1887
AUG. 17.
APPELLATE CIVIL.
12 B. 164

JUDGMENT.

SARGENT, C.J.—The question in this case arises upon a refusal of the District Judge to grant probate of the will of one Shapurji Nasarwanji to Hormusji Navroji, on the ground that the bequests contained in it are illegal and void. The probate is only conclusive as to the appointment of executors and the validity and the contents of the will—Williams on Executors, p. 452 (4th ed.); and on the application for probate it is not the province of the Court to go into the question of title, with reference to the property of which the will purports to dispose, or the validity of such disposition—*Behary Lall Sandyal* v. *Juggo Mohun Gossain* (1).

But it has been contended that as Hormusji was cited on Dosabhai's second application for letters of administration in 1882, the grant of administration to him cannot now be revoked. It appears, however, that when those proceedings were commenced, and when Hormusji was cited, Hirabai, who was the executrix named in the will (Hormusji being only named in the will as executor on her death), was still alive, and the citation did not, therefore, call on him to accept or renounce executorship. **[167]** On Hirabai's death, however, which took place before the actual grant of administration to Dosabai, such a citation was imperatively required by s. 16 of Act V of 1881 before the grant could be legally made, and, therefore, in default of such citation, the proceedings were defective in substance—a circumstance which constitutes good cause for the revocation of the letters of administration, as provided by s. 50 of the above Act. We must, therefore, discharge the order, and direct that the letters of administration granted to Dosabhai be revoked, and probate be granted to Hormusji, in accordance with his application.

The applicant to have his costs here and in the Court below.

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**12 B. 167.**

## REVISIONAL CRIMINAL.

*Before Mr. Justice West and Mr. Justice Birdwood.*

## *In Re* HOWARD.* [25th August, 1887.]

*Defamation—Republication of defamatory matter already published—Indian Penal Code (Act XLV of 1860), s. 499—Dismissal of complaint—Criminal Procedure Code (Act X of 1882), s. 203.*

A complaint was filed, under s. 499 of the Indian Penal Code, against the proprietors, editor, and printer of a newspaper for publishing matter alleged to be defamatory. The Magistrate, before whom the complaint was lodged, found that the publication complained of was a mere reproduction or republication of what had been previously printed and published in another newspaper. He was, therefore, of opinion that, unless and until criminal proceedings had been taken in respect of the earlier publication, a charge of defamation could not properly be brought with regard to the later publication. He, therefore, dismissed the complaint, under s. 203 of the Code of Criminal Procedure (Act X of 1882).

*Held*, that the order of dismissal was improper. The Indian Penal Code (s. 499) makes no exception in favour of a second or third publication as compared with a first. If the complaint is properly laid in respect of a publication which

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* Criminal Revision; Application No. 172 of 1887.

(1) 4 C. 1.

1887
AUG. 25.

REVISIONAL CRIMINAL.

12 B. 167.

is *prima facie* defamatory, the Magistrate is bound to take cognizance of the complaint, and deal with it according to law.

THIS was an application under the criminal revisional jurisdiction of the High Court, under s. 435 of the Code of Criminal Procedure (Act X of 1882).

The applicant Howard lodged a complaint in the Court of the Chief Presidency Magistrate, charging the proprietors, editor, and printer of a Bombay newspaper, called the *Advocate of India*, with defamation.

**[168]** The charge was laid in respect of three paragraphs or reports published in that paper under date the 21st and 24th August, 1886, and 30th September, 1886 respectively. The alleged defamatory paragraphs purported to be extracts from other newspapers, called the *Poona Observer* and the *Dekkan Herald*, which contained reports of certain criminal proceedings instituted against Howard at Poona.

The Magistrate, after examining the complainant, dismissed the complaint, under s. 203 of the Code of Criminal Procedure (Act X of 1882). Being of opinion that until the *Poona Observer* and the *Dekkan Herald* had been prosecuted and convicted of defamation in respect of the original reports which were alleged to be defamatory, no charge of defamation would lie against the *Advocate of India* for merely reproducing the reports already published by the Poona newspapers. He also held that the complaint was one of a frivolous and vexatious character, intended to insult and annoy the owners and staff of a newspaper, with the management of which the complainant was at enmity.

Against this order of dismissal, Howard made the present application to the High Court, under s. 435 of Act X of 1882.

