not itself an interest in land. The learned counsel for the appellant has also failed to show us that the suit falls within any of the articles of the Schedule to the Small Cause Courts Act excluding the jurisdiction of the Court of Small Causes. We see no reason to doubt that the suit is a small cause, and we accordingly dismiss the appeal with costs.

A. R.

Appeal dismissed.

MISCELLANEOUS CRIMINAL.

Before Sir Shadi Lal, Chief Justice.

1924

Dec. 1.

THE CROWN—Petitioner,

versus

PIR QADIR BAKHSH SHAH—Respondent.

Criminal Miscellaneous No. 83 of 1924.

Criminal Procedure Code, Act V of 1898 (as amended by Act XVIII of 1923), sections 195, 342 (2) and 476. Accused person making false statement in an affidavit in support of an application for transfer—Whether liable to be prosecuted for perjury—Procedure to be adopted in initiating prosecution.

Held, that there is no law which confers upon an accused person immunity from prosecution in respect of a false statement made in an affidavit tendered by him in support of an application for transfer, and that such statement can be the subject-matter of a charge for perjury—section 342 (2) of the Code of Criminal Procedure referred to and explained.

In the matter of the petition of Barkat (1), and *Emperor* v. *Bindeshri Singh* (2), disapproved.

Ghulam Muhammad v. *Crown* (3), referred to.

The relative scope of section 195 and section 476 explained, and the procedure prescribed for initiating a prosecution for an offence connected with the administration of justice criticized.

(1) (1897) I. L. R. 19 All. 200. (2) (1906) I. L. R. 28 All. 331.
(3) (1922) I. L. R. 3 Lah. 46.

Petition under sections 195 and 476 of the Criminal Procedure Code, praying that the Court be pleased to file complaint in writing against the respondent, etc.

1924

THE CROWN
v.
PIR QADIR BAKHSH SHAH.

JAI LAL, Government Advocate, for Petitioner.

FEROZ KHAN NOON, for Respondent.

JUDGMENT.

SIR SHADI LAL, C. J.—On the 25th of May 1923, the respondent, Qadir Bakhsh Shah, against whom a criminal case, under section 411, Indian Penal Code, was pending in the Court of a Magistrate at Dera Ghazi Khan, made an application to the High Court for the transfer of the case to another district. In support of his application he made a long affidavit which contained, *inter alia*, the following allegations against the Superintendent of Police :—

> "I state on oath that the Superintendent of Police himself spoke to me and asked me to say that Ghulam Hussain, Tumandar, had possessed the stolen camel, and he told me that I would be given a 'good service' certificate; and when I told him that I could not, he said to me that I would get into trouble ".

The application for transfer was, after notice to the District Magistrate, heard on the merits and finally dismissed by a Judge of the High Court. The Government Advocate has now applied on behalf of the Local Government, praying that the respondent may be prosecuted for committing perjury in respect of the above statement. The learned counsel stigmatizes the statement as false and seeks to prove its falsehood by producing an affidavit sworn by Mr. Wace, who is ad-

1924

THE CROWN
v.
PIR QADIR
BAKHSH SHAH.

mittedly the Superintendent of Police referred to by the respondent. This affidavit is in the following terms :—

"II. That I never spoke to Qadir Bakhsh Shah—

(*i*) nor asked him to say that Ghulam Hussain, Tumandar, possessed the stolen camel.

(*ii*) That I never told him (Qadir Bakhsh Shah) that he would be given a "good service certificate".

(*iii*) That I never told Qadir Bakhsh Shah that he would get into trouble.

III. That in fact I never saw Qadir Bakhsh Shah during the police investigation of the case, nor made to him any of the statements attributed to me by him in his affidavit of 25th May 1923."

Now, I may say at once that I am not called upon to pronounce any opinion on the question as to which of these two affidavits should be held to be true; the simple issue before me is whether a *prima facie* case for an inquiry has been made out. On that point there can be no two opinions. The allegations contained in one affidavit are flatly contradicted by the other, and it is obvious that both of them cannot be true. I must accordingly hold that it is expedient in the interests of justice that an inquiry should be made into an offence described in section 193, Indian Penal Code.

The learned counsel for the respondent, however, contends that, as the affidavit was tendered by his client for the purpose of getting the transfer of a case in which he was accused of an offence, he cannot

1924

THE CROWN
v.
PIR QADIR
BAKHSH SHAH.

be rendered liable to punishment for making a false statement in that affidavit. This contention is based upon a judgment of the Allahabad High Court in *Emperor* v. *Bindeshri Singh* (1), which no doubt enunciates the principle that where an accused person applies for the transfer of a case pending against him to some other Court, supporting his application by an affidavit, he cannot, or at least ought not to, be prosecuted under section 193, Indian Penal Code, in respect of the statements made therein.

Now, I have examined that judgment as well as the earlier judgment in *In the matter of the petition of Barkat* (2) followed therein, and I must say that with all due deference to the learned Judges, I am unable to concur in their exposition of the law. The only provision of the law, which confers immunity upon an accused person from criminal liability for making a false statement, is that contained in sub-section (2) of section 342, Criminal Procedure Code. But the protection afforded by that sub-section is expressly confined to the statement made by an accused in answer to questions put to him by the Court for the purpose of enabling him to explain any circumstances appearing in the evidence against him. It is clear that these questions can be put only at some stage of an inquiry or trial in the original Court, and that it is only the answers to such questions for which the privilege can be claimed. The object of the Legislature in granting the immunity can be gathered from the language of the section itself. When the witnesses for the prosecution have been examined, it is unnecessary to call upon the accused for his defence, if he can, by making his own statement, offer a satisfactory explanation of the points made out against

(1) (1906) I. L. R. 28 All. 331 (2) (1897) I. L. R. 19 All. 200.

