ORIGINAL CIVIL.

Before Fletcher J.

THADDEUS

v.

JANAKI NATH SAHA.*

1912

Dec. 2

Sanction for prosecution—Criminal Procedure Code (Act V of 1898), s. 195—Verbal application—Jurisdiction—Revocation—Power of Court granting sanction—Practice.

Where a verbal application was made by counsel for sanction to prosecute under section 195 of the Criminal Procedure Code and granted by the Court, but no order could be drawn up, as the application was not made upon formal petition :

Held, that upon a formal petition being subsequently presented, the Court had jurisdiction to grant such sanction, the former sanction being inoperative.

Held, further, that a Judge sitting on the Original Side has no jurisdiction to revoke a sanction previously granted by him, and that application for such revocation must be made to a Civil Appellate Bench of the Court.

Kali Kinkar Sett v. *Dinobandhu Nandy* (1) discussed.

MOTION.

This was a Rule obtained on September 5th, 1912, by one of the defendants, Brojendra Nath Saha, calling upon the plaintiffs to show cause why an order, dated May 27th, 1912, granting sanction under section 195 of the Criminal Procedure Code to prosecute the said defendant, Brojendra Nath Saha, should not be set aside, and the said sanction revoked.

The following are the material facts. The suit was instituted by the plaintiffs under O. XXXVII

* Application in Original Civil Suit No. 460 of 1911.

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of the Civil Procedure Code, to recover money due to them from the defendants upon certain promissory notes. Upon an affidavit sworn by the defendant, Brojendra Nath Saha, in which he denied the execution of the notes, leave was given to defend the suit. The defendant, however, subsequently admitted in writing to the plaintiffs that the statements made by him in the affidavit were false, and on September 1st, 1911, Harington J. granted the plaintiffs a decree *ex parte* for the full amount claimed, with interest and costs.

Counsel for the plaintiffs thereupon made a verbal application for sanction to prosecute the defendant, Brojendra Nath Saha, under sections 193, 199, and 200 of the Indian Penal Code, and this application was granted by the learned Judge. The order for sanction was not embodied in the decree, nor was a separate order drawn up, on the ground that the sanction was not based on a written petition.

In these circumstances, on May 27th, 1912, a formal petition for sanction, with a copy of the Court minute of September 1st, 1911, attached, was presented before Fletcher J. and an order for sanction passed thereon.

On July 27th, 1912, a warrant was issued for the arrest of Brojendra Nath Saha, but was not executed.

Mr. K. N. Chaudhuri and *Mr. F. S. R. Surita* showed cause. It has been held in *Kali Kinkar Sett* v. *Dinobandhu Nandy* (1) that a Judge sitting on the Original Side of the High Court has no power to extend the time during which a sanction to prosecute granted by him is to remain in force; *a fortiori* he has no power to revoke such a sanction.

Mr. Eardley Norton, *Mr. C. R. Das* and *Mr. Nisith C. Sen*, in support of the Rule. The sanction

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granted by Fletcher J. was without jurisdiction, because sanction had already been granted by Harington J. on September 1st, 1911. That this sanction was merely verbal is immaterial, since sanction need not be in writing: *The Queen* v. *Kristna Rau* (1).

The order of May 27th, 1912, cannot be regarded as an extension of the sanction of September 1st, 1911, for such extension can only be granted if the sanction is still unexpired, and by a Civil Appellate Bench of the Court: *Kali Kinkar Sett* v. *Dinobandhu Nandy* (2).

On the merits, the plaintiffs are disentitled to their order for sanction, by reason of their delay, which they have not explained: *Balwant Singh* v. *Umed Singh* (3), *Ram Nath Chamar* v. *Ram Saran Lall* (4). *Dharamdas Kamar* v. *Sagore Santra* (5).

