that Balmakund ought not to have been convicted under section 65 for having refused to give a second receipt to Gotting. We accordingly allow the application, set aside the conviction and sentence, and direct that the fine, if paid, be refunded.

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EMPEROR v. BALMAKUND.

Conviction set aside.

REVISIONAL CIVIL.

1911
December, 20.

Before Mr. Justice Karamat Husain and Mr. Justice Chamier.

AJUDHIA PRASAD (APPLICANT) *v.* RAM LAL AND ANOTHER (OPPOSITE PARTIES).*

Criminal Procedure Code, section 195 (7), *clauses (a), (b) and (c)—Sanction to prosecute—Sanction refused—Further application—"Case"—"Principal court of original jurisdiction."*

In a suit for arrears of rent exceeding Rs. 100, a decree was passed in favour of the appellant. In course of execution proceedings the respondents made certain statements which, according to the appellant, were false. The appellant applied for sanction to prosecute them under section 195, clause (7) of the Code of Criminal Procedure. The sanction was refused by the Assistant Collector.

Held on application made to the District Judge to grant sanction, that no such application lay. The "case" in connection with which an offence was alleged to have been committed was the proceedings in execution, from which no appeal lay, and the District Judge was not in relation to such proceedings the "principal court of original jurisdiction."

THE facts of this case are thus stated in the following order of TUDBALL, J., referring the case to a Bench of two Judges:—

"The facts of this case are briefly as follows:—A suit for arrears of rent was brought in the court of an Assistant Collector of the first class, for a sum of over one hundred rupees. It was decreed, and the decree-holder subsequently brought the decree into execution. In the course of the execution proceedings two statements were made by the opposite parties which the present applicant deems to be false. He applied to the court of the Assistant Collector for sanction. That officer refused. Thereupon the present applicant went to the District Judge to have the order refusing sanction set aside. The District Judge held that he had no jurisdiction in the matter and that clause (*c*) of sub-section 7 of section 195 of the Code of Criminal Procedure applied to the matter, as there is no appeal in execution proceedings in the Revenue Court. He held that, as a District Judge, he was not the principal court of original jurisdiction within the meaning of clause (*c*), sub-section 7. The applicant has come here in revision and pleads that the District Judge has refused to exercise jurisdiction which the law has given him. On behalf of the opposite parties it was pleaded that in all cases in which no appeal lies, in order to find out which is the principal court of original jurisdiction within the meaning of this clause, one must look to the nature of the case. If it is a criminal case in which no appeal lies, then the principal court of original

* Civil Revision No. 37 of 1911.

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jurisdiction will be the principal court of original criminal jurisdiction. If it is a suit in a Revenue Court, where no appeal lies, the principal court of original jurisdiction within the meaning of this clause will be the principal original court of revenue jurisdiction. My attention has been drawn by the applicant to a ruling of this Court in *Wazir Muhammad* v. *Hub Lal* (1). As I have personally some doubt as to the correctness of that decision, and as present aspect of the case does not seem to have been placed before that court, I think it would be better to refer this matter to a bench of two Judges. I order accordingly."

On the case coming up for hearing before a bench of two Judges,

Mr. *A. H. C. Hamilton*, for the applicant :—

The District Judge was wrong in refusing to exercise jurisdiction. As the suit was one for arrears of rent, an appeal would lie to the District Judge under section 177 of the Tenancy Act, and therefore, under section 195 (7), sub-clause (*b*) of the Code of Criminal Procedure the applicant was right in applying to the District Judge against the order of the Assistant Collector refusing sanction. If the particular proceedings are considered, and if it be held that no appeal would lie from an order passed by a Revenue Court in execution proceedings, then the case would be governed by clause (*c*) of section 195 (7), and the District Judge would be the principal court of original jurisdiction. In either case, therefore, whether sub-clause (*b*) or sub-clause (*c*) applied, the District Judge was the proper court which could exercise jurisdiction.

Babu *Piari Lal Banerji* (for Pandit *Uma Shankar Bajpai*), for the opposite party :—

Neither clause (*b*) nor clause (*c*) would give jurisdiction to the District Judge. The words "nature of the case" used in clause (*b*) mean "nature of the case pending" which in the present instance was an "execution case." The word 'case' does not mean 'suit,' and it would not be proper to refer back to the original suit or to consider what its nature was. The proceedings which were pending constituted the 'case,' and it was the nature of these proceedings which had to be looked to. The offence was alleged to have been committed not in connection with the suit, but in connection with the execution case. If in all cases a reference to the nature of the suit were made, various anomalies would

(1) (1909) I. L. R., 31 All., 313.

