Singh and Mahendrapal Singh thereupon sued for parittion of their shares of the family property and also for a declaration that their shares in the family property were not liable to satisfy the decree obtained against their father Bhagwan Singh. The courts below have dismissed the suit so far as the declaration claimed is concerned. The learned Judge of the lower appellate court has, after considering the decisions of the various courts on the interpretation to be put on certain observations of their Lordships of the Privy Council in *Sahu Ram Chandra* v. *Bhup Singh* (1), as to the existence of such liability, dismissed the appeal. The Judicial Commissioner of Oudh has, however, in the case of *Bharath Singh* v. *Prag Singh* (2) put a plain meaning on the words of their Lordships of the Privy Council which are to the effect that such a pious obligation can only be enforced after the death of the father. We agree with this interpretation of the ruling of their Lordships of the Privy Council referred to above and we think that the court below was wrong in dismissing the plaintiffs appellants' suit for a declaration that their shares of the family property were not liable to be taken in execution of a simple money decree obtained against the father, inasmuch as their father was alive. As matters stand at present we think the plaintiffs are entitled to the declaration asked for and the creditors cannot proceed against their shares of the family property for the realization of the debts due from the father. We, therefore, modify the decree of the courts below by decreeing the plaintiffs' claim in full. The plaintiffs are entitled to their costs in all courts.

*Decree modified.*

## REVISIONAL CRIMINAL.

*Before Sir Grimwood Mears, Knight Chief Justice, and Justice Sir Pramada Charan Banerji.*

SHARIF AHMAD *v.* QABUL SINGH. *

1921
*February*, 28.

*Criminal Procedure Code, sections 435 to 439—Revision—Practice—Application to be first made to Sessions Judge or District Magistrate—Act No. XLV of 1860 (Indian Penal Code), sections 499, 95—Defamation—Act causing slight harm.*

So far as the practice of the High Court in the matter of applications for revision on the Criminal side is concerned, an application to the lower

* Criminal Revision No. 1 of 1921 from an order of Ratan Chand, Magistrate, First Class of Muzaffarnagar, dated the 22nd of December, 1920.

(1) (1917) I. L. R., 39 All., 437 : L. R, 44 I. A., 126. (2) (1917) 43 Indian Cases, 291.

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court should be considered an essential step in the procedure, and that should be so whether the District Magistrate or the Sessions Judge has power to grant the relief or not. In future, therefore, failure on the part of the applicant to submit his application to the lower court will operate as a bar to the application being entertained by the High Court. *Emperor* v. *Mansur Husain* (1) referred to.

Observations on the application of section 95 of the Indian Penal Code.

THIS was an application in revision from an order convicting the applicant of the offence of defamation and sentencing him to a fine of Rs. 10. At the hearing a preliminary objection was taken that the applicant should have applied first to the Sessions Judge and that, as he had not done so, according to the rule of practice of the High Court, the present application should not be considered.

On this objection—

Mr. *C. Ross Alston* for the applicant :—

It is only in cases where the lower court has jurisdiction to entertain an application and pass an order which the applicant wants that the applicant must first go to the lower court. There are some cases in which the Sessions Judge can grant the relief prayed for and there are others in which he can only make a reference to the High Court. In cases of the latter sort the Sessions Judge, so to say, acts only as a post office. The Judicial Commissioner's Court at Lucknow adopts it as a general rule of practice that, in all cases in which a Sessions Judge has jurisdiction to entertain an application, the application must be made to him before it is made to the Judicial Commissioner's Court. It is suggested that it is a rule of practice that the High Court will not interfere until you go to the Sessions Judge. I shall place before your Lordships all the rulings on the point :—*Empress of India* v. *Nilambar Babu* (2), *Empress* v. *Mohar Singh* (3), *Empress* v *Phul Koeri* (4), *Queen Empress* v. *Reolah* (5), *Queen Empress* v. *Janki Prasad* (6), *Matai Lal* v. *Anant Ram* (7), *Emperor* v *Kali Charan* (8), *Shafaqat-ullah* v. *Wali Ahmad Khan* (9), *Emperor* v. *Abdus Sobhan* (10) and *Emperor* v. *Mansur Husain* (1).

(1) (1919) I. L. R., 41 All., 587.
(2) (1879) I. L. R., 2 All., 276.
(3) Weekly Notes, 1886, p. 295.
(4) Weekly Notes, 1887, p. 105.
(5) (1887) I. L. R., 14 Calc., 887.
(6) Weekly Notes, 1888, p. 132.
(7) Weekly Notes, 1890, p. 164.
(8) Weekly Notes, 1904, p. 232.
(9) (1907) I. L. R., 30 All., 116.
(10) (1909) I. L. R., 36 Calc., 643.

