

1887.

KHANDERÁV
RÁYAJIRÁV
v.
GANESH
SHÁSTRÍ.

Code of Civil Procedure (Act XIV of 1882) and he cannot apply for execution of the decree. The certificate gives him no right beyond administration of the estate, and would not include the power to execute a decree. Section 7 of Regulation VIII of 1827 says that, as heir, the holder of a certificate can apply. The plaintiff is not the heir. The lower Court having exercised its discretion, its finding should not be disturbed.

SARGENT, C.J.:—The applicant for execution in this case had had a certificate of administration granted him under Regulation VIII of 1827, which, by section 7 of the Regulation enabled him “to do all acts competent to a legal administrator” amongst which the most important one is the getting in the outstandings of the deceased, including judgment-debts. By section 232 of the Code of Civil Procedure (Act XIV of 1882) the transferee, by law, of a decree may apply for its execution, and we think that the holder of the certificate of administration having the power to do all acts necessary to get in the estate, which would comprise the executing decrees obtained by the deceased, is a transferee of such decrees within the contemplation of the above section.

We must, therefore, discharge the order of the Court below, and direct the District Judge to proceed to dispose of the appellant's *darbhást* on the merits. Appellant's costs of appeal to follow the result.

FULL BENCH.

Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice Nánábhái Haridás, and Mr. Justice Birdwood.

BANKAT HARGOVIND, PLAINTIFF, v. NÁRÁYAN VÁMAN
DEVBHANKAR, DEFENDANT.*

1887.
February 1.

Jurisdiction—Malicious prosecution—Suit against a mámlatdár for malicious prosecution undertaken by him at the instance of his superior officer, to clear his character—Subordinate Judge competent to try such suit.

The defendant, who was a mámlatdár, was required by his superior officer to clear his character from certain charges of bribery which had been brought against him in an anonymous letter, and he accordingly prosecuted the plaintiffs, whom he suspected of having written the letter.

*Civil Reference, No. 23 of 1886.

The plaintiffs were convicted and sentenced by a Magistrate; but, on appeal, were acquitted by the Sessions Judge.

The plaintiffs thereupon brought this suit in a Subordinate Judge's Court to recover damages from the defendant for malicious prosecution. The jurisdiction of the Subordinate Judge to try the suit being questioned, he referred the case to the High Court.

Held, that the Subordinate Judge had jurisdiction to try the suit. The defendant was sued in his individual, and not in his official, capacity; and the fact that he was a *mámlatdár* when he prosecuted the plaintiffs, could not affect the character in which he was sued.

THIS was a reference by Ráv Sáheb Sitánáth G. Ajinkya, Subordinate Judge of Bhadgáon, under section 13 of Act X of 1876, through the District Judge of Khándesh.

Suit for malicious prosecution. The defendant was a *mám-latdár* at Cháligáon, in the Khándesh District, and had been called upon by his superior officer to clear his character from certain charges of bribery contained in an anonymous letter which had been sent to that officer. He accordingly had prosecuted the plaintiffs, whom he suspected to be the authors of the letter, and they were convicted by a Magistrate. On appeal, however, the Magistrate's decision was reversed, and they were acquitted by the Sessions Judge of Khándesh, who was of opinion that the evidence did not warrant the conviction.

The plaintiffs thereupon brought this suit against the defendant, in the Subordinate Judge's Court at Bhadgáon, to recover damages for malicious prosecution. The defendant having challenged the jurisdiction of the Subordinate Judge, he referred the case, under section 13 of Act X of 1876, to the High Court.

Pándurang Balibhadra, (Acting Government Pleader), for the defendant:—The *mámlatdár* cannot be sued in the Subordinate Judge's Court. The proper tribunal for such a suit is the Court of the District Judge. The *Mámlatdár* having prosecuted the plaintiffs at the instance and express order of his superior, must be considered to have acted in his official capacity—*Moro Vishwanáth v. Bál Náth*⁽¹⁾.

SARGENT, C. J.:—The present suit is brought against the defendant to recover damages for malicious prosecution, and it

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is in his individual, and not his official, character in which he is sought to be made liable. The fact that the defendant was mámlatdár of Chálisgáon when he prosecuted the plaintiff, cannot affect the character in which he is sued in the present action, which simply raises the question whether the defendant is personally liable for proceeding with that prosecution. The Subordinate Judge should, therefore, proceed with the case.

REVISIONAL CRIMINAL.

Before Mr. Justice West and Mr. Justice Birdwood.

QUEEN EMPRESS v. NA'MDEV SATVA'JI.*

1887.

February 10.

Criminal Procedure Code (Act X of 1882), Secs. 209, 210—Discharge of accused—Magistrate bound to commit when prima-facie case is made out against accused.

Under sections 209 and 210 of the Criminal Procedure Code (Act X of 1882) a Magistrate holding a preliminary inquiry ought to commit the accused to the Court of Session when the evidence is enough to put the party on his trial, and such a case obviously arises when credible witnesses make statements which, if believed, would sustain a conviction.

THIS was an application, under the revisional criminal jurisdiction of the High Court, for the revision of an order of discharge made under section 209 of the Criminal Procedure Code (Act X of 1882) by Ráv Báhádur Narayan B., Magistrate, (First Class), of Sholápur.

The accused was charged with having set fire to the complainant's crops on the 28th March, 1886.

At the preliminary inquiry held by the First Class Magistrate of Sholápur, two of the witnesses for the prosecution deposed to having seen the accused committing the offence. The third witness stated that he had seen the accused running away from the complainant's field soon after the crops had been set on fire.

The Magistrate discharged the accused, under section 209 of the Criminal Procedure Code (Act X of 1882), for the following reasons:—

* Criminal Review, No. 312 of 1886