Before Sir W. Comer Petheram, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Brodhurst, and Mr. Justice Tyrrell.

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ISHRI PRASAD *v.* SHAM LAL.

Criminal Procedure Code, ss 195, 476—"*Sanction*"—"*Complaint.*"

On the 2nd August, 1884, a Munsif, who was of opinion that in the course of a suit which had been tried before him, certain persons had committed offences under ss. 193, 463, and 471 of the Penal Code, and that the prosecution of these persons was desirable, made an order which he described as passed under s. 643 of the Civil Procedure Code, and in which he directed that the accused should be sent to the Magistrate, and that the Magistrate should inquire into the matter. In May, 1885, upon an application by one of the accused to the District Court to "revoke the sanction for prosecution granted by the Munsif," it was contended that the "sanction" had expired on the 2nd February, 1885, and had ceased to have effect.

Held by the Full Bench that the Munsif's order, whether it was or was not a sanction, was a sufficient "complaint" within the meaning of s. 195 of the Criminal Procedure Code, and that the limitation period prescribed by that section was not applicable to the case.

Per PETHERAM, C. J., and STRAIGHT, J.—That considering that s 643 of the Civil Procedure Code was closely similar to s. 476 of the Criminal Procedure Code, the Munsif's order might be taken as having been passed under the latter section.

Also *per* PETHERAM, C. J., and STRAIGHT J.—The words in s. 195 of the Criminal Procedure Code, "except with the previous sanction or on the complaint of the public servant concerned," must be read in connection with s. 476, which was enacted with the object of avoiding the inconvenience which might be caused if a Munsif, or a Subordinate Judge, or a Judge, were obliged to appear before a Magistrate and make a complaint on oath, like an ordinary complainant, in order to lay the foundation for a prosecution. The language of s. 476 indicates that where *a Court* is acting under s. 195, a complaint in the strict sense of the Code is not required, and that the procedure therein laid down constitutes the "complaint" mentioned in s. 195.

THE facts of this case were as follows :—The Munsif of Jalesar, on the 2nd August, 1884, after recording a proceeding, in which he expressed his opinion that one Ishri Prasad, the plaintiff in a suit decided by him, had given false evidence, and had dishonestly used as genuine a forged document, and that certain witnesses produced by Ishri Prasad had given false evidence, and that one of such witnesses had committed forgery, made the following order :—"That the case be entered in the miscellaneous register under s. 643 of Act XIV of 1882, and Ishri Prasad, for punishment under ss. 193, 463, and 471 of the Indian Penal Code, Tulshi Ram and Kamlapat for punishment under s. 193 of the

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Indian Penal Code, and Sobha Ram patwari for punishment under ss. 193 and 463 of the Indian Penal Code, together with a copy of the proceeding of this Court, be sent to the Magistrate of Etah. A bail of Rs. 400 was asked for from Ishri Prasad, and a bail of Rs. 100 from each of Tulshi Ram, Kamlapat, and Sobha Ram, but they did not give it; hence the criminals in custody of the Jalesar police should be sent to the Magistrate of Etah. The Magistrate may also be requested to send for the evidence mentioned below for inquiry and finding on the aforesaid charges, and whatever proof is required the Court may be informed in respect thereof, and it will send it." On the 8th September, 1884, Ishri Prasad applied to the District Court to revoke the "sanction for prosecution granted by the Munsif under s. 195 of the Criminal Procedure Code." At the hearing of the application by the District Judge, it was contended for the applicant that the "sanction" expired on the 2nd February, 1885, and had ceased to have effect. On the 27th May, 1885, the District Judge rejected the application, holding that the Munsif did not merely sanction the prosecution, but himself instituted the complaint, and that s. 195 did not limit the period within which "complaints," as distinguished from "sanctions," should be made. Ishri Prasad subsequently received a summons from the Deputy Magistrate of Etah, to appear before the Court for inquiry into the charges preferred against him. He then applied to the High Court to revise the order of the District Judge and of the Munsif on the following grounds:—"(1) because the sanction given by the Munsif has expired; (2) because the Munsif held no preliminary inquiry as he was bound to do under the law; (3) because on the facts the sanction is improper."

The application was made before the Full Bench.

Mr. *C. Dillon*, for the applicant.

Mr. *J. Niblett*, for the opposite party.

The following judgments were delivered by the Full Bench:—

STRAIGHT, J.—The question raised by this reference is, whether the terms of the order of the Munsif, which was passed on the 2nd August, 1884, amounted to a "sanction" or to a "complaint" under s. 195 of the Criminal Procedure Code. It seems that in

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the course of a suit which had been heard before him, and which had closed, the Munsif was of opinion that certain persons had committed offences under ss. 193, 463, and 471 of the Penal Code, and, having all the materials before him, he came to the conclusion that a prosecution should be instituted. He accordingly directed that they should be sent to the Magistrate of Etah under bail, and the Magistrate should inquire into the matter.

