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DADA  
v.  
NAGESH.

*Janardan*<sup>(1)</sup>, and it was laid down that an appeal lies against the decision of the question whether any particular suit was one admitting of valuation by the Judge; but if a valuation made by him is within his proper functions, its essential elements cannot be examined into in appeal. This ruling was followed by this Court in *Sardarsingji v. Ganpatsingji*<sup>(2)</sup> and *Sardarsingji v. Ganpatsingji*<sup>(3)</sup>. The Calcutta High Court has taken this same view in *Ajoodhya Pershad v. Gunga Pershad*<sup>(4)</sup>, *Rajkrishna Banerjee v. Bama Soonduree Dasse*<sup>(5)</sup> and *Gunga Monee Chowdhrao v. Gopal Chunder Roy*<sup>(6)</sup>. The Allahabad High Court has taken a different view of the section in *Balkaran Rai v. Gobind Nath Tewari*<sup>(7)</sup>, but the Madras High Court has preferred to follow in *Kanavan v. Komappan*<sup>(8)</sup> the Calcutta ruling in *Ajoodhya Pershad v. Gunga Pershad*.

The Bombay decision noticed above leaves no doubt on the point that the decision of the question of law as to whether a particular suit falls within section 7, clause 4 (c) and (d), or whether it is a suit for which *ad valorem* duty should be paid, is appealable.

For these reasons, I would reverse the decision of the lower appellate Court, and remand the appeal to the District Court to be disposed of according to law.

*Decree reversed and case remanded.*

(1) (1886) 10 Bom., 610.

(2) (1889) 14 Bom., 395.

(3) (1892) 17 Bom., 56.

(4) (1880) 6 Cal., 240.

(5) (1875) 23 Cal., W. R., 296.

(6) (1873) 19 Cal., W. R., 24.

(7) (1890) 12 All., 129.

(8) (1890) 14 Mad., 169.

## CRIMINAL REVISION.

*Before Mr. Justice Parsons, Chief Justice (Acting), and Mr. Justice Ranade.*

*IN RE JIVANJI ADAMJI.\**

*Criminal Procedure Code (Act V of 1898), Sec. 557—Pleader—Appointment of a pleader to act as Presidency Magistrate—Appointment not forbidden by the Code.*

The appointment of a pleader to act as a Magistrate is not forbidden by section 557 or any other provision of the Code of Criminal Procedure (Act V 1898).

\* Criminal Application for Revision, No. 245.

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After the Criminal Procedure Code of 1898 had come into force, a practising pleader was appointed to act as a Presidency Magistrate. On his appointment he gave up practising and was not practising at the time the accused was tried and convicted by him of theft. The accused applied to the High Court, in revision, to quash the conviction, on the ground that the appointment of the Magistrate contravened the provisions of section 557 of the Code of Criminal Procedure.

*Held*, that section 557 of the Code does not deal with appointments, and had no application to the present case, as the Magistrate was not practising at the time the accused was tried and convicted.

APPLICATION under section 435 of the Criminal Procedure Code (Act V of 1898).

Mr. S. B. Spencer was a pleader of the High Court practising, for the most part, in the Presidency Magistrates' Courts.

On the 27th July, 1898, Mr. Spencer was appointed to act as Fourth Presidency Magistrate in place of Khán Bahádur P. H. Dastur. As soon as the appointment was made, he ceased to practise.

On the 29th August, 1898, the accused was charged before Mr. Spencer with theft. The accused was convicted and sentenced to six months' rigorous imprisonment.

The accused thereupon applied to the High Court under its revisional jurisdiction, contending that the conviction was illegal, as the appointment of Mr. Spencer to act as a Presidency Magistrate was in contravention of section 557 of the Criminal Procedure Code.

The High Court sent for the record of the case.

*Branson* (with him *Ruttonji R. Desai* and *Manubhai Nanubhai*) for the accused:—The appointment of Mr. Spencer to act as a Presidency Magistrate was invalid under section 557 of the new Code of Criminal Procedure (Act V of 1898) as he was practising exclusively in the Presidency Magistrates' Courts till the date of his appointment. From the Draft Bill (as printed in the *Gazette of India*, 1898, Part VI, pages 32-33) it appears that the section as originally drafted was much wider in its scope than the section it now stands. It disqualified every pleader from sitting as a Magistrate in the Presidency towns. The disqualification is now

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limited to those pleaders only who practise in the Presidency Magistrates' Courts. This disqualification is based on public policy, and the intention of the Legislature appears to be to prevent pleaders who practise in the Magistrates' Courts from acting as Magistrates in those Courts.

*Lang*, Advocate General, for the Crown:—Section 557 of the new Code does not deal with the appointment of a pleader to act as a Presidency Magistrate. The section does not say that no pleader shall be "appointed," but the words used are, no pleader shall *sit*. This means that a pleader cannot practise and at the same time sit as a Magistrate in the Presidency Magistrates' Courts. The section was intended to check the practice prevailing in the North-West Provinces and in the Bengal Presidency, where pleaders used to act as Honorary Magistrates without ceasing to practise. The section has no application to the present case, as Mr. Spencer gave up practising as soon as he was appointed. He is not, therefore, disqualified from sitting as a Presidency Magistrate.

PARSONS, C. J. (ACTING):—It has been argued before us that the conviction in this case by the Acting Presidency Magistrate (Mr. Spencer) is illegal, because his appointment to act as a Presidency Magistrate, dated the 27th July, 1898, contravenes the provisions of section 557 of the Criminal Procedure Code. That section, however, does not deal with appointments; all it says is that "No pleader who practises in the Court of any Magistrate in a Presidency town or district shall sit as a Magistrate in such Court or in any Court within the jurisdiction of such Court." Fortunately it is unnecessary for us to inquire into the object, meaning or general application of the section, or even to endeavour to ascertain what would happen if a pleader did practise and sit as a Magistrate in any Court. It is sufficient to say that Mr. Spencer has not done so in this case. He was a pleader when he was appointed to act as a Presidency Magistrate. The appointment of a pleader to act as a Magistrate is not forbidden by any provision of the Code. On appointment he gave up practising, and he does not now practise. The section has, therefore, no application to him. We dismiss the application.