to the Small Cause Court for a new trial. They ought to be returned to us as that order is reversed. 1896

PROTAP CHUNDER SEN v. TUNSOOK DASS.

SALE, J.—My order will include those costs.

Rule absolute.

Attorneys for plaintiff: Messrs. *Ghose & Kar.*

Attorney for defendant: Babu *N. C. Bose.*

C. E. G.

APPELLATE CIVIL.

Before Mr. Justice Ghose and Mr. Justice Gordon.

SHAMA CHARAN DAS (PLAINTIFF, PETITIONER) *v.* KASI NAIK (DEFENDANT, OPPOSITE PARTY.) * 1896 *June* 10.

Sanction to prosecute—Code of Criminal Procedure (Act X of 1882), sections 195, 439—Penal Code (Act XLV of 1860), section 210—Superintendence of High Court—Code of Civil Procedure (Act XIV of 1882), section 622.

A decree-holder applied for execution of his decree against the judgment-debtor. The application was dismissed on the ground that the decree had been satisfied out of Court. The judgment-debtor then applied for and obtained sanction to prosecute the decree-holder under section 210 of the Penal Code.

Held, that such sanction must be revoked, because the decree had not been caused to be executed, and therefore no offence under section 210 of the Penal Code had been committed.

THE petitioner Shama Charan Das obtained a decree for arrears of rent under Act X of 1859 against the opposite party, Kasi Naik. The decree-holder having applied for execution of the decree in June 1894, the judgment-debtor pleaded satisfaction out of Court in April 1892. The Deputy Collector allowed the objection; and being satisfied, upon the evidence, that the objection was true, he dismissed the decree holder's application on the 31st December 1894. On the 2nd January 1895, Kasi Naik applied to the Deputy Collector under section 195 of the Criminal Procedure Code for sanction to prosecute Shama Charan Das under sections 209 and 210 of the Penal Code. The Deputy Collector made the following *ex parte* order: "The petitioner Kasi Naik may prose-

* Civil Rules Nos. 1334 and 1335 of 1895 made against the order passed by F. E. Pargiter, Esq., District Judge of Cuttack, dated the 7th of May 1895.

1896

SHAMA CHARAN DAS v. KASI NAIK.

cute Shama Charan Das under section 210 of the Penal Code." Shama Charan Das then appealed to the District Judge to revoke the sanction thus granted. On the 7th May 1895, the District Judge dismissed the application on the ground that he had no jurisdiction to hear it, as appeals from the Deputy Collector did not ordinarily lie to him within the meaning of section 195 of the Criminal Procedure Code. Shama Charan Das then moved the High Court, and a rule was granted by Pigot and Stevens, JJ., calling upon the opposite party to shew cause why the District Judge should not be directed to hear the case, or, in the alternative, why the High Court should not pass proper orders after hearing the parties on the merits. The rules came on for hearing before Ghose and Gordon, JJ. Rule No. 1335 was a rule granted on similar facts, one Baboo Naik being the opposite party.

Dr. *Ashutosh Mookerjee* (with him Babu *Ganendra Nath Bose*) for the petitioner.—The District Judge had jurisdiction to revoke the sanction. Sections 23 and 24 of Act X of 1859 refer to eight classes of suits; in four of these classes, appeals from the Deputy Collector always lie to the Judge under sections 153, 155 and 160; in the other four classes, if the value of the suit is above Rs. 100, the appeals similarly lie always to the Judge; if the value is under Rs. 100, the appeals lie sometimes to the Judge and sometimes to the Collector; the appeals in the majority of classes therefore lie to the District Judge, and therefore the appeals *ordinarily* lie to him within the meaning of section 195 of the Criminal Procedure Code. *Hari Prosad* v. *Debi Dial* (1). *Maduray Pillay* v. *Elderton* (2) does not militate against this view. [GHOSE, J.—Apart from the question of jurisdiction, you must satisfy us that you have got a good case on the merits.] The order is bad on two grounds: *Firstly*, the Deputy Collector had no jurisdiction to go into the question of satisfaction, and a sanction based on a finding so arrived at cannot stand. *Secondly*, no offence under section 210 of the Penal Code was committed, as the application for execution was dismissed. The sanction ought not to stand as it was granted without notice to the accused, and no sufficient grounds appear on the face of the record—*Kedarnath Das* v. *Mohesh Chunder Chuckerbutty* (3).

(1) I. L. R., 10 All., 582. (2) I. L. R., 22 Calc., 487.
(3) I. L. R., 16 Calc., 661.

1896

SHAMA CHARAN DAS v. KASI NAIK.

Mr. *S. R. Das* (with him Babu *Durga Mohun Das*) for the opposite party.—The Judge had no jurisdiction to hear the case. [GHOSE, J.—We should like to hear you on the merits.] But the petitioner is not entitled to ask this Court to interfere without first resorting to the Collector, who was the proper authority under section 195 of the Criminal Procedure Code to deal with the matter. Sections 210 and 511 of the Penal Code govern the case. [GHOSE, J.—But the order for sanction does not refer to section 511]. But under section 195 of the Criminal Procedure Code the Court has power to frame a charge of any other offence disclosed by the facts; and the facts disclose no attempt to commit an offence under section 210 of the Penal Code. At any rate the Deputy Collector committed only an error of law, and this Court cannot interfere under section 622 of the Civil Procedure Code.

