. J. Marsden, Esq., Presidency Magistrate of Calcutta, dated the 9th July 1881.

(1) 23 W. R., 431.

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from Mr. Justice Broughton, to prosecute one Dwarka Mohun Dass and his gomasta Anunto Hurry Pal, on the ground that the former, at the hearing of the suit of Dwarka Mohun Dass *v.* Poona Churn Pal, used as evidence on his behalf two documents purporting to be contracts, which were found by Mr. Justice Broughton not to be genuine, and that the latter had affirmed and filed a false affidavit in support of an application for leave to verify the plaint. At the prosecution at the Police Court, the two accused were charged under ss. 471, 193, and 209 of the Indian Penal Code. After summonses were issued and the parties had appeared, the Magistrate objected that no matter could be gone into which required sanction under s. 41 of the Presidency Magistrates' Act, and that the sanction obtained was a limited sanction. He held, therefore, that the prosecution under ss. 193 and 209 could not be entertained, but that the prosecution might proceed on the charge under s. 471. The complainant, not agreeing to waive his right to prove that the accused had fraudulently instituted a false suit and given false evidence at the trial of the suit, the Magistrate ordered the accused to be discharged, and fined the complainant Rs. 50, to be awarded to each of the accused by way of compensation.

A rule *nisi* was applied for and obtained by Mr. Lee on behalf of the complainant, calling upon the Magistrate to show cause,—1*st*, why the fines should not be remitted; 2*nd*, why the sanction obtained should not be recognized in so far as it gave leave to prosecute under ss. 41 and 42 of the Presidency Magistrates' Act; 3*rd*, and why he should not be directed to record the evidence of the complainant and his witnesses.

Mr. *Jackson* on behalf of the accused applied for and obtained a rule, calling upon the complainant to show cause why the accused should not be heard, the Court directing that the two rules should be returnable on the same day.

Mr. *Lee*, at the hearing of these rules, contended, that the accused had no *locus standi*, and no claim as of right to appear at the argument of the rule, because this was not an appeal from the Magistrate's decision, but an application to the High

Court to exercise its general powers of superintendence under s. 15 of the Charter, and that, inasmuch as the Court had no power to compel the accused to refund the Rs. 50 given to him as compensation, he would have no right to appear to defend at that point of the case. [On Mr. Bonnerjee, who appeared for the Magistrate and the Crown, informing the Court that he had no objection to the accused being heard, the Court decided, that as the accused was present and represented by Counsel, he had a right to appear.]

Mr. *Bonnerjee*, on behalf of the Magistrate and the Crown, showed cause against the rule, contending, that the application was in the nature of an appeal, and that being so, the petitioner had no *locus standi*, as appeals against acquittals could only be instituted by the Local Government as laid down in s. 168 of the Presidency Magistrates' Act. That the Magistrate had not acted illegally, for the sanction to prosecute was limited and not general, and that the Magistrate had no jurisdiction to hear a complaint of any offences which were not specifically mentioned in the sanction. The prosecution have no right to make this application. Section 147 of the Criminal Procedure Code is not wide enough to allow the High Court to entertain it: *The Empress* v. *Gasper* (1). [MORRIS, J.—Section 147 is for the promotion of justice.] The power of the Court has been curtailed by the Presidency Magistrates' Act.

Mr. *Jackson* (with him Mr. *M. Ghose* and Mr. *Trevelyan*) for the accused.—If the right of setting aside an order exists under s. 147, it exists as well for the public as the Government; but if so, how is it that the Legislature has provided that no appeal from an acquittal shall lie except one presented by Government: *Empress* v. *Miyaji Ahmed* (2). Then, can persons come up to the Court by way of revision when they have no right by way of appeal. The case of *The Corporation of Calcutta* v. *Bheecunram Napit* (3) lays down that s. 147 is only applicable to cases of conviction, whereby a defendant is aggrieved; complainants cannot come up under it. Nor will

(1) I. L. R., 2 Calc., 278. (2) I. L. R., 3 Bomb., 150.
(3) I. L. R., 2 Calc., 290.

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the Court exercise its extraordinary powers under s. 15 of the Charter when there is an appeal: *Rajcoomar Singh* v. *Dinonath Ghuttuck* (1). The case of *In re Balaji Sitaram* (2) gives the requisites of a proper sanction. The petition on which the rule was obtained is not accurate, and it does not appear that the person signing it was present at the Police Court. The following cases show that where material facts have been kept from the Court, the Court has always refused to entertain any application founded thereon:—*The Attorney-General* v. *The Mayor of Liverpool* (3), *Wilson* v. *Callender* (4), *Sibnarain Ghose* v. *Hullodhur Doss* (5). As to the question of refund of the fine, the Court has no power to make such an order: *The Queen* v. *Hadjee Jeebun Bux* (6).

Mr. *Lee* in support of the rule.—The Court has undoubted power to interfere under s. 15 of the Charter, even supposing that the application cannot be made under s. 147 of the Criminal Procedure Code. The application is not made by way of appeal, because there has been no trial, and s. 168 has reference to acquittal, dismissal or discharge after an enquiry of some sort. The Magistrate refused to do his duty by refusing to take evidence on the first two charges, and by wrongfully interpreting the sanction given by the High Court to be a limited one only. Further, the award of compensation was illegal. Section 242 of the Presidency Magistrates' Act provides that a sum not exceeding Rs. 50 should be allowed for compensation if it appear that there be not sufficient ground for the complaint, but the sanction granted by the Court must be taken to be sufficient ground; nor has the Magistrate power to fine until he has heard the case, or a sufficient portion of it, to enable him to decide that there was no good ground for the complaint. As regards the jurisdiction of the High Court to interfere, see *Chunder Coomar Roy* v. *Omesh Chunder Mojoomdar* (7).

