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present no means to pay off the debt, we appointed a Panch, and the Panch fixed instalments as mentioned above.

Mr. Mohile, the Subordinate Judge, on the 22nd of July entertained the application to pass a decree in accordance with the so-called award. He says :—

> There appears to be a real point of difference between the plaintiff and the defendant, that is the amount due by the latter to the former and the amount of instalments which the defendant should pay to the plaintiff.

It was quite clear upon the proceedings that there was no point of difference between the parties and no dispute as to the amount of instalments which should be paid. We regret that the First Class Subordinate Judge should have allowed his Court to be used for a proceeding of this kind, and it reflects but little credit on his judicial capacity that he should have permitted it. We set aside the decree under sections 115 and 151 of the Code of Civil Procedure.

Decree set aside.

G. B. R.

CRIMINAL REVISION.

FULL BENCH.

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

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March 31.

In re PUNAMCHAND MANEKLAL.*

Criminal Procedure Code (Act V of 1898), section 195, clauses (b) and (c)—Income-Tax Collector—Revenue Court—Sanction to prosecute—Indian Penal Code (Act XLV of 1860), sections 193, 196, 199, 471—Offences committed before the Income-Tax Collector.

An Income-Tax Collector is a Revenue Court within the meaning of that term as used in clauses (*b*) and (*c*) of section 195 of the Criminal Procedure Code, 1898.

* Criminal Application for Revision No. 5 of 1914.

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THIS was an application in the exercise of the High Court's Criminal Revision.

The facts were as follows :—

The applicant was assessed in a sum of Rs. 35 as income-tax for the year 1911. He appealed to the Income-Tax Collector (J. H. Hartshorne). When examined, the applicant made a statement as to his income and supported it by his account-books which he produced.

The Income-Tax Collector was of opinion that the statement made by the applicant was false and that it was sought to be supported by false account-books. A notice was therefore issued to the applicant to show cause why sanction should not be given for prosecuting him. The Income-Tax Collector granted the sanction on the 25th July 1912. It was not communicated to the applicant. A copy of it, however, was forwarded to the Mamlatdar of Nadiad with the intimation that necessary steps should be taken to lodge a complaint in the Court of the First Class Magistrate of Kaira.

Nothing was done under the sanction till the 20th October 1913, when T. P. Lakhia, the Resident First Class Magistrate of Kaira, filed a complaint in the Court of the First Class Magistrate of Kaira, charging the applicant with offences punishable under sections 177, 193, 196 and 471 of the Indian Penal Code. The case was later on transferred by the District Magistrate to the Court of the Sub-Divisional Magistrate of Kaira. The applicant filed objections to his prosecution, but the objections were overruled.

The applicant applied to the Joint Judge at Ahmedabad ; but his application was rejected.

He next applied to the High Court.

The application was argued on the 10th and 13th March 1914.

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Velinkar, with *Ratanlal Ranchhoddas*, instructed by *Soonderdass & Co.*, for the applicant.

S. S. Patkar, Government Pleader, for the Crown.

On the 13th March 1914, the Court (Heaton and Shah, JJ.) referred the following question to a Full Bench :—

Whether an Income-Tax Collector is or is not a "Court" within the meaning of that word as used in clauses (*b*) and (*c*) of section 195 of the Criminal Procedure Code.

The following judgments were delivered :—

HEATON, J. :—The applicant in this case is a person against whom a complaint has been made of offences under sections 177, 193, 196, 199 and 471 of the Indian Penal Code. It will be observed that these are all offences which are included in section 195 of the Criminal Procedure Code. They all arose out of what the applicant is supposed to have done in connection with proceedings before an Income-Tax Collector. Now undoubtedly an Income-Tax Collector is a public servant, and as to the offence under section 177, his sanction would be required under clause (*a*) of section 195 and what appears to be a sanction was in fact given by the Income-Tax Collector. But it is now spent, or rather was spent before this complaint was made, because the complaint was made much more than six months after the sanction had been given. So far then it appears that as regards section 177 these proceedings are not lawful in their inception and should be set aside. As regards the other sections 193, 196, 199 and 471 they are subject to precisely the same infirmity if the Income-Tax Collector is a "Court" within the meaning of clauses (*b*) and (*c*) of section 195. On this matter, *i. e.*, whether an Income-Tax Collector is such a "Court", there is a certain amount of authority which, in the main, favours the view that he is a "Court". But a Bench of this Court decided in 1906 that an Income-Tax Collector is not a "Court" within the meaning of

section 476 of the Criminal Procedure Code: *In re Kalidas*[1]. If he is not a "Court" within the meaning of that section it is, at least to me, difficult, in spite of the definition of "Court" in section 195, to suppose that he can be a "Court" within the meaning of the latter section; for the purpose of the two sections is very much the same and their connection is intimate.

