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intentionally made before any officer acting in execution of the Registration Act. The Deputy Magistrate had no powers whatever under that Act. It does not appear that he had any registering power given to him by the Registrar under section 11 of the Act. We cannot say, therefore, that section 82 applies to this case. The words "any officer acting in execution of this Act" must mean an officer legally authorized to act in execution of the Act. Nor do we think that section 193, Penal Code, is applicable. That refers to a stage of judicial proceedings. There was here no judicial proceeding. In the result the conviction and sentence must be set aside and the fine, if paid, will be refunded.

Rule made absolute and conviction quashed.

H. T. H.

Before Mr. Justice Trevelyan and Mr. Justice Rampini.

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 April 13.

ABDUL MAJID (PETITIONER) v. KRISHNA LAL NAG (OPPOSITE PARTY).*

Penal Code, ss. 193, 199—Proceedings by District Judge without jurisdiction—Ultra vires—Jurisdiction, sanction to prosecute granted in proceedings held without—Bengal Tenancy Act, 1884, s. 95—Sanction to prosecution.

The Bengal Tenancy Act does not authorise a proceeding calling upon a person to show cause why he should not make over documents and papers belonging to the estate of which a common manager has been appointed.

A person giving false evidence in such proceeding cannot be convicted under section 193, or section 199 of the Penal Code.

THE facts which gave rise to this application were as follows :—

Buksh Ali died on the 17th March 1890 possessed of certain properties situate in the district of Noakhali, and leaving him surviving four widows, six daughters and one son. The petitioner Abdul Majid was the husband of one of the daughters of the eldest widow, who was named Halunnessa.

On the 29th August 1892, the District Judge of Noakhali appointed Krishna Lal Nag, the opposite party in this proceeding,

* Criminal Revision No. 172 of 1893, against the order passed by W. H. M. Gun, Esq., Sessions Judge of Noakhali, dated the 25th of January 1893.

the common manager of the estate of Buksh Ali under the provisions of section 95 of the Bengal Tenancy Act; the appointment being made at the instance of Hafiza, another of the widows of Buksh Ali. The application for such appointment was opposed by Halunenessa, on amongst other grounds that some of the properties, claimed in the application as belonging to Buksh Ali's estate, in reality belonged to Halunenessa. The opposition to the application was, however, unsuccessful.

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On the 6th September 1892, Krishna Lal Nag submitted a report to the District Judge complaining that Abdul Majid and Halunenessa had not made over to him all the papers and documents in their possession relating to the estate of Buksh Ali, and on the 7th September 1892 the District Judge passed an order calling on the parties complained against to produce before him all the accounts relating to the estate in their possession, and on the 14th September passed a further order calling on Abdul Majid to show cause why he should not be prosecuted for obstructing the common manager.

On the 15th September Abdul Majid and Halunenessa filed two affidavits in which they swore, *inter alia*, that they had no such papers in their possession, and that they had not resisted the common manager. The District Judge, not considering the affidavits sufficient, issued a warrant against Abdul Majid, but withdrew the same the following day on the latter putting in an appearance, and on the 4th October he directed the prosecution of Abdul Majid, under section 188 of the Penal Code, for disobeying his order in not producing the documents. On the 19th October 1892 the District Judge disposed of the miscellaneous proceedings instituted on the report of the common manager, and in his order sanctioned the prosecution of Abdul Majid by the common manager, and directed the latter to apply to the Magistrate to bind down the petitioner.

The case was then taken up by the Deputy Magistrate, who on the 17th November 1892 convicted the petitioner under section 188 and fined him Rs. 100. The petitioner appealed against this conviction, with the result that on the 9th January 1893 the Officiating District and Sessions Judge, Mr. Anderson, set aside the conviction.

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The previous orders in the case had been passed by Mr. Gun, the District Judge, and pending these proceedings, and on the 24th October 1892, it appeared that Mr. Gun had, on the application of the common manager, directed a search warrant to issue to search the house of Abdul Majid and Halunenessa for the papers alleged to be in their possession, and on the 29th October the warrant was executed, and the house of the petitioner's father as well as that of himself and Halunenessa were searched, and certain documents were alleged to have been found which related to the estate of Buksh Ali.

After the search, the common manager applied to Mr. Gun for sanction to prosecute the petitioner, under sections 193 and 199 of the Penal Code, for making false statements in the affidavits referred to above and in his deposition taken before Mr. Gunn as District Judge in the miscellaneous proceeding alleged to have been taken under the Bengal Tenancy Act. And the petitioner was called on to show cause why such sanction should not be given.

On the 25th January 1893 the matter came on for hearing and resulted in the following orders being passed:—

The opposite party appears by pleaders to show cause, but no sufficient cause has been shown. It is only said that the opposite party does not know what documents were found in his house, and that they may have been put there without his knowledge. It appears that he denied all knowledge of those papers, but some of them have been found, it is said, in his house. I sanction the prosecution of Abdul Majid under sections 193 and 199, Indian Penal Code, for falsely stating in evidence in the course of the hearing of the miscellaneous case No. 12 of 1892 (*Krishna Lal Nag v. Halunenessa and others*) before the District Judge of Noakhali on the 26th September 1892, that "I know *kismut* Andormanik. None of its kabuliyats are with me or with Halunenessa," and for stating in the affidavit of the 1st Aswin 1299 filed in the same case, "no papers connected with his rent collections or documents came into my hands after the Chaudhuri's death," and in the affidavit of the 4th Aswin 1299 "no papers connected with Baksha Ali Chaudhuri's collection nor tenants' kabuliyats and document of such kind were or are with me," which statements he knew to be false.

