

1909.

RAGHU-
NATHJI
TARACHAND
•
THE BANK
OF BOMBAY.

minor is not now competent to contract; but I am unable to see how, in a suit like the present, this construction of section 11 can destroy the force of section 247. Though Keshavlal is a minor, and as such not competent to contract, yet for the reasons already given, I think that the liability of his share is a question to be determined by the law of partnership, and it is in the Contract Act that that law is contained.

On these grounds I agree with the learned judge below that the minor's share is liable to the Bank. It is urged that this is a harsh conclusion, but considerations of that nature do not seem to me appropriate in such a case as this where unfortunately either one innocent party or another must suffer for the misconduct of a third.

For these reasons I agree that the decree should be affirmed subject to the slight variation not contested, and that this appeal should be dismissed with costs.

Decree confirmed.

Attorneys for the appellant: Messrs. *Payne & Co.*

Attorneys for the respondents: Messrs. *Crawford, Brown & Co.*

B. N. L.

CRIMINAL REVISION.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

EMPEROR *v.* NAGJI GHELABHAI.*

1909.

July 21.

Criminal Procedure Code (Act V of 1898), sections 195, 478—Sanction to prosecute—Subsequent order to prosecute passed under section 478.

The grant of a sanction to prosecute to a private individual under section 195 of the Criminal Procedure Code, 1898, is no bar to the subsequent institution of proceedings by the Civil Court itself under section 478 of the Code.

Queen-Empress v. Shankar⁽¹⁾, followed.

THIS was an application to revise an order passed by Devdat D., Second Class Magistrate of Pardi.

* Criminal Application for Revision No. 144 of 1909.

(1) (1888) 13 Bom. 384.

The petitioner Nagji Ghelabhai and another preferred a complaint against Khandu Malhari and five others charging them with theft or in the alternative with criminal breach of trust. The Second Class Magistrate of Párdi inquired into the case and discharged the accused under section 253 of the Criminal Procedure Code, 1898.

One of the accused, Khandu Malhari, thereafter applied for sanction to prosecute the complainants under section 195 of the Criminal Procedure Code, 1898. This application was granted.

Another of the accused, Dala Sidhu, also applied for and obtained sanction to prosecute the complainants, for offences under sections 211, 193, 196 and 463 of the Indian Penal Code, 1860.

Some time after this, a clerk in the Second Class Magistrate's Court at Párdi filed an information against the same complainants in the Court of the First Class Magistrate at Bulsár, charging them under sections 182, 211, 193, 195, 196, 465, 471 and 109 of the Indian Penal Code, 1860, with reference to the same matter. The clerk also produced an order sanctioning the prosecution.

The Magistrate entertained the complaint, and put the petitioners on their trial.

The petitioners applied to the High Court.

H. C. Coyajee (with *K. M. Talayarkhan*), for the petitioners:—We submit that the Magistrate having once granted sanction to Khandu Malhari, was not competent to grant any more sanctions to others with reference to the same matter. The Magistrate is not even at liberty to extend the time of a sanction which he has once granted; much less can he give a subsequent sanction to the same or any other man.

G. S. Rao, Acting Government Pleader, for the Crown:—The first sanction here is granted under section 195 of the Criminal Procedure Code, 1898. It does not restrict the Magistrate's power to direct prosecution of the same persons under section 478 of the Code. See *Queen-Empress v. Shankar*⁽¹⁾.

(1) (1888) 13 Bom. 384.

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SCOTT, C. J.:—On the 31st of October 1908 the Second Class Magistrate of Párdi granted sanction to two accused persons in a theft case to prosecute the complainants for the offences mentioned in section 195 of the Criminal Procedure Code. No action was taken upon that sanction, but in the December following a complaint was lodged in the Court of the nearest Magistrate, First Class, by the Kárkun of the Second Class Magistrate of Párdi who stated to the Court that he knew the accused who were the complainants in the theft case and that he had lodged the complaint by order of the Second Class Magistrate, that it was a verbal order, that he was given the sanction order and the papers in the case of the complaint of the accused Nagji Ghelabhai and that he produced the Second Class Magistrate's sanction. Thereupon the accused was arrested and put on his trial.

An application has now been made to us to quash the proceedings on the ground that they have been instituted under an illegal sanction. The argument is that section 195 of the Criminal Procedure Code only contemplates one sanction for prosecution by a private individual, and it does not contemplate a new sanction to a private individual being given, because, that would be an evasion of the proviso to section 195 (6) which in effect provides that the term of a sanction shall not be extended except by the High Court.

The learned Government Pleader, however, has pointed out to us the evidence of the clerk of the Second Class Magistrate to which we have alluded and we think that having regard to that evidence we ought to accept the Government Pleader's argument that the proceedings which are now going on before the First Class Magistrate are proceedings instituted under section 476 by the Court itself.

The Kárkun who instituted those proceedings is an officer of that Court and has no personal interest in prosecuting the accused persons.

It has been held by this Court in the case of *Queen-Empress v. Shankar*⁽¹⁾ that the existence of a previous sanction under section 195 of the Criminal Procedure Code is no bar to the institution of proceedings by the Civil Court itself under section

(1) (1888) 13 Bom. 384.

478 and, we think, that is an authority for the view which we take in this case that the sanction of the 31st October to the private individuals is no bar to the proceedings which are now being taken at the instance of the Second Class Magistrate by his Karkun.

We, therefore, reject the application.

Application rejected.

R. R.

1909.
EMPEROR
NAGJI
GUELABHAI.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

NARSINH AND OTHERS (ORIGINAL DEFENDANTS 1a, 1b AND 1c), APPELLANTS,
v. VAMAN VENKATRAO AND OTHERS (ORIGINAL PLAINTIFFS 1-3 AND
DEFENDANTS 2-5), RESPONDENTS.*

1909.
July 27.

Limitation Act (XV of 1877), sections 22, 28—Civil Procedure Code (Act XIV of 1882), section 31—Civil Procedure Code (Act V of 1908), Order I, Rule 9—Lands attached to vatan—Joint owners—Lease—Lease good till the death of the surviving joint owner—Gordon Settlement of 1864—Suit by representatives of one joint owner to recover possession—Representatives of the other joint owner joined as co-defendants with the representatives of the lessee—Plaintiffs' claim allowed to the extent of their share—Appeal by plaintiffs and co-defendants claiming their share—Limitation—Treatment of co-defendants as co-plaintiffs—Amendment of plaint and decree.

Certain lands attached to a vatan belonged jointly to two brothers V. and D. In the year 1872 the lands were let by V. under a perpetual lease which was attested by D. D. pre-deceased V. In the year 1905 within twelve years from the death of V., his representatives brought a suit for the recovery of the lands let by V. They sought to recover the entire lands on the ground of eldership. The suit was brought against defendants 1a, 1b and 1c as the heirs of the mortgagee of the lessee (the original 1st defendant), against defendants 2 and 3 as the heirs of the lessee and against defendants 4 and 5 as the heirs of D. The heirs of defendant 1 and defendants 2 and 3 defended the suit on the ground, *inter alia*, of limitation, the suit not having been brought within twelve years from the date of the lease. Defendants 4 and 5 did not contest the plaintiffs' claim. The first Court allowed the plaintiffs' claim to the extent of their share, namely, a moiety on the ground that their claim to that extent

* Second Appeal No. 248 of 1908.