

We have to construe the section as it exists in the Act. The section provides that an appeal shall lie from a decision of a Collector of the District or Assistant Collector of the first class in all suits mentioned in section 93 in which "the rent payable by the tenant has been a matter in issue and has been determined." The appeal is not limited to the question of the rate of rent, but it is given in every suit in which that question having been in issue has been determined. In this case the question of the rate of rent was in issue in the Court of first instance and was determined by that Court, consequently the condition necessary to give a right of appeal under the section was fulfilled. It is true that, had no question arisen in the Court of first instance as to the rate of rent, there could have been no appeal on the question of payment, but we have to construe the section as we find it. As, according to the language used in section 189, an appeal lies in every suit in which the question of the rent payable by a tenant has been in issue and has been determined, an appeal lay in this case to the District Judge. The point taken here cannot therefore be sustained. We dismiss the appeal with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

1896

SARJU
PRASAD
F.
HAIDAR
KHAN.

1896
July 6.

Before Mr. Justice Blair and Mr. Justice Banerji.

FARZAND ALI (APPLICANT) v. HANUMAN PRASAD (OPPOSITE PARTY.)

Criminal Procedure Code, section 191(c)—Act No. X of 1872, section 140(c)
—*Complaint—By whom a complaint of an offence may be made.*

The complaint upon which under section 191(c) of the Code of Criminal Procedure a Magistrate may take cognizance of an offence may be made by any member of the public acquainted with the facts of the case, not necessarily by the person aggrieved by the offence to which the complaint relates. *In re Ganesh Narayan Sathe* (1) followed.

THE facts of this case sufficiently appear from the judgment of the Court.

(1) I. L. R., 13 Bom., 600.

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 HANUMAN
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Mr. R. Malcomson and Pandit Madan Mohan Malaviya for the applicant.

Mr. C. Dillon for the opposite party.

BLAIR and BANERJI, JJ.—This is a petition in revision presented on behalf of an accused person against whom proceedings have gone to the stage, first, of issuing summons, and secondly, of an order that failing the service of summons a warrant shall issue. One of the grounds of the petition having been abandoned, the only one which remains is that the complaint, which we take to be an information given with intent to set the Court in motion, was made by some person other than the person aggrieved.

A preliminary objection was made by Mr. Dillon, who appears for the opposite party, that the petition and its grounds disclosed no matter for the exercise of our revisional jurisdiction. He contended that the general principles of law having force in India, which are expressed in section 191 of the Code of Criminal Procedure, 1882, empowered any one of the public to complain to a Magistrate of any act which is in violation of the criminal law of this country, while the cases in which the proceedings could only be initiated by the aggrieved person are set forth in sections 195, 196, 197, 198 and 199 of the Code of Criminal Procedure. He argued that the special limitation imposed on those cases excludes the idea that any such limitation was applicable to other cases in the institution of prosecutions.

Mr. Malcomson, who appears for the petitioner, has addressed to us an argument based upon the construction of the Criminal Procedure Code of 1872, section 140, and upon the construction of the corresponding section of the Code of Criminal Procedure now in force. The provisions of section 191 of the present Code are *in pari materia* with the provisions of section 140 of the Act of 1872. Section 140 of the Act of 1872 makes four divisions of the circumstances under which a Magistrate is empowered to issue a summons or a warrant. The first refers to those cases in which a report has been made by the Police of a cognizable offence; the second, to the information or report by a Police officer as to a

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non-cognizable offence ; the third, which is the one which is suggested to us as applicable to the present matter, is in the following words :—“ Upon a complaint by a private person. Any person acquainted with the facts of a case may make a complaint.” The fourth division deals with cases in which a Magistrate entertains suspicion and makes no reference to the information or other grounds upon which that information is based. We are asked by Mr. *Malcomson* to put upon the third division a construction which at first sight seems somewhat violent. We are asked to say that by the words in the first sentence “ upon a complaint by a private person ” must be meant an aggrieved person and nobody else. In the second sentence of that clause we are asked to put upon the words “ any person acquainted with the facts of the case ” the interpretation “ any person other than the one aggrieved.” We have not had cited to us any authority for the bifurcation of that clause. Indeed, if Mr. *Malcomson's* interpretation were correct, power would be given to a Magistrate to issue a warrant or summons upon the complaint of the party aggrieved, while the second sentence on Mr. *Malcomson's* construction would enable other parties to make a complaint, although there are no words in the section empowering a Magistrate to issue a summons or a warrant upon such a complaint. It seems to us that the construction of those words is obvious, that whereas in the previous clause informations of the Police officer receive the explanation that for the purpose of this section they must be regarded as complaints, so in the third clause the complaint by a private person receives the explanation that such complaint may be made by any person who is acquainted with the facts of the case. That seems to us to be the easy, ordinary and natural construction to put upon the words of that section. Mr. *Malcomson* argued that clause (c) of section 740 of the Act of 1872 was reproduced and subdivided into two clauses in the corresponding section, viz., section 191 of the Act of 1882. He suggested that the first clause “ upon receiving a complaint of facts which constitute such offence,” meant a complaint by a person aggrieved, and by him only,

