

1880  
AUG. 25.

APPEL-  
LATE  
CIVIL.

5 B. 135.

by the Civil Court, and held that the Talukdari Act deprived the Civil Court of the power of hearing a suit of this nature. The plaintiffs appealed to the High Court.

*Nagindas Tulsidas*, for the appellants.

[136] *Nanabhai Haridas*, Government Pleader, for the respondent.

#### JUDGMENT.

The judgment of the Court was delivered by

M. MELVILL, J.—We fail to find anything in Act XV of 1871 which can be held to bar a suit like the present, which is to recover the amount said to have been improperly levied as rent of rent-free land, and to obtain a declaration that such land is not subject to the payment of rent. It is impossible to suppose that the Legislature intended to confer upon the manager of a Thakor's estate the power to confiscate the rights of property by treating the private estates of individuals as if they held as tenants of the Thakor. Section 23 no doubt exempts the manager, from personal liability for anything done by him *bona fide* pursuant to the Act, and he would not, therefore, be subject to an action for damages on account of the attachment of the plaintiffs' property. But it is certainly open to the plaintiffs to prove that their land is held rent-free, and to recover from the Thakor's estate any moneys which have been improperly levied as rent, and paid into the estate. The decision in S. A. 141 of 1879, to which the District Judge refers, has no bearing on the present case. The only question argued in that appeal, was whether a "*hak*," payable from the Thakor's estate, and which had accrued due before the application of Act XV of 1871 to the estate, was a liability charged upon the estate within the meaning of s. 8 of the Act. This Court held that it was a charge, and that, consequently, the claim in respect thereof ought to have been notified to the manager in the manner prescribed in ss. 6 and 7; and on this ground the Court confirmed the decree of the District Judge.

The decree of the District Court is reversed, and the case remanded for a decision of the issues raised by the appeal. Costs to follow final decision.

*Decree reversed.*

5 B. 137.

#### [137] APPELLATE CRIMINAL.

*Before Mr. Justice Kemball and Mr. Justice F. D. Melvill.*

*In re SAVANTA.*† [September, 1880.]

*Sanction—Mamlatdar's Court—The Code of Criminal Procedure, Act X of 1872, s. 468.*

The Mamlatdar's Court constituted by Bombay Act III of 1876, is a Civil Court within the meaning of s. 468 of the Code of Criminal Procedure; therefore a complaint of an offence mentioned in that section, when such offence is committed before or against the Mamlatdar's Court, shall not be entertained in the Criminal Courts except with the sanction of the Mamlatdar's Court, or of the High Court to which it is subordinate.

[F., 2 Bom. Cr. Cas. 9 (11, 12) = 14 Cr.L.J. 80 = 15 Bom. L.R. 53 = 18 Ind. Cas. 416.]

THIS was an application for revision of an order of discharge passed by J. A. Guerin, Magistrate (First Class) of Belgaum, under s. 215 of the Code of Criminal Procedure in the case of the *Empress v. Bhimaji*

\* Criminal Application for Revision, No. 122 of 1880.

*Govind and others*, who were charged with having given false evidence before the Mamlatdar of Chikodi in a possessory suit. 1880

SEPTEMBER.

The facts of the case are as follows:—

One Ravji instituted a possessory suit against the applicant Savanta in the Court of the Chikodi Mamlatdar, Mr. Hayavadan. During the trial of the suit he called a number of witnesses, and also produced a lease on his behalf; but the Mamlatdar disbelieved them all, and pronounced the lease to be a forgery. His claim was, therefore, rejected by the Mamlatdar, who, in his judgment, expressed an opinion that the witnesses should be prosecuted for giving false evidence; but before giving his formal sanction to such prosecution he died. The successful defendant thereupon applied to the Collector to give the necessary sanction; but he ruled that the Court of the Mamlatdar was not a Civil Court within the meaning of s. 468 of the Code of Criminal Procedure, and that no sanction was necessary to prosecute witnesses for giving false evidence in the Court of the Mamlatdar constituted by Bombay Act III of 1876. Savanta accordingly preferred complaints before Mr. Guerin, Magistrate (First Class) at Chikodi, who dismissed them, holding that the Court of the Mamlatdar was a Civil Court, and that the complaints could not be proceeded with without a formal sanction of the successor in office of the deceased [138] Mamlatdar. The defendant, therefore, applied to the High Court, praying for a reversal of the Magistrate's order, or for a fresh auction by that Court itself.

APPEL-  
LATE  
CRIMINAL,  
5 B. 137.

