

sama Nadhabhai⁽¹⁾, the Act came into force long before the suit was filed and, therefore, under section 31 (2) there can be no alienation of the estate or any portion thereof without the previous sanction of the Governor in Council. A sale in execution of a decree is such an alienation as comes within the terms of this section (see *Kalian v. Pathubhai*⁽²⁾).

We must, therefore, reverse the order of the District Judge and direct that he give the plaintiffs such time as shall to him seem reasonable for the production, by them, of the sanction of the Governor in Council; in case they produce the same, he can then affirm his present order, otherwise he must dismiss their dakhast. We leave him to dispose of the costs incurred throughout.

Order reversed.

(1) P. J., 1895, p. 428.

(2) I. L. R., 17 Bom., 289.

1897.

CHUDASAMA
NAUDHABHAI
v.
NARAN
TRIBHOVAN.

CRIMINAL REVISION.

Before Mr. Justice Parsons and Mr. Justice Ranade.

*IN RE MOTIRAM.**

*Criminal Procedure Code (Act X of 1882), Sec. 345—Compounding offences—
Mischief—Mischief done to the private property of a village Mahár.*

1897.

August 26.

The accused was charged with mischief for causing damage to crops which were the private property of a village Mahár. The Magistrate refused to allow the offence to be compounded, on the ground that the damage was done to a village Mahár and, therefore, could not be treated as damage affecting only a private person, as Mahárs had duties to perform in connection with the village.

Held that the offence was compoundable under section 345 of the Code of Criminal Procedure (Act X of 1882), as the damage was caused to a private person and not to the public. The fact that the complainant was a village Mahár would not make his personal property the property of the public, or even of the Mahár community generally.

APPLICATION under section 435 of the Code of Criminal Procedure (Act X of 1882).

The complainant was a vatandár Mahár of the village of Gartad in Khándesh.

* Criminal Application for Revision, No. 194 of 1897.

1897.

IN RE
MOTIRAM.

The accused was the revenue pátel of the village. He was charged with causing damage to the complainant's property by rooting up the hedge of his threshing floor, and letting in cattle, which consumed a portion of the crops.

At the hearing of the case before the Second Class Magistrate a *rajināma* was filed, expressing the willingness of the parties to compound the case.

The Magistrate refused to allow the offence to be compounded, on the ground that the damage was done to a village Mahár with a view to driving him out of the village, and, as such, could hardly be treated as affecting only a private person, as Mahárs had duties to perform in connection with the village.

The Magistrate convicted the accused of mischief under section 427 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for one month and pay a fine of Rs. 50.

This conviction and sentence was confirmed, on appeal, by the Magistrate of the First Class, Khándesh.

The accused thereupon applied to the High Court under its revisional jurisdiction to set aside the conviction and sentence.

G. K. Deshmukh for accused.

Ráo Bahádur *Fasulev J. Kirlikar*, Government Pleader, for the Crown.

PARSONS, J. :—The Magistrate refused to allow the offence to be compounded, because “the damage was done to a village Mahár and, therefore, could not be treated as damage affecting only a private person, as Mahárs have duties to perform in connection with the village.” Section 345 of the Criminal Procedure Code says that “mischief, when the only loss or damage caused is loss or damage to a private person, may be compounded by the person to whom the loss or damage was caused.” These words evidently refer to the definition of mischief in section 425 of the Penal Code, under which the loss or damage may be caused either to the public or to any person. They thus declare that when the loss or damage is caused to the public, the offence cannot be compounded, but that it can when the loss or damage is caused to any person. In the present case, the damage was caused to harvested

crops, which were the private property of the complainant. It was, therefore, a loss or damage caused to a private person and not to the public. The fact that the complainant was a village Mahár would not make his personal property the property of the public or even of the Mahár community generally. The Magistrate ought, therefore, to have entertained the application of the complainant to compound the case. We reverse the conviction and sentence, and remand the case to the trying Magistrate with instructions that he should admit the application, and, if he finds that the complainant is desirous of compounding the offence, act accordingly.

1897.

 IN RE
 MOTIRAM.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

HIRALAL AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS, v. BAI ASI
 AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

1897.

 September 7.

Letters Patent, 24 and 25 Vict., C. 104, Cl. 15—Appeal from an order of a single Judge of the High Court in the exercise of the Court's revisional or extraordinary jurisdiction—Appeal.

No appeal lies under clause 15 of the Letters Patent from an order of a single Judge of the High Court dismissing an application for the exercise of the Court's extraordinary or revisional jurisdiction.

The Letters Patent provide for an appeal only from a judgment passed in the original or appellate jurisdiction of the High Court.

APPEAL under clause 15 of the Letters Patent, 1865, from an order of Mr. Justice Candy.

The plaintiffs sued in the Court of Small Cause at Broach to recover Rs. 75 on a bond executed by Bái Asi for herself and as guardian of her minor son Isaji Saleman.

The Court decreed the claim against Bái Asi alone, holding that she had no authority to bind her minor son.

The plaintiffs thereupon applied to the High Court under section 25 of the Provincial Small Cause Courts Act (IX of 1887) for the exercise of its revisional jurisdiction by calling for the record of the case and allowing the claim against the minor also.

* Appeal No. 39 of 1897 under the Letters Patent.