

1931  
 BHULLAN  
 v.  
 BACHECHA  
 KUNRI.

plaintiffs came to court in spite of the express contract entered into by their predecessors and only an equitable relief has been granted to them, we direct that the parties should bear their own costs of this appeal. The costs in the court below will abide the result.

Before Sir Grimwood Mears, Chief Justice and Mr. Justice Sen.

1931  
 January, 22.

YUSUF ALI KHAN (APPLICANT) v. LACHMI MANI DASSI  
 (OPPOSITE PARTY).\*

*Criminal Procedure Code, section 195 (1) (a)—Complaint by an appellate court—Appeal.*

Where an appellate court in the exercise of its authority under section 195 (1)(a) of the Code of Criminal Procedure directs the institution of a complaint under section 186 of the Indian Penal Code, the order is not open to appeal.

Mr. *M. Mahmud-ullah*, for the appellant.

Mr. *Saila Nath Mukerji*, for the respondent.

MEARS, C. J. and SEN, J. :—Srimati Lachmi Mani Dassi applied for the enforcement of a decree against Yusuf Ali Khan about the construction of a wall. The court bailiff was deputed to have that wall constructed. He returned without doing so and submitted a report to the learned Munsif of Cawnpore that Yusuf Ali Khan and certain other persons had obstructed him in the discharge of his duty. He accordingly prayed that proceedings be initiated against Yusuf Ali Khan under section 186 of the Indian Penal Code.

This report was apparently made under section 195(a) of the Code of Criminal Procedure. The Munsif held a preliminary inquiry and came to the conclusion that no complaint should be filed against Yusuf Ali Khan. He accordingly rejected the application of the amin. On an appeal being preferred

\*First Appeal No. 37 of 1930, from an order of J. J. W. Allsop, District Judge of Cawnpore, dated the 16th of January, 1930.

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.

1931

YUSUF ALI  
KHAN  
v.  
LACHMI  
MANI DASSI.

## REVISIONAL CIVIL.

*Before Mr. Justice Sen.*

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

1931

January, 20

*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