result. For example, under section 171 an Assistant Collector of the second class, is empowered to dispose of all execution applications, notwithstanding that the suit might have been decided by an Assistant Collector, of the first class, and all orders passed in execution by the Assistant Collector, of the second class, are appealable under section 176 to the Collector. It would be a grave anomaly to let the Collector hear an appeal from an order in execution proceedings and to let the District Judge hear an appeal from an order granting or refusing sanction in respect of an offence committed in connection with the execution application, and that would be the result if 'nature of the case' meant 'nature of the original suit.' Clause (*c*) deals with cases where no appeals lie. This might mean either (1) where no appeals lie from the decision of the particular tribunal having regard to the constitution of the tribunal, or (2) where no appeals lie from the particular decision having regard to the nature of the particular case. In the present case it is immaterial which of the two meanings is given to the clause. The clause goes on to say that appeal in sanction matters shall be deemed to lie ordinarily to the *principal court of original jurisdiction.* These words do not always mean *principal* civil *court of original jurisdiction.* The principal court of original jurisdiction would be the District Judge, the Collector, or the District Magistrate according as the case was a civil, revenue or criminal case. In the present case, as sanction was refused by a Revenue Court, the principal court of original jurisdiction would be the court of the Collector.

Mr. *A. H. C. Hamilton,* was heard in reply.

CHAMIER, J.—A suit for arrears of rent exceeding Rs.100, was brought in the court of an Assistant Collector of the first class and was decreed. In the course of execution proceedings in the same court the respondents made statements which, according to the applicant, were false. The applicant then applied to the Assistant Collector for sanction to prosecute the respondents. That officer refused to give sanction, and the applicant then went in appeal to the District Judge, who threw out the appeal on the ground that he had no jurisdiction to hear it. This is an application for revision of the order of the District Judge. On behalf

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of the applicant it is contended that the case is governed by clause (*b*) of sub-section (7) of section 195 of the Code of Criminal Procedure, and that on a proper construction of that clause the District Judge had jurisdiction. It is contended further that he had jurisdiction even if clause (*c*) of the same sub-section is held to be applicable, and that one or other of these clauses must apply to the case. As regards clause (*b*) the argument for the applicant is that the *case* in connection with which the offence is said to have been committed, was a suit for rent exceeding Rs. 100, against the decree in which an appeal lay to the District Judge, therefore the Assistant Collector, who refused sanction, must be deemed, for the present purpose, to be subordinate to the District Judge, who accordingly ought to have entertained the applicant's appeal. To this the respondents reply that the *case* in connection with which the offence is alleged to have been committed, was the execution proceeding, the order in which was not appealable, therefore clause (*b*) does not apply.

The applicant contends that even if clause (*b*) held to be inapplicable, clause (*c*) cannot apply, because the opening words of the clause "where no appeal lies" refer only to cases in which no appeal lies against any decisions of the court, and that the words do not mean as contended by the respondent "when no appeal lies in the case in connection with which the offence is alleged to have been committed." In the alternative the applicant contends that if clause (*c*) applies the court indicated is the court of the District Judge. To this the respondents reply that the principal court of original jurisdiction under the Tenancy Act is the court of the Collector.

The word "case" has been the subject of many conflicting decisions in connection with section 622 of the Code of Civil Procedure, 1882, and section 115 of the present Code. I do not think that any useful purpose would be served by a reference to those decisions, for the word must be construed with due regard to the context that it appears in, and the purpose for which the section of which it forms part was framed. It was this consideration which led the majority of the chartered High Courts to place a narrow meaning upon the word "case" in the section just mentioned. The object of sub-section (7) of section 195 of the Code of

Criminal Procedure was to indicate the court to which a court giving or refusing sanction to a prosecution should be deemed to be subordinate within the meaning of sub-section (6) as originally framed. Sub-section (7) provided only that the court giving or *refusing* sanction, should be deemed to be subordinate only to the court to which appeals *ordinarily* lay. This produced a mass of conflicting rulings and clauses (*a*), (*b*) and (*c*) were added with a view to getting rid of the difficulty. Clause (*a*) provides for the case of a subordinate court against whose decisions appeals lie to two courts of different grades, and is plain enough. Clause (*b*) provides for the case of a subordinate court against whose decisions appeals lie to two different kinds of courts. Here the test is to what court did an appeal lie in the case in connection with which the offence is alleged to have been committed? The word *case* taken by itself may mean either the original case out of which arose the case or proceeding in which the offence is said to have been committed or the actual proceeding in which the offence is said to have been committed. It must be construed with reference to the context in which it appears. The words are "*nature of the case in connection with which the offence is alleged to have been committed.*" There being a remote connection with an original suit and an immediate connection with an execution proceeding, I am of opinion that the case in connection with which the offence is alleged to have been committed is the execution proceeding. According to the decisions of this Court no apppeal lies against an order of an Assistant Collector of the first class passed in execution proceedings under the Tenancy Act. The result is that clause (*b*) does not apply. Does clause (*c*) apply? The opening words of the clause "where no appeal lies" do not appear to me to refer to courts against none of whose decisions an appeal lies, but to refer to particular cases in which no appeal lies. The whole sub-section seems to be confined to courts against whose decisions or some of whose decisions appeals do lie, for the opening words are,—"For the purposes of this section every court shall be deemed to be subordinate only to the court to which *appeals from the former court ordinarily lie*" (the italics are mine). The result of this construction is possibly that the Legislature has made no provision in section 195 for an appeal against

