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whether a contract is a wagering contract or not are applicable to this case just as much as to other contracts. The test is well known. Where it is shown that the common intention of the parties was that in no case was delivery to be taken or given but that in all cases differences should be paid then the parties are wagering. It is impossible to my mind to go beyond that and it in effect furnishes the answer to the question propounded.

Solicitors for the plaintiff: Messrs. *Mehta, Lalji & Co.*

Solicitors for the defendants: Messrs. *Mulla & Mulla.*

Answer accordingly.

G. G. N.

ORIGINAL CIVIL.

*Before Sir Lallubhai Shah, Kt., Acting Chief Justice, and
Mr. Justice Crump.*

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June 21.

ABDUL LATIF USMAN, APPELLANT v. HAJI TAR MAHOMED AND ANOTHER, RESPONDENTS^a.

Criminal Procedure Code (Act V of 1898), section 195 (7)—Sanction to prosecute—Order of a single Judge on the Original Side of the High Court granting or refusing sanction—Whether appeal lies from such order—Practice.

Under the general rule contained in sub-section (7) of section 195 of the Criminal Procedure Code, 1898, an appeal lies to the Court of Appeal in the High Court from an order made under the section by a single Judge on the Original Side of the High Court, granting or refusing a sanction to prosecute.

THIS was an appeal from the order of Kanga J. refusing sanction to prosecute Haji Tar Mahomed and Ali Mahomed Jivraj the constituted attorney and Munim respectively of the plaintiff Vali Mahomed Haji

^a O. C. J. Appeal No. 148 of 1921: Suit No. 2600 of 1920.

Gani who had filed a suit to recover Rs. 22,009-11-0 from the defendant Abdul Latif Usman as damages for breaches of contracts for the sale and purchase of 100 tons of white Java sugar of July shipment. The defence was that the disputes between the parties in respect of the said contracts were settled through the intervention of one Mahomed Isak on or about the 13th October 1920 and that according to the terms of the said settlement the defendant became liable to pay to the plaintiff a sum of Rs. 15,107-6-9 only. After evidence in the case was recorded the plaintiff's counsel gave up his contention that there was no settlement of the contracts as regards the 100 tons of July shipment. Accordingly a decree was passed for Rs. 15,107-6-9 only and the plaintiff was ordered to pay the costs of the suit.

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The defendant, thereafter, applied for a sanction to prosecute Haji Tar Mahomed and Ali Mahomed Jivraj for using as genuine a forged document, for giving false evidence and fabricating a false document and abetting each other in the commission of the offence during the trial of the suit. The defendant alleged that both Haji Tar Mahomed and Ali Mahomed Jivraj forged a letter, dated 16th October 1920, alleged to have been written on behalf of the plaintiff to Messrs. Usman Samoo, a firm of brokers, in which the said Mahomed Isak was a partner and that both of them used the said letter as genuine at the trial of the suit. It was further alleged against Haji Tar Mahomed that he made a false statement in Court as regards the settlement of the July shipment.

Kanga J. refusing sanction to prosecute observed :—

“ In my opinion there is neither in this case sufficient *prima facie* evidence nor a reasonable prospect of conviction and so sanction to prosecute should not be granted.”

The defendant appealed.

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A preliminary objection was taken on behalf of the respondents that no appeal lay from the order of a single judge of the High Court making an order under section 195 of the Criminal Procedure Code.

Velinkar, for the appellant.

Coltman, for the respondents.

SHAH, AG. C. J.:—This is an appeal from the order of Mr. Justice Kanga refusing to grant sanction which was applied for by the defendant in Suit No. 2600 of 1920. The sanction to prosecute was asked for in respect of a letter, dated 16th October 1920 (Exhibit E), which was said to have been forged and also in respect of a statement made by respondent No. 1 as regards the settlement of the July shipment which was a matter in dispute between the parties. It is not necessary for the purpose of this appeal to state in detail the facts relating to the suit. The suit was decided on the 9th August 1920, when it was conceded by the plaintiffs that there was a settlement in respect of the July shipment.

