

CRIMINAL REVISION.

Before Mr. Justice Shah and Mr. Justice Hayward.

EMPEROR v. CHIMAN DAMODAR BHATE*.

1920.

March 2.

Indian Oaths Act (X of 1873), Sections 9-11—Special oath—Inadmissibility of special oath in proceedings under sections 14 and 15 of the Village Police Act (Bombay Act VIII of 1867).

Sections 9 to 11 of the Indian Oaths Act, 1873, are not applicable to proceedings before a Village Police Patil under sections 14 and 15 of the Bombay Village Police Act, 1867.

Queen-Empress v. Murarji Gokuldas⁽¹⁾, followed.

Per SHAH, J.:—"The proceedings before the Police Patil under sections 14 and 15 of the Village Police Act (VIII of 1867) are essentially criminal proceedings and the same rule which applies to criminal proceedings ought to apply on general grounds to proceedings before the Village Patil so far as the effect of any special oath is concerned."

THIS was an application to revise conviction and sentence passed by Dagdu Mango, Police Patil of Dharangaon.

The facts were that the accused was charged under section 14 of the Village Police Act, 1867, with having abused the complainant. At the trial, which was held before the Village Police Patil, the accused proposed a special oath to the complainant that the latter should take the Koran in his hand. The complainant did so: whereupon the Patil convicted the accused and ordered him to be detained in the Chavdi for twelve hours.

The accused applied to the High Court.

W. B. Pradhan, for the accused:—The Indian Oaths Act is not applicable to criminal proceedings. It is the duty of a criminal Court to satisfy itself by evidence whether the alleged offence has been committed or no.

* Criminal Application for Revision No. 372 of 1919.

⁽¹⁾ (1888) 13 Bom. 389.

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The complainant is not a party to the criminal proceedings, but the Crown is; nor can accused be a party, for, in that event, under section 8 of the Indian Oaths Act, he can be bound by a special oath, which would be directly against the provisions of section 5 of the same Act: see also *Queen-Empress v. Murarji Gokuldas*⁽¹⁾. It is the accused who proposed the special oath to the complainant but that does not matter as the accused can consent to nothing: see *The Attorney General of New South Wales v. Henry Louis Bertrand*⁽²⁾ and it was the duty of the criminal Court to follow the procedure laid down by law strictly and come to a determination.

S. S. Patkar, Government Pleader, for the Crown:—The present prosecution being under the Village Police Act, it ought to be governed by that special law. Section 17 of that Act (Bom. Act VIII of 1867) says that “the Police Patel shall record the names of the parties” &c., and so the complainant and the accused are parties to the proceeding which is no doubt a judicial proceeding under section 8 of the Indian Oaths Act. Therefore section 9 of the Indian Oaths Act applies. Judicial proceedings would include a criminal proceeding—section 5 makes provision for not administering an oath to an accused person in a criminal proceeding. In *Queen-Empress v. Murarji Gokuldas*⁽¹⁾ it was held that the complainant in a criminal proceeding is not a party because the Crown is the prosecutor and the case is conducted by the Public Prosecutor. This is true of an ordinary criminal proceeding. But in the proceedings before the Police Patel under section 17, the complainant is a party and it is optional with him to withdraw his complaint at any time before conviction is recorded. Petty abuse is not an offence under the Indian Penal Code and the Criminal Procedure Code

⁽¹⁾ (1888) 13 Bom. 389.⁽²⁾ (1867) 36 L. J. P. C. 51 at p. 57.

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does not apply to proceedings before the Village Police Patil: section 2, clause (c), of the Criminal Procedure Code.

SHAH, J.:—This case has been decided by the Police Patil on the special oath of the complainant. The special oath was offered to the complainant at the instance of the accused and the decision is based on that oath. It has been held by this Court in *Queen-Empress v. Murarji Gokuldas*⁽¹⁾ that sections 9 to 11 of the Indian Oaths Act are not intended to apply to criminal proceedings. It is clear that the provision of the Indian Oaths Act relating to the special oaths cannot properly apply to criminal proceedings. Section 11 of the Act provides that the evidence given on special oath as against the person, who offered to be bound by it, is conclusive proof of the matter stated. It seems to me that in criminal matters the truth has to be ascertained by the Court; and the matter stated on special oath cannot be and ought not to be accepted as conclusively proved by such an oath in a criminal proceeding. The scheme of these sections shows that they are not intended to apply to criminal proceedings.

It is urged, however, on behalf of the Crown, that though that view may be right with reference to the criminal proceedings generally it does not apply to proceedings before the Police Patil under the Village Police Act (VIII of 1867). It seems to me that the proceedings before the Police Patil under sections 14 and 15 are essentially criminal proceedings, and the same rule which applies to criminal proceedings ought to apply on general grounds to proceedings before the Village Patil so far as the effect of any special oath is concerned.

⁽¹⁾ (1888) 13 Bom. 389.

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Generally speaking, we are very slow to interfere with any decision of a Police Patil. But having regard to the nature of the error in this case, I am of opinion that it would not be right to allow the decision to stand.

I would therefore make the Rule absolute and set aside the conviction and sentence.

HAYWARD, J. :—I agree. The case was not properly tried. The provisions of sections 9 to 11 of the Indian Oaths Act, 1873, have in their nature no application to criminal proceedings, as indicated in the case of *Queen-Empress v. Murarji Golcaldas*^(a).

Rule made absolute.

R. R.

(a) (1888) 13 Bom. 389.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Heaton.

SHRINIWAS KUPPUSWAMI MUDLIAR (ORIGINAL OPPONENT), APPELLANT v. M. C. WAZ (ORIGINAL APPLICANT), RESPONDENT*.

1920.

March 3.

Civil Procedure Code (Act V of 1908), Order XLIII, Rule 1—Appeal from order—Order granting leave to sue Receiver for negligence—Appeal.

An appeal does not lie from an order granting leave to sue a Receiver for damages arising from his negligent discharge of duty.

APPEAL from an order passed by V. V. Pataskar, Additional First Class Subordinate Judge at Poona.

The facts appear sufficiently from the judgment of the learned Chief Justice.

B. J. Desai, with *S. Y. Abhyankar*, for the appellant.

Strangman, Advocate General, with *J. R. Gharpure*, for the respondent.

MACLEOD, C. J. :—The opponent, appellant in this case, was appointed Receiver in Suit No. 137 of 1913,

* Appeal from Order No. 35 of 1919.