In most of these cases it will be found that the Sessions Judge had the power to grant the relief prayed for. Even in the others, the Sessions Judge was taken to have *concurrent jurisdiction* with the High Court. Now, he can be said to have *concurrent jurisdiction* only when he can grant the relief which the High Court can grant. The expression concurrent simply means running together. There can be no principle in forcing a man to engage a pleader and go to a Sessions Judge with an application when it is perfectly certain that the Sessions Judge cannot grant the relief sought for.

As in this case the application has already been admitted, it may conveniently be decided on the merits. The case clearly falls under section 95 of the Indian Penal Code. The remark complained of is so trivial that no sane man of ordinary temper would take objection to it. The cases of *Empress* v. *Vansittart* (1) and *Empress* v. *Amir Hasan* (2) were more serious than the present one, and yet it was held that section 95 of the Indian Penal Code applied to them. Moreover, the remark was made on provocation offered by the complainant himself. Qabul Singh may have had good ground to question the authority of Ram Chandra Sahai to sign and verify the written statement; but he had no business to refer to the pay of Ram Chandra Sahai.

Babu *Satya Chandra Mukerji*, for the opposite party :—

The case clearly comes within the opening words of section 499 of the Indian Penal Code. Qabul Singh is a leading vakil of the place and is an Honorary Magistrate. He is assessed to income tax on Rs. 16,000. Sharif Ahmad knew all these facts and yet made the remark out of spite.

As regards the rule of practice I have only to refer to one case which has not been referred to by my learned friend. That is the case reported in I. L. R., 28 All., 268.

[Mr. *C. Ross Alston.* That too is a case in which the Sessions Judge could grant the relief sought for by the applicant.]

But the case reported in the Weekly Notes for 1904, at p. 232, is on all fours with the present case. The reason for the rule laid down in all these cases is twofold. In the first place

(1) Weekly Notes, 1883, p. 46. (2) Weekly Notes, 1883, p. 167.

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the Sessions Judge can reject all frivolous applications and thus prevent most of them coming to the High Court and wasting your Lordships' time. In the second place, the Sessions Judge gives his own views on a case when he refers it to the High Court and his views would be of much value to your Lordships in deciding the case.

MEARS, C. J.:—This is an application in revision to set aside a conviction for criminal defamation. A preliminary point has been taken by the opposite party, which is that the matter ought not to have been brought direct to the High Court from the court of the convicting Magistrate, but should first have been submitted to the intermediate court of the Sessions Judge.

Mr. *Ross Alston* for the applicant has argued that in cases where the lower court has no power to grant the relief claimed the party aggrieved may proceed straight to the High Court without referring the matter to the consideration of the lower court which, as the case may be, will be either that of the District Magistrate or the Sessions Judge. In support of this contention he has cited many authorities, none of which however decides in terms the proposition that he has put forward.

We are of opinion that the correct rule of procedure is that set out in the judgment of Mr. Justice PIGGOTT in *Emperor* v. *Mansur Husain* (1). He says:—"It is obviously advisable that this Court should make it a rule of practice that a person dissatisfied with any order or proceeding in a court of inferior jurisdiction to that of the Sessions Judge or of the District Magistrate should, in the first instance, obtain the opinion of the Sessions Judge, or of the District Magistrate, on the matter in question, before invoking the jurisdiction of this Court. Such a procedure tends to prevent the time of this Court from being wasted over frivolous or unsustainable applications; it also ensures the further advantage that, if the matter eventually comes before this Court, it comes upon a record containing an expression of opinion by a court of superior jurisdiction, such as that of the Sessions Judge or of the District Magistrate. I am further opinion that, if such a rule of practice is once laid

(1) (1919) I. L. R., 41 All., 587, (591).

down, it ought to be enforced evenly and without making capricious exceptions in favour of particular applicants."

Now there is a broad understandable general rule which in the opinion of the learned Judge should apply to all cases. We are of opinion that that should be the practice. There are other cases to be found in *Empress of India* v. *Nilambar Babu* (1), *Gullay* v. *Bakar Husain* (2), *Shafaqat-ullah* v. *Wali Ahmad Khan* (3), all of which show that there has been no question at all that where the District Magistrate or Sessions Judge has a concurrent jurisdiction, it has been regarded as essential that the matter should first be submitted to the District Magistrate or the Sessions Judge, as the case may be.

In a case to which we have been referred, *Emperor* v. *Abdus Sobhan* (4), the Calcutta High Court had no doubt that an application for revision should not be entertained in cases where the Sessions Judge or the District Magistrate had concurrent jurisdiction; but they thought there was no such general rule where the position of the Sessions Judge, or District Magistrate, was such that he could not grant the relief applied for.