It is said on behalf of the persons prosecuted that the Munsif's order was a "sanction" and not a "complaint" under s. 195 of the Criminal Procedure Code. Upon this point I may observe that every such order must in a sense be a sanction, because it implies that the Judge wishes and authorizes that a prosecution should take place. The law does not require that the sanction should be expressed in any special terms. It need not (though it is desirable that it should) expressly name the person at whom it is directed so long as its meaning and intention are clearly shown. It does not appear to me that the order in the present case must necessarily be construed to be a sanction within the meaning of s. 195. The question then arises whether or not the order amounted to a "complaint." During the argument I intimated my opinion that the words in s. 195—"except with the previous sanction or on the complaint of the public servant concerned"—must be read in connection with s. 476, and s. 476 affords a clear indication of what was contemplated by the Legislature regarding the nature of the complaint of a Civil Court under s. 195. It is easy to imagine the inconvenience which might be caused if a Munsif, or a Subordinate Judge, or a Judge were obliged to appear before a Magistrate and make a complaint on oath in order to lay the foundation for a prosecution, and for this reason the Legislature thought it desirable that the procedure to be followed in case of complaint by a Court should be different from that which has to be observed by an ordinary complainant. S. 476 is in the following terms:—"When any Civil, Criminal, or Revenue Court is of opinion that there is ground for inquiring into any offence referred to in s. 195, and committed before it or brought under its notice in the course of a judicial proceeding, such Court, after making any preliminary inquiry that may be necessary, may send the case

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for inquiry or trial to the nearest Magistrate of the first class, and may send the accused in custody or take sufficient security for his appearance before such Magistrate, and may bind over any person to appear and give evidence on such inquiry or trial." In the first place, there is here a distinct reference to s. 195, and therefore a complaint under that section must be shaped according to the provisions of s. 476. The Munsif in the present case did comply with those provisions. It is true that he refers to s. 643 of the Civil Procedure Code, but I think that this circumstance is of no great importance; and that, considering that s. 643 of the Civil Procedure Code is closely similar to s. 476, the order may be taken as having been passed under the latter section; and, looking at the matter in this way, I think that the Munsif's order, whether it was or was not a sanction, was a sufficient "complaint," and satisfied the requirements of the law under ss. 195 and 476. In my opinion the language of such last-mentioned section indicates that where *a Court* is acting under s. 195, a complaint in the strict sense of the Code is not required, and that the procedure therein laid down constitutes the complaint mentioned in s 195. This being so, there is nothing to prevent the prosecution being proceeded with, and the Magistrate, with reference to the last paragraph of s. 476, should entertain and dispose of the matter.

PETHERAM, C. J.—I am of the same opinion.

BRODHURST, J.—The grounds for revision are, in my opinion, invalid. The Munsif's proceedings were taken under s. 643 of the Civil Procedure Code; no inquiry other than was made was required by law; and the limitation period referred to by s. 195 of the Criminal Procedure Code does not apply to this case.

The case would in all probability have been decided long ago, had it not been for the delay that occurred in the Judge's Court in disposing of the petitioner's application.

The District Judge's view of the law is correct, and his order is a proper one. I would reject the application.

TYRRELL, J.—Chapter XV of the Criminal Procedure Code lays down rules governing proceedings in prosecutions. Part *B* prescribes the "conditions requisite for initiation of proceedings."

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S. 191 gives the general rule that "any" offence may come to the cognizance of the Criminal Court: (*a*) by complaint of individuals, (*b*) by police report, (*c*) or by other informations. But this rule is specially limited by s. 195, which prohibits the prosecution of certain specified offences, except (*a*) on the complaint of certain Courts, or (*b*) on sanction given to individuals by such Courts. In the latter case, the individual would proceed to lay his complaint under s. 191; in the other case, the Court contemplated by s. 195 would take action by way of "complaint," and the procedure to be followed by such Court is prescribed in Chapter XXV, s. 476, referred to by my learned brother Straight.

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Before Sir W. Comer Petheram, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Brodhurst, and Mr. Justice Tyrrell.

SURTA AND OTHERS (PETITIONERS) *v.* GANGA AND OTHERS (OPPOSITE PARTIES)*

Civil Procedure Code, s 206—*Order amending decree—High Court's powers of revision.*

A District Judge, by an order passed under s. 206 of the Civil Procedure Code, altered a decree passed by his predecessor in the terms, "I dismiss the appeal," to read "I accept the appeal," on the ground that his predecessor had obviously meant to say he accepted the appeal, and that the decree as it stood failed to give effect to the judgment.

Held by the Full Bench that an order passed under s. 206 of the Civil Procedure Code constituted an adjudication separate from that concluded by a decree under the Code passed after the parties had been heard and evidence taken, and that the order in the present case was therefore a separate adjudication, and was not appealable under s. 588. Also that, in saying that by "dismiss," his predecessor had meant "decree," the Judge had altered the decree in a manner not warranted by the terms of s. 206, that he had therefore exercised his jurisdiction "illegally and with material irregularity," within the meaning of s. 622 of the Code, and that the High Court was consequently competent to reverse his order.

The judgment of OLDFIELD, J., (1) reversed, and that of MAHMOOD, J., (1) affirmed.

THIS was an application by the plaintiffs in a suit, for revision, under s. 622 of the Civil Procedure Code, of an order amending the appellate decree in the suit, passed by the District Judge of Saharanpur. The application was heard by Oldfield and Mah-

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* Appeal No. 1 of 1885, under s 10, Letters Patent.

(1) *Ante*, p. 412.