An objection has been taken on behalf of the respondents that no appeal lies because the subordinate Court contemplated by section 195, Criminal Procedure Code, is a Court other than a High Court and that therefore there could be no appeal under that section from the order of a Judge of the same Court. It seems to me, however, that the preliminary objection must be disallowed. Sub-section (7) of section 195 provides that for the purpose of this section every Court shall be deemed to be subordinate only to the Court to which appeals from the judgment of that Court ordinarily lie. In the present case there could be no doubt that under clause 15 of the Letters Patent appeals would ordinarily lie from the judgments of a single Judge exercising Original Civil Jurisdiction to this Court, that is, the

Court of Appeal on the Original Side. It is true that generally speaking the subordinate Court contemplated by section 195, Criminal Procedure Code, is a Court different from the Court to which the appeals would ordinarily lie. But, having regard to the words of the section, it seems to me clear that, for the purpose of section 195, the Court from whose order the present appeal is preferred is a Court from whose judgment an appeal would ordinarily lie to this Court: and therefore the present appeal asking us to grant the sanction and to revoke the order refusing to grant the sanction is competent. It may be, though it has not been suggested, that sub-section (7) really provides for the three classes of cases mentioned in clauses (a), (b) and (c) of that sub-section. I do not think, however, that those specific provisions are restrictive of the general rule contained in that sub-section defining subordination for the purpose of section 195. It is not necessary for the purpose of this case to decide, whether, apart from section 195, an appeal would be competent under clause 15 of the Letters Patent. As at present advised, I doubt whether an order refusing to grant a sanction to prosecute under section 195, Criminal Procedure Code, is a judgment within the meaning of clause 15. I base my decision on the preliminary objection upon the terms of section 195, Criminal Procedure Code.

[His Lordship dealt at this point with the merits of the appeal, and continued :—] I am satisfied that the circumstances which have been fully stated by Mr. Velinkar are entirely insufficient to justify our disturbing the order made by Mr. Justice Kanga.

As regards costs, though, generally speaking, it may be desirable not to make any order as to costs in proceedings under section 195, it seems to me that in this case the learned Judge was right in making the order as to costs. After a careful consideration of the

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circumstances of this case I have come to the conclusion that there is no valid reason why we should deprive the respondents of the costs which the present appellant has rendered it necessary for them to incur without any apparent justification. I would, therefore, dismiss the appeal with costs.

I desire to add that we have treated the proceedings as having been taken under section 195 of the Code of Criminal Procedure ; if the learned Judge considered the matter under section 476, Criminal Procedure Code, it is clear that there would be no appeal. The rule-*nisi* obtained by the appellants in the trial Court does not in terms refer to section 195. This aspect of the case was not referred to in the argument, and as both parties treated the case as falling under section 195, Criminal Procedure Code, we have dealt with it on that footing.

CRUMP, J.:—As to the merits of this case, I do not find it necessary to add anything to the judgment just delivered. But so far as it concerns the question about our jurisdiction to hear this appeal, I should like to say this much. Clause 6 of section 195 of the Code of Criminal Procedure lays down a general rule as to appeals. In a case where a sanction has been granted by any authority, such sanction can be revoked or granted by any authority to which the authority giving or refusing it is subordinate. Clause 7 lays down a special rule as regards Courts, and the test of subordination for the purpose of that clause is whether an appeal ordinarily lies from the Court which granted the sanction to the Court which is asked to revoke it. Now if that is the test, it is, I think, clear that inasmuch as the Judge who heard this matter was sitting as a Court and inasmuch as the appeal ordinarily lies from his judgment by virtue of clause 15 of the Letters Patent to a Bench of two Judges sitting as a Court, therefore we have here the jurisdiction conferred by

clause 7 of section 195 of the Criminal Procedure Code. That being so, it is open to us to consider whether the sanction which has been refused here should or should not be granted.

Whether, apart from the provisions of the Code of Criminal Procedure, an appeal lies under clause 15 of the Letters Patent from the order refusing sanction, is a question on which I express no opinion.

Solicitors for the appellant : Messrs. *Pandia & Co.*

Solicitor for the respondents : Mr. *M. B. Chothia.*

Appeal dismissed.

G. G. N.

INSOLVENCY JURISDICTION.

Before Mr. Justice Marten.

In Re MANECKCHAND VIRCHAND PATNI.*

Presidency Towns Insolvency Act (III of 1909), section 18—Adjudication order—Prior insolvency proceedings in District Court—Jurisdiction of the Commissioner in Insolvency—Provincial Insolvency Act V of 1920—Practice—Procedure.

Section 18 of the Presidency Towns Insolvency Act, 1909, does not confer power on the Commissioner in Insolvency to stay insolvency proceedings pending against the insolvent in any other Court. The other insolvency is neither a "suit" nor "other proceeding" pending against the insolvent within the meaning of the section. The "other proceedings" should be *ejusdem generis* with or analogous to a suit.

The District Court in its insolvency jurisdiction is subject to the 'superintendence' of the High Court on its Appellate Side and not to the Commissioner in Insolvency.

APPLICATION by an insolvent for stay of insolvency proceedings in a District Court.

* Insolvency Petition No. 334 of 1922.

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