CRIMINAL REVISION.

1909.
November 25.

Before Mr. Justice Chandavarkar and Mr. Justice Batchelor.

IN RE SHIVLAL PADMA.*

Criminal Procedure Code (Act V of 1898), section 195—Sanction to prosecute—Order granted by single Judge—Powers of Full Court to revoke the sanction—Full Court not an Appellate Court—Presidency Small Cause Courts Act (XV of 1882), sections 37, 38.

Where a sanction to prosecute has been granted by a Judge of the Presidency Small Causes Court at Bombay, a Full Court of that Court has no power to revoke the sanction.

Per CHANDAVARKAR, J. :—The language used in sections 37 and 38 of the Presidency Court of Small Causes Act (XV of 1882) does not appear to be appropriate for the purpose of conferring appellate jurisdiction upon the Full Court.

Per BATCHELOR, J. :—The jurisdiction conferred by section 38 of the Act is not appellate, but revisional only.

THIS was an application under the criminal revisional jurisdiction of the High Court.

The fifth Judge of the Bombay Presidency Small Causes Court granted a sanction to prosecute the applicant Shivlal Padma for offences punishable under sections 191, 193, 196, 463 and 465 of the Indian Penal Code.

The applicant applied to the Full Court of the Court of Small Causes at Bombay, but that Court declined to interfere on the ground that it had no jurisdiction.

The applicant applied to the High Court.

S. B. Dadyburjor, for the applicant.—The only point is whether the full Court of the Bombay Court of Small Causes can revoke the sanction granted by the fifth Judge. The power of one Court to revoke the sanction granted by another Court is given by section 195 of the Criminal Procedure Code. Under section 195 (6) "any sanction given or refused.....may be revoked or granted by any authority to which the authority...is subordinate." Clause 7 further defines the subordination. "Every

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Court shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie."

We have thus to see whether the Court of the fifth Judge is subordinate to the Full Court within the meaning of section 195 (6) and (7) that is, whether an appeal ordinarily lies from the Court of the fifth Judge to the full Court. The powers of the Full Court are defined be section 38 of the Presidency Small Cause Courts Act (XV of 1882) and we have to see whether in view of these powers, it could be called an Appellate Court.

The word appeal has nowhere been defined either in the Civil or Criminal Procedure Codes.

Wharton's Law Lexicon (8th Edn.) gives the definition of appeal as "the removal of a cause from an inferior to a superior Court for the purpose of testing the soundness of the decision of the inferior Court." Century Dictionary defines the word as "in law, to refer to a superior Judge or Court for the decision of a cause depending; specifically to refer a decision of a lower Court or Judge to a higher one for re-examination or revisal." The definition in Webster's Dictionary is in terms similar to the one in Wharton's.

It follows from these definitions of appeal that any Court, which could examine and test the soundness of the decision of another Court on any point, either of law or fact, is a Court of appeal to the other.

The Full Court satisfies all these conditions. It can, under section 38, alter, set aside or reverse any order or decree, passed by the fifth Judge. No Appellate Court could have powers wider than these. The Full Court consists of two Judges, viz., the Chief Judge and the Judge whose decisions are under consideration. Its powers are given in a chapter which is headed "New Trials and Appeals." The constitution of this Court, as well as its powers, were fully considered in *Behram* v. *Ardeshir*[1]. It is not necessary that an appeal should lie from one Court to another in *all* cases. If in some cases it lies, that is sufficient for section 195 of the Criminal Procedure Code: *Maduray Pillay*

(1) (1903) 27 Bom. 563; 5 Bom. L. R. 940.

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v. *Elderton*[1]. The word "ordinarily" is specially used in the section to obviate this difficulty. Therefore it does not matter if an appeal does not lie in *ex parte* cases.

R. R. Desai, for the respondent :—The word appeal does not appear anywhere in the section. I rely on the case of *In re Goverdhandas*[2] to show that the Full Court has no power to revoke a sanction granted.

Moreover the Full Court and the Court of the fifth Judge cannot be considered as two distinct Courts. No such distinction is made in the whole Act. The use of the word "appeal" in the heading of the chapter is not justified by what follows in the chapter itself.

CHANDAVARKAR, J. :—The question, in this case, is whether a Full Court of the Presidency Small Causes Court in Bombay has power to grant or revoke a sanction refused or granted by a single Judge of that Court. The determination of that question depends upon the further question whether the Full Court is a Court of appeal, or whether, if it is not a Court of appeal, it is a Court of ordinary original jurisdiction within the meaning of clause 7 of section 195 of the Criminal Procedure Code. As regards the Full Court, it ought to be borne in mind that there is no mention of or provision for it in the Presidency Small Cause Courts Act. This has been pointed out in a decision of this Court in *Behram* v. *Ardeshir* [3]. As held there, it is a Court which has obtained its legality and status owing to a long continued practice. And there it was also held that, though no rules had been framed as to the exercise by the Full Court of any powers under the Act, it did not follow that the sittings of that Court were *ultra vires*. It is the long practice which has given it its validity. But that decision left the question untouched as to whether the jurisdiction exercised by the Full Court was of an appellate or revisional character. Its determination depends on the construction of sections 37 and 38 of the Presidency Small Cause Courts Act, XV of 1882. Now, these sections occur under Chapter VI of the Act. That chapter is

