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payment of compensation to an accused person can be made in a case which is false as well as frivolous or vexatious." In our opinion the law has been correctly laid down in those cases. It is certainly arguable that the word 'frivolous' might not have been intended by the Legislature to include 'false,' but the word 'vexatious' seems no less applicable to a case which was deliberately false than to one which has been entered upon without reason or consideration. The learned Judge who dissented from the rest of the Court has expressed the opinion that the two words 'frivolous' or 'vexatious' should be regarded as *ejusdem generis*, and if the law had intended to include a deliberately false complaint or information that it would have been differently expressed. It seems to us that the opinion so expressed would have been entitled to greater weight if the phraseology of the first Code of Criminal Procedure of 1861 had not undergone alteration. In that Act a complaint which was frivolous *and* vexatious was the proper subject for amends. In the later amendments of the Code the copulative has been changed into the disjunctive 'or.' It is impossible for us to say that this change has not been deliberately made, and that the words 'frivolous or vexatious,' as the learned Judge would have us hold, are equivalent to the words 'frivolous and vexatious.' We think that the object of section 250 was rightly described in the case reported in 21 Madras. We therefore decline to accede to the recommendation of the learned Judge and direct that the record be returned.

Record returned.

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March 15.

Before Mr. Justice Knox.

EMPEROR v. SUNDAR SARUP.*

Criminal Procedure Code, sections 4, 190, 192, 195, and 476—Act No. XLV of 1860 (Indian Penal Code), section 193—Complaint—Procedure.

An Assistant Collector trying a rent suit came to the conclusion that the plaintiff had committed perjury, and accordingly submitted the record to the Collector of the District "for starting a case under section 193, Indian Penal Code." The "Collector" ordered "that a case under section 193 of the Indian Penal Code be initiated against Sundar Sarup and made over for decision to Maulvi Abdul Rafi-ud-din, Magistrate of the first class." *Held* that although

* Criminal Revision No. 76 of 1904.

the order of the Assistant Collector could not be regarded as an order under section 476 of the Code of Criminal Procedure, it fell within the definition of a complaint, and the Collector, who was also the District Magistrate, had power as Magistrate to take action upon it and pass the order which he had passed. *In the matter of the petition of Alamdar Husain* (1) followed.

In this case an Assistant Collector of the second class in trying a rent suit came to the conclusion that the plaintiff had committed an offence under section 193 of the Indian Penal Code. He thereupon passed the following order: "As plaintiff knowingly and voluntarily told a lie, it will be fair that he be proceeded against under section 193, Indian Penal Code. It is therefore ordered that the record of the case be herewith submitted to the Collector for starting a case under section 193, Indian Penal Code." On receipt of the record with this order, the Collector directed "that a case under section 193 of the Indian Penal Code be initiated against Sundar Sarup and made over for decision to Maulvi Abdul Rafi-ud-din, Magistrate of the first class." Against this order application was made in revision to the Addition Sessions Judge of Aligarh, who held that the Assistant Collector's order was in effect one under section 476 of the Code of Criminal Procedure, and that the order subsequently made by the "Collector" was an order which he was competent as District Magistrate to pass under section 200 of the Code. The application for revision was accordingly dismissed. A further application was then made to the High Court, and it was contended that the only order made on the face of it under section 476 of the Code of Criminal Procedure was the order of the Collector, and he had no jurisdiction to pass such an order.

Babu *Satya Chandra Mukerji*, for the applicant.

The Assistant Government Advocate (Mr. *W. K. Porter*) for the Crown.

Knox, J.—This is an application asking this Court to interfere in revision with an order passed by the Court of Session at Aligarh whereby an order passed by the District Magistrate of Bulandshahr, dated the 30th November 1903, was affirmed. The order of the District Magistrate of Bulandshahr, dated the 30th November 1903, runs as follows:—"That

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a case under section 193 of the Indian Penal Code be initiated against Sundar Sarup and made over for decision to Maulvi Abdul Rafi-ud-din, Magistrate of the first class." It is contended that this order is neither an order passed under section 476 of the Code of Criminal Procedure, nor is it an order justified by any other section of the same Code. It certainly is not an order passed under section 476. The offence of which the Magistrate of the District has taken cognizance is an offence under section 193 of the Indian Penal Code. On referring to section 195 of the Code of Criminal Procedure, it will be seen that no Court can take cognizance of an offence punishable under section 193 when such an offence is committed in any Court, except with the previous sanction or on a complaint of such Court. The alleged offence punishable under section 193 was committed in the Court of the Assistant Collector of Bulandshahr. I have therefore to see whether the Magistrate of the District, when he issued his order, which in terms is an order under section 192 of the Code of Criminal Procedure, had before him either the previous sanction or the complaint of the Assistant Collector in whose Court the alleged offence was committed. I have no doubt in my own mind that the Assistant Collector when he made his order, dated the 16th November 1903, did intend to act under the provisions of section 476 of the Code of Criminal Procedure. It is extraordinary, however, and a matter for great regret that courts which contemplate action under section 476 so seldom take the trouble of referring to the section and seeing that their procedure and the order made by them is in accordance with the provisions of the law. In the present case the Assistant Collector, instead of sending the case to the nearest Magistrate of the first class and sending the accused in custody and binding over persons to appear and give evidence before the nearest Magistrate of the first class, contented himself with a proceeding under which he sent the record of the case before him to the Collector of the District with a view to proceedings being instituted against Sundar Sarup under section 193 of the Indian Penal Code. Whatever may have been the intentions of the Assistant Collector, it would be great straining of the language used by him to hold that his order was

an order passed under section 476. But from the very words used by the Assistant Collector it is evident that his intention was, and that he did make in writing an allegation to the Collector of the District, with a view to the Collector taking action under the Code of Criminal Procedure, that Sundar Sarup had committed an offence under section 193 of the Indian Penal Code. The Collector of the District is also Magistrate of the District. As Magistrate of the District he considered this allegation and he acted upon it. Is his action to be taken as being without jurisdiction, because when it was addressed to him as Collector he took action upon it as Magistrate? If he had taken action upon it as the Collector this Court could not have considered the order in revision (see *In the matter of the petition of Bhup Kunwar*, Weekly Notes, 1904, p. 15), but he took action upon it as Magistrate; and in revision I prefer to follow the principles laid down in *In the matter of the petition of Alamdar Husain* (1), and decline to interfere, merely because, for after all it only amounts to this, the Magistrate of the District was in the proceeding of the Assistant Collector described as Collector of the District. If the Assistant Collector in his proceedings had directed that the record of the case be laid before the District Magistrate, there is no question that the District Magistrate being a Magistrate of the first class would have had jurisdiction to pass the order he did in spite of the otherwise imperfect and slovenly terms in which the order was couched. I dismiss the application.

Application dismissed.

APPELLATE CIVIL.

1904
March 21.

Before Mr. Justice Blair and Mr. Justice Banerji.

GAYA DIN (DECREE-HOLDER) *v.* HIRA LAL (APPLICANT).
Civil Procedure Code, section 351(d)—Insolvency—“Any other act of bad faith.”

One H. L. being the servant of a trading firm misapplied moneys of the firm. The firm obtained a decree against him for the refund of some nine

* First Appeal No. 86 of 1903 from an order of T. C. Pigott, Esq., District Judge of Moradabad, dated the 30th of May 1903.

(1) (1901) I. L. R. 28 All., 249.