In a very much later case (*In re Nanchand Shivchand*[2]) another Bench of this Court decided that a "District Judge", determining the validity of elections under section 22 of the District Municipalities Act (Bombay Act III of 1901) is a "Court" within the meaning of clause (*b*) of section 195 of the Criminal Procedure Code. The reasoning of Mr. Justice Batchelor's judgment in that case, is, it seems to me, a reasoning which, if applied to this case, would inevitably lead to the conclusion that an Income-Tax Collector is a "Court". He is empowered to summon witnesses, to take evidence and under the Oaths Act he consequently may administer an oath. I cannot myself believe that if giving false evidence on oath to an Income-Tax Collector is an offence under section 193 of the Indian Penal Code and it is declared to be such an offence by section 37 of the Income-Tax Act, no sanction should be required to prosecute such a person for giving false evidence, whereas sanction is required if the evidence is given, say for example, before a Magistrate or a Sub-Judge. It seems to me that the purpose of these provisions in section 195 are that when false evidence is alleged to be given on oath, the prosecution shall not proceed without a sanction, and that the Code intends to make no distinction whatever between different cases provided that the oath may properly be administered and that the evidence may be taken.

(1) (1906) 8 Bom. L. R. 477. (2) (1912) 37 Bom. 365

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Otherwise in some cases, as for instance, an Income-Tax Collector's proceedings, complaints for giving false evidence might be made by any private person, they might be made out of ill-will and without the slightest foundation of truth. And yet the Magistrate would be bound to deal with them. I can see no reason whatever for supposing that the section intends such a thing to happen when it specifically provides that in other cases sanction must be furnished. Therefore not only does the reasoning in Mr. Justice Batchelor's judgment seem to me to be opposed to the decision of *In re Kalidas*[1], but it also appeals to me as being a reasoning which is correct in itself. But we cannot altogether disregard the ruling in *In re Kalidas*[1]. Therefore it seems to me that we are bound to submit to a Full Bench this question:—

Whether an Income-Tax Collector is or is not a "Court" within the meaning of that word as used in clauses (*b*) and (*c*) of section 195 of the Criminal Procedure Code?

There is only one other point that needs attention in this matter. It was argued that because the complaint, which was made against this applicant, was lodged by a certain Mr. Lakhia by order of the District Magistrate or the Collector, and because the Collector is a public servant to whom the Income-Tax Collector is subordinate, therefore this complaint may be regarded as a complaint of the kind provided for in clause (*a*) of section 195. But that clause provides that the public servant concerned may either give a sanction or make a complaint and that seems to me to exclude the idea that a public servant may make a complaint by any form of delegation. It seems to me that he must make the complaint, if he wishes to take that course,

[1] (1906) 8 Bom. L. R. 477.

personally. If he does not wish to take that course personally, the delegation is obtained by giving the sanction. Similarly the Collector as superior officer, though personally no doubt he might make the complaint, cannot delegate the making of a complaint to another. So I do not think that the proceedings in this case can be supported by that argument.

If the decision of the Full Bench is that an Income-Tax Collector is a "Court" then I think the whole of these proceedings must be set aside.

SHAH, J.:—I concur. This is an application to quash the proceedings arising out of a complaint lodged by Mr. L. P. Lakhia, the Resident First Class Magistrate of Nadiad, on the 10th October 1913. The complaint purports to have been made with the sanction of the Income-Tax Collector dated 23rd July 1912, and relates to offences which are mentioned in section 195 of the Criminal Procedure Code. It is clear that the complaint cannot be entertained by any Court, if the order of the 23rd July 1912 is a sanction and if a sanction is necessary under the section. The order of the 23rd July 1912 was made by the Income-Tax Collector after giving due notice to the petitioner, and though the terms of the order do not place the matter beyond dispute, it is fairly open to the construction that it is a sanction and not merely a departmental direction to prosecute. The complaint, so far as it relates to the offence under section 177 of the Indian Penal Code, can be taken cognizance of only with the previous sanction or on the complaint of the public servant concerned or of some servant to whom he is subordinate. Treating the Income-Tax Collector's order of the 23rd July as a sanction, the proceedings so far as they relate to the offence under section 177, Indian Penal Code, must be set aside as the sanction was not in force at the date of the complaint owing to the lapse of time. Even if it