A prosecution was then instituted against the petitioner, and the 21st March 1893 fixed for the trial of the case before the Deputy Magistrate.

It further appeared that another prosecution was instituted against the petitioner under the sanction referred to above as granted on the 19th October 1892, but this formed the subject-matter of another application to the High Court and is immaterial for the purpose of this report. The petitioner applied to the High Court to exercise its revisional jurisdiction in respect of the order of the 25th January 1893, and asked that the record might be sent for and the sanction annulled, on the grounds, *inter alia*, that the District Judge had no jurisdiction to hold the enquiry he did, and that the whole of his proceedings were *ultra vires*; that the sanction for prosecution under sections 193 and 199 was void *ab initio* and given without jurisdiction; and it was further on the merits alleged that the papers found in no way related to the estate of Buksh Ali, except one, which was a very old document and which was not found in the petitioner's house or in his possession.

On this application a rule was issued which now came on to be heard.

Mr. P. L. Roy (with him Moulvi *Serajul Islam* and Moulvi *Mustafa Khan*) for the petitioner.—The order granting sanction is without jurisdiction. The fact that a common manager is appointed under section 95 of the Bengal Tenancy Act, and that he is thereby in the position of an officer of the Court under the Judge, does not entitle him to any privileges over other suitors. In seeking relief he must use the same proceedings that other suitors are required to use. The District Judge had no jurisdiction to hold a judicial enquiry upon the letter of the common manager. There is absolutely no provision made for such a purpose either under the Bengal Tenancy Act or any other law. Section 193 of the Penal Code, therefore, does not apply, because the alleged evidence was not given “in any stage of a judicial proceeding.” [RAMPINI, J.—Would not the second part of the section apply to the facts of this case?] I submit not, because the whole section is governed by the provisions of section 191 of the Penal Code, which says that a person must be legally bound by some express provisions of law to speak the truth. Here the proceeding being one not authorised by law, the petitioner was not legally bound to speak the truth. The case law is in favour of my contention—see *The Queen*

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v. *Jadub Chunder Biswas* (1) and *Empress v. Chait Ram* (2).
 Similarly section 199 of the Penal Code has no application to the facts of the case, because that section is also governed by the provisions of section 191. I refer to the last portion beginning with the words "or being bound by *law* to make a declaration upon any subject." Here there was no such obligation on the part of the petitioner, and I therefore contend that the sanction is *ultra vires* and ought to be set aside.

No one appeared for the opposite party.

The judgment of the High Court (TREVELYAN and RAMPINI, JJ.) was delivered by

RAMPINI, J.—This is a rule calling on the other side to show cause why the order of the District Judge of Noakhali sanctioning the prosecution of the applicant under sections 193 and 199, Indian Penal Code, should not be set aside. It appears that the District Judge appointed a common manager under section 95 of the Bengal Tenancy Act, and that the applicant was called upon to deliver certain accounts and papers to the common manager so appointed. The manager reported that the applicant would not furnish him with these accounts and papers, and the District Judge then instituted a miscellaneous proceeding in respect of this matter. In this proceeding the applicant made a certain statement and filed two affidavits, alleging that he had not the accounts and papers called for. It is held that this statement before the District Judge and the allegations made in the affidavits were false, and upon these grounds the District Judge has sanctioned the prosecution of the applicant under sections 193 and 199. Now, we find no provision in the Bengal Tenancy Act authorising a District Judge to make any such enquiry or to order the applicant to deliver up any such papers, and we further find no provision in that Act or any other law authorising the District Judge to examine the applicant on oath in such proceedings. We do not think, therefore, that the applicant can be said to have been legally bound by oath when he was examined before the District Judge. Therefore the facts alleged do not disclose that he committed any offence under section 193, Indian Penal Code. Furthermore, we

(1) W. R., 1864 Cr., 15.

(2) I. L. R., 6 All., 103.

cannot find any provision of the law, or any rules having the force of law, permitting the use of affidavits in such proceedings or authorising the administration of an oath to persons who profess to file affidavits in such proceedings. Therefore we do not think that the facts show the commission of any offence by the applicant under section 199, Indian Penal Code. We accordingly think there are no grounds why the applicant should be prosecuted under either of these sections. We therefore set aside the order of the District Judge sanctioning the present prosecution, and direct that the proceedings be quashed and the rule made absolute.

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Rule made absolute and order set aside.

H. T. H.

Before Mr. Justice Trevelyan and Justice Rampini.

CHATHU RAI, 2ND PARTY (PETITIONER), v. NIRANJAN RAI,
1ST PARTY (OPPOSITE PARTY).*

 1893
May 9.

*Criminal Procedure Code (Act X of 1882), ss. 145, 437—"Complaint"—
District Magistrate, power of, to order further enquiry—Dispute concerning land—Power to order enquiry.*

Section 437 of the Code of Criminal Procedure does not give power to order a further inquiry in a case under section 145 of that Code.

THE facts which led to the issue of the rule in this case were as follows:—

The two parties claimed to be in possession of five plots of land in mouzah Amma Narbipore. On 30th of June 1892, Niranjana Rai, the 1st party, brought a complaint against Chathu Rai and Mohabir Rai for criminal trespass, under section 447 of the Penal Code, with reference to this land. The Deputy Magistrate, Mr. S. M. Nasiruddin, in charge of the Magistrate's office at the time, before whom the complaint was filed, issued a summons only against Mohabir Rai, and made the case over to Baboo Medni Prasad Singh, Deputy Magistrate, for trial. The case was, however, compounded as between Niranjana and Mohabir. Niranjana

* Criminal Revision No. 222 of 1893, against the order passed by S. M. Nasiruddin, Deputy Magistrate of Arrah, dated the 24th of February 1893.