But if we go beyond this, if we say not only that the decision shall not be proved for the purpose of establishing the plaintiff's claim, but also that it shall not be proved even for the purpose of showing that the Collector acknowledged the claim; then I think we should be going right outside the intention and purpose of the section as a whole. That is why I think this decision can be proved as an acknowledgment, because I think not only does the section as a whole, having regard to its purpose and intention, not prohibit such a thing, but all that it does prohibit is the use of the decision for the purpose of substantiating and establishing the plaintiff's claim. I agree to the order proposed.

Decree amended.

J. G. R.

APPELLATE CRIMINAL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Heaton.

In re SIKANDARKHAN MAHOMEDKHAN.*

1920.

January 15.

Criminal Procedure Code (Act V of 1898), section 195 (6)—Sanction to prosecute—Refusal of sanction by First Class Magistrate—Additional Sessions Judge can grant it on appeal—Jurisdiction.

Under section 195, clause 6 of the Criminal Procedure Code, 1898, an Additional Sessions Judge has jurisdiction to hear an application or an appeal from an order passed by a First Class Magistrate refusing or granting sanction.

THIS was an appeal from an order passed by K. B. Wassoodew, Additional Sessions Judge at Ahmedabad, granting sanction to prosecute on appeal from an order passed by D. M. Kothawalla, First Class Magistrate at Ahmedabad, refusing to grant sanction to prosecute.

* Criminal Appeal No. 709 of 1919.

1920.

SIKANDAR KHAN, *In re.*

The applicant had filed a complaint of the offence of hurt against the accused Joseph Jan Mahamed in the Court of First Class Magistrate at Ahmedabad. The Magistrate dismissed the complaint.

The accused then applied to the Magistrate for sanction to prosecute the applicant for making a false charge. The Magistrate declined to grant the sanction.

The accused next appealed against the order. The appeal was heard by the Additional Sessions Judge of Ahmedabad, who granted the sanction.

The complainant appealed to the High Court.

G. N. Thakor, for the complainant :—The Additional Sessions Judge has neither power nor jurisdiction to grant in appeal sanction under section 195, Criminal Procedure Code, when it was refused by the First Class Magistrate. Under section 9 of the Criminal Procedure Code, only the appointment of a Sessions Judge is contemplated as constituting the Sessions Court, and it follows that any power exercised under clause (6) of section 195 of the Criminal Procedure Code, can be so exercised only by the Sessions Court or the High Court, to whom alone an appeal from the Magistrate ordinarily lies. I rely on *In re Musa Asmal*[1], according to which, the powers of even a Joint Sessions Judge to hear appeals or exercise revisional jurisdiction are limited. There is nothing to show that a general or special power was delegated to the Judge of the lower Court to hear such appeals, as the theory of the Criminal Procedure Code contemplates that only the Sessions Judge constitutes the Sessions Court. Sections 409 and 438 (2) of the present Code of Criminal Procedure do not alter the position of the Additional Sessions Judge, as we find it in the old Code.

(1) (1884) 9 Bom. 164

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D. G. Dalvi, for the accused, not called upon.

MACLEOD, C. J. :—The petitioner has appealed from an order of the Additional Sessions Judge reversing an order of the First Class Magistrate, who refused to give sanction to prosecute the petitioner. A rule was granted on the petitioner's application of the 16th October 1919, and, therefore, it seems it was treated by the learned Judges who granted the Rule as an application in revision. The petitioner charged the accused with causing hurt with a dangerous weapon. The accused was acquitted; and the trying Judge expressed the opinion that if the Police applied for sanction to prosecute the petitioner he would have granted it. The police did not apply. The First Class Magistrate appears to have thought that he was prevented from giving sanction, because he had previously said that he would only give sanction if an application was made by the Police. The fact remains that it is evident from his judgment in the assault case, that he thought that it was a case in which sanction ought to be given.

The Additional Sessions Judge has granted sanction to prosecute the petitioner. It has been argued before us that he had no jurisdiction to make the order. Section 195 of the Criminal Procedure Code deals with sanctions for prosecutions for certain offences, and under sub-section (6) any sanction given or refused under this section may be revoked or granted by any authority to which the authority giving or refusing it is subordinate; and under sub-section (7) for the purposes of this section every Court shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie. Clearly the First Class Magistrate was subordinate to the Sessions Court. An appeal would lie ordinarily to the Sessions Court. Section 409 especially provides that an appeal to the Court of Session

1920.

SIKANDAR-KHAN, *In re.*

or Sessions Judge shall be heard by the Sessions Judge or by an Additional Sessions Judge. Therefore it is difficult to see how it can be said that an appeal would not ordinarily lie and could not be heard by the Additional Sessions Judge. Under section 193 (2) Additional Sessions Judges and Assistant Sessions Judges shall try such cases only as the Local Government by general or special order may direct them to try. It has not been contended that there has been no general order by the Local Government empowering the Additional Sessions Judge in this case to try ordinary cases and appeals, such as are intended by section 409. Otherwise the Additional Sessions Judge would have no power to try any case at all. Once we come to the conclusion that the Additional Sessions Judge would ordinarily have jurisdiction to hear appeals from the First Class Magistrate, then it seems to follow from section 195 that the Additional Sessions Judge would have jurisdiction to hear an application or an appeal from the First Class Magistrate refusing to give sanction. Therefore, in my opinion, the Additional Sessions Judge had jurisdiction to give sanction, reversing the order of the First Class Magistrate, and I see no reason to interfere with the conclusion he came to. The rule is discharged.

HEATON, J. :—I concur the in order proposed; and I will add a few words on the question of jurisdiction. As I understand the Code, when an Additional Sessions Judge is appointed under section 9 of the Code, he is appointed to exercise the jurisdiction of the Court of Session. So far as section 9 taken by itself makes it clear, or enables us to understand matters, an Additional Sessions Judge and even an Assistant Sessions Judge has all the powers of a Sessions Judge, and if we confine our attention to section 9, he is a Sessions Judge. But thereafter the Code proceeds to limit in

certain particulars the powers both of Additional and of Assistant Sessions Judges. It does so, for instance, in section 31 in the matter of the sentences which an Assistant Sessions Judge can impose. It does so in section 193 in the matter of the trial of cases. It does so in section 409 in the matter of power to hear appeals. An Additional Sessions Judge has power to hear appeals, an Assistant Sessions Judge has not. But the theory of the Code to my thinking is quite clear. The Additional Sessions Judge has those powers of the Court of Session which he is not by some specific provision of the Code prohibited from exercising. He is certainly not prohibited from exercising the power to hear an appeal or an application, whichever you call it, against an order of sanction, or refusal to grant sanction, made by a lower Court. It seems to me, therefore, that it is not made out that the Additional Sessions Judge acted without jurisdiction. There is no other reason of importance why his order should be interfered with.

Appeal dismissed.

R. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Heaton.

NILKANTH BHIMAJI SHINDE (ORIGINAL PLAINTIFF), APPELLANT *v.* HANMANT EKNATH SHINDE AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.[*]

1920. *January* 20.

Indian Registration Act (XVI of 1908), sections 17 and 49—Partition—Unregistered receipts acknowledging acceptance of shares—Receipts relied on to prove fact of partition—Admissibility of receipts.

The plaintiff claimed to be entitled to certain property alleging that the same was allotted to his share on a partition between himself and his brothers.

[*] Second Appeal No. 682 of 1918.