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July 10.

## REVISIONAL CRIMINAL.

*Before Sir John Edge, Kt., Chief Justice, Mr. Justice Straight and Mr. Justice Tyrrell.*

HARI PRASAD (PETITIONER) v. DEBI DIAL (OPPOSITE PARTY).

*Criminal Procedure Code, s. 195—Sanction for prosecution for giving false evidence in a suit under Act XII of 1881 tried by an Assistant Collector of the second class—Sanction granted by Collector—Jurisdiction of Sessions Judge to entertain application to revoke sanction.*

A suit for arrears of rent under s. 93, clause (a), Act XII of 1881, was heard by a Tahsildar having the powers of and acting as an Assistant Collector. Application was made to him for an order sanctioning the prosecution of a witness for having given false evidence in the course of the trial of the suit. The Tahsildar referred the matter to the Magistrate of the district who was the Collector, and that officer made an order sanctioning the prosecution. From this order the witness applied to the Court of the District Judge to revoke the sanction. That Court being of opinion that the Court of the Collector was not subordinate to it in the matter within the meaning of s. 195 of the Code of Criminal Procedure, 1882, declined to interfere. The witness then applied to the Commissioner of the Division, and that officer holding that he had no jurisdiction in the matter also declined to interfere. On application by the witness to the High Court for revision of the order of the Court of the District Judge:

*Held*, that the Court of a Collector when granting sanction for prosecution under s. 195 of the Code of Criminal Procedure, 1882, in respect of false evidence given in the course of the trial of a rent case from the final decision in which there was no appeal to the Court of the Judge of the District, was still to be deemed subordinate to it, within the meaning of that section, and the Court of the District Judge may be taken to be the Court to which appeals from the decisions of the Collector ordinarily lie.

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

Pundit *Sundar Lal*, for the petitioner.

EDGE, C. J.—This is a reference by my brother Straight to this Bench now composed of my brothers Straight, Tyrrell and myself. In a suit for arrears of rent under s. 93, clause (a), Act XII of 1881, which was heard by a Tahsildar having the powers of and acting as an Assistant Collector of the second class, application was made to him for an order sanctioning the prosecution of a witness in the suit for perjury. The Tahsildar, thinking he had no jurisdiction, referred the matter to the Magistrate of the District, who was the Collector. The latter officer made an order sanctioning the prosecution. From that order the witness applied to the Sessions Judge to revoke the sanction. The Sessions Judge, being of opinion that the Collector was not sub-

ordinate to the Court of the Sessions Judge in this matter within the meaning of s. 195 of the Code of Criminal Procedure of 1882, declined to interfere. The witness then applied to the Commissioner of the Division. The Commissioner of the Division, being of opinion that he had no jurisdiction under s. 195 of the Code of Criminal Procedure of 1882, also declined to interfere. The witness then through counsel applied to this Court to revise the order of the Sessions Judge, the principal plea taken being that the Judge of Gorakhpur had jurisdiction to hear the application to revoke the sanction. My brother Tyrrell and I are only asked to express our opinion in the matter. It will be for my brother Straight to pass orders in the case. The question on which we are asked for an opinion is whether the Judge's Court is the Court to which appeals from the Collector's Court ordinarily lie. I have great difficulty in answering that question in the light of the provisions of the N.-W. P. Rent Act on the subject of appeals. Under that Act one set of appeals—from a Collector's *decrees* in suits—goes necessarily to the District Judge. Another class of appeals—from his *orders* made in applications—goes necessarily to the Commissioner of the Division. In either case the course of appeal may be described as ordinary: and it is difficult to say whether the Commissioner's Court or the Judge's Court is the Court to which appeals from the Collector's Court ordinarily lie. It would be inconvenient to hold that, in cases arising out of s. 195 of the Code of Criminal Procedure, the Court to which applications to set aside or to grant a sanction given or refused in the Court below should be made should have to be determined by a consideration of the question of the *forum* of appeal in the particular matter in which the perjury is alleged to have been committed. It has been suggested by my brother Tyrrell that the framers of s. 195, as amended in 1882, had in mind the normal course of appeals in a district, as provided, for example, in Act VI of 1871, rather than the appellate provisions of peculiar local or special Acts, and that for the purposes of s. 195 the Court of the Judge of the District may be taken to be the Court to which appeals from the Collector's Court ordinarily lie. I think we may come to this conclusion, but I must say that I doubt whether the framers of s. 195 of Act X of 1882 had present to their minds the difficulty or ambiguity in this respect arising out

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of the provisions of the Rent Act XII of 1881. The reference will be returned to our brother Straight with our opinion thereon.

STRAIGHT, J.—I agree.

TYRBELL, J.—I agree. It was held by a Full Bench (1) of this Court that a Court of Revenue was a Civil Court within the meaning of ss. 468 and 469 of Act X of 1872, which are replaced by s. 195 of the present Code. It is true that those sections did not contain the provision that “every Court shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie.” But the reasons for holding that a Collector trying a suit under the Rent Act is a Civil Court for the purposes of Chapter XXXV of the former Code of Criminal Procedure seem to me to retain all their original force and to be unaffected by the alterations introduced in the corresponding Chapter XV of the present Code. And this being so, I think that the normal course of appeal applicable to civil cases was contemplated in the clause containing the words “the Court to which appeals from the former Court ordinarily lie.” Moreover, as a very substantial part of a Collector’s judicial work under our Rent Act is appealable only to the District Judge (s. 189, Act XII of 1881, and s. 191 *id.*, where the District Judge is indicated as the Court of “regular appeal” from a Collector’s *decree* in “all suits mentioned in s. 93”), I do not discern a sufficient reason in the mere fact that the Collector’s *orders* in certain cases (s. 196) are not appealable to the Judge but to the Commissioner, for departing from the rule and practice we laid down in *Q. E. v. Sabsukh* (1).

The arguments from convenience preponderate largely in favour of the local and more accessible jurisdiction. [Upon this expression of opinion Straight, J., set aside the order of the District Judge declining jurisdiction and directed him to restore the application for revision from the Collector’s order to his file and dispose of it according to law.]

(1) *Queen-Empress v. Sabsukh*, I. L. R., 2 All., 533.