1924

THE CROWN v. PIR QADIR BAKHSH SHAH.

him. In tendering his explanation he should enjoy a perfect freedom to say what he likes in respect of the evidence produced against him, and he should not be hampered by any fear of prosecution for making a false statement. It will be seen that this examination is entirely in the interest of the accused. While the law makes it obligatory upon the Court to question him in order to give him an opportunity of offering his explanation, it gives him considerable latitude in the matter. He is not required to take an oath before answering the questions put to him by the Court, nor is he bound to answer them. If he chooses to answer them, he is not liable to punishment for making a false statement.

Neither in the language of the section nor on principle do I see any valid reason for extending the immunity to a statement made otherwise than in answer to questions put by the trial Court. If the proposition laid down by the Allahabad High Court be correct, an accused person would be at liberty to make all sorts of unfounded allegations against the trial Judge; and I do not think that this abuse of the privilege granted for a special purpose was ever contemplated by the framers of the Code. I consider it unnecessary to dwell upon the subject any longer, because I find that the view taken by the Allahabad Court has already been dissented from by this Court in *Ghulam Muhammad, etc.* v. *The Crown* (1), and I am clearly of the opinion that there is no law which confers upon an accused person immunity from prosecution in respect of a false statement in an affidavit tendered by him in support of his application for transfer; and that such statement can be the subject-matter of a charge for perjury.

(1) (1922) I. L. R. 3 Lah. 46.

1924

THE CROWN
v.
PIR QADIR
BAKHSH SHAH.

Coming now to the question of the procedure to be adopted for bringing the matter before a criminal Court for inquiry, I observe that the Criminal Procedure Code Amendment Act, XVIII of 1923, has abolished the practice of granting sanction to a private individual to launch a prosecution for an offence connected with the administration of justice, and that section 195, Criminal Procedure Code, as amended by that Act, now lays down the rigid rule that no Court shall take cognizance of any of the offences enumerated therein except on the complaint in writing of the public servant or the Court concerned. The section merely prescribes a condition precedent to the cognizance of certain offences by a Court and is founded upon the same principle as several other sections in the Code, *e.g.*, sections 196, 196-A, 198 and 199, all of which require the institution of complaints by certain specified persons in respect of offences mentioned therein.

There appears to be some misapprehension as to the relative scope of sections 195 and 476. Section 195 lays down a rule to be followed by the Court which is to take cognizance of an offence specified therein, but contains no direction for the guidance of the Court which desires to initiate a prosecution in respect of an offence alleged to have been committed in, or in relation to, a proceeding in the latter Court. For that purpose we must turn to section 476, which requires the Court desiring to put the law in motion to prefer a complaint either *suo motu* or on an application made to it in that behalf, but does not make it incumbent upon the Court to make a preliminary inquiry in every case before starting prosecution. To justify the Court in initiating prosecution, it is necessary only to hold that it is expedient in the interests of

1924

THE CROWN
v.
PIR QADIR
BAKHSH SHAH.

justice that an inquiry should be made into an offence referred to in section 195.

It will be observed that under the law as it existed prior to its amendment in 1923 it was open to the Court either to grant sanction to a private individual or to send the case for inquiry or trial to the nearest first class Magistrate, and that it was not necessary to make a formal complaint. Under the new law the Court has no alternative but to prefer a complaint in writing and to forward it to a Magistrate of the first class having jurisdiction to entertain it. This procedure in its application to the High Court is open to serious objections. It is hardly consistent with the dignity of a Judge of the High Court that he should have to make and sign a complaint which is to be inquired into by one of his subordinates; and that he should be treated and recorded as complainant throughout the proceedings, the only exception being that his examination in support of the allegations in the complaint has been dispensed with by proviso (aa) to section 200, Criminal Procedure Code.

Nor is it fair to the accused that he should be arraigned in a case which has been instituted on a complaint made by a Judge of the highest tribunal and is to be tried by a judicial officer who is subordinate to the complainant. It is to be hoped that no Magistrate taking cognizance of a case of this description would be influenced by the circumstance that the complaint has been preferred by a Judge of the High Court, but there can be little doubt that the accused person is likely to entertain an apprehension, not altogether without justification, that his conviction is a foregone conclusion.

I am, however, bound to administer the law as I find it, even if I consider it to be objectionable, and

I must leave it to the Legislature to make such amendment as may be deemed expedient. I accordingly direct that a complaint under section 193, Indian Penal Code, in respect of the statement quoted above, be drafted and placed before me for signature. The complaint shall then be forwarded to the District Magistrate of Lahore who shall proceed in accordance with law.

Before concluding I desire to make it absolutely clear that nothing contained in this judgment shall be construed as implying, in the slightest degree, any expression of opinion on the merits; and that the decision of the case shall depend entirely upon the evidence which may be adduced by the parties. As I have already explained, I am constrained to make a complaint in writing because under the present law no other course is open to me.

C. H. O.

Petition accepted.

REVISIONAL CRIMINAL.

Before Sir Shadi Lal, Chief Justice.

JAWAHAR LAL—Petitioner,

versus

JAGGU MAL (COMPLAINANT) Respondent.

Criminal Revision No. 1189 of 1924.

1924

Dec. 10.

Criminal Procedure Code, Act V of 1898, section 195 (as amended by Act XVIII of 1923)—Necessity for written complaint by the Court—previous sanction granted to private person of no avail since the 1st September 1923.

Held, that since the amendment of section 195 of the Code of Criminal Procedure by Act XVIII of 1923, which came into force on the 1st September 1923, no Court can take cognizance of an offence punishable under any of the sections