We think that there should be one general uniform rule of practice, covering all cases of revision, because the position of a District Magistrate or Sessions Judge is not that of a mere automaton even in cases where he cannot grant the relief which is asked. He has power to reject; and in cases which are clearly unsustainable a rejection by him does no doubt in some cases have the result that the matter is not subsequently pursued to the High Court. He also in every case which comes up to this Court sets out the circumstances and records his opinion, and we regard that as a matter of importance and value to this Court. We, therefore, hold that as far as the practice of this Court is concerned, an application to the lower court should be considered an essential step in the procedure; and that should be so whether the District Magistrate or Sessions Judge has power to grant the relief or not. In future, therefore, failure on the part of the applicant to submit his application to the lower

(1) (1879) I. L. R., 2 All., 276.
(2) (1905) I. L. R., 28 All., 268.
(3) (1907) I. L. R., 30 All., 116.
(4) (1909) I. L. R., 36 Calc., 643.

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court will operate as a bar to the application being entertained by this Court.

As, however, in the course of the argument it became plain to us that the conviction in the present case ought not to stand, we thought it better, in this particular instance, to save the time of the lower court and of this Court by disposing of the matter.

The facts can be very shortly stated and are that during the hearing of a civil suit on the 1st of June, 1920, in the case of Ramji Lal against the Municipal Board of Kairana, a question arose as to the authority of the acting Secretary of the Municipal Board to sign and verify the written statement on behalf of the Board. The complainant in this case, Qabul Singh, and Sharif Ahmad (the opposite party) are both vakils. The former was present in his professional capacity representing Ramji Lal, and the latter (who is also the Chairman of the Municipal Board) was also in court. When Qabul Singh took the objection as to the authority of the clerk he added that the pay of Ram Chandra Sahai was only Rs. 10 to Rs. 15 a month. Thereupon, according to the evidence, Sharif Ahmad broke in and said "Ram Chandra Sahai's status is higher than yours." Remarkable as it may seem, this is the utterance which caused Qabul Singh to commence criminal proceedings. It is said there was pre-existing ill-feeling between the parties and the tone of the remark was contemptuous. But even allowing for this the occurrence was in our opinion of so trivial a nature that no person of ordinary balance, sense and temper would have made it the subject of criminal proceedings. It was an ill-bred and ill-mannered remark, and in the circumstances a foolish one as well. Mr. *Satya Chandra Mukerji*, who appears for Qabul Singh, admits that in view of the position of Qabul Singh no one in Court could have taken the remark seriously. That being so, no harm could be suffered by Qabul Singh, and we think that the Magistrate should have dismissed the proceedings as being vexatious and frivolous. Two similar cases have been cited to us which show the disapproval with which this Court entertains proceedings of this kind. They are *Empress* v. *Vansittart* (1) and *Empress* v. *Amir Hasan* (2). We need not do more than

(1) Weekly Notes, 1883, p. 45. (2) Weekly Notes, 1883, p. 107.

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give the references, but we entirely approve the point of view of the tribunals who tried those cases. We, therefore, think this is a conviction which should be set aside and that the learned Magistrate should have considered the case as one properly falling within section 95 of the Indian Penal Code and should have dismissed it.

We, therefore, set aside the conviction, and order that the fine of Rs. 10, which we are told has been paid, should be refunded.

*Conviction set aside.*

## APPELLATE CIVIL

*Before Sir Grimwood Mears, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.*

1921
*March*, 2.

RAM DHAN AND OTHERS (PLAINTIFFS) *v.* PRAYAG NARAIN AND OTHERS (DEFENDANTS)*.

*Hindu law—Religious endowment—Requirements for the completion of a valid gift—Registered deed alone not sufficient without delivery of possession.*

The mere execution of a deed of endowment is not sufficient under the Hindu law to create a valid endowment, but to complete the gift there must be a transfer of the apparent evidences of ownership from the donor to the donee. *Dajai Dabee* v. *Mothura Nath Chattopadhya* (1), *Kalidas Mullick* v. *Kanhaya Lal Pundit* (2) and *Watson and Co.* v. *Ramchund Dutt* (3) referred to.

THE facts of this case are fully set forth in the judgment of the Court.

Mr. *Nihal Chand* and Dr. *S. M. Sulaiman*, for the appellants.

Mr. *B. E. O'Conor*, Babu *Lalit Mohan Banerji*, Munshi *Girdhari Lal Agarwala* and Munshi *Panna Lal*, for the respondents.

MEARS, C. J., and BANERJI, J. :—This appeal arises in a suit for possession of a village called Itaura in the district of Agra and for mesne profits. This village originally belonged to one Rao Joti Prasad, who was a man of great affluence in the district

* First Appeal No. 184 of 1918 from a decree of Kauleshar Nath Rai, Subordinate Judge of Agra, dated the 28th of January, 1918.

(1) (1883) I. L. R., 9 Calc., 854. (2) (1884) I. L. R., 11 Calc., 121.
(3) (1890) I. L. R., 18 Calc., 10.