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the Courts below. No further question, this being so, need be dealt with.

Their Lordships will humbly advise His Majesty that the appeal should be dismissed, and that the appellants will pay the costs.

Solicitors for the appellants: Messrs. *T. L. Wilson & Co.*

Solicitors for the first and second respondents: Messrs. *Ranken Ford, Ford & Chester.*

Appeal dismissed.

J. V. W.

CRIMINAL REFERENCE.

Before Mr. Justice Heaton and Mr. Justice Shah.

EMPEROR v. NARAYAN GANPAYA HAVNIK.*

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August 10.

Criminal Procedure Code (Act V of 1898), section 195 (1) (c)—Sanction to prosecute—Mamlatdar's Court—Enquiry into Record of Rights—Mamlatdar's Court is Revenue Court—Land Revenue Code (Bombay Act V of 1879), Chapter XII.

A Mamlatdar holding an enquiry relating to Record of Rights, under Chapter XII of the Land Revenue Code (Bombay Act V of 1879), is a Revenue Court within the meaning of section 195 (1) (c) of the Criminal Procedure Code (Act V of 1898).

THIS was a reference made by V. M. Ferrers, Sessions Judge of Kanara.

The facts were as follows. The accused claiming under a document purporting to be the will of one Bidre Tamanna, applied to the Mamlatdar praying that

* Criminal Reference No. 47 of 1914.

certain entries should be made in the Record of Rights, as provided in the will which he produced before the Mamlatdar. The Mamlatdar made the inquiry under Chapter XII of the Bombay Land Revenue Code (Bombay Act V of 1879), came to the conclusion that the will was a suspicious document, and declined to make any mutations in the Record of Rights.

The Sub-Divisional Magistrate then took up the case under section 190, clause (c) of the Criminal Procedure Code, and having come to the conclusion that the will was forged, committed the accused to take his trial before the Court of Session.

The Sessions Judge being of opinion that the commitment was illegal, referred the case to the High Court for quashing the order of commitment, on the following grounds :—

It is provided by section 195, Criminal Procedure Code, that " No Court shall take cognizance of any offence described in section 463...when such offence has been committed by a party to any proceeding in any Court...except with the previous sanction or on the complaint of such Court."

Now it is not disputed by the learned Public Prosecutor that the offence, which he alleges, comes within this definition, and that the Court in which it was committed was the Court of the Assistant Collector. It is presumed that the enquiry which that officer was conducting was of such a nature that his office is to be deemed a Civil Court in accordance with section 196 of the Bombay Land Revenue Code.

The Court therefore whose sanction or complaint is required is the Court of the Assistant Collector.

Now there is nothing on the record which purports to be a sanction or complaint by that officer. The Sub-Divisional Magistrate has taken up the case on his knowledge or suspicion. The point which requires decision is one of a very technical kind ; but, in point of law, the defence appears to be right in contending that this Court cannot take cognizance of this case.

The Sub-Divisional Magistrate was certainly not acting upon the complaint of the Assistant Collector's Court. He expressly states that he was not acting upon complaint.

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Nor does it appear that he had the sanction of that Court before he took cognizance of the case. The very paper on which the Public Prosecutor relies is in itself the act of a Magistrate's Court; and such a Court could not in such a case as this pass such an order without antecedent sanction.

It does not appear that because a Magistrate happens also to be a revenue officer, he is dispensed from the restrictions of section 195: or that he can, in his Magisterial capacity, take cognizance without sanction or complaint of an offence committed in the Revenue Court in which also he happens to preside.

The obstacle thus thrown in the way of this Court being of a purely formal kind search was made in section 537 for an outlet. That section applies however exclusively to proceedings in confirmation, revision or appeal. Trial by Court of Session is neither confirmation, revision nor appeal.

The contention that there is in this case neither the complaint nor the sanction of the Assistant Collector's Court, and that therefore the order made in the Sub-Divisional Magistrate's Court on 26-2-1914 and the subsequent proceedings are without jurisdiction, appears to be in accordance with the letter of the law.

If the Court of the Assistant Collector and the Court of the Sub-Divisional Magistrate are regarded as one and the same, the case should have been sent elsewhere for trial in accordance with section 476.

But if there be two distinct Courts, then the Court of the Sub-Divisional Magistrate has no jurisdiction until the Court of Assistant Collector has made or sanctioned a complaint.

The reference was heard.

T. R. Desai, for the accused:—The Sub-Divisional Magistrate who committed the case had no authority to take cognizance in absence of a sanction by the Mamlatdar. The Mamlatdar who held the inquiry under Chapter XII of the Land Revenue Code (Bombay Act V of 1879) was a "Court" within the meaning of that term as used in section 195 of the Criminal Procedure Code. The term "Court" has been given a wide interpretation. See *Queen-Empress v. Munda Shetti*⁽¹⁾; *Raghoobuns Sahoy v. Kokil Singh*⁽²⁾ and *In re Punamchand Maneklal*⁽³⁾.

