

the declaration prayed for would, on the above authorities, be beyond the Court's jurisdiction, and, consequently, no decree could be made in the suit as at present framed, in which plaintiff's title as adopted son could be embodied. We must, therefore, confirm the decree of the District Court, with costs.

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BALKRISHNA
CHIMNAJI
v.
BALAJI
RAMCHANDRA.

Decree confirmed.

REVISIONAL CRIMINAL.

Before Mr. Justice West and Mr. Justice Nánábhái Haridás.

QUEEN EMPRESS v. JETHMAL JAYRAJ.*

August 24.

Stamp Act I of 1879, Secs. 64 and 69—Refusal to give receipt—Sanction of Collector necessary before prosecution—Jurisdiction, want of.

Prosecution for an offence committed in contravention of section 64 of the Stamp Act I of 1879 cannot be instituted unless with the previous sanction of the Collector under section 69 of the same Act.

THIS was an application for exercise of the powers of the High Court in its revisional criminal jurisdiction.

One Chunilál Márvádi and the accused Jethmal carried on a certain partnership business. On dissolution of the business the accounts were closed and Chunilál paid the accused Rs. 404 adn asked for a receipt which the accused refused to give. Thereupon Chunilál lodged a complaint against the accused before the Second Class Magistrate at Shevgaon in the Nagar District. At the trial the accused alleged that he offered to give a receipt for the amount as a part payment of the sum of Rs. 1,201 which he alleged was due from Chunilál. The Magistrate was of opinion that a receipt acknowledging the sum of Rs. 404 at least, ought to have been given, and that as the accused refused to give it, he had committed an offence under section 64 of the Stamp Act I of 1879. Accordingly the Magistrate sentenced the accused to pay a fine of Rs. 50 or in default to undergo one month's rigorous imprisonment.

The accused presented an appeal to the District Magistrate of Nagar who rejected it with the following remarks:—

“The offence complained of was evidently (from evidence recorded) committed; but an irregularity appears to have been

* Application for review, No. 163 of 1884.

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committed in not refusing to take the complaint of the prosecutor until the Collector had given a sanction for the prosecution. Still it does not appear that the accused was prejudiced in his defence in any way by this irregularity * * * * *. The conviction and sentence are confirmed and the petition of appeal is rejected. The convicting Magistrate below is directed in future to act in conformity with section 69 of the Stamp Act I of 1879."

The accused made an application to the High Court for revision.

Ghanashám Nilkanth Nádkarni for the applicant.—The proceedings of the Magistrate below are *ab initio* illegal. To prosecute a person for having committed an offence under section 64 of the Stamp Act the previous sanction of the Collector, as laid down in section 69, is necessary.

WEST, J.—The jurisdiction of the Magistrate in this case depended on sanction to the prosecution by the Collector. It was essential, therefore, that the record of the conviction should evidence such sanction. It does not contain any written sanction, nor any note even of sanction having been given to the prosecution. The conviction, therefore, must be reversed, as the trial was held without jurisdiction. The fine to be restored.

Conviction reversed.

APPELLATE CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Kemball.

June 27.

DHONDI JAGANNÁTH (ORIGINAL PLAINTIFF), APPELLANT, *v.* THE COLLECTOR OF SALT REVENUE AND THE SECRETARY OF STATE FOR INDIA IN COUNCIL (ORIGINAL DEFENDANTS), RESPONDENTS.*

Appeal—Objections to decree filed by respondent under section 561 of the Civil Procedure Code (Act XIV of 1882)—Withdrawal of appeal—Right of respondent to have objections decided.

An appellant finding after the hearing had commenced that his appeal was hopeless, claimed the right of withdrawing the appeal in order to prevent the objections filed under section 561 of the Civil Procedure Code, (XIV of 1882) by the respondent against the decree from being heard.

* Regular Appeal, No. 79 of 1881.