FLETCHER J. This is an application to revoke a sanction that has been granted under section 195 of the Code of Criminal Procedure. The facts appear to be as follows: On September 1st, 1911, a suit brought by Mr. Thaddeus against the applicant was heard before Harington J., who decreed the suit *ex parte*. At the conclusion Mr. Buckland, who appeared for Mr. Thaddeus, according to the Court minute, asked for sanction to prosecute Brojendra Nath Saha, under sections 193, 199 and 200 of the Indian Penal Code, for having made a false affidavit. The Court according to the minute said, "Very well." That suit, as I have already said, was heard on September 1st, 1911; that was on the eve of the long vacation, and the decree was not drawn up till January 6th, 1912. Apparently last year the Court sat for a very few days, owing to

(1) (1872) 7 Mad. H. C. R. 58.
(2) (1905) I. L. R. 32 Calc. 379.
(3) (1896) I. L. R. 18 All. 203.
(4) (1896) 1 C. W. N. 529.
(5) (1906) 11 C. W. N. 119.

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the visit of His Majesty the King-Emperor, between the long vacation and the New Year, and the visit of the King-Emperor running into the New Year, according to my recollection, we did not resume work on January 2nd, as we generally do. The decree was filed on January 6th, and an office copy was obtained on January 16th. According to the practice of the Court, sanctions are not embodied in the decree. The office raise difficulties about that, and they refuse to put these other matters into the decree. There having been apparently no formal application before Mr. Justice Harington in the matter, the office refused to draw up the order without formal papers being put in. So, on the 27th May, 1912, a petition was presented to myself, I being then the senior Judge sitting on the Original Side, Harington J. being absent on furlough, asking for the sanction, as to which Harington J. had said, "Very well," on September 1st, 1911. According to the minutes I also said, "Very well", and the order was drawn up, and that is how the matter stands at present. The first question that has been raised is as to whether I had jurisdiction to grant the second sanction. It has been stated, on the authority of the *Queen* v. *Kristna Rau* (1), that a verbal sanction was enough, and therefore, Mr. Justice Harington's sanction having been granted verbally, I had no jurisdiction to grant the sanction on May 27th, 1912. I cannot depart from what I know is the established practice of the Court, that is, to grant these sanctions only on the formal petition being put in, upon which an order can be passed. That I know is the practice in this Court, and the office raise difficulties in drawing up orders where no formal application is made to the Court. It seems, therefore, I must follow what I know is the established practice of this Court, and hold that

(1) (1872) 7 Mad H. C. R. 58.

I had jurisdiction to pass the order of May 27th, 1912, when the petition had been placed before the Court. Then it is said that I ought not to have granted sanction because it was so long after September 1st, 1911. Whether, if that point had been called to my attention, that Mr. Thaddeus had been staying his hand between September 1st, 1911, and May 27th, 1912, to apply for his formal order for sanction, I should have given it, I am not now in a position to say. But certainly it does appear to me that is a matter in which the delay should have been explained. However, I made the order, and the order is there, unless I have power and see good grounds for cancelling the same. The first point that has been raised by Mr. Chaudhuri is that I have no power to cancel this order at all, because any application to revoke the sanction ought to be made to the Appellate Bench, and on that point it appears to me that he is supported by the decision in *Kali Kinkar Sett v. Dinobandhu Nandy* (1), which Mr. Norton also relies on, that this Court is not the proper Court to extend time. If I have got no power to extend time under sub-section (*6*) of section 195 of the Code of Criminal Procedure, I have no power to revoke sanction which has been granted. I think that the two cases stand on exactly the same footing, and the case cited by Mr. Norton, being the decision of Sir Francis Maclean C.J., and Sale and Harington JJ., shows that any application to revoke the sanction, if properly granted, ought to be made to an Appellate Bench. The sanction having been properly granted, I have no jurisdiction to revoke it. Whether some other Court may think that this sanction ought to be revoked, owing to the delay made by Mr. Thaddeus, or for some other reason, it is not for me to say. All that I have to say is that, having properly granted the sanction, I have

(1) (1905) I. L. R. 32 Calc. 379.