special Judge, was erroneous, and that neither of them had any jurisdiction to determine this particular matter. Incidentally, I may say that no objection to the jurisdiction under S. 5 was ever taken by the appellant either before the taxing officer or before Mr. Justice Crump. It was not until the last decision was given against him that this point was raised. If, then according to the appellant, the procedure under S. 5 was erroneous, it is difficult to see what right of appeal there can be to this Court. As pointed out by their Lordships of the Privy Council in *Rangoon Botatoung Co. Ld.* v. *Collector of Rangoon* (7) p. 27 :

> An appeal does not exist in the nature of things. A right of appeal from any decision of any tribunal must be given by express enactment.

Their Lordships were here citing what Lord Bramwell observed in the case of the *Sandback Charity Trustees* v. *North Staffordshire Railway Company* (8).

Nor if we turn to S. 15 of the Letters Patent, would any appeal necessarily lie because the appeal there given is from orders passed in exercise of the original jurisdiction pursuant to S. 13 of the recited Act. And when one turns to the corresponding section in the Government of India Act, 1915, S. 108 (1) refers to the exercise of the original and appellate jurisdictions vested in the Court. But it may be argued that under S. 5 Court-fees Act the Court is not really exercising its original or appellate jurisdiction and that the Judge there appointed by the Chief Justice is more in the nature of persona designata as in the case of the Chief Judge of the Small Cause Court in certain matters arising under Municipal elections. In these circumstances, and apart from the use of the words "final decision" in S. 5, we should find great difficulty in any event in dealing with the appeal which is presented to us at this stage. In saying this, I do not overlook the provisions of S. 19-1 of the Court-fees Act. But I wish to make it quite clear that Mr. Justice Crump was not sitting as the Testamentary Judge or in exercise of the ordinary testamentary jurisdiction of the High Court. He was sitting on this occasion solely as a Judge specially designated to decide this case under S. 5, Court-fees Act. Consequently, there has been no decision of "the Court," so far as I am aware, under S. 19-1. In these circumstances, I need not pursue this particular point. The result is that this appeal will be dismissed with costs.

D.D. *Appeal dismissed.*

(7) [1912] 40 Cal. 21=16 I. C. 188=39 I. A. 197 (P. C.).

(8) [1877] 3 Q. B. D. 1=26 W. R. 229=47 L.J. Q. B. 10=37 L. T. 391.

A. I. R. 1927 Bombay 647

MADGAVKAR AND PATKAR, JJ.

Nana Khandera Ghadge—Accused—Applicant.

v.

Emperor—Opposite Party.

Cri. Rev. Application No. 17 of 1927, Decided on 28th June 1927.

Criminal P. C., S. 195—Court has power to sanction prosecution for an offence before Commissioner appointed by it.

The commissioner is Subordinate to the Court appointing him and the offence to refuse to take the oath and answer the question put by the commissioner is an offence against the Court itself. [P 648 C 1]

Ambedkar and *K. A. Padhye* — for Applicant.

P. B. Shingne—for the Crown.

Madgavkar, J. — The petitioner Nana Khanderao has been convicted under S. 179, I. P. C., for refusing to answer questions put to him by the commissioner appointed by the Subordinate Judge of Koregaon. The learned Subordinate Judge, under S. 195, Civil P. C., sanctioned his prosecution under S. 179, I. P. C., and he has been convicted, and applies in revision. The single ground taken in revision is that the sanction by the Subordinate Judge is incompetent and should have been by the commissioner. The offence alleged being under S. 179, I. P. C., the sanction would naturally be under S. 195, cl. (a), Civil P. C. The question on the present application is whether the commissioner before whom the alleged offence took place was or was not subordinate to the Subordinate Judge.

