

CRIMINAL REVISION.

Before Mr. Justice Parsons and Mr. Justice Ranade.

1897.

*IN RE CHOTALAL MATHURADAS.**

September 16.

*Criminal Procedure Code (Act X of 1882), Sec. 195—Sanction to prosecute—
Departmental inquiry into the misconduct of a revenue officer—Judicial proceed-
ing—Bombay Land Revenue Code (Bom. Act V of 1879), Secs. 196, 197.*

A Collector, on receiving information that his Deputy Chitnis had attempted to obtain a bribe, ordered his Assistant Collector to make an inquiry into the matter, with a view to taking action under section 32 of the Bombay Land Revenue Code (Bom. Act V of 1879). The Assistant Collector found, on inquiry, that the charge of bribery was unfounded, and gave a sanction to prosecute the informant and his witnesses for giving false evidence. This sanction was revoked by the Collector. The Chitnis appealed to the High Court against the order revoking the sanction.

Held, that the inquiry made by the Assistant Collector was a departmental inquiry, and not a judicial proceeding, and that the Assistant Collector, while holding the inquiry, was not a Court. No sanction for prosecution was, therefore, necessary under section 195 of the Criminal Procedure Code (Act X of 1882).

APPLICATION under section 435 of Act X of 1882.

The applicant, Chotalal Mathuradas, was the Deputy Chitnis of the Collector of Kaira.

The Collector received information that Chotalal had attempted to obtain a bribe from one Dungar Garud in respect of an official act.

The Collector thereupon ordered the Assistant Collector to make an inquiry into the matter with a view to his taking action under section 32 of the Bombay Land Revenue Code (Bom. Act V of 1879).

The Assistant Collector found, on inquiry, that the charge of bribery was entirely unfounded, and was made maliciously. He, therefore, gave sanction to prosecute the informant and his witnesses for giving false evidence.

On appeal to the Collector the sanction was revoked.

* Criminal Revision, No. 198 of 1897.

Against this order of revocation, the Deputy Chitnis, Chotalal, made the present application to the High Court under its Revisional Jurisdiction.

1897.

IN RE
CHOTALAL
MATHURADAS.

C. II. Setalvad for applicant:—The Collector had no power to revoke the sanction. The only authority that could revoke the sanction was the Sessions Judge or, failing him, the High Court—section 195 of the Code of Criminal Procedure (Act X of 1882). The Collector's order is, therefore, *ultra vires*. Refers to *Sheo Prasad Singh v. Kastura Kuar*⁽¹⁾; *In re Parsotam Lal v. Bijai*⁽²⁾.

Ráo Bahádur *Vasudev J. Kirtikar*, Government Pleader, for the Crown:—The order of revocation was right, for the sanction is unnecessary and was erroneously granted. The inquiry in the course of which the informant is alleged to have committed perjury was a departmental inquiry and not a judicial proceeding. There are certain inquiries under the Land Revenue Code which are expressly declared to be judicial proceedings. Section 196 of the Code shows what those inquiries are. They are called "formal or summary" inquiries. The inquiry in the present case is not either a formal or summary inquiry. It is an ordinary departmental inquiry falling under section 197 of the Code. As such, it is not a judicial proceeding, and the officer who held the inquiry is not a Court. The distinction between a judicial and an administrative inquiry is pointed out in *Queen-Empress v. Tulja*⁽³⁾.

Gokaldas K. Parekh for accused:—This Court has no jurisdiction to interfere in revision with the Collector's order. The proceedings before the Collector cannot be treated as a judicial inquiry. And the Collector did not profess to act as a judge, in revoking the sanction granted by his Assistant. The sanction itself was not granted under section 195 of the Criminal Procedure Code. Under the Land Revenue Code, orders passed by the Assistant Collector are appealable to the Collector. See sections 9 and 203 of the Code. The Collector had, therefore, authority to revoke the sanction in appeal.

(1) I. L. R., 10 All., 119 at p. 121.

(2) I. L. R., 6 All., 101.

