

1902

SATREPA
KUNWAR
v.
HULAS
KUNWAR.

its validity, the will had become invalid and of no effect. There could be no valid registration of it after one month from its execution. Act I of 1869, sections 19 and 20, and the Indian Succession Act (X of 1865), sections 51 and 60, were referred to.

Mr. *Cohen*, K.C. and Mr. *DeGruyther* for the respondents were not heard.

1902: *November* 19.—Their Lordships' judgment was delivered by Lord MACNAGHTEN.

Their Lordships are of opinion that the judgment of the Judicial Commissioner is right. Whether the document in question is regarded as a codicil or as a will, it is perfectly good as a testamentary instrument and it must have its legitimate effect.

Their Lordships will therefore humbly advise His Majesty that the appeal ought to be dismissed. The appellant will pay the respondent's costs of the appeal.

Appeal dismissed.

Solicitors for the appellant—Messrs. *Gordon, Dalbiac and Pugh*.

Solicitors for the respondent—Messrs. *T. L. Wilson & Co.*
J. V. W.

1902
August 18.

REVISIONAL CRIMINAL.

Before Mr. Justice Burkill.

HARBANS RAI AND OTHERS (APPLICANTS). v. CHUNNI LAL AND RAM PRASAD (OPPOSITE PARTIES).*

Revision—Practice—Criminal Procedure Code, section 195—Sanction to prosecute—Application for sanction refused by Magistrate—Independent application subsequently made to the Sessions Judge.

Certain persons who had been discharged after a complaint against them of the offences of kidnapping and extortion, applied to the Magistrate who had discharged them for sanction to prosecute the complainants. This application was refused by the Magistrate. The applicants then, instead of appealing or applying in revision to the Sessions Judge against the order of the Magistrate, made a fresh and independent application to the Sessions Judge for sanction to prosecute the complainants. The Sessions Judge declined to entertain this application. On application under section 195 of the Code of

* Criminal Revision No. 487 of 1902.

Criminal Procedure being made to the High Court against both the orders above referred to, the High Court refused to interfere on the ground that the applicants had not pursued their proper remedy in the Court below.

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

Messrs. *C. C. Dillon* and *B. E. O'Connor*, and Pandit *Sundar Lal*, for the applicants.

Mr. *C. Ross Alston* and Babu *Satya Chandra Mukerji*, for Chunni Lal.

Babu *Sital Prasad Ghosh*, for Ram Prasad.

BURKITT, J.—I think this application in its present form cannot be entertained. After the trial of Harbans Rai and others, who were discharged, the said Harbans Rai and others applied to the Magistrate for permission to prosecute certain persons, who, they alleged, had concocted false charges of extortion and kidnapping against them. The Magistrate rejected the application without giving any reasons for his order. The applicants seem to have submitted to that order of the Magistrate. They took no proceedings in revision or by way of appeal, if an appeal lay against it. What they did was, that they made an original application to the Sessions Judge, asking him to grant them the sanction which they had asked for in vain from the Magistrate. They did not ask the Sessions Judge to take up in revision, or to take any action on, or notice of, the proceedings before the Magistrate. The Sessions Judge very properly refused to entertain an application made under such circumstances. The application is now renewed to this Court. I think it cannot be sustained, because the applicants, on the rejection of their first application by the Magistrate, should have applied in revision to the Sessions Judge, or they might, in the first instance, have applied (without having gone to the Magistrate) to the Sessions Judge for sanction, but that they did not think fit to do. The order of the Magistrate refusing sanction could have been taken up, if the applicants had so asked, in revision by the Sessions Judge, but, as it is, it stands untouched. It is a valid order, unreversed, passed by a competent Court rejecting the applicants' application for sanction to prosecute the opposite party. I therefore think I ought not to entertain the present application, and I therefore reject it.

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