APPELLATE CIVIL.

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

COLLECTOR OF NORTH ARCOT AND ANOTHER (DEFENDANTS), APPELLANTS,

v.

NAGI REDDI (PLAINTIFF No. 2), RESPONDENT.*

1891. April 30. May 1.

Revenue Recovery Act—Act II of 1864 (Madras), s. 52—Karnam in a permanently settled zamindari.

The karnam in a permanently settled zamindari is a village servant employed in revenue duties within the meaning of the Revenue Recovery Act, s. 52.

SECOND APPEAL against the decree of H. H. O'Farrell, Acting District Judge of North Arcot, in appeal suit No. 97 of 1889, reversing the decree of C. Ranga Rau, Acting District Munsif of Vellore, in original suit No. 11 of 1888.

The plaintiff's property had been attached and sold under Act II of 1864 to enforce payment of a sum said to be payable by him on account of mera due to the karnam of a village in the permanently settled Kangundi Zamindari.

The plaintiff now sued to have the order made by the Collector (defendant No. 1) under Act II of 1864 set aside and for damages.

The District Munsif dismissed the suit, but his decree was reversed on appeal by the District Judge, who awarded to the plaintiff Rs. 7-14-3 damages against the Collector and the manager of the zamindari, who was defendant No. 2.

The defendants preferred this second appeal.

Mr. *Powell* for appellant No. 1.

Subramanya Ayyar for appellant No. 2.

Bhashyam Ayyangar for respondent.

JUDGMENT.—The question is whether the karnam in a permanently settled zamindari is a village servant employed in revenue duties within the meaning of section 52 of Act II of 1864. It has been held by the District Judge that the section does not apply to such karnams, but only to karnams in unsettled

* Second Appeal No. 505 of 1890.

COLLECTOR OF NORTH ARCOT v. NAGI REDDI.

districts. It is clear that, independently of Regulation XXIX of 1802, the karnam was, as he is now admittedly everywhere except in lands settled under Regulation XXV of 1802, a revenue servant. By the preamble of Regulation XXIX of 1802, passed after the passing of Regulation XXV, it is declared that the office of karnam is still of great importance, and that it is expedient to provide for the continuance of it, and the Regulation goes on to indicate the duties which are to be performed by the karnam. Some of those duties are duties which may aptly be called revenue duties. The Regulation VI of 1831 further tends to show that these karnams were regarded as revenue servants, for the Regulation relates to hereditary village and other offices in the Revenue and Police departments, and by the last section it is expressly provided that the Regulation shall not apply to karnams holding office under Regulation XXIX of 1802. We cannot agree with the District Judge in the view he has taken of the question, and must reverse the decree and remand the appeal to be dealt with according to law. Costs are to be provided for in the revised decree.

APPELLATE CRIMINAL.

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

1891. Oct. 14, 15.

QUEEN-EMPRESS

v.

RANGA RAU.*

Criminal Procedure Code—Act X of 1872, s. 466—Act X of 1882, s. 197—Government orders as to tribunal for trial of officials.

In 1890 the Collector of Ganjam reported to the Board of Revenue a charge of bribery, &c., against a Sub-Magistrate and received directions to send the case for trial to some Magistrate other than himself, or the Principal Assistant Magistrate. He accordingly sent it to the Senior Assistant Magistrate of Berhampore; the accused was convicted, but he appealed to the Sessions Judge, who reversed the conviction on the merits. The Government did not appeal against the acquittal of the accused, but the District Magistrate referred to the High Court the question whether the Magistrate had jurisdiction:

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* Criminal Revision Case No. 282 of 1891.

Held, on the reference, that it was not a case for the interference of the High Court, because (1) it was not shown that the Magistrate had acted without jurisdiction; (2) Government had not appealed against the acquittal by the Sessions Judge who had tried and determined the question of jurisdiction.

CASE referred for the orders of the High Court under section 438 of the Code of Criminal Procedure by E. C. Johnson, District Magistrate of Ganjam.

The case was stated as follows:—

"A charge of bribery, extortion and criminal intimidation "having been made against the Sub-Magistrate and Deputy "Tahsildar of Narasannapet, I reported the same, in the capacity "of Collector, to the Board of Revenue on 18th September 1890, "and was directed in Board's Proceedings, No. 6967, Miscella- "neous, dated 31st October 1890, to send the case for trial to "some Magistrate other than myself or the Principal Assistant "Magistrate who had held departmental inquiry in the case. I "accordingly sent it for trial to the Senior Assistant Magistrate, "Berhampore.

"The case was taken up as calendar case No. 36 of 1890 on "his file; charges under sections 161, 166 and 384, Indian Penal "Code, were framed; the accused was found not guilty under "sections 166 and 384, Indian Penal Code, but guilty under "section 161, Indian Penal Code, and was sentenced to two years' "simple imprisonment and a fine of Rs. 1,000.

