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redemption suit No. 1107 of 1877, on the ground that it is the practice of the English Court of Chancery to enlarge the time for payment of the mortgage-debt; that such a practice is recognised by the Transfer of Property Act; and that there were sufficient grounds alleged for exercising the power of enlargement. As to the practice of the Court of Chancery, it would appear from the judgment in *Novosielski* v. *Wakefield* (1) that, under special circumstances, the Court will enlarge the time given in a redemption decree, but the question here is whether the Court executing the decree has the power to do so. **[109]** The proviso to s. 93 of the above Act empowers the Court to postpone the day fixed in a redemption suit under s. 92, as to which it may be a question whether this proviso would apply to a case like the present where the application is for execution of the decree, and the day has already expired. But it is sufficient to say in the present case that the Act has not been extended to this Presidency, and that the Court executing the decree has no power to alter the language of the decree, which it would virtually do if it enlarged the time mentioned in it by accepting the Rs. 649-11-0 paid into Court on the 12th October, 1886. See the directions of this Court in *Sakwar* v. *Mukund Babajishet* (2). We may also add that, in our opinion, even if the Court had the power to enlarge in the course of execution, the mere fact that the plaintiffs had lodged an appeal would afford no special ground for enlarging the time. We must, therefore, discharge the order of the Court below, and reject the *darkhast*, with costs throughout on plaintiffs.

Order discharged.

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CRIMINAL REFERENCE.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

QUEEN-EMPRESS *v.* RACHAPPA AND QUEEN-EMPRESS *v.* IRAPPA.*

[5th July, 1888.]

Sanction to prosecute—Revocation of—Distinction between a sanction granted to a private person and a complaint by a Court—Criminal Procedure Code (Act X of 1882), ss. 195 and 476.

Section 195 of the Criminal Procedure Code (Act X of 1882) distinguishes between the sanction granted by a Court to a prosecution by a private individual and a complaint made by the Court itself. A superior Court to which such Court is subordinate may revoke the sanction granted in the former case to the private prosecution, but it has no power in the latter case to set aside a complaint duly made by a subordinate Court.

Ishri Prasad v. *Sham Lal* (3), *Queen* v. *Baijoo Lall* (4) and *Gyan Chunder Roy* v. *Protab Chunder Doss* (5) referred to.

[Diss., 16 A. 80=14 A.W.N. 9; 26 B. 785; 20 C. 349 (350); 21 M. 124 (F.B.)=2 Weir 124; 18 P.R. 1902 (Cr.)=78 P.L.R. 1902; **F.**, 13 M. 144; **R.**, 26 A 249 (259)=24 A.W.N. 15; 32 B. 184=10 Bom. L.R 28 (36)=7 Cr. L.J. 35=3 M.L.T. 116; 17 C.L.J. 245 (251)=17 C.W.N. 647=14 Cr. L.J. 197=19 Ind. Cas. 197; 9 C.P.L.R. 27 (28) (Cr); 23 P.R. 1901 (Cr); 30 P.R. 1905. (Cr), =105 P.L.R. 1905; Rat. Un. Cr. Cas. 587; Rat Un. Cr. Cas. 701 (703); Rat. Un. Cr. Cas. 895 (899).]

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* Criminal Reference, No. 129 of 1887.

(1) 17 Vesey. 417.
(2) Printed Judgments for 1887, p. 324.
(3) 7 A. 871.
(4) 1 C. 450.
(5) 7 C. 208.

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[110] THIS was a reference under s. 438 of the Criminal Procedure Code (Act X of 1882) by J. K. Spence, District Magistrate, Dharwar.

On the 4th December, 1886, the Subordinate Judge of Hubli granted a sanction for the prosecution of one Rachappa bin Gurshidappa under ss. 193, 210 and 511 of the Indian Penal Code, and sent the case for inquiry and trial to the First Class Magistrate under s. 476 of the Code of Criminal Procedure. The sanction was revoked by the District Judge of Dharwar on 27th January, 1887.

In another case the First Class Magistrate of Hubli accorded sanction to the trial of one Irappa bin Margappa under s. 211 of the Indian Penal Code. He did not send the case for inquiry and trial to another Magistrate, as contemplated by s. 476 of the Code of Criminal Procedure. But the District Magistrate appears to have sent the case for trial to a First Class Magistrate, and while the trial was proceeding the Sessions Judge revoked the sanction on the 12th September, 1887.

