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ant to do, or refrain from doing, something with his own property such as has actually been passed by the Mámlatdár in this case, for which no authority can be found in the Act. It is obviously undesirable that the nice questions which may arise between riparian proprietors as to the amount of water each can take from a stream should be determined by a Mámlatdár's Court. This really is the question at issue in the present case. It is not whether the plaintiffs have been obstructed in the use of water in their water-course, but it is whether the defendants have, by exceeding their rights as owners of land abutting on the stream, caused injury to other owners, the plaintiffs. We are of opinion that such a suit does not come within the Mámlatdárs' Courts Act. We make the rule absolute with costs.

Rule made absolute.

CRIMINAL REVISION.

Before Mr. Justice Parsons and Mr. Justice Ranade.

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QUEEN-EMPRESS *v.* GANESH RAMKRISHNA.*

December 20.

Criminal Procedure Code (Act X of 1882), Secs. 195-369—Sanction to prosecute—Revision—Session Judge's power to review his order in proceedings taken to revoke sanction.

A Sessions Judge, having once refused to revoke a sanction granted by a Subordinate Court under section 195 of the Criminal Procedure Code (Act X of 1882), has no jurisdiction afterwards to review his order and set aside the sanction.

An application to a Sessions Judge for revocation of a sanction granted under section 195 of the Code is a criminal proceeding in revision. Any order passed in such a proceeding is final, and cannot be reviewed or revised by him.

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

The accused Ganesh Ramkrishna Pathak, having obtained a decree against one Gangaram bin Sankraji in the Court of Small Causes at Poona, applied for execution of this decree without certifying to the Court certain payments which had been made in part satisfaction of it. Thereupon the Small

* Criminal Revision, No. 321 of 1897.

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Cause Court granted a sanction under section 195 of the Code of Criminal Procedure (Act X of 1882) to prosecute him for an offence under section 210 of the Indian Penal Code (Act XLV of 1860). He applied to the Sessions Judge to revoke the sanction, but the Sessions Judge on 6th April, 1897, declined to interfere.

The accused subsequently made another application to the Sessions Judge, who thereupon reviewed his previous order, and on 24th August, 1897, revoked the sanction, giving the following reasons:—

"Looking to the fact that the proceedings in a Court of a Subordinate Judge and of a Small Cause Court Judge are in their nature civil, it appears to me that any application to revise an order passed by either of those Courts under section 195 of the Criminal Procedure Code must be in its nature a civil proceeding, notwithstanding the fact that the application in the case of a Small Cause Court Judge is made to the Court of Session. Whether this view of the law is sound or not, I am further of opinion that it is competent to a Court acting in its capacity as a Court of revision to reconsider its order, and for reasons shown to revise the orders of the Court below. Section 437 of the Criminal Procedure Code confers on District Magistrates certain revisional powers. In Bombay Criminal Rulings for 1890, No. 48, dated 14th September, 1890, it was held that it was competent to a District Magistrate to order a further inquiry under section 437, although he may have declined to do so on a previous occasion in the same matter. The case of *Queen-Empress* v. *C. P. Fox*[1] was relied upon by the other side to show that the High Court cannot review its judgment pronounced on revision in a criminal case. That case was a peculiar one.....It was held by a Full Bench that it had not power under section 439 of the Criminal Procedure Code to review its judgment pronounced on revision in a criminal case. Nothing was said as to its powers under section 195, nor its powers of revision in a civil case ..... On these grounds I am of opinion that it is open to this Court in its revisional capacity to review its former order."

Against this order Gangaram, the judgment-debtor, applied to the High Court under its revisional jurisdiction.

Invernrity (with him *N. G. Chandavarkar*), for the applicant:—The Sessions Judge had no jurisdiction to review his previous order and revoke the sanction. The proceedings before him were not of a civil, but criminal nature. It has been held that the High Court cannot review its orders passed on revision in criminal cases—*Queen-Empress* v. *C. P. Fox*[1]. If the High Court

(1) (1885) I. L. R., 10 Bom., 196.

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cannot, much less can the Sessions Court review its orders passed in revision.

Shivram V. Bhandarkar for the accused :—Proceedings for sanction to prosecute, when initiated in a Civil Court in the course of a civil suit, are of a civil and not criminal nature. In *Darubhai* v. *Raiji*[1] such proceedings were treated as civil and not criminal, and this Court dealt with the matter under section 622 of the Code of Civil Procedure. The Sessions Judge had, therefore, jurisdiction to review his previous order. Assuming that proceedings under section 195 of the Criminal Procedure Code are of a criminal nature, there is nothing to prevent a Criminal Court from exercising the power of review which is inherent in every Court, unless it is expressly taken away by statute. Section 369 of Act X of 1882 no doubt prevents a Criminal Court from reviewing its judgment after it is signed. But the order that was reviewed by the Sessions Judge in the present case is not a judgment—sections 366-368. None of the conditions stated in those sections apply to the order in question. Nor does section 430 apply, as it relates to judgments and orders of an appellate Court. But the order in question was admittedly passed by the Sessions Judge in his revisional capacity—*Mehdi Hasan* v. *Tota Ram*[2]. The ruling in *Queen-Empress* v. *C. P. Fox*[3] does not apply, as that was a case of a conviction on a trial. Here there was no trial and no conviction.

