

1886

Lala *Lalla Prasad*, for the applicant.

QUEEN-  
EMPRESS  
v.

MAHESHRI  
BAKSH  
SINGH.

The *Government Pleader* (Munshi *Ram Prasad*), for the Crown.

STRAIGHT, Offg. C. J.—This conviction cannot be sustained. There is a serious conflict of testimony as to the words which were used by the petitioner regarding the complainant Niamat Ali, and it is exceedingly doubtful, upon the face of the whole evidence, whether any such threat of injury, as came within s. 189 of the Penal Code, was held out by the petitioner to the complainant. I do not agree with the Judge's observation, that it is immaterial what the words used actually were; on the contrary, it was most material that those words should be before the Court to enable it to ascertain whether, in fact, a threat of injury to the constable was really made by the petitioner. It does not appear in what mode the complainant was conducting his examination of the several persons suspected of participation in the burglary, and it is possible that he conducted it in such a manner as might properly elicit from the petitioner a remonstrance or observation as to the impropriety of his conduct, accompanied by a threat to complain of him, which under such circumstances could not be the subject of a charge under s. 189. However this may be, the case is such a doubtful one that the conviction is not sustainable. The application for revision must, therefore, be allowed, and quashing the orders of the Magistrate and the Judge, I acquit the petitioner, and direct that he be at once released, and that the fine, if realized, be refunded.

*Conviction set aside.*

*Before Mr. Justice Straight, Offg. Chief Justice.*

QUEEN-EMPRESS v. JUGAL KISHORE.

*Act XLV of 1860 (Penal Code), s. 182—Prosecution under s. 182—Criminal Procedure Code, s. 195.*

A prosecution under s. 182 of the Penal Code may be instituted by a private person, provided that he first obtains the sanction of the public officer to whom the false information was given, or of his official superior. *Queen-Empress v. Radha Kishan* (1) overruled.

Where a specific false charge is made, the proper section for proceedings to be adopted under is s. 211 of the Penal Code.

(1) I. L. R., 5 All. 36.

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 QUEEN-  
EMRESS  
v.  
JUDAT,  
KISHORE.

THIS was a case reported to the High Court for orders by Mr. T. Benson, Sessions Judge of Saháranpur. In this case three persons named Chajju Ram, Sadu Ram, and Jugal Kishore, were tried and convicted by the Cantonment Magistrate of Roorkee of an offence under s. 182 of the Indian Penal Code. The false information, in respect of which they were charged and tried, was given to a head-constable, and was to the effect that they believed it was probable that stolen property would be found in the complainant's house. The house was accordingly searched, but no stolen property was found, and it appeared that the object of the accused in giving the information was merely to annoy and humiliate the complainant. The latter obtained sanction from the District Superintendent of Police to prosecute the accused, and in the result they were tried and convicted as above mentioned, and fined Rs. 10 each. The Sessions Judge was of opinion that the conviction was bad, inasmuch as a private person was not competent to institute proceedings under s. 182 of the Penal Code, with reference to the ruling of Straight, J., in *Queen-Emress v. Radha Kishan* (1). He added:—"It appears to me that the High Court's ruling in *Queen-Emress v. Radha Kishan* (1) does away entirely with the remedy which apparently, on the face of s. 182, a private person has who is injured by false information given to the police, where such information is not in the nature of a complaint or institution of proceedings. It would appear to me, however, that the person so aggrieved has no other remedy. Nor can I see anything in s. 195 of the Criminal Procedure Code indicating that a private person cannot prosecute under s. 182,—rather the contrary. The section apparently contemplates a prosecution on the part of a private person sanctioned by a police-officer."

STRAIGHT, Offg. C. J.—I am glad that the learned Judge has reported this case, because it has afforded me an opportunity of considering my ruling in the case of *Queen-Emress v. Radha Kishan* (1). Upon further consideration I have come to the conclusion that the latter portion of my judgment in that case was erroneous, and that a prosecution under s. 182 of the Penal Code may be instituted by a private person, provided that he first obtains the sanction of the public officer to whom the false informa-

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tion was given, or of his official superior. I am induced to adopt this altered view upon closer consideration of s. 195 of the Criminal Procedure Code, where a distinction is drawn between "sanction" and "complaint;" and I think that by the use of the former word it was contemplated that a prosecution may emanate from some person other than the officer interested. Though I take this view of the matter now, it would in no way have altered the order I made in *Queen-Emperess v. Bidha Kishan* (1), had I held it when that was passed, as, in my opinion, when a specific false charge is made, as in that case, the proper section for proceedings to be adopted under is s. 211. With these remarks the record may be returned.

## APPELLATE CIVIL.

*Before Mr. Justice Olipheld and Mr. Justice Tyrrell.*

LACHMAN SINGH AND OTHERS (DEFENDANTS) v. SALIG RAM AND OTHERS (PLAINTIFFS).\*

*Lambardar and co-sharer—Government revenue—Payment by lambardar of arrears of revenue due by co-sharer—Charge—Act XII of 1881 (N.-W. P. Rent Act), s. 93 (g).*

In execution of a decree obtained by a lambardar under s. 93 (g) of the N.-W. P. Rent Act, the decree-holder caused to be attached a certain share upon which the arrears of Government revenue which he had satisfied had accrued. In defence to a suit brought by certain purchasers of the same property from the judgment-debtors to have it declared that the property was not liable to sale under the decree, and to remove the attachment, the decree-holder pleaded that, by the fact of paying the arrears of revenue due on the estate of the plaintiffs' vendors, he had obtained a charge on it, and could bring it to sale to satisfy the decree.

*Held* that a charge of this nature could not be enforced in execution of a decree which was merely a personal one for arrears of Government revenue against persons against whom it was passed by a Revenue Court not competent to establish or enforce a charge on property, or to do more than pass a personal decree, and whose powers in execution were confined to realization from personal and immoveable property of the judgment-debtors. *Nugender Chunder Ghose v. Sremutty Kaminee Dossee* (2) referred to.

The facts of this case are stated in the judgment of the Court.

\* Second Appeal No. 1663 of 1885, from a decree of Maulvi Muhammad Abdul Basit Khan, Subordinate Judge of Mainpuri, dated the 22nd August, 1885, reversing a decree of Maulvi Muhammad Wajid Ali Khan, Munsif of Mainpuri, dated the 13th February, 1885.