APPELLATE CRIMINAL.

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

QUEEN-EMPRESS (PETITIONER),

1895. February 27.

v.

SUBBARAYA PILLAI (RESPONDENT).*

Criminal Procedure Code—Act X of 1882, *ss.* 195, 407, 476—*Application for sanction to prosecute—Offence committed before Second-class Magistrate—Court to which appeals ordinarily lie—Application by letter for sanction to prosecute—District Magistrate's order sanctioning prosecution and prescribing the Court in which the prosecution should take place.*

The District Forest officer applied by letter to the District Magistrate to take such action as he deemed fit against one Subbaraya Pillai, who, for reasons stated by the District Forest officer, was suspected of having abetted the offence of giving false evidence in the course of proceedings instituted on behalf of the Forest Department in the Court of a Second-class Magistrate. The District Magistrate had previously directed that all appeals from the Second-class Magistrate should be heard by the Deputy Magistrate, but he passed an order himself whereby he (1) sanctioned the prosecution of Subbaraya Pillai, and (2) directed that it should take place in the Court of the Head Assistant Magistrate:

Held, (1) that the District Magistrate had no jurisdiction to sanction the prosecution for the reason that he was not the ordinary appellate authority;

(2) that the second part of his order was irregular for the reasons that it was not authorized by Criminal Procedure Code, section 195, and he had no jurisdiction to act under section 476, since the alleged offence was not brought to his notice in the course of a judicial proceeding.

PETITION under Criminal Procedure Code, sections 435 and 439, praying the High Court to revise the order of W. F. Grahame, Sessions Judge of South Arcot, on Criminal Miscellaneous Petition No. 9 of 1894.

The petitioner in the Sessions Court sought the cancellation of an order of the District Magistrate granting sanction for his prosecution on a charge of abetment of the offence of giving false evidence in a case instituted on behalf of the Forest Department in the Court of the Second-class Magistrate of Kallakurichi. That case having terminated, reasons for supposing the petitioner to have committed the above offence were communicated to the District

* Criminal Revision Case No. 643 of 1894.

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Forest officer, who thereupon forwarded to the District Magistrate a report from the Forest Ranger stating these reasons, together with a letter in which he asked the District Magistrate, to take such action as he deemed fit against Subbaraya Pillai, the petitioner. The District Magistrate called for reports from the Second-class Magistrate and from the Divisional Magistrate, and then issued a notice to the petitioner to show cause why his prosecution should not be sanctioned. The District Magistrate then made an order by which he sanctioned the prosecution and directed that it should take place in the Court of the Head Assistant Magistrate.

The Sessions Judge cancelled this order on the ground that it was *ultra vires*. He said:—"It must, I think, on the authority "of *Queen-Empress* v. *Kuppu*(1), be held that in this matter the "action of the District Magistrate cannot be upheld. It is clear "that the District Magistrate did not act under the provisions of "section 476, Criminal Procedure Code, for the matter was not "brought before him in any judicial proceeding. Therefore it "was not an order under that section. There remains only section "195. According to that section and having regard especially "to the language of the penultimate paragraph, the only authori-"ties which can give sanction are the Court before which the "offence has been committed and the Court 'to which appeals "'from the former Court ordinarily lie.' Appeals from the "Kallakurichi Second-class Magistrate ordinarily lie to the "Tirukoilur Divisional Magistrate. The Public Prosecutor has "argued that the Kallakurichi Second-class Magistrate's Court is "subordinate to the Court of the District Magistrate and that "the District Magistrate has in this matter jurisdiction under the "provisions of section 191, Criminal Procedure Code. But the "penultimate paragraph of section 195, Criminal Procedure Code, "already quoted, shows that, although the Kallakurichi Second-"class Magistrate may be, and doubtless is, subordinate to the "District Magistrate, the Second-class Magistrate's Court is sub-"ordinate to the Court of the Tirukoilur Divisional Magistrate. "As to section 191, Criminal Procedure Code, the law expressly "lays down that no such offence as the one now in question shall "be tried except under a sanction to be given after certain specified "steps shall have been taken either under section 476 or under

(1) I.L.R., 7 Mad., 560.

"section 195, Criminal Procedure Code, and this provision of law "ousts in this case the authority conferred by section 191. The "District Magistrate was indubitably not acting under the pro- "visions of section 476. And as regards section 195, even if the "District Magistrate could be held to have power to give sanction, "a view which seems to be excluded by the express words of section "195, there was no application made for sanction to prosecute. I "am unable to hold that a letter from an officer who was not "concerned in the case, in which that officer requests the District "Magistrate to take against a certain person such steps as the "District Magistrate may deem fit, is an application for sanction "to prosecute that person for a specific offence.

"My opinion is that an application for sanction to prosecution "ought to have been made to the Second-class Magistrate who tried "the case, or to the officer to whom appeals from the Second-class "Magistrate ordinarily lie, and that, on the authority of the deci- "sion already quoted, the District Magistrate had no power to "grant sanction even if a regular application had been made to "him. In this case no regular application has been made to any "one for sanction to prosecute the petitioner for abetment of the "offence of giving false evidence, and the order passed by the "District Magistrate is *ultra vires*."

The present petition was preferred on behalf of the Crown on the grounds that the letter of the District Forest officer, dated the 26th of June 1893, was equivalent to an application for sanction to prosecute and that the District Magistrate was competent to give the sanction.

The Public Prosecutor (Mr. *E. B. Powell*) for the Crown.

Respondent was not represented.

JUDGMENT.—Section 195, Criminal Procedure Code, does not make any particular form of application for sanction necessary, nor does it enact that application shall be made by any particular person. The section merely provides that no Court shall take cognizance of certain offences without a sanction.

In the present case the sanction might have been given by the Second-class Magistrate or by some other Court to which his Court is subordinate, and for the purpose of section 195 that other Court is defined to be the Court to which appeals from the Second-class Magistrate ordinarily lie.

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Under section 407, Criminal Procedure Code, an appeal lies to the District Magistrate, but, if the District Magistrate has directed that all appeals from Second and Third-class Magistrates in the Kallakurichi taluk shall be heard by the Deputy Magistrate—and we understand this to be the case—it follows that all appeals from their decisions shall be presented to the Deputy Magistrate, and the Deputy Magistrate's Court is the Court to which the appeals ordinarily lie. Had the sanction been granted by the Second-class Magistrate the appeal would, in the ordinary course of things, have been presented to the Deputy Magistrate as the Magistrate having jurisdiction to entertain the appeal. For this reason we consider that the view of the Sessions Judge was correct.

We may point out that the order of the District Magistrate was irregular on another ground. His order directs that the accused be prosecuted before the Head Assistant Magistrate. No such order could be passed under section 195 which must be confined to a grant of sanction, as the District Magistrate had no jurisdiction to act under section 476, since the alleged offence was not brought to his notice in the course of a judicial proceeding. We must therefore decline to interfere and dismiss this petition.

Ordered accordingly.

APPELLATE CRIMINAL.

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

1895. August 9.

QUEEN-EMPRESS

v.

RAPPEL.*

Penal Code—Act XLV of 1860, *ss.* 40, 64—*Towns Nuisances Act (Madras)—Act III of* 1889, *ss.* 3, 11—*Imprisonment in default of payment of a fine.*

Where a conviction has taken place under Towns Nuisances Act (Madras), 1889, section 3, a Magistrate has jurisdiction to impose a fine and also to pronounce a sentence of imprisonment in default of payment of the fine.

CASE referred for the orders of the High Court under Criminal Procedure Code, section 438, by H. Moberly, Acting District

* Criminal Revision Cases Nos. 175 and 176 of 1895.