

1925.

BURJOR
v.
ELLERMAN
CITY LINES,
LIMITED.

proceedings should be stayed. We do not think that in the circumstances of the case the plaintiff should be compelled to start proceedings afresh in order to get the dispute between him and the defendant company decided, and there is no reason whatever why this claim arising in August 1922, the subject-matter of a suit of 1923, should not be decided in these Courts as early as possible. Either party can apply under the rules to have the suit transferred to the list of commercial causes, when the hearing can be expedited. The summons will be discharged with costs in this Court and in the lower Court.

COYAJEE, J. :—I am of the same opinion.

Solicitors for appellants : Messrs. *Payne & Co.*

Solicitors for respondents : Messrs. *Crawford, Bayley & Co.*

Summons discharged.

J. S. K.

CRIMINAL REVISION.

Before Mr. Justice Fawcett and Mr. Justice Mavlarkar.

In re PATEL MULJIBHAI HIRABHAI^o.

1925.

July 15.

Criminal Procedure Code (Act V of 1898), section 195 (1) (c)—“Court”—Courts in British India—Courts in Native States not included.

The word “Court” in section 195 (1) (c) of the Criminal Procedure Code refers only to a Court in British India; and does not include a Court in a Native State.

Channmalapa Chenbasapa v. Abdul Vahab⁽¹⁾, referred to.

THIS was an application against an order passed by E. I. Patel, Resident Magistrate, F. C., at Nadiad.

Sanction to prosecute.

^o Criminal Application for Revision No. 191 of 1925.

⁽¹⁾ (1910) 35 Bom. 139.

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In re.

The applicant was a subject of H. H. the Gaekwar of Baroda. He was alleged to have produced a fabricated receipt in evidence in a suit filed against him in the Court of the Subordinate Judge at Savli in the Baroda State. A complaint was lodged against him under sections 467 and 109 of the Indian Penal Code in respect of the receipt, in the Court of the Resident First Class Magistrate at Nadiad (British Indian territory).

The applicant applied to the Magistrate that the prosecution could not be entertained in the absence of a complaint of the Savli Subordinate Judge.

The Magistrate rejected the application and proceeded with the case.

The applicant applied to the High Court.

The application was placed before a Bench for grant of a rule.

N. P. Desai, for the applicant.

FAWCETT, J.:—In this case it is said that sanction is necessary for the prosecution of the applicant under section 195 (1) (c), Criminal Procedure Code. This, however, assumes that the word "Court" in that clause includes a Court in a Native State such as Baroda State. As at present advised, we do not think that that word can possibly be so construed, and we may refer to *Chanmalapa Chenbasapa v. Abdul Vahab*⁽¹⁾ in support of this view. Obviously there is a difficulty in supposing that the Legislature intended that complaints or sanctions should be made or issued by Courts not within the territorial jurisdiction of the Legislature but outside its control.

MADGAVKAR, J.:—I agree. The opening words of section 195, Criminal Procedure Code, "No Court shall take cognizance" clearly limit the meaning of the word

⁽¹⁾ (1910) 35 Bom. 139.

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“Court” to British Indian Courts to which alone the British Indian Legislature could direct the prohibition which follows in the section. It is, therefore, difficult to attach a wider meaning to the same word “Court” in the remaining clauses of section 195. Moreover, section 1 limits the ambit of the Code to British India, and no reason is shown for widening the meaning of the Courts in British India to Courts in Native States, as is sought by the applicant. The application must, in my opinion, fail.

Application rejected.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Fawcett and Mr. Justice Madgarkar.

1925.

July 17.

VAMAN TRIMBAK JOSHI AND OTHERS (ORIGINAL DEFENDANT NO. 2, AND HEIRS OF DEFENDANT NO. 1), APPELLANTS *v.* CHANGI ALIAS CHANGUNA DAMODAR SHIMPLI, MINOR, BY HER GUARDIAN, RESPONDENT NO. 2, AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS⁶.

Indian Registration Act (XVI of 1908), section 17, sub-section 2, clause (c)—Agreement to reconvey—Registration—Admissibility.

On September 28, 1911, D passed a registered sale deed in favour of S, and on the same day the vendee S passed an unregistered agreement to D (vendor) that he would reconvey the property to the vendor, provided that the vendor paid the purchase money to him within a period of eleven years. D having died, his widow and daughter assigned their rights under the transaction in favour of the plaintiffs. On September 2, 1921, the plaintiffs sued to obtain specific performance of the agreement of September 28, 1911, and for possession. It was contended that the agreement, being unregistered, was inadmissible in evidence.

Held, that, in the absence of evidence showing that the transaction was in effect a mortgage the agreement was a mere agreement to reconvey and, therefore, exempted from registration under section 17 (2) (c) of the Registration Act, 1908.

⁶ Appeal No. 29 of 1924 from Order.