Dr. *Ashutosh Mookerjee* in reply.—Even if this Court cannot interfere under section 622 of the Civil Procedure Code, it can do so either under section 15 of the Charter or section 439 of the Criminal Procedure Code. [GHOSE, J.—We are sitting now as a Civil Bench]. There is no difficulty about that. *Mahomed Bhakku* v. *Queen-Empress* (1).

The judgment of the Court (GHOSE and GORDON, JJ.) was as follows:—

The subject-matter of this rule is an order by the Deputy Collector of Cuttack, acting under the provisions of Act X of 1859. The order was an order giving sanction for the prosecution of the petitioner under section 210 of the Indian Penal Code. An application was made to the District Judge for the revocation of this sanction; but that officer declined to entertain it, being of opinion that, inasmuch as appeals against judgments passed by a Deputy Collector under Act X of 1859 would not ordinarily lie to him, but to the Collector, he was not competent to entertain the application and afford any relief to the petitioner in the matter. Thereupon, an application was made to this Court, and a rule was granted calling upon the other side to show cause why the order of the District Judge should not be set aside, or why, in the alternative, this Court should not make such an order, if any, in respect of the sanction as to this Court might seem just.

(1) I. L. R., 23 Calc., 532.

1896

SHAMA CHARAN DAS v. KASI NAIK.

We might here mention that the value of the suit—which was one for rent, and in which the order complained against was made,—was below Rs. 100, and that therefore no appeal would lie to the Judge against the judgment of the Deputy Collector in that suit. And we are not prepared to say that the Judge was wrong in the view that he has expressed, namely, that appeals against decrees and orders made by a Deputy Collector, acting under the provisions of Act X of 1859, ordinarily lie to the Collector, and not to him as Judge of the District. It is however unnecessary to examine this question any further ; because we have thought it right and proper to deal with the application of the petitioner under section 439 of the Code of Criminal Procedure, which gives ample authority to the High Court in this matter.

It appears that the petitioner, having obtained a decree in the Court of the Deputy Collector for rent, presented an application for the execution thereof. Thereupon, a notice was issued, calling upon the judgment-debtor, the opposite party, to show cause why the decree should not be executed. He appeared and stated that the decree in question had been satisfied out of Court, and offered evidence in support of that statement. The Deputy Collector rightly or wrongly (as to which we need not express any opinion) went into that evidence, and being of opinion that the decree had been satisfied by the judgment-debtor in the manner alleged by him, dismissed the application for execution ; and at the same time made an order sanctioning the prosecution of the petitioner for an offence under section 210 of the Indian Penal Code.

That section runs thus : " Whoever fraudulently obtains a decree or order against any person for a sum not due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied, or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years or with fine or both."

The offence with which the petitioner is charged is, as we understand it, that he has caused the decree to be executed against the opposite party after it had been satisfied.

1896

SHAMA CHARAN DAS v. KASI NAIK.

It seems to us that the view that has been adopted in this connection by the Deputy Collector is erroneous ; because, though, no doubt, an application was presented by the petitioner for the execution of the decree in question, yet the decree was not caused to be executed against the opposite party. What was done was simply that an application for the execution of the decree was presented, and a notice was thereupon issued, calling upon the opposite party to show cause why the decree should not be executed ; and the Deputy Collector, being of opinion that the decree had already been satisfied, ordered that it should not be executed. We think that, under the circumstances, no offence under section 210 of the Indian Penal Code could have been committed.

In this view of the matter, we think that the order of the Deputy Collector, dated the 2nd of January 1895, sanctioning the prosecution of the petitioner for an offence under section 210 of the Indian Penal Code, should be revoked ; and we accordingly direct that the rule be made absolute.

No. 1335.—For the reasons already stated, this rule should also be made absolute.

H. W. *Rules made absolute.*

APPELLATE CRIMINAL.

Before Mr. Justice O'Kinealy and Mr. Justice Banerjee.

QUEEN-EMPRESS *v.* JABANULLA (AND ANOTHER.) *

1896
June 25.

Appeal in Criminal Case—Criminal Procedure Code (Act X of 1882), section 423—Power of the Appellate Court—Altering a finding of acquittal into one of conviction.

The Appellate Court can, under the provisions of section 423 of the Criminal Procedure Code, in an appeal from a conviction, alter the finding of the lower Court and find the appellant guilty of an offence of which he was acquitted by that Court.

THE appellants were charged with offences punishable under section 148, section 302 read with section 149, and section 326 of

* Criminal Appeal No. 318 of 1896, against the order passed by R. H. Greaves, Esq., Sessions Judge of Sylhet, dated the 13th of April 1896.