

1902 not die intestate as to his joint moveable property, and with that slight variation, which does not deal with a very substantial matter, the appeal must be dismissed with costs. Such slight variation ought not to affect the costs of the appeal.

As regards appeal No. 29 of 1900, the appeal by Kadumbini Dassi, it is only on the question of costs. It is said that she ought to have had her costs either from the plaintiff or out of the testator's estate.

Now what has been her attitude in this litigation? So far as the suit sought to set aside the trust deed of the 24th of May 1877, she, as surviving trustee of that deed, was a necessary party to the suit. But she has supported Nundo Lal Bose not only in her pleadings, but also by her evidence. Nundo Lal Bose has singularly failed in his defence, and I do not see how under such circumstances Kadumbini can properly ask for costs from the plaintiff or out of the testator's estate. The Court below was perhaps rather generous in not making her pay some costs. This appeal also must be dismissed with costs.

BANERJEE, J. I am of the same opinion.

HILL, J. I concur.

Attorney for appellant: *Hirendra Nath Dutta*.

Attorney for respondent, Nistarini Dassi: *J. C. Dutt*.

Attorneys for respondent, Pashupati Nath Bose: *G. C. Chunder & Co.*

Attorney for respondent, Kadumbini Dassi: *Romesh Chandra Basu*.

APPEAL  
FROM  
ORIGINAL  
CIVIL.

30 C. 369=7  
C. W. N. 353  
[affirmed  
on appeal  
33 C. 180  
(P. C.)]

30 C. 354 (=7 C. W. N. 114).

[394] CRIMINAL REVISION.

SADHU LALL v. RAM CHURN PASI.\* [3rd June, 1902.]

*Sanction to prosecute—Appeal—Revocation of sanction by Joint Magistrate specially authorised to hear appeals, legality of—Jurisdiction—Subordinate Court—Criminal Procedure Code (Act V of 1898) ss. 195 and 407.*

Where a Joint Magistrate who had been authorised by the District Magistrate to hear appeals under s. 407, cl. (2) of the Criminal Procedure Code, on appeal revoked a sanction to prosecute granted under s. 195 of the Code by an Assistant Magistrate exercising second-class powers:

*Held*, that the existence of the special power which was conferred on him by the District Magistrate did not constitute the Joint Magistrate the Court to which appeal ordinarily lay under s. 195, cl. (7) from a Magistrate exercising second-class powers, and that his order revoking the sanction must be set aside as having been made without jurisdiction.

[*Fol.* 31 *All.* 244=9 *A. L. J.* 260=13 *Cr. L. J.* 273=14 *I. C.* 657: 27 *Mad.* 124: 3 *N. L. R.* 50: 2 *Lah. L. J.* 660; *Ref.* 26 *Mad.* 556 (F.B.).]

RULE granted to the petitioner Sadhu Lall.

This was a Rule calling on the District Magistrate to show cause why the order made by the Joint Magistrate on the 25th January 1902 revoking the sanction which had been granted by the Assistant Magistrate should not be set aside on the ground that the Joint Magistrate had no jurisdiction to revoke the sanction.

The petitioner applied for sanction under s. 195 of the Criminal Procedure Code to prosecute one Ram Churn Pasi and certain other persons for giving false evidence in a criminal case against the petitioner. The Assistant Magistrate of Bhagulpur, before whom the application was made and who exercised second-class powers, granted sanction on the

\* Criminal Revision No. 276 of 1902, against the order passed by E. E. Forrester, Esq., Joint Magistrate of Bhagulpur, dated the 28th of January 1902.

14th January 1902. Ram Churn Pasi and another appealed to the Joint Magistrate of Bhagalpur, who had been authorised by the District Magistrate under s. 407, cl. (2) of the Criminal Procedure Code to hear appeals, [396] and who on the 28th January, 1902, revoked the sanction given by the Assistant Magistrate.

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Mr. *Sen Gupta* and *Babu Inanendra Nath Sarkar* for the petitioner. The assistant Magistrate who granted the sanction exercised second class powers, and under s. 195, cl. (7), appeals would ordinarily lie from him to the Court of the District Magistrate. The Joint Magistrate was authorised by the District Magistrate to hear appeals. Those appeals could only be heard by him under the special powers conferred on him by the District Magistrate under s. 407, cl. (2). The special powers, thus conferred, did not constitute the Joint Magistrate the Court to which appeals would ordinarily lie under s. 195, cl. (7), from the Court of a Magistrate exercising second-class powers, and the order by the Joint Magistrate revoking the sanction was made without jurisdiction.

30 C 394=7  
C. W. N. 114.

STEVENS AND HARRINGTON, JJ. In this case one *Sadhu Lall* applied for sanction under section 195 of the Code of Criminal Procedure to prosecute certain persons for giving false evidence in a criminal case. The Assistant Magistrate before whom the application came granted it. The Magistrate who granted it exercised second-class powers. Two of the persons against whom the sanction was granted applied for the revocation of that sanction. Their application was made to the Joint Magistrate, and he revoked the sanction given by the Assistant Magistrate.

A Rule was granted calling upon the District Magistrate to show cause why the order revoking the sanction should not be set aside on the ground that the Joint Magistrate had no jurisdiction to make it.

In section 195, clause (7), it is provided that for the purposes of the section every Court shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie. In the present case the Court of the Joint Magistrate was not that to which appeals ordinarily lay: but the Court to which appeals ordinarily lay was that of the District Magistrate. It is true that under section 407, clause (2), the District Magistrate might direct that an appeal under that section, or any class of appeals should be heard by any Magistrate of the first class subordinate to him [396] and empowered by the Local Government to hear such appeals. Under this section he had authorised the Joint Magistrate to hear appeals; but those appeals can only be heard by the Joint Magistrate under the special power which was conferred on him by the District Magistrate under section 407, clause (2), and the existence of that power does not constitute the Joint Magistrate the Court to which appeals ordinarily lie under section 195, clause (7).

For these reasons we think that the Joint Magistrate took a mistaken view of his powers in respect of the sanction under section 195. His order revoking that sanction must therefore be set aside.

The Rule is accordingly made absolute.

*Rule made absolute.*