

the appeal, set aside the decrees of both the lower Courts and remand the suit to the Court of first instance, through the lower appellate Court, with directions that it be reinstated on the file of pending suits and be disposed of on the merits, an opportunity being given to the defendant appellant, if so advised, to apply to have the award set aside. We think that under all the circumstances the costs here and hitherto should abide the event. We order accordingly.

*Appeal decreed and cause remanded.*

## REVISIONAL CRIMINAL.

*Before Mr. Justice Dillon.*

EMPEROR v. TULA.\*

*Act No. XLV of 1860 (Indian Penal Code), section 211—False charge—Practices—Opportunity to be given to prove charge before prosecuting.*

Where it is intended to prosecute any person under section 211 of the Indian Penal Code such person ought to be given an opportunity of substantiating, if he can, the charge which he has brought before he is prosecuted. *Queen-Empress v. Ganga Ram* (1) and *Queen-Empress v. Raghu Tiwari* (2) followed.

THE facts of this case are as follows:—One Tula lodged a complaint of robbery against Rameshwar and another in the Court of a first class Magistrate of Garhwal. As Tula had already reported the matter to the Police, the Magistrate decided to await the police report before taking action on the complaint. The police report was to the effect that the complaint was false. Beyond examining the complainant at the time of recording his complaint the Magistrate took no further evidence in the case. On receiving the police report, the Magistrate dismissed the complaint under section 203 of the Code of Criminal Procedure. Tula was then called upon to show cause why he should not be prosecuted under section 211, Indian Penal Code. In showing cause, Tula said that beside other witnesses he relied upon those who had already been examined by the police. The Magistrate then passed an order, directing Tula to be prosecuted under section 211, Indian Penal Code, and sent the case to the District Magistrate for disposal. On the case coming before the

\* Criminal Reference No. 178 of 1907.

(1) (1885) L. L. R., 8 All., 38.

(2) (1893) L. L. R., 15 All., 336.

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District Magistrate objections were taken on behalf of Tula to the validity of the order directing his prosecution on the ground that Tula had been given no opportunity of proving his case.

DILLON, J.—In this case one Tula lodged a complaint of robbery against Rameshwar and another in the Court of a first class Magistrate of Garhwal. As Tula had already reported the matter to the police, the Magistrate decided to await the police report before taking action on the complaint. The police report was to the effect that the complaint was false. Beyond examining the complainant at the time of recording his complaint the Magistrate took no further evidence in the case. On receiving the police report, the Magistrate dismissed the complaint under section 203 of the Code of Criminal Procedure. Tula was then called upon to show cause why he should not be prosecuted under section 211, Indian Penal Code. In showing cause, Tula said that beside other witnesses he relied upon those who had already been examined by the police. The Magistrate then passed an order, directing Tula to be prosecuted under section 211, Indian Penal Code, and sent the case to the District Magistrate for disposal. On the case coming before the District Magistrate objections were taken on behalf of Tula to the validity of the order directing his prosecution on the ground that Tula had been given no opportunity of proving his case. The question, therefore, is whether the order of Mr. Dharmanand Joshi, Magistrate of the first class, Garhwal, dated 11th February 1907, above referred to, is a proper order or not. There is apparently no ruling of this Court directly on the point except one—*Queen-Empress v. Ganga Ram* (1) which lays down that an order under section 195 of the Code of Criminal Procedure directing the prosecution of the complainants for bringing a false charge under section 211, Indian Penal Code, should not have been made until the complainants had been afforded an opportunity of proving their case. In *Queen-Empress v. Raghu Tiwari* (2) it was held that in a case like that under consideration, “the Court should, in our opinion, as a rule, proceed to determine such criminal proceeding instituted in it and should give the person instituting such proceeding a reasonable opportunity of supporting his case before proceeding

(1) (1885) L. L. R., 8 All., 38.

(2) (1893) I. L. R., 15 All., 386.

against him for an offence under section 211." Following these rulings I hold that the order in question was not a proper order. I therefore set it aside.

## APPELLATE CIVIL.

*Before Sir George Knox, Kt., Acting Chief Justice, and Mr. Justice Richards.*  
 MOHSAN SHAH AND OTHERS (PLAINTIFFS) v. MAHBUB ILAHI AND OTHERS  
 (RESPONDENTS).\*

*Act No. XIX of 1873 (N.-W. P. Land Revenue Act), sections 194(g) and 203  
 —Act (Local) No. III of 1899 (Court of Wards Act), sections 9, 35 and  
 47—Power of Court of Wards to sell property under its superintendence.*

The estate of a Muhammadan lady, named Hawa Begam, was at her own request taken under the superintendence of the Court of Wards under section 194, clause (g), of Act No. XIX of 1873. This was in 1896. In 1902 the Court of Wards sold a portion of Hawa Begam's property, as was alleged, without her consent. Held on suit by persons claiming title through Hawa Begam to recover the property so sold, that the Court of Wards was under the circumstances entitled to sell, even without the owner's consent, and that its discretion could not be questioned in any Civil Court.

*Semble* that if the property had been placed under the superintendence of the Court of Wards, under section 9 of Local Act No. III of 1899, and if the sale had been made without the consent of the proprietor otherwise than on the ground set out in the concluding paragraph of section 35, the sale would have been a bad sale and the Civil Court could have entertained a suit to question the power of the Court of Wards to sell.

IN 1896, under the provisions of the North-Western Provinces Land Revenue Act, section 194(g), the Court of Wards, at the instance of the proprietor, assumed the superintendence of the property of one Musammat Hawa Begam. In 1902, after the coming into force of the local Court of Wards Act, 1899, the Court of Wards sold a portion of Hawa Begam's property. After Hawa Begam's death, certain persons claiming to be her heirs sued to recover from the purchase the property so sold upon the ground that the sale was without Hawa Begam's consent and *ultra vires* of the Court of Wards. The Court of first instance (Subordinate Judge of Meerut) dismissed the suit, and this decree was on appeal confirmed by the Additional District Judge. The plaintiffs thereupon appealed to the High Court.

\* Second Appeal No. 1109 of 1906, from a decree of Munshi Muhammad Ahmad Ali Khan, Additional District Judge, Meerut, dated the 22nd of August 1906, confirming a decree of Mr. H. David, Subordinate Judge of Meerut, dated the 11th of December 1905.

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