(1) (1895) 22 Cal. 487. (2) (1902) 27 Bom. 130.
(3) (1903) 27 Bom. 563 ; 5 Bom. L. R. 555.

headed "New Trials and Appeals." No doubt the heading of a chapter is a key to the construction of the enactment, as has been pointed out by Lord Macnaghten in his judgment in *Arrow Shipping Company* v. *Tyne Improvement Commissioners* (1). But it is a key, only where the main provisions of the sections which occur under that heading or chapter are ambiguously worded. Here it is clear that the words of the heading of the chapter mean no more than that the chapter deals with the question of new trials and appeals. That does not mean that an appeal is allowed but it means that the chapter concerns the question. How that question is solved must be decided on the provisions of the sections of the Chapter. Section 37 says:— "Save as otherwise provided by this Chapter or by any other enactment for the time being in force, every decree and order of the Small Cause Court in a suit shall be final and conclusive." That means that ordinarily a decree of a Presidency Small Causes Court is not appealable. Then section 38 goes on to provide that, "the Small Cause Court may...order a new trial to be held, or alter, set aside or reverse the decree or order, upon such terms as it thinks reasonable." Does this language amount to an appellate jurisdiction conferred upon the Full Court? This is an Act of the Legislature of the Government of India, and in construing these sections, we may well call in aid the language used by the same Legislature in other Acts as to the right of appeal. For instance, in the Civil Procedure Code and in the Criminal Procedure Code, in conferring an appellate jurisdiction upon a Court apt language has been used, the words used being "an appeal shall lie." Here the provisions of the section do not use the word "appeal" at all. And that view, I think, is further strengthened by this circumstance, that where a right of appeal is given to a party, it means from a lower to a higher Court. For instance in the High Court, where there is a judgment by a single Judge, sitting as a Court, there is an appeal under the Letters Patent to a Court consisting of two Judges.

But here the Act makes no distinction between a Judge and more than one Judge of the Presidency Small Causes Court,

(1) [1894] A. C. 508 at p. 530.

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What is spoken of is the Small Causes Court, whether it consists of one Judge or more than one Judge. And the jurisdiction here conferred is not necessarily upon a Bench consisting of more than one Judge. Therefore, the language used in the sections does not appear to me to be appropriate for the purpose of conferring appellate jurisdiction upon the Full Court. It is all the more necessary to arrive at that conclusion, having regard to the decision of *Behram* v. *Ardeshir* (1) which says that the Full Court is merely a creature of practice. There is no provision for it in the Presidency Small Causes Courts Act. Therefore, we should not extend its powers beyond those which have been recognised up to now unless there is anything express in the Act, which justifies the extension of these powers.

For these reasons, I am of opinion that the Full Court was right in holding that it had no jurisdiction to interfere with the sanction granted by the fifth Judge of the Small Causes Court. This application is rejected and the rule discharged.

BATCHELOR, J.:—I am of the same opinion. I think that in order that Mr. Dadyburjor should succeed in his application, it is necessary for him to show that under the Presidency Small Cause Courts Act, XV of 1882, appeals ordinarily lie from the decision of a single Judge to the Full Court. (See section 195 of the Criminal Procedure Code.) That is a proposition which, in my opinion, it is impossible to maintain. The question turns upon the meaning of section 38 of the Presidency Small Cause Courts Act, and I have no hesitation in thinking that the jurisdiction conferred by that section is not appellate, but revisional only. The words used are apt for the purpose of expressing the grant of revisional jurisdiction and they are very inapt for the other purpose. No right is conferred upon the defeated litigant, but a power is conferred upon the Court, and it is noteworthy that the Court concerned is the same Court—the Small Cause Court—with which other sections of the Act deal.

Moreover if Mr. Dadyburjor's argument were right, then the result of section 38 would be this: that in case of every single

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decree passed in a contested suit there would be a right of appeal. That view is, I think, opposed both to the general scheme of this Act and to the language of section 37, which must be read together with section 38. For these reasons, I agree with my learned colleague in thinking that this application should be refused.

Rule discharged.

R. R.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

RAVJI VALAD MAHADU PATIL (ORIGINAL DEFENDANT), APPELLANT, *v.* SAKUJI VALAD KALOJI AND ANOTHER (ORIGINAL) PLAINTIFFS), RESPONDENTS.*

1909. *November* 29.

Hindu Law—Sudras—Mitakshara—Legitimate son—Illegitimate son—Vatan—Collateral succession—Suit by reversioner for declaration as nearest heir—Widow of the last male holder—Vested right—Limitation Act (XV of 1877), Art. 120.

Amongst Sudras governed by the Mitakshara an illegitimate son cannot inherit a vatan collaterally in preference to legitimate heirs.

The right to sue for a declaration of heirship to a vatan does not accrue until the death of the widow of the last male holder of the vatan, the widow having a vested interest in it as the nearest heir.

SECOND appeal from the decision of C. Fawcett, District Judge of Ahmednagar, confirming the decree of G. L. Dhekne, Subordinate Judge of Kopargaon.

The plaintiffs, who were cousins, sued for a declaration that they, and not the defendant, were the heirs to the Patilki Vatan of their paternal uncle Ganpati Hari, deceased, or of Reubai, the widow of the deceased. The plaint alleged that Ganpati died about thirteen years before the suit, that the defendant fraudulently represented himself to be the heir of Ganpati and got

* Second Appeal No. 475 of 1909.