In both these cases the sanction was granted and revoked under the powers conferred by s. 195 of the Code of Criminal Procedure.

The question referred to the High Court by the District Magistrate was—whether the District Judge in the one case and the Sessions Judge in the other had authority to revoke the sanction.

The High Court issued notices to the accused in both cases to show cause why the orders revoking the sanction should not be set aside.

Rav Saheb *V. N. Mandlik*, for the Crown.—In Rachappa's case the Subordinate Judge granted the sanction and sent the case under s. 476 of the Code of Criminal Procedure to a Magistrate for inquiry and trial. The sanction amounts, therefore, to a complaint by a Court, and as such cannot be revoked. When a case is sent to a Magistrate under s. 476, he is bound to proceed according to law. There is a distinction between a sanction given to a private person and a sanction amounting to a complaint [111] by the Court. In the latter case the sanction is irrevocable by a superior Court. Refers to *Queen* v. *Baijoo Lall* (1); *Ishri Prasad* v. *Sham Lall* (2).

P. M. Mehta (with him *N. G. Chandavarkar*), for accused Rachappa.—Sections 195 and 476 of Act X of 1882 are to be read together. Section 476 lays down the procedure to be followed by a Court when complaining under s. 195. A sanction may be followed by a complaint either of a private individual or of a Court. If a complaint be made by a private person, it is admitted that the sanction is revocable. Why should it not be revocable when a complaint is made by a Court? No reason is shown why the same principle should not apply to both cases. The Legislature do not appear to make any distinction between the two cases. The words "sanction" and "complaint" are not used in opposition to each other in s. 195. I contend that they are synonymous terms. A complaint implies a sanction already given, and renders any further sanction unnecessary. Whether the complaint is made by a Court or by a private person, in either case the necessary sanction exists. The two cases should be dealt with on the same principles. Refers to *Reg*, v. *Ganu* (3) and *Reg.* v. *Mahomed Khan* (4).

Shamrav Vithal, for accused Irappa, was not called on.

BIRDWOOD, J.—The District Magistrate has referred two cases to us—(1) *Imperatrix* v. *Rachappa* and (2) *Imperatrix* v. *Irappa*, which do

(1) 1 C. 450. (2) 7 A. 871. (3) 5 B.H.C.R. Cr. Ca. 38.
(4) 6 B.H.C.R. Cr. Ca. 54.

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not stand on the same footing, but which we can conveniently dispose of together. In both cases sanction was given for the prosecution of the accused under s. 195, cl. (*b*), of the Code of Criminal Procedure. Rachappa's prosecution was sanctioned by the Subordinate Judge of Hubli, who after granting the sanction sent the case to the First Class Magistrate of Hubli for enquiry and trial under s. 476 of the Code. Irappa's prosecution was sanctioned by the Magistrate (First Class) of Hubli, who does not seem to have sent the case to any other Magistrate for enquiry and trial, as contemplated in s. 476. The District **[112]** Magistrate seems to have ordered the First Class Magistrate subordinate to him to try the case against Irappa; but we cannot find that any such procedure as is prescribed by s. 476 was adopted in this case. In both cases the District Judge of Dharwar revoked the sanction granted. We see no reason for interfering with his order in Irappa's case, as we take it to have been simply an order revoking a sanction granted by a Subordinate Court. No question has been raised as to the District Judge's jurisdiction to make an order of this kind. Indeed, it is an order which he is clearly empowered by s. 195 to make; and no application has been made to us by any party aggrieved by it for its reversal. Section 195 of the Code distinguishes between a "sanction" granted by a Court for a prosecution and a "complaint" made by a Court. A Court may either grant a sanction to a private person, or, whether it grants a formal sanction or not, it may itself adopt the procedure laid down in s. 476. If it grants a sanction and merely sends the accused to a Magistrate, it does not comply with the requirements of s. 476. But if it makes such enquiry as may be necessary under that section and then sends the case to the nearest Magistrate of the First Class for enquiry and trial, or, if the Court to which it is subordinate adopts that procedure, then such action amounts to the making of a complaint such as is contemplated in s. 195, as distinguished from a complaint made by a private person to whom a sanction has been granted under the section.—See I. L. R., 7 All., 871. The distinction is recognized in the *Queen* v. *Baijoo Lall*(1) and in *Gyan Chunder Roy* v. *Protap Chunder Doss* (2). Though a superior Court can revoke a sanction granted by a subordinate Court, no power is given to it to set aside a complaint duly made by a subordinate Court. We think it was the clear intention of the Legislature that when a Court finds it necessary to take proceedings in the nature of a complaint, it should be as free to do so as any private individual who has occasion to put the Criminal Courts in motion against an accused person, and that no superior Court should have the power to nullify any proceeding by way of complaint duly taken by a Court according to law. On receiving **[113]** a case duly sent to him by a Court under s. 476 of the Code, a Magistrate is bound to proceed with the case according to law. The Court to which the Court making the complaint is subordinate has no power to stop the enquiry (*Reg.* v. *Amruta Nathu*(3)); though of course the Magistrate can discharge the accused if the evidence does not warrant a commitment (*Reg.* v. *Pandurang Myral*(4)). We, therefore, reverse the order of the District Judge in the case of Rachappa as made without jurisdiction.

