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to the learned District Judge of Cawnpore, he reversed the order of the Munsif and has directed the prosecution of Yusuf Ali Khan under section 186 of the Indian Penal Code. An appeal has been preferred to this Court. A preliminary objection has been taken that no appeal lies.

We are clearly of opinion that this objection is well founded and ought to be sustained. The complaint made by Mr. Allsop was not under section 476 of the Code of Criminal Procedure, because section 476 does not embrace within its fold an offence under section 186 of the Indian Penal Code. Mr. Allsop evidently intended to proceed and did proceed under section 195 (*a*) of the Code of Criminal Procedure. The question which arises in this appeal is that where an appellate court in the exercise of its authority under section 195 (*a*) of the Code of Criminal Procedure has directed the institution of a complaint under section 186 of the Indian Penal Code, is the said order open to appeal? We do not find anything in section 195 of the Code of Criminal Procedure or in any other section of the Code, and we wonder at the filing of a second appeal in this Court. We accordingly hold that no appeal lies. We dismiss the appeal with costs.

REVISIONAL CIVIL.

Before Mr. Justice Sen.

SECRETARY OF STATE FOR INDIA IN COUNCIL (DEFENDANT) *v.* HARNARAIN BENGALCHAND (PLAINTIFFS).*

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Railways Act (IX of 1890), section 55(2)—Auction sale of consignments by railways for realisation of dues—"Local newspapers"—Duty to publish in local newspaper.

"Local newspaper" in section 55(2) of the Railways Act means a newspaper which is issued from the locality and not

*Civil Revision No. 373 of 1930.

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one which, issued from elsewhere, may be read in the locality. So, where an auction sale under that section was held at Agra, but notice of the intended auction was not published in any of the newspapers issued from Agra, although it was published in two newspapers of Calcutta and Cawnpore, respectively, it was *held* that the terms of the section not being complied with, the auction sale was not validly held and the consignee could maintain an action against the railway administration.

Mr. *U. S. Bajpai*, for the applicant.

Mr. *S. N. Seth*, for the opposite party.

SEN, J. :—This is an application for revision of the order of the learned Judge of the court of small causes at Agra, dated the 31st of May, 1930, allowing the plaintiffs' claim against the defendant applicant for Rs. 170.

Two waggons of coal were despatched from Musanda by a Colliery Company to a firm at Agra carrying on business under the name and style of Krishna Ice Factory. The railway receipt was endorsed by the consignee in favour of Harnarain Bengalchand, who are the plaintiffs in the action. The plaintiffs' claim against the railway company was founded upon tort. They alleged that the railway company did not deliver the goods to the consignee and unlawfully sold the goods to a third party without any statutory powers.

The goods were consigned from Musanda on or about the 6th of March, 1929, and reached Agra on the 13th of March. No notice of the arrival of the goods was sent by the railway company to the consignee. One of the questions in controversy in the case is as to whether the railway company was bound under the statute to give notice of the arrival of the goods immediately on the date of their arrival. The goods appeared to have been unloaded by the consignee, but they were not removed from the railway premises.

This, however, is a point on which the finding of the learned Judge is by no means very clear. On the 16th of March, 1929, the railway company asked the Krishna Ice Factory to remove the goods and to pay certain charges. A protracted correspondence followed. The Krishna Ice Factory did not pay either the railway freight or the wharfage claimed. The result of it was that the railway company sold the goods at auction on the 29th of June, 1929, for Rs. 320. The present suit was instituted against the railway company for recovery of the value of the goods so sold and Rs. 6 for the costs of the notices and correspondence etc. The learned Judge of the court of small causes has decreed the claim. It is contended that the learned Judge has misconceived the nature of the powers possessed by the railway company and has misapplied the law to the case in hand. Reliance has been strongly placed upon section 55 (2) of the Indian Railways Act (IX of 1890) which runs thus: "When any animals or goods have been detained under sub-section (1), the railway administration may sell by public auction, in the case of perishable goods at once, and in the case of other goods or of animals on the expiration of at least fifteen days' notice of the intended auction, *published in one or more of the local newspapers*, or where there are no such newspapers, in such manner as the Governor-General in Council may prescribe, sufficient of such animals or goods to produce a sum equal to the charge, and all expenses of such detention, notice and sale, including, in the case of animals, the expenses of the feeding, watering and tending thereof."

The railway company, prior to putting up the goods for sale, ought to have published a notification in terms of this provision in one or more of *local* newspapers. For some reason or other which has not been explained, the notification was not published in any one of the newspapers of Agra. It was published in

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the "*Bengali*" of Calcutta and in the "*Vartman*" of Cawnpore. Clearly, therefore, there was no compliance with the terms of this section. The railway company not having fulfilled one of the conditions, no sale of the goods could validly take place. The claim of the plaintiffs against the railway company was, therefore, well founded. Mr. *Uma Shankar Bajpai* for the railway company contends that "local newspaper" means any newspaper which is read at Agra. It is not improbable that the two newspapers in which the notification was published are read at Agra, but there is no evidence forthcoming in the case. But I am not prepared to accept the interpretation put by Mr. *Bajpai*. By "local newspaper" I understand a newspaper which is issued from the locality.

The result is that this application fails. It is accordingly dismissed with costs.

REVISIONAL CRIMINAL.

Before Mr. Justice Kendall.

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EMPEROR *v.* ARJUN SINGH.*

Perjury—Quantum of proof for conviction—Oath against oath —Indian Penal Code, section 193—*Evidence Act* (*I of* 1872), *sections* 3 *and* 134.

It is not safe to lay down as a general rule, irrespective of the circumstances of the case, that a conviction for perjury cannot properly be based on an oath against an oath. The dictum of English common law that the testimony of a single witness is not sufficient to sustain an indictment for perjury is not a safe guide for the Indian courts, which are bound by the statute law enacted in sections 3 and 134 of the Evidence Act.

Messrs. *K. D. Malaviya* and *Gopalji Mehrotra*, for the applicant.

*Criminal Revision No. 795 of 1930, from an order of K. N. Wanchoo, Sessions Judge of Benares at Jaunpur, dated the 10th of November, 1930.