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that is to say, those words were the equivalents for the explanation in the Act of 1872 upon a complaint by a private person, *i.e.*, as interpreted by Mr. *Malcomson*, a private person aggrieved.

It was suggested to us that the words of the complaint itself suggested that the person who made it was the person injured. With such an interpretation it is unnecessary to deal. Mr. *Malcomson* informs us that he did not contend that the persons mentioned in sections 195, 196, 197, 198 and 199 of the Code of Criminal Procedure, 1882, were outside of, but they were included in the general provisions of clause (a) of section 191. We confess to feeling some difficulty in understanding why in certain cases the initiation of prosecutions should have been confined expressly to persons aggrieved if they were already included in the general enactment of section 191. Mr. *Malcomson* contended that clause (c) of section 191 included and provided for the case of complaints by persons other than persons aggrieved, and in that respect covered the same grounds as the second sentence in clause (c) of section 140 of the Act of 1872. They do not, however, cover the same ground in this respect, that whereas in clause (c) of section 140 of the Act of 1872 the information tendered by a private person must be of the nature of a complaint intended to set the Court in motion, clause (c) of section 191 of the Act of 1882 includes information of all kinds and without restriction, except that it must be from some person other than a Police officer. In our opinion Mr. *Malcomson's* construction will not hold water. Clause (c) of section 191 would not be applicable to complaints at all, and the only complaint upon which the Court could act would be a complaint under clause (a) of that section. It would be in our opinion, having regard to the general policy of the law, an impossible restriction to impose upon the right of all persons interested in the due administration of the law to debar them from making complaints of the violation of law and setting the Court in motion in case of such violation. It would require clear and positive words, which are wholly absent in the Code of Criminal Procedure, to induce us to put what appears to us such a forced and unnatural construction on the words of that section.

To the best of our knowledge Mr. *Malcomson's* ground for revision is not one that has ever been heretofore entertained by this Court, nor has he laid any foundation for the exercise of our revisional jurisdiction. Our attention has been called to a case (*In re Ganesh Narayan Sathe*) reported in I. L. R. 13 Bom. 600 in which two learned Judges lay down that as a general principle the right to complain of violations of law belongs, unless expressly restricted, to every member of the public. This seems to us to be a thoroughly sound proposition and one which is the basis of our present decision. Our finding on the preliminary point being in favor of Mr. *Dillon's* client, this petition is rejected.

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APPELLATE CIVIL.

1896
July 15.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Blennerhassett.
SHEO CHARAN LAL*(PLAINTIFF) v. SHEO SEWAK SINGH AND ANOTHER
(DEFENDANTS.)*

Execution of decree—Validity of sale in execution—Civil Procedure Code, sections 268, 274—Attachment.

Held that a sale of the mortgagee's rights under a mortgage duly held and confirmed was effectual to pass the mortgagee's rights to the auction purchaser, even though the attachment subsequent to which such sale was held might have been made under a wrong section of the Code of Civil Procedure. *Balkrishna v. Masuma Bibi* (1), *Mahadeo Dubey v. Bhola Nath Dicket* (2), *Ram Chand v. Pitam Mal* (3), and *Karim-un-nisa v. Phul Chand*(4) referred to.

THE plaintiff sued for sale under a mortgage, alleging that he had purchased at a sale in execution of a decree, which sale had been duly confirmed and a sale certificate granted to him, the rights and interests of the mortgagees in the mortgage in question.

The defendants, one of the original mortgagors and the son of the other, resisted the suit mainly on the ground that the attachment, in pursuance of which the sale to the plaintiff had taken place, had been made under section 274 of the Code of Civil Procedure,

* Second Appeal No. 677 of 1894, from a decree of J. Danman, Esq., District Judge of Benares, dated the 26th April 1894, modifying a decree of Babu Nil Madhub Rai, Subordinate Judge of Benares, dated the 30th June 1893.

(1) I. L. R., 5 All., 142.

(3) I. L. R., 10 All., 506.

(2) I. L. R., 5 All., 86.

(4) I. L. R., 15 All., 184.