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be not a sanction, the same result must follow, as there can be no doubt that the present complaint is not made by the Income-Tax Collector or by his superior. The present complainant, who is the Resident Magistrate at Nadiad, has nothing to do with the Income-Tax Collector or his superior, and in my opinion he can lodge the complaint only with the *sanction* of the proper authority.

As regards the other offences, which fall under section 195, sub-section (1), clauses (*b*) and (*c*), the complaint is subject to the same objection, if the Income-Tax Collector is a Court within the meaning of these clauses. It has been held by this Court in *In re Kalidas*[1] that the Income-Tax Collector is not a Court under section 476 of the Criminal Procedure Code. So far as the present point is concerned, I think the word "Court" would have the same meaning in section 195, and *Kalidas's case* is, therefore, an authority for the view that the Income-Tax Collector is not a Court within the meaning of clauses (*b*) and (*c*) of section 195. No reasons are given in the judgment in support of this conclusion, and the *ratio decidendi* of *In re Nanchand Shivchand*[2] clearly suggests that the conclusion in *Kalidas's case* is not correct. Apart from the decisions, the reason of the rule requiring a sanction or a complaint of the Court concerned in respect of certain offences is in favour of the view that the Income-Tax Collector is a Court. In a recent case the Madras High Court has held that the Income-Tax Collector is a Court: see *In re Nataraja Iyer*[3]. Having regard to the conflicting decisions, as well as to the practical importance of the point, I think that the question formulated by my learned colleague should be referred to a Full Bench for decision.

(1) (1906) 8 Bom. L. R. 477. (2) (1912) 37 Bom. 365.
(3) (1912) 36 Mad. 72.

The reference was heard by a Full Bench consisting of Scott, C. J., and Batchelor and Beaman, JJ., on the 23rd March 1914.

Velinkar, with *Ratanlal Ranchhoddas*, instructed by *Soonderdass & Co.*, for the applicant.

S. S. Patkar, Government Pleader, for the Crown.

Velinkar.—In the present case, the sanction in question was granted on the 23rd July 1912. The complaint, on the strength of that sanction, was lodged on the 20th October 1913. The sanction has therefore spent itself by lapse of six months under section 195, clause 6, of the Criminal Procedure Code.

The Income-Tax Collector, under Act II of 1886, performs the functions of a Court: see sections 3 (9), 4, 14, 16, 25 (1) (2), 26, 27, 28, 30, 37 and 40. He administers oath and determines the jural relations between the appellant and the Government.

The word "Court" in section 195, clauses (*b*) and (*c*), of the Criminal Procedure Code should be liberally construed. The word is not defined. It is not confined to a Court of justice but includes a Court of law as well.

The Collector acting in appraisement proceedings under sections 69 and 70 of the Bengal Tenancy Act (Beng. Act VIII of 1885) has been held to be a "Court" as used in section 195: *Raghoobuns Sahoy* v. *Kokil Singh*[1]. A Tahsildar holding an inquiry as to whether a transfer of names in a land register should be made or not is a Revenue Court as used in section 195: *Queen-Empress* v. *Munda Shetti*[2].

But a Sub-Registrar under the Registration Act (III of 1877) has been held to be not a Court: see *Queen-Empress* v. *Tulja*[3], and rightly so, for he does not

(1) (1890) 17 Cal. 872. (2) (1900) 24 Mad. 121.

(3) (1887) 12 Bom. 36.

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determine any jural relation between parties. The case of *In re Nataraja Iyer*[1] is an instance in point, for there the Madras High Court has held that a Divisional Officer hearing appeals under the Income-Tax Act is a Court within the meaning of section 476 of the Code.

The meaning of the term "Court" is discussed in *Royal Aquarium and Summer and Winter Garden Society* v. *Parkinson*[2].