(1) 1 C. L. R., 352.
(2) 11 Bomb., 34.
(3) 1 My. and Cr., 210.
(4) 9 Moore's P. C. Ca., 100.
(5) 9 Moore's P. C. Ca., 354.
(6) I. L. R., 1 Calc., 354.
(7) 22 W. R., Crim., 78.

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The judgment of the Court (MORRIS and TOTTENHAM, JJ.) was delivered by

MORRIS, J.—We are asked to exercise our powers of superintendence under s. 15 of the Charter Act, by remitting certain compensation awarded to two persons, who have been complained against by the petitioner, and by setting aside an order of discharge made by the Presidency Magistrate, and directing the trial of the case to be proceeded with, in the light of a construction which ought to have been put, but was not put, upon an order of sanction to a prosecution made by Mr. Justice Broughton, after judgment passed in a civil suit on the Original Side of the High Court, in which the petitioner was defendant, and the persons complained against, plaintiffs.

After hearing the learned Standing Counsel in support of the action taken, and orders passed, by the Presidency Magistrate, and also Mr. Jackson who appeared, and whom we permitted to address us, on behalf of the persons who would be affected by any order directing a further trial of the case, and after considering the arguments addressed to us in reply by Mr. Lee, we are of opinion that we cannot properly exercise powers of superintendence under the Charter Act in this matter, and that the application must be rejected.

In the first place, s. 168 of the Presidency Magistrates' Act prescribes the course, and it seems to us the only course, which must be taken when an order of discharge made by a Presidency Magistrate is sought to be set aside. The Government alone have a right of appeal, and clearly, as was argued before us, no such special exception would have been made by the Legislature in favor of the Government, if both the Government and private individuals could obtain the same end by an application invoking the aid of the Court under s. 15 of the Charter Act.

Mr. Lee contends, that s. 168 of the Presidency Magistrates' Act relates only to cases in which a trial has been had, and that it has no application to a case, such as the present, in which the order of discharge was given in the course of proceedings preliminary to trial. Mr. Lee refers to the fact that, on the day fixed for the trial, when both parties were before the

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Court, no examination of the complainant and of his witnesses was made, the reason being that the Presidency Magistrate, upon the view which he took of the sanction given by Mr. Justice Broughton, refused to allow the prosecution to proceed on all the charges specified in the summons.

This objection, though, perhaps, started by the Presidency Magistrate himself, was, undoubtedly, taken by Mr. Ghose, the counsel for the accused; and this being so, it seems to us, having regard to the provisions of s. 119, Act IV of 1877, that the trial, in the sense in which the word 'trial' is used in the Act, had then commenced. By this objection, we understand the accused to have shown cause why they should not be convicted, and their objection prevailing, they were ordered to be discharged.

Then again, in the matter of setting aside the order, which practically amounted to a fine upon the complainant, by which compensation was awarded to the accused, we think that we are powerless to interfere. The award of compensation is a matter which lies entirely within the discretion of the Presidency Magistrate, and from the statement of the facts of the case, which has been presented to us, we are quite unable to say, that that discretion has been unreasonably, or improperly, exercised. The accused were certainly put to a considerable amount of harassment by being brought on two different occasions before the Court, and on neither occasion did the complainant see fit to prosecute his case. On the last occasion,—that is to say, on the 9th July, even on the view taken by the Magistrate of the limited character of the sanction given by Mr. Justice Broughton, there was nothing to prevent the complainant from adducing evidence against the accused.

The Counsel for the complainant admits that he refused to go on with the case, in the hope that the Magistrate would allow an adjournment to enable him to refer to Mr. Justice Broughton, and obtain from him an expression of opinion as to the nature of the sanction granted by him. It seems to us that the Magistrate was quite within his right in refusing to allow the trial to stand over, and his order of discharge was in accordance with law.

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This order is no bar to further proceedings being taken by the petitioner, if he be so advised, and this renders interference by this Court, under s. 15 of the Charter Act, entirely unnecessary.

This application is dismissed, and the rule discharged.

Rule discharged.

ORIGINAL CIVIL.

Before Mr. Justice Wilson.

PROVABUTTY DABEE (PLAINTIFF) *v.* MOHENDRO LALL BOSE (DEFENDANT).

1881
June 24.

Ancient Lights—Enlargement of Window—Obstruction—Notice—Delay—Mandatory Injunction.

Where a person, who has a right to light from a certain window, opens a new window, or enlarges the old one, the owner of an adjoining house has a right to obstruct the new or enlarged opening, if he can do so without obstructing the old, but if he cannot obstruct the new without obstructing the old, he must submit to the burden.

A plaintiff entitled as of right to light and air through a certain window, subsequently enlarged it, and on the light thereto being interfered with by the defendant, gave him notice to remove the obstruction two days after it had been completed.

Held, that he had been guilty of no delay in taking steps to prevent the obstruction, and that he was entitled to a mandatory injunction requiring the defendant to remove it.

THE plaintiff, a Hindu lady, stated, that she was the owner of a certain house, numbered 56, Punchanuntollah Lane, and that adjoining these premises to the north and west, stood a house belonging to the defendant; that, in October 1880, the defendant, notwithstanding remonstrance, commenced to build a wall which, when completed, obstructed a window in the north wall of her house, and deprived her of the access of light and air