PARSONS, J.:—The only point before us is whether the Sessions Judge, having refused on the 6th April to revoke the sanction, had jurisdiction to review his order and revoke it on the 24th August. I entertain no doubt that the proceedings before the Sessions Judge in the matter of the application to revoke the sanction were criminal proceedings, and that his order of the 6th April was an order passed in revision and not by way of appeal. This being so, it is quite clear, from the decision of this Court in *Queen-Empress* v. *C. P. Fox*[3] and of the Allahabad High Court in *Mehdi Hasan* v. *Tota Ram*[2], that the order could not be reviewed. The latter is a decision exactly in point, for in it

(1) P. J., 1889, p. 123.
(2) (1892) I. L. R., 15 All., 61.
(3) (1885) I. L. R., 10 Bom., 176.

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the Court held that its order rejecting an application to revise an order granting sanction was final and could not be reviewed by it. If the High Court has no power to review its order, the Court of Sessions can have none. We set aside the order of 24th August.

RANADE, J.:—The only question we have to consider in this case is whether the Sessions Judge, after once passing an order declining to interfere with the sanction granted by the Small Causes Court Judge, could entertain a fresh application, set aside his previous order, and revoke that sanction. The authorities seem to me to be clearly against the exercise of any such power by the Sessions Judge in respect of orders passed under section 195. There is no provision in the Civil Procedure Code on the subject of granting sanctions to prosecute. These provisions occur only in section 195 and in chapter 35 of the Criminal Procedure Code, and it has been held that proceedings taken under section 195 are judicial in their nature, and not ministerial, (*Laraiti* v. *Ram Dial*[1]). The procedure of granting sanction to a private party is only an alternative of the more direct procedure of complaint by the Court before whom the offence is committed. In a case which came before us by way of appeal on a point of limitation from an order of dismissal passed by Mr. Justice Candy, we confirmed his order, and held that proceedings under section 195 held on appeal before a District Court were criminal, and not civil, proceedings. The first application to the Sessions Judge, which he disposed of by declining to interfere, was thus a criminal proceeding, and he had no power to admit a review, or to revise his order in the way he has done. Section 369 expressly provides that no Court other than a High Court can alter or review its own judgment, and section 430 expressly provides that all judgments and orders of appellate Courts are final, except in cases provided for by section 417 and Chapter 32. Section 417 relates to appeals by Government, and Chapter 32 relates to references and revision. This latter procedure is obviously intended to be a substitute for review in criminal proceedings. The Allahabad High Court has ruled that an application to a Sessions Judge to set aside a sanction granted under section 195, is a proceeding in revision—*Mehdi Hasan* v. *Tota Ram*[2]. See

(1) (1882) I. L. R., 5 All., 224. (2) (1892) I. L. R., 15 All., 61.

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also *In re Anant Ramchandra Lotlikar*[1]. The Session Judge's first order was thus passed in revision, and he had no power to review again or revise it except in the manner laid down in Chapter 32—*In the matter of the petition of F. W. Gibbons*[2]; *Queen-Empress* v. *Durga Charan*[3]; *Queen-Empress* v. *C. P. Fox*[4]. Even, as regards the High Courts, it has been expressly ruled that they have no power to review or revise their own judgments or orders. Two of these decisions were Full Bench decisions. This Court has all along held this view both under the old Code, as also under the present Code—*Empress* v. *Mahomed Yashin*[5]; *Reg.* v. *Mehtarji Gopalji*[6]. It is clear that the same prohibition applies with greater force in the case of the District Courts under the express terms of sections 369 and 430. If the Sessions Judge was of opinion that his first order was improper, he should have proceeded under Chapter 32 and made a reference to this Court. He had no power to revise or review his own decision. We must, therefore, reverse that order.

Order reversed.

(1) (1886) I. L. R., 11 Bom., 438.
(2) (1886) I. L. R., 14 Cal., 42.
(3) (1885) I. L. R., 7 All., 672.
(4) (1885) I. L. R., 10 Bom., 176.
(5) (1879) I. L. R., 4 Bom., 101.
(6) (1870) 7 Bom. H. C. Rep., 67, Cr. Ca.

CRIMINAL REVISION.

Before Mr. Justice Parsons and Mr. Justice Ranade.

IN RE JAMNADAS HARINARAN.*

1897.
December 26.

Stamp Act (I of 1879), Sec. 3 (17)—Receipt—Memorandum of payment—Document containing no acknowledgment of payment not a receipt—No stamp necessary for such document.

A made a payment of Rs. 22 to B. At A's request C made a memorandum in writing to the following effect :—"B has received Rs. 22," but affixed no stamp to it. He was charged and convicted, under section 61 of the Indian Stamp Act (I of 1879), for not affixing a receipt stamp to the memorandum.

Held, (reversing the conviction,) that the memorandum was not a receipt. To constitute a receipt within the meaning of section 3 (17) of the Stamp Act, there must be an acknowledgment, either express or implied, of the receipt, and not a mere statement that money was received.

* Criminal Revision, No. 370 of 1897.