

1881

AKHANDU  
v.  
MANIL.

that he is out of caste in consequence of having committed a serious criminal offence, and that if she resided with him she would lose her own caste. We do not think that Act IX of 1861 can be regarded as applying to such a case. The Act applies to any relatives or friends of the minor who may claim in respect of the custody or guardianship of such minor. The husband, if he could be held to be a relative within the meaning of the Act, does not claim possession of the girl as a minor but as his wife, who is sixteen years of age, and has lived with him as a wife in former years. Therefore the Judge's order rejecting the application, though made upon different grounds, is correct.

*Application rejected.*

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## CIVIL JURISDICTION.

*Before Mr. Justice Spankie and Mr. Justice Oldfield.*

IN THE MATTER OF THE PETITION OF MADHO PRASAD.

*Sanction for prosecution—Act X of 1872 (Criminal Procedure Code), ss 468, 469—  
High Court's powers of revision—Act X of 1877 (Civil Procedure Code), s. 622.*

The discretionary power of a Civil Court, before or against which an offence mentioned in ss. 468 or 469 of Act X of 1872 is alleged to have been committed, to grant or withhold sanction to the prosecution for such offence, is not subject to revision by the High Court under s. 622 of Act X of 1877.

THIS was an application to the High Court for the revision under s. 622 of Act X of 1877 of an order of Lieutenant-Colonel F. Wheeler, Judge of the Cantonment Court of Small Causes at Cawnpore, dated the 24th December, 1880. It appeared that the applicant, one of the plaintiffs in a suit which had been instituted in the Cantonment Court of Small Causes at Cawnpore, had on the 23rd December, 1880, applied to the Judge of that Court for sanction to prosecute the defendant in that suit for fabricating false evidence. On the same day the Judge made an order granting the required sanction. On the following day, the 24th December, the Judge, stating that such sanction had been granted by mistake, and that there was nothing to show that the defendant had fabricated false evidence, made an order setting aside his previous order granting such sanction.

The grounds on which revision of the order of the 24th December was sought were (i) that the Judge of the Small Cause Court

was not competent to revoke his previous order of the 23rd December; and (ii) that the reasons given for the second order failed to support it.

Mr. *Colvin*, for the petitioner.

The judgment of the Court (SPANKIE, J., and OLDFIELD, J.) was delivered by

OLDFIELD, J.—This is an application to the Court to revise under s. 622, Civil Procedure Code, an order of the Judge of the Small Cause Court of Cawnpore, cancelling a previous order which he had made granting his sanction to the applicant to institute a complaint of an offence under s. 193, Indian Penal Code, alleged to have been committed in the course of a suit decided in his Court. It is contended that it was illegal to cancel the order giving sanction. We are of opinion that this is not a case to which the provisions of s. 622 are intended to apply. The cases referred to in that section are those where “the Court by which the case was decided appears to have exercised a jurisdiction not vested in it by law, or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of its jurisdiction illegally or with material irregularity.” The section contemplates the revision of an error committed in the course of deciding a case. The provisions of this section would not appear to be applicable to a matter relating to the exercise of the discretionary power of a Court in the granting or withholding sanction to a criminal prosecution. Moreover, considering the Judge of the Small Cause Court had a discretion as to the grant of sanction, and that it is still within the power of the applicant to apply for sanction to the superior Court, we should be indisposed to interfere by way of revision. The application is dismissed.

## APPELLATE CIVIL.

*Before Mr. Justice Pearson and Mr. Justice Spankie.*

IMDAD HUSAIN (DEFENDANT) v. MANNU LAL AND ANOTHER (PLAINTIFFS).\*

*Conditional sale—Foreclosure of mortgage—Regulation XVII of 1806, s. 8.*

An instrument of conditional sale provided that the conditional vendor should retain possession of the property to which it related, paying interest on the principal

\* Second Appeal, No. 551 of 1880, from a decree of J. H. Prinsep, Esq., Judge of Cawnpore, dated the 4th May, 1880, reversing a decree of Babu Kam Kali Chaudhri, Subordinate Judge of Cawnpore, dated the 24th December, 1879.

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