The Court (WEST and BIRDWOOD, JJ,) sent for the record and proceedings of the case and after hearing the applicant in support of his application made the following order :—

ORDER.

WEST, J.—It appears from the decision of the Magistrate in disposing of the case, though the matter is not brought out with absolute clearness, that he was under the impression that when a previous publication of the alleged defamatory matter had occurred, the subsequent republication could not properly be made the subject of prosecution until that course had been taken with regard to the earlier publication. This, however, is not law. The Indian Penal Code makes no exception in favour of a second or third publication as compared with a first; and such an exception would obviously be made a means of defeating the principal provision of the law of defamation. In England it is not allowed to a defendant to prove that a statement, similar to the one for which he is indicted, has been previously published by **[169]** persons who have not been prosecuted (see *Reg* v. *Hole* (1); and the repetition of a common rumour, however prevalent, is not received as an excuse for its futher promulgation (*Waithman* v. *Weaver* (2); nor, according to the English law, is the recovery of damages against one journal accepted even as mitigation in an action against another journal for a repetition of the libel (*Reg.* v. *Kerr* (3)). It will be necessary, and we direct the Chief Presidency Magistrate to resume the consideration of the complaint in this case, directing his attention to the particulars thereof with reference to

(1) 8 Cox C. C. 411. (2) 11 price, 257, *note*. (3) 8 C. & P. 177.

1887
AUG. 25.
REVISIONAL CRIMINAL.
12 B. 167.

the principles we have indicated, and he will thereon give his decision on the complaint with regard to the following points :—1, the veracity and good faith of the complaint; 2, the legal responsibility of the persons accused, and each of them ; 3, as to the fact of publication ; and, 4, with regard to the nature of the publication as penally defamatory or otherwise. The order of the Magistrate dismissing the complaint is reversed, in order that he may proceed in the course we have thus prescribed.

*Order reversed.*

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**12 B. 169.**

## APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nanabhai Haridas.*

MOHANLAL RAICHAND (*Plaintiff*) *v.* VIRA PUNJA AND OTHERS (*Defendants*).* [1st September, 1887.]

*Jurisdiction—Civil Procedure Code (Act XIV of* 1882), *s.* 15.

The plaintiff, who was a money-lender residing within the limits of the Ahmedabad Cantonment, sued the defendants, who resided within the jurisdiction of the City Small Cause Court at the same place, upon a bond executed by them at the cantonment. He presented his plaint to the Cantonment Magistrate, whose pecuniary jurisdiction extended to Rs. 200 only; but that officer, being of opinion that the suit was cognizable by the City Small Cause Court, returned it to the plaintiff, who subsequently presented it to the Judge of the City Small Cause Court, whose pecuniary jurisdiction extended to Rs. 500. On reference by him to the High Court,

[170] *Held* that both the Courts had jurisdiction to try the suit, but that the Court of the Cantonment Magistrate was to be regarded as the Court of lower grade, and, therefore, under s. 15 of the Civil Procedure Code (Act XIV of 1882), was the proper Court to try the suit.

*Dwarkanath Dutt* v. *Bhathu Hawoldar* (1)referred to and followed.

[F., 16 B. 702 (704).]

THIS was a reference by Khan Bahadur Navroji Dorubji, Acting Judge of the Court of Small Causes at Ahmedabad, under s. 617 of the Civil Procedure Code (Act XIV of 1882). It was as follows :—

" The plaintiff in this case sought to recover from the defendants the sum of Rs. 108, due on a bond dated 30th December; 1884. The plaintiff is a money-lender residing within the limits of the Ahmedabad Cantonment and it is stated in the plaint that the defendants executed the bond at the cantonment, where the cause of action, therefore, arose. The defendants, however, are residents of Mauje Naroda, in Daskroi Taluka, within the jurisdiction of the City Small Cause Court.

" The plaintiff at first brought the plaint to be presented to the City Small Cause Court, but on learning that the Cantonment Magistrate also had jurisdiction, he presented the plaint there with an application to have it filed in that Court. The Cantonment Magistrate, however, returned the plaint with an endorsement on the plaintiff's application that, according to s. 8 of Act XI of 1865, the plaint should be filed in the City Small Cause Court. On the plaintiffs' presenting his plaint to the City Small

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* Civil Reference No. 31 of 1887.

(1) 21 W.R. C. R. 457.