*G. R. Kirloskar*, for the applicant.—The Court of the Mamlatdar, as constituted under Bombay Act III of 1876, is not a Civil Court for purposes of s. 468 of the Code of Criminal Procedure. This section renders a sanction necessary only when any offence mentioned in it is committed before or against a Civil or Criminal Court. A comparison of the provisions of Reg. XVII of 1827, ch. viii, Act XVI of 1838, Bombay Act V of 1864, and Bombay Act III of 1876 show that the Mamlatdar's Court cannot be called a Civil Court in the ordinary acceptation of that term. The Mamlatdar's Court is a Revenue Court: see Act XVI of 1838, s. 1. The latest enactment on the subject, *viz.*, Act III of 1876 (Bombay), which directly applies to the present case, supports this view, for by s. 18 of it it draws a distinction between the Court created by it and the Civil Court. It enacts that the possession given by the Mamlatdar's Court is only to continue till a decree is passed by a Civil Court. In *Mahadaji Govind v. Sonubin Davlata* (1), a case under Bombay Act V of 1864, and in *Ba Jamna v. Bai Jadav* (2), a case under Bombay Act III of 1876 the Mamlatdar's Court was held to be a Civil Court for a limited purpose only, *viz.*, subordination to and superintendence by the High Court. If, then, the Mamlatdar's Court is not a Civil Court certainly not an ordinary Civil Court such as is mentioned in the 2nd proviso of s. 18 of Bombay Act III of 1876, it is a Revenue Court. Whenever the Code of Criminal Procedure deals with that Court, it mentions it specifically, as in ss. 435 and 438. Section 468 omits to mention a Revenue Court, and it must be taken that it does so deliberately. No sanction is, therefore, necessary to prosecute witnesses giving false evidence before the Mamlatdar's Court.

*Gokaldas Kahandas*, for the discharged persons.—In the cases cited it was held that the Mamlatdar's Court was a Civil Court for all purposes. The Civil Courts are subordinate to the High Court and the Revenue Courts to the Collector and the Revenue [139] Commissioners. It is

(1) 9 B.H.C.R. 249.

(2) 4 B. 168.

1880 not pretended that the Mamlatdar's Court is subordinate to the Collector  
 SEPTEMBER. or the Revenue Commissioner for any purpose whatever, and the reverse  
 — has been expressly held. But, even if the Mamlatdar's Court be held to be  
 APPEL- a Revenue Court, still a sanction is necessary: *Empress v. Säbsukh* (1).  
 LATE *Nanabhai Haridas*, Government Pleader, for the Crown.— A  
 CRIMINAL. Mamlatdar exercises civil, criminal and revenue jurisdiction; he is subject,  
 — accordingly, to different supervision. As a subordinate Civil Court within  
 5 B. 137. the meaning of Reg. II of 1827, s. 5, the Mamlatdar's Court is subject to the  
 supervision of the High Court. The provisions of the various enactments  
 — from Reg. XVI of 1827, ch. viii, down to Bombay Act III of 1876—show  
 that the functions of the Mamlatdar in this respect were purely civil, and  
 distinguished from either criminal or revenue. Moreover, the rulings of the  
 High Court, which have been referred to, are not to be construed in a  
 restricted sense, as has been contended. They decide that the Mamlatdar's  
 Court is a Civil Court for all purposes.

## JUDGMENT.

The judgment of the Court was delivered by

KEMBALL, J.—We have now heard this matter fully argued, and are of opinion that the First Class Magistrate was right in holding that he had no jurisdiction to entertain the complaint without sanction of the Court of the Mamlatdar in which the alleged offence was committed. It is contended for the applicant that the Mamlatdar's Court is not a Civil Court within the meaning of the Criminal Procedure Code, and in support of this contention, we have been referred to ss. 435 and 438 of the same Code in which a Revenue Court is spoken of as distinct from a Civil Court, and also to s. 18 of Bombay Act III of 1876, where a distinction is drawn between a Mamlatdar's Court and a Civil Court. To what class of Court the term "Revenue Court" in the Criminal Procedure Code relates, we have no means of knowing; nor, indeed, do we understand why any distinction should have been drawn in the sections above quoted between it and a Civil Court, but that Code applies to the whole of British India, and it has been held in this Presidency in the cases of *Mahadaji v. Sonu* (2) and [140] *Bai Jamna v. Bai Jadav* (3) that a Mamlatdar's Court is a Civil Court, so that the only question we have to consider is whether it is so in the sense of s. 468 of the Criminal Procedure Code. No doubt a distinction is taken in Bombay Act III of 1876 between a Mamlatdar's Court and an ordinary Civil Court; but we are unable to discover any intelligible reason why the term Civil Court should be taken in the restricted sense of an ordinary Civil Court, as distinguished from a Mamlatdar's Court, or why sanction for prosecution should not be as necessary and desirable in the case of an offence committed before or against the Mamlatdar's Court as in one committed against the ordinary Civil Court; See ss. 468 and 469 respectively. The terms "a Civil Court" and "any Civil Court" seem to us necessarily to include a Mamlatdar's Court; and we cannot suppose that the Legislature intended to give to suitors in such Courts unlimited powers of prosecution. We understand that the Mamlatdar, who disposed of the particular case out of which this question has arisen, is dead; but he appears to have been prepared to give the requisite sanction. We are not aware whether any application has been made to his successor; but, if not, it will rest with him, on application being made, to consider whether or no to grant it now.

Order accordingly.

(1) 2 A. 533.

(2) 9 B.H.C.R. 249.

(3) 4 B. 168.