(1) (1900) 24 Mad. 121.

(2) (1890) 17 Cal. 872.

(3) (1914) 38 Bom. 642.

S. S. Patkar, Government Pleader, for the Crown :—
The Mamlatdar proceeded under section 196 of the Land Revenue Code. He was not a Civil Court; nor was he a Revenue Court. The case came to the notice of the Sub-Divisional Magistrate Mr. Maxwell as Assistant Collector and he was entitled to complain to his Court as a First Class Magistrate.

HEATON, J. :—The Sessions Judge of Kanara has referred to us a case, which has been committed to him, on the ground that the commitment was illegal and ought to be quashed.

What had happened is this: after the death of a certain person, another person put forward a will which, he said, had been made by the deceased, and in virtue of this will he claimed a change in the entries in the Record of Rights. This claim became a disputed claim which, under rules made by the Government, had to be enquired into by the Mamlatdar. The Mamlatdar made his enquiry: he saw the will produced before him. He came to the conclusion that there was grave suspicion attaching to the will and he declined to recognize it as a basis for any change in the Record of Rights. Eventually the case was taken up by a Sub-Divisional Magistrate, under clause (c) of section 190 of the Criminal Procedure Code, and was inquired into by him as a Magistrate and finally was committed to the Court of Session. As I mention his proceedings, I would like to say this: that they have been conducted in the most painstaking and thorough way and the mistake which has occurred is one which, at any rate, casts no reflection whatever on the manner in which he conducts magisterial work. The mistake is this: if the Mamlatdar in making his enquiry was a "Court" within the meaning of that word as used in clause (c) of section 195, then a sanction or complaint was required as provided by section 195, before this case could proceed. We have

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come to the conclusion that the Mamlatdar in making this enquiry was a "Court". I should describe him as a "Revenue Court" but it matters very little whether you describe him in that way or as a "Civil Court". The judicial result is precisely the same in a matter of this kind. I say that he was a "Court" for these reasons: he had power to summon witnesses, to take evidence, although it may be not to administer an oath, to consider the evidence and to make a final order which might be, as in this case, an order of great importance and would be final unless changed by his superior on revision or appeal until there had been a decision of a Civil Court which conflicted with it. It seems to me that there are all the ingredients required for a Court, in these matters that I have stated. Therefore, I think that a sanction was necessary in this case. But I think it is more than a merely technical defect that there is not a sanction and for this reason. Supposing that a person aggrieved had applied to the Mamlatdar for sanction and supposing the Mamlatdar had, as he properly ought to do, called on these accused persons to show cause why sanction should not be given, and supposing then that they said "sanction should not be given because we are about to apply for probate of this will": if that were their reply, then I say it would be a monstrous thing for a Court forthwith to give the sanction. It might say "I will allow you a month or two months" or whatever period might be reasonable within which to apply for probate "and if within that time you have not applied, then I shall grant a sanction." That view of the case shows, I think, very clearly that in a matter of this kind where there has been no inquiry into the genuineness of the will by a Court of Probate or by a Civil Court, the conducting of a prosecution without a sanction amounts to very much more than a mere technical defect.

We think that the proper order for us to make in this case is to quash the order of commitment and the whole of the proceedings before the Magistrate. And if it is determined, that this prosecution should take place, it must take place with that foundation and beginning which the law requires.

SHAH, J. :—I am of the same opinion. The inquiry made by the Mamlatdar in this case was one which he was legally empowered to make under the rules relating to the Record of Rights. In conducting the enquiry he could exercise the powers referred to in Chapter XII—particularly in sections 189 and 197—of the Land Revenue Code. He summoned the party interested and recorded evidence before making his order relating to the disputed entry in the Record of Rights. Section 196 of the Land Revenue Code has no application to this inquiry as it is neither formal nor summary under the Act. It may be, therefore, that the Mamlatdar cannot be deemed a Civil Court for the purposes of the inquiry. But I feel clear that the Mamlatdar holding an inquiry as provided in Chapter XII of the Land Revenue Code is a Revenue Court within the meaning of section 195, subsection (1), clause (c) of the Criminal Procedure Code. As the offence in question is in respect of a document produced before the Mamlatdar in the inquiry made by him, and as there is no sanction or complaint of the Mamlatdar or of any other Revenue Court to which he is subordinate, it is clear that the Magistrate had no jurisdiction to take cognizance of the offence.

Order set aside.

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