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GORAKH BABÁJI v. VITHAL NÁRÁYAN JOSHI.

has, we think, in disposing of it, exercised the jurisdiction, which he undoubtedly had, in an illegal manner. The first rule of adjudication is that a judge shall decide *secundum allegata et probata—The "Alice" v. The "Rosita"* (1). In this case, the defendant admitted having executed the promissory note in question in this sense that he signed it and delivered it to the plaintiff, though, as he says, on the understanding that the attestations were to be added, and the document made use of as a security only after the consideration money was paid to the defendant, which, he says, never took place. The admission of the defendant's signature and delivery of the document was confirmed by the defendant in his deposition, yet the Assistant Judge has found that the execution of the document is not proved. He says he cannot find an admission of execution in the defendant's statement. This is distinctly in contradiction to the written statement and the deposition. On the plaint and the written statement, no question of the execution in the ordinary sense could be raised, as that was not disputed. The allegation of delivery under special circumstances and that of non-receipt of consideration were questions in controversy, and could be tried and decided, as they should now be. The judgment of the District Court is reversed, and the cause is remitted for disposal of the appeal on the merits with reference to the foregoing observations. Costs of this application to be borne by the opponent.

Decree reversed and case remanded.

(1) L. R., 2 P. C., 214.

REVISIONAL CRIMINAL.

Before Mr. Justice West and Mr. Justice Birdwood.

1886 November 16.

IN RE ANANT RA'MCHANDRA LOTLIKAR.*

Criminal Procedure Code (Act X of 1882), Sec. 195—Sanction to prosecute—"Subordinate Court," what is a—Sanction to prosecute refused by Subordinate Judge in suit over Rs. 5,000—Jurisdiction of District Court to grant sanction in cases to which appeal lies to High Court from Subordinate Judge.

In matters relating to the grant of sanction to prosecute under section 195 of the Criminal Procedure Code (Act X of 1882), a Court is regarded as "subordi-

* Criminal Review, No. 288 of 1886.

nate" to another Court where the latter is the Court to which an appeal from the former *ordinarily* lies, and an application for such sanction must be made to such superior Court even in those particular cases in which an appeal lies to some other Court, *e. g.* to the High Court.

A decree-holder applied to the First Class Subordinate Judge for sanction to prosecute his judgment-debtor, under sections 206 and 424 of the Indian Penal Code, for fraudulent concealment of certain moveable property, worth about Rs. 10,000, awarded by the decree. This application was rejected by the Subordinate Judge. The District Judge declined to interfere, on the ground that the decree being appealable to the High Court, the High Court alone could deal with the application under section 195 of the Criminal Procedure Code.

Held, that though the decree in the present instance was appealable to the High Court, still as appeals from the Court of the First Class Subordinate Judge ordinarily lay to the District Court, the former was subordinate to the latter Court within the meaning of section 195 of the Criminal Procedure Code.

THIS was an application, under section 439 of the Criminal Procedure Code (Act X of 1882), for a revision of the order of H. Batty, Acting District Judge of Ratnágiri.

The petitioner, Anant Rámchandra, obtained a decree in the Court of the First Class Subordinate Judge of Ratnágiri for partition of certain ancestral property. The decree awarded to the petitioner moveable property worth about Rs. 10,000. The judgment-debtors having concealed the whole of this moveable property, to prevent its being taken in execution of the decree, the petitioner applied to the First Class Subordinate Judge for a sanction to prosecute the judgment-debtors under sections 206 and 424 of the Indian Penal Code (XLV of 1860).

This application was rejected by the Subordinate Judge, on the ground that it was made with a view to annoy and harass the judgment-debtors.

The petitioner then applied to the District Judge, who held that he had no jurisdiction, under section 195 of the Criminal Procedure Code of 1882, to grant a sanction which had been refused by the First Class Subordinate Judge, on the ground that the subject-matter of the suit being over Rs. 5,000, the First Class Subordinate Judge was subordinate to the High Court, and not to the District Court. He was of opinion that the case, being one appealable to the High Court, could be dealt

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with, as to sanction under section 195, by the High Court alone.

The District Judge, therefore, declined to interfere.

The petitioner thereupon applied to the High Court for a revision of the order of the District Judge.

Shámráv Vithal for the petitioner:—The Court of the First Class Subordinate Judge is, under Act XIV of 1869, subordinate to the District Judge. Appeals from his decisions ordinarly lie to the District Judge. He is, therefore, subordinate to the District Judge within the meaning of section 195 of Act X of 1882. Refers to *Imperatrix* v. *Lakshman Sakhárám*[1].

WEST, J.:—We think that section 195 of the Code of Criminal Procedure (Act X of 1882) has been worded, as it is, on purpose to give legislative effect to the judgment in *Imperatrix* v. *Lakshman Sakhárám*[1]. The intention and effect is, we think, to make a Court, in relation to the sanction or the refusal of sanction of a prosecution, subordinate to the Court to which an appeal from it ordinarily lies, *i. e.* lies in the majority of cases, even though in the particular instance the appeal would lie to another Court, *ex. gr.*, to the High Court.

We, therefore, set aside the order of the District Judge, and direct him to dispose of the application to him on its merits.

Order reversed and case remanded.

(1) I. L. R., 2 Bom., 481.