The present reference owes its origin to a conflict of decision in *In re Kalidas*[3] and in *In re Nanchand Shivchand*[4]. We submit that the former decision is not correct.

Patkar.—The decision in *In re Kalidas*[3] is correct and ought to be followed.

The power of a public servant to administer an oath in any proceeding before him does not make him a Court: for an oath can be administered by a public servant under section 4 of the Oaths Act.

The inquiry by a Land Acquisition Collector as to the value of land and the amount of compensation to be paid for its acquisition, resulting in an award, is an administrative and not a judicial proceeding: *Ezra* v. *Secretary of State for India*[5].

Section 37 of the Income-Tax Act which provides that proceeding under Chapter IV of the Act shall be deemed to be a judicial proceeding enacts a statutory fiction for the purpose of sections 193 and 228 of the Indian Penal Code. It cannot make the Income-Tax Collector a Court: see *The Queen* v. *Assessment Committee of Saint Mary Abbotts, Kensington*[6].

C. A. V.

(1) (1912) 36 Mad. 72.
(2) [1892] 1 Q. B. 431.
(3) (1906) 8 Bom. L. R. 477.
(4) (1912) 37 Bom. 365.
(5) (1905) 32 Cal. 605.
(6) [1891] 1 Q. B. 378.

SCOTT, C. J. :—The question referred for decision is "whether an Income-Tax Collector is or is not a 'Court' within the meaning of that word as used in clauses (*b*) and (*c*) of section 195 of the Criminal Procedure Code".

The word "Court" is defined in the section by a limited and exclusive definition to mean a Civil, Revenue or Criminal Court. It cannot be contended that the Income-Tax Collector is a Civil or Criminal Court and therefore the only question is whether he at any time in the discharge of his functions under Act II of 1886 is a Revenue Court.

The term "Revenue Court" is not in general use but it has been used occasionally by local legislatures in this country in connection with the decision of questions relating to revenue by officers specially and exclusively empowered to decide them. See, for example, the City of Bombay Revenue Act and the Revenue Code of Oudh, the United Provinces and the Punjab (U. P. Act II of 1901, sections 59-62 ; U. P. Act III of 1901, section 189 et seq. ; Oudh Act XXII of 1886, section 109 ; Punjab Act XVI of 1887, section 101). Speaking generally, revenue questions are removed from the cognizance of Civil Courts and the officer charged with the duty of deciding disputed questions relating to revenue between the individual and the Government would be invested with the functions of a Revenue Court. The inquiries into such questions assigned to officers empowered *eo nomine* as "Revenue Courts" in the United Provinces are entertained and disposed of by corresponding officers in Bombay under Chapters XII and XIII of the Bombay Land Revenue Code of 1879 though the word "Revenue Court" is not to be found anywhere in those chapters. We have no doubt that the Bombay inquiries would be equally proceedings in Revenue Courts in the sense in which that term is used in the definition clause of section 195 of the Criminal Procedure Code. We also think

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that inquiries conducted according to the forms of judicial procedure under Chapter IV of the Income-Tax Act and execution proceedings under Chapter V (which provides that an order passed by a Collector on a petition under Chapter IV shall have the force of a decree of a Civil Court in suit in which the Government is the plaintiff and the defaulter is the defendant) are proceedings in a Revenue Court.

The express exclusion from the term "Court" in section 195 of a Registrar or a Sub-Registrar, though a legislative recognition of the correctness of the conclusion in *Queen-Empress* v. *Tulja*[1], does not affect the question now before us as to the scope of the term "Revenue Court", for a Registrar or Sub-Registrar under the Registration Act could not by any stretch of imagination be held to be a Revenue Court. The Registration Act has its special group of sections corresponding with Chapter XI of the Indian Penal Code and sections 195 and 476 of the Criminal Procedure Code.

For the above reasons we answer the question referred in the affirmative.

On the 9th April 1914, the Divisional Court (Heaton and Shah, JJ.) passed the following order :—

Order :—Having regard to the decision of the Full Bench that an Income-Tax Collector is a "Revenue Court" within the meaning of section 195 of the Criminal Procedure Code, the proceedings are set aside and the rule issued by this Court on the 7th January 1914 is made absolute.

Rule made absolute.

R. R.

(1) (1887) 12 Bom. 36.