PARSONS, J.—I concur. It is plain that s. 195 of the Code of Criminal Procedure, 1882, makes a great distinction between the sanction

(1) 1 C. 450.
(2) 7 C. 208.
(3) 7 B.H.C.R. Cr. Ca. 29.
(4) 5 B.H.C.R. Cr. Ca. 41.

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and the complaint of a public servant or Court—a distinction that has already been pointed out in the case of *Gyan Chunder Roy* v. *Protap Chunder Doss*(1). A sanction is a document to be drawn up and given to a private individual in order that he may file it with the complaint he makes to the Magistrate, and so enable the Magistrate to take cognizance of the complaint. It is to such a document only that the after clauses of s. 195 profess to apply, and to that application alone they must be confined. A complaint, on the other hand, is an allegation made to a Magistrate with a view to his taking action under the Code, that some person has committed an offence (s. 4 (*a*)).

Under s. 195 a Magistrate can take cognizance of a complaint if made by a public servant or by a Court. Either, therefore, can make a complaint, although a Court is at liberty, if it chooses, to proceed instead in accordance with the provisions of s. 476. When once, however, such a complaint is made, s. 195 does not give to any other Court the power of revoking that complaint, still less can the section be construed as conferring upon a superior Court the power to interfere when a subordinate Court has sent a case for enquiry or trial to a Magistrate under the provisions of s. 476. The provisions of s. 195 relating to the revocation or grant of a sanction given or refused by a subordinate Court can, in my opinion, refer only to a sanction, and cannot apply to a complaint. I am supported **[114]** in this opinion by a decision of the Full Bench of the Allahabad High Court in the case of *Ishri Prasad* v. *Sham Lall* (2), where it was held that the proviso in the section that the sanction shall not remain in force for more than six months did not apply to a complaint. If that provision does not apply, it follows that no other similar provision applies to a complaint, and I am of opinion that this is so. Applying, then, this principle to the cases referred to us, I find that the Sessions Judge had power to interfere in Irappa's case, as in that case a sanction only was given and no complaint made. I find that he had no power to interfere in Rachappa's case, since a Court under the powers conferred on it by s. 476 had sent that case to a Magistrate.

Order in Rachappa's case set aside.

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13 B. 114.

INSOLVENCY JURISDICTION.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Scott.

IN RE CAWASJI OOKERJI. [27th April, 1888.]

Insolvency—Indian Insolvent Act 21 *and* 22 *Vict., Cap.* 21, *s.* 58*—Jurisdiction—Practice.*

The insolvent filed his petition in December, 1865, and in January, 1866, on his application for his personal discharge under s. 47 he was ordered to be imprisoned. He never applied for his discharge under s. 59 or 60 of the Indian Insolvent Act (Stat. 21 and 22 Vict., cap. 21). When he had completed the term of his imprisonment he left Bombay and went to Morar and ultimately settled at Aligarh in the North-West Provinces. In August, 1886, the Official Assignee was informed that the insolvent was possessed of landed property at Aligarh, and also considerable moveable property. On the 25th August, 1886, the Official Assignee obtained a *rule nisi* calling on the insolvent to show cause why he should not hand over all this property to the Official Assignee for the payment of creditors. On the 10th August, 1887, an order was made by the

(1) 7 C. 208. (2) 7 A. 971.