1893

TARAPAT OJHA v. RAM RATAN KUAR.

have been parties to the wrongful dispossession and to be claiming under the plaintiffs' landlords was one within s. 95 in respect of which an application under cl. (*m*) of that section might be made. On the other hand, where a tenant has been dispossessed by a person not claiming title through the tenant's landlord, the tenant's remedy for possession and damages is by suit in the Civil Court, as in such a case it might be necessary for the tenant to prove not only his own title from the landlord, but the landlord's title to let. For these reasons we are of opinion that the suit as against the second set of defendants, not only for possession but in respect of the damages, fails on the ground of want of jurisdiction of the Civil Court. The other relief claimed in this suit was a decree cancelling an order of a Settlement Officer and a decree ordering a lease granted by the first set of defendants to the second set to be invalid. A Civil Court has no jurisdiction to cancel an order of a Settlement Officer by decree in a civil suit. The validity or invalidity of the lease as against the plaintiffs would depend on the finding of the Court of Revenue as to whether a tenancy was subsisting between the plaintiffs and the first set of defendants. As the appeal was referred to the Full Bench on the question of jurisdiction, and as our decision on that question disposes of the respondents' suit, we allow the appeal, and dismiss the suit with costs in all Courts.

*Appeal decreed.*

1893
*June* 13.

## REVISIONAL CRIMINAL.

*Before Mr. Justice Aikman.*

QUEEN-EMPRESS *v.* MATABADAL.

*Criminal Procedure Code, s. 476—Order by Magistrate for prosecution under s. 195 of the Indian Penal Code—Preliminary inquiry.*

When a Magistrate takes action under s. 476 of the Code of Criminal Procedure, it is not necessary to the validity of his order that he should hold a preliminary inquiry. *Baperam Surma* v. *Gouri Nath Dutt* (1) followed.

The facts of this case sufficiently appear from the judgment of Aikman, J.

1) I. L. R. 20, Calc., 474.

1893

QUEEN-EMPRESS v MATABADAL.

Mr *J. Simeon*, for the applicant.

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

AIKMAN, J.—The applicant in this case was convicted by the Joint Magistrate of Allahabad of an offence punishable under s. 193 of the Indian Penal Code and sentenced to four months' rigorous imprisonment, which conviction and sentence were upheld in appeal by the Sessions Judge. He applies to this Court for revision. The first ground in the application is that there was no sanction for the prosecution under s. 195 of the Code of Criminal Procedure. This was a case which was instituted under the provisions of s. 476 of the Code of Criminal Procedure by the Magistrate before whom the alleged offence was committed, and, this being so, s. 195 of the Code does not apply. Even had sanction been necessary, this would have afforded no ground for interference, as it is not shown that the want of sanction occasioned any failure of justice. (See s. 537 of the Code of Criminal Procedure). The next ground in the application is that the conviction is bad, inasmuch as no inquiry was held by the Magistrate under s. 476. I entirely concur with the opinion expressed by the Calcutta High Court in a recent case, *Baperam Surma* v. *Gouri Nath Dutt* (1), to the effect that it is not necessary for the validity of an order under s. 476 that there should be a preliminary inquiry. The petitioner was convicted of having made on oath two contradictory and irreconcilable statements. It is objected in the third ground of the application that there is no evidence on the record to show which of the two statements was false. It is unnecessary that there should be any such evidence. It is now settled law that there may be a conviction in the alternative without any such evidence. The contention that the sentence is too severe is without force. I am of opinion that the applicant deserves the punishment he got. The application is rejected.

*Application rejected.*

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(1) I. L. R., 20, Calc, 474.