"Against this conviction appeal was made to the Sessions "Judge, who quashed the conviction. . . .

"I then asked the Government to direct the Public Pro- "secutor to present an appeal to the High Court against the "double acquittal; but Government, in declining to do so, has "directed me to refer to the High Court 'the question of the "'jurisdiction of the Senior Assistant Magistrate.'

"Government Order No. 572, dated April 9, 1875, specified, "under the last paragraph of section 466 of the Code of Criminal "Procedure of 1872 (corresponding with section 197 of the Code "now in force), 'the Court of Sessions' as the Court before which "any Deputy Tahsildar and Magistrate should be tried. This "order is declared by Government to be still in force.

"Under these circumstances the trial by the Acting Senior "Assistant Magistrate was without jurisdiction; and I have the "honour to request that his order in the case may be set aside

QUEEN-EMPRESS v. RANGA RAU.

"and the commitment of the accused for trial by the Court of "Sessions ordered."

The *Government Pleader* and *Public Prosecutor* (Mr. *Powell*) for the Crown.

Ramachandra Rau Saheb and *Pattabhirama Ayyar* for the accused.

JUDGMENT.—This is a case referred to us by the District Magistrate of Ganjam under the instructions of Government.

A charge of bribery, extortion and criminal intimidation was made against the Sub-Magistrate and Deputy Tahsildar of Narasannapet, and on the 18th September 1890 the District Magistrate of Ganjam reported the same to the Board of Revenue, and was directed by the Board to send the case for trial to some magistrate (other than himself or the Principal Assistant Magistrate). The case was, therefore, sent for trial to the Senior Assistant Magistrate, Berhampore. The prisoner was convicted under section 161, Indian Penal Code. The Sessions Judge on appeal reversed the conviction on the merits. It was argued before him by the vakil for the prisoner that the conviction was void on the ground that the Senior Assistant Magistrate had no jurisdiction. This defence, however, the Sessions Judge overruled on the ground that from the list of notifications and rules which have the force of law in this Presidency it does not appear that the Government has passed an order under section 197, Criminal Procedure Code. The Government did not appeal against the acquittal.

Mr. Powell, the Public Prosecutor, now argues that all the proceedings must be set aside, as the Senior Assistant Magistrate had no jurisdiction to try the case, and consequently all the proceedings are void, and he refers us to an order of Government, dated 9th April 1875, which specified, under section 466 of the Code of Criminal Procedure then in force the Court of Session as the Court before which a Tahsildar and Magistrate or a Deputy Tahsildar and Magistrate shall be tried exclusively. The Government has, however, furnished the High Court with a list of the notifications and rules having the force of law in this presidency revised up to July 1887, and we find no mention of the order of Government, dated 9th April 1875, in this list, and we must presume, therefore, that the order has been repealed or is considered to have ceased to have effect, the Code having been repealed. Mr. Pattabhirama Ayyar argues that such a Government order under section 197 of

the *present* code would be *ultra vires*, because, as it now stands, the law limits the power of Government to determining, in each particular case as it arises, the person by whom and the manner in which the prosecution of such public servant is to be conducted, and empowers Government to specify the Court before which the trial of a public servant is to be held; whereas in the order of 1875 the Government directed that a class, viz., Tahsildars and Magistrates or Deputy Tahsildars and Magistrates, should be tried only by a Court of Session. This may be so and may explain why the Government order was repealed, if repealed it be.

We must decline to interfere on two grounds: (1) it has not been shown that the trial by the Senior Assistant Magistrate was without jurisdiction; (2) the question of jurisdiction was considered by the Sessions Judge and decided adversely to Government and Government has not appealed.

APPELLATE CRIMINAL.

Before Mr. Justice Parker and Mr. Justice Wilkinson.

1891. August 6.

QUEEN-EMPRESS

v.

MUNISAMI AND OTHERS.*

Criminal Procedure Code—Act X of 1882, *ss.* 436, 437—*Further inquiry—Power of District Magistrate to suggest a committal.*

A District Magistrate who refers a case to a Sub-Magistrate for further inquiry has no authority to fetter him in the exercise of his judicial discretion as to the question whether the case should or should not be committed to the Court of Sessions.

CASE referred for the orders of the High Court under section 438 of the Code of Criminal Procedure by E. J. Sewell, Sessions Judge of North Arcot.

The question referred was whether or not a committal was illegal which was made by a Second-class Magistrate, (who had previously discharged the accused and now expressed no opinion that a *prima facie* case had been made out for the prosecution,) in

* Criminal Revision Case No. 297 of 1891.