(3) I. L. R., 12 Bom., 36.

1897.

IN RE
 CHOTALAL
 MATHURADAS.

PARSONS, J.:—Several important points have been raised and argued in this case, but the only one with which we propose to deal is whether the office of the Assistant Collector before whom the evidence alleged to be false was given was “a Court” within the meaning of the word as used in section 195 (b) of the Code of Criminal Procedure (Act X of 1882).

We think that there can be no doubt that it was not. The facts are these. The Collector received information that his Deputy Chitnis, Chotalal, had been trying to obtain a bribe from one Dungar, and after examining him and certain other persons he ordered the case against Chotalal to be sent to the Assistant Collector for inquiry under the Land Revenue Code. It was in the inquiry held by the Assistant Collector in pursuance of this order that the alleged false evidence was given and it is material to ascertain if his office at the time of holding the inquiry was a Court or not; for if it was not, then no sanction will be necessary for a prosecution.

Apparently there is some difference of opinion among the High Courts in India as to the meaning to be attached to the word “Court” as used in section 195, but we are not concerned with that in the present case. We consider that the Legislature has in the Bombay Land Revenue Code decided that point for us. Section 196 of that Code declares that “a formal summary inquiry under this Act shall be deemed to be a ‘judicial proceeding’ within the meaning of sections 193, 219 and 228 of the Indian Penal Code, and the office of any authority holding a formal or summary inquiry shall be deemed a Civil Court for the purposes of such inquiry.”

The mention of these inquiries in this section excludes all other inquiries and the authority holding them, and section 197 makes an express provision how these latter inquiries are to be conducted. It is clear that the inquiry held in the present case was one that the Act did not require to be either formal or summary. When the Code requires a formal or summary inquiry it says so in plain language (see sections 59, 87, 91, 93, 118, 125, 129). The present inquiry, if provided for at all by the Code, can only be so under the implied authority given by

Chapter IV. It was a mere departmental inquiry held in order to ascertain whether there was any truth in the charge of bribery laid against Chotalal such as would justify the Collector in taking action under section 32 of the Code. If a formal or summary inquiry was intended, such would certainly be stated in section 33, but neither that section nor any other section of this chapter mentions the nature of the inquiry. It must, therefore, be held to be an ordinary inquiry falling within the provisions of section 197. As such, it would not be a judicial proceeding and the office of the authority holding the inquiry would not be a Court.

No sanction, therefore, for prosecution is required under section 195 (b) of the Code of Criminal Procedure.

We dismiss the application and return the papers in all the three cases, and the applications will be struck off as dismissed.

APPELLATE CIVIL.

Before Sir C. F. Farran, Kt., Chief Justice, and Mr. Justice Candy.

SHIVJIRAM SAHEBRAM MARWADI (ORIGINAL PLAINTIFF), APPELLANT,
v. WAMAN NARAYAN JOSHI (ORIGINAL DEFENDANT), RESPONDENT.*

1897.
September 20.

Lis pendens—Mortgage—Decree on mortgage—Sale of mortgaged land pending proceedings in execution of decree.

On the 22nd August, 1882, Yesu and Krishna mortgaged certain land to the plaintiff by an unregistered mortgage. On the 17th May, 1884, Yesu alone mortgaged the same land to the defendant. This mortgage was duly registered. Subsequently to the date of the defendant's mortgage the plaintiff sued Yesu and Krishna on his mortgage, and on 26th August, 1884, he got a decree for the sale of the mortgaged property. On 1st November, 1884, he applied for execution of his decree, and in August, 1885, the execution sale took place and the property was sold to one Dagdu, who was the plaintiff's nominee. Meanwhile, however, and pending the plaintiff's execution proceedings, Yesu and Krishna on the 14th March, 1885, sold the property to the defendant by a registered deed of sale. The plaintiff now sued the defendant for possession.

Held (1) that the sale to the defendant on the 14th March, 1885, pending the plaintiff's execution proceedings was a sale *pendent: lit:* and void as against the plaintiff.