

[APPELLATE CRIMINAL.]

Before Mr. Justice Kimball and Mr. Justice Pinkey.

In re MUSE ALI ADAM.*

1878.
July 11.

Code of Criminal Procedure (Act X. of 1872), Section 210—Sanction—Complainant—Withdrawal—Indian Penal Code (Act XLV. of 1860), Section 183.

In cases of contempt of the lawful authority of a public servant, the complainant referred to in section 210 of the Code of Criminal Procedure, is the public servant whose authority has been resisted, and without whose sanction no criminal proceedings can be instituted against the offender, and not the person injured by the resistance.

THIS was a reference, under the provisions of section 296 of the Code of Criminal Procedure, by J. G. White, Magistrate of the District of Broach.

The accused person was charged, under section 183 of the Indian Penal Code, with the offence of offering resistance to the lawful authority of a public servant, by having obstructed the execution of a warrant of the Court of the Subordinate Judge at Broach. The charge was prosecuted by Muse Ali Adam, with the sanction of the Subordinate Judge, under section 170 of the Code of Criminal Procedure; but subsequently, on the representation of the said Muse Ali Adam, it was permitted to be withdrawn by the Magistrate, Second Class, of Broach, under section 210 of the Code, without any application from the Subordinate Judge. The District Magistrate was of opinion that the proper complainant in the case was the Subordinate Judge, and not Muse Ali Adam, and that the permission for the withdrawal of the prosecution was illegal.

There was no appearance on either side.

KIMBALL, J. :—The Court concurs with the opinion of the Magistrate of the District. The offence charged was one of “contempt of the lawful authority of a public servant,” and no proceedings could have been instituted against the offender without the sanction of the Court whose authority had been resisted. In such a case the complainant spoken of in section 210 of the Code of Criminal Procedure, must be deemed to be the Court resisted, and not the person injured through the resistance. Therefore, to make the withdrawal of such a complaint, as that under consideration, legal,

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it must be based on the application alone of the Court or authority sanctioning the proceedings.

The Court annuls the order of the Subordinate Magistrate, permitting the withdrawal of the charge in this case, and directs the Magistrate to proceed with the trial, and dispose of the case according to law.

Order accordingly.

Note.—See Criminal Review No. 7 of 1876. *In re* Keshav Lakshman, I. L.R. 1 Bom. 175.

[APPELLATE CIVIL.]

Before Mr. Justice Kemball and Mr. Justice Pinhey.

July 11.

SHIVLAL KHUBCHAND, APPLICANT, *v.* APAJI BHIVRA V
AND OTHERS, OPONENTS.*

Code of Civil Procedure (Act VIII. of 1859), Section 338—Sureties—Extent and duration of their liabilities.

The present applicant having taken out execution of a decree held by him, and the judgment-debtor having appealed to the District Court, the two opponents became sureties under section 338 of Act VIII. of 1859 that the judgment-debtor would “obey and fulfil all such orders and decrees as should be given against him in appeal;” and, in default of his so doing, they bound themselves “to pay jointly and severally, at the order of the Court, all such sums as the Court should, to the extent of Rs. 812-8, adjudge.”

Held (Pinhey, J., *dissentiente*) that the obligation of the sureties to fulfil the decree of the Appellate Court was not confined to the first decree of that Court, but extended to the final decree which it passed upon the case being remanded by the High Court in special appeal.

This was an application to set aside the order of W. H. Newnham, Judge of Puna.

Ganesh Ramchandra Kirtoskar for the applicant.

Shumrav Vitthal for the opponents.

The facts and arguments fully appear from the following judgments:—

KEMBALL, J. :—The dispute in this case arises out of the following facts:—

*Application (Extraordinary Jurisdiction) No. 25 of 1878 under Reg. II. of 1827, sec. 5, cl. 2.