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an order of a Small Cause Court giving or refusing sanction, and it may be that the only court which can interfere with such an order is the High Court. This result may not have been contemplated, but the construction advocated by the applicant seems to me to be clearly inadmissible. It would have been another matter if clause (*c*) had formed a separate sub-section. I hold that clause (*c*) applies to the present case, and therefore the applicant should have appealed to "*the principal court of original jurisdiction.*" I can discover no justification for reading these words as if they were "*principal court of original civil jurisdiction.*" The clause applies to all classes of cases, and it is impossible to suppose that the Legislature intended the principal court of original civil jurisdiction to revise the orders of Criminal and Revenue Courts with which it has no concern as a Civil Court. The circumstance that District Judges in this province generally have the powers of Sessions Judges and hear appeals in Revenue cases, seems to be wholly irrelevant. The principal court of original jurisdiction under the Tenancy Act is clearly not the court of the District Judge.

For the above reasons I am of opinion that the District Judge was right in declining to entertain the applicant's appeal, and I would dismiss this application with costs.

KARAMAT HUSAIN, J.—I am of opinion that the word "case" in clause (*b*), sub-section (7), of section 195 of the Code of Criminal Procedure (Act No. V of 1898), means the actual proceedings in which the offence is said to have been committed and not the original case out of which those proceedings arose. I am also of opinion that the opening words of clause (*c*), sub-section (7), of section 195 of the Code "where no appeal lies" refer to cases in which no appeal lies and not to courts against the decisions of which there is no appeal. It was so held by mein *Wazir Muhammad* v. *Hub Lal* (1). In that ruling it was assumed that the court of District Judge was the principal court of original jurisdiction. That, however, is not the case, and the nature of the proceedings in which sanction is given or refused is to determine the principal court of original jurisdiction.

(1) (1909) I. L. R., 31 All., 313.

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For the above reasons I agree with my learned brother in dismissing the application.

BY THE COURT.—Order of the Court is that the application be dismissed with costs.

Application dismissed.

MATRIMONIAL.

1911
December, 22

Before Mr. Justice Chamier.

ESTHER MARIE JACKSON (PETITIONER) *v.* FREDERICK ORMOND LAYLAND JACKSON (OPPOSITE PARTY).*

Act No. IV of 1869 *(Indian Divorce Act), section* 57*—Marriage—Remarriage of petitioner in divorce proceedings within six months of the decree becoming absolute.*

Where the successful petitioner in a suit for dissolution of marriage entered into a second marriage within six months of the decree for dissolution of marriage becoming absolute, it was *held* that the second marriage was void. *Warter* v. *Warter* (1) followed.

THIS was a suit by Esther Marie Jackson for a declaration that her marriage with Frederick Ormond Layland Jackson is null and void. The parties, who are Christians, were married in Allahabad, on the 12th of January, 1910. The respondent, who had been married to another woman, had obtained in the Calcutta High Court a decree *nisi* for dissolution of that marriage, and the decree had been made absolute on the 6th of December, 1909. He believed that on the decree being made absolute, he was free to marry again, and he assured the present petitioner that all the necessary formalities had been complied with. The respondent's former wife was alive when the parties were married. On the above facts the petitioner claimed to be entitled to a declaration that her marriage with the respondent is null and void.

Mr. *R. K. Sorabji*, for the petitioner.

The opposite party was present in person.

CHAMIER, J.—This is a suit by Esther Marie Jackson for a declaration that her marriage with Frederick Ormond Layland Jackson is null and void.

The parties, who are Chistians, were married in Allahabad, on the 12th of January, 1910. The respondent, who had been married to another woman, had obtained in the Calcutta High

* Matrimonial suit No. 6 of 1911.

(1) (1890) L. R., 15 P. D., 152; 59 L. J., P. and M., 87.