It is conceded that the commissioner is a public servant under S. 21, Cl. (4), I. P. C. In the present case, the commissioner to examine accounts was appointed under O. 26, Rs. 11 and 12. He was appointed by the Subordinate Judge : the Subordinate Judge could have terminated his appointment at any time ; his specific duties were laid down with

instructions : and under O. 26, R. 12, Cl. (2), the Subordinate Judge had power to direct further inquiry if he had reason to be dissatisfied with the proceedings and report of the commissioner. It is difficult, in our opinion, to conceive of greater subordination than what is implied by all these acts. Appointment, exercise of power and termination of appointment were all throughout in law subject to the orders and supervision of the Subordinate Judge. Reliance was placed for the petitioner on *Narasimhayya* v. *Venkatasawmi* (1). There, in the judgment, it was observed (p. 586) ;

> The subordination of one public servant to another may arise either from express enactment or from the fact that both public servants belong to the same department, one being superior in rank to the other.

There it was held that a village Munsif in Madras, to whom a theft was reported, was not subordinate to the Sub-Magistrate. The dictum has no application to the facts of the present case. As far as we can judge of the intention of the legislature and in the light of public policy the offence to refuse to take the oath and answer the questions put by the commissioner appointed by the Court is an offence against the Court itself, and the Court perhaps can more appropriately consider the question of sanction rather than the commissioner appointed by it. For the purposes of the present application, however, it is not necessary to consider this question more deeply.

We hold that the commissioner was subordinate to the Subordinate Judge who appointed him and the sanction is, therefore, proper. The application fails and is dismissed.

N.D. *Rule discharged.*

(1) [1908] 18 M. L. J. 584.

A. I. R. 1927 Bombay 648

MADGAVKAR, J.

Ibrahim Fazalbhai and *others*—Plaintiffs.

v.

Jan Mahomed Rahim—Defendant.

O. C. J. Suit No. 1582 of 1926, Decided on 18th July 1927.

Bombay Rent Act (War Restrictions) Act, S. 1, Cl. (a), (ii), 4—Reconstruction of wall and extensive alterations make new premises.

Where a landlord reconstructs the wall which has fallen down and makes extensive alterations, he is entitled to regard them as new premises: *A. I. R.* 1921 *Bom.* 224, *Rel. on.* [P 648 C 2]

Wadia—for Plaintiffs.

Chagla—for Defendant.

Judgment.—(The material portion of the judgment is as follows:) The only question which remains is the question of law, whether in this view of the facts, the premises in suit fell under S. 2, Cl. (a) (ii), Rent Act, and whether the standard rent of these premises was Rs. 225 or whether the plaintiffs are only entitled to come in under S. 4 in respect of the amount they spent. I am of opinion that for the reasons and in the view of the law taken in *Chapsey Umersey* v. *Keshavji Damji* (1) and in the unreported decision of Pratt, J., in *Tricumdas Gordhandas* v. *Narayanlal Bansilal* (2) and English cases such as *Stockham* v. *Easton* (3) and *Marchbank* v. *Campbell* (4), the plaintiffs are entitled to have these premises treated as new premises in respect of which the defendant had no complaint but submitted to have them treated as new premises, as, for the matter of that, did every other tenant as far as record goes with the single exception of one tenant Dr. Moses for a small amount of rent due for the single room. I am of opinion that the two flats occupied as a single flat by the defendant in November 1920 were premises not to be identified with the premises as they stood before the wall fell down and before Fazalbhai made extensive alterations. In other words, the identity of the premises changed. In so holding I desire carefully to guard myself against any judicial decision that a landlord can by a pretence of substantial alterations deprive tenants of the benefit of standard rent. On the contrary, in view of the settled policy of the Rent Act, it is quite clear that the Courts would not lend themselves to any such action but would have to be carefully satisfied that the identity of the new premises has been really altered so as to enable a landlord to do what he did in the present case, evidently without any deliberate act of evicting the old tenant or merely to raise the rent.

N.D. *Suit decreed.*

(1) A. I. R. 1921 Bom. 224=45 Bom. 744.
(2) O. C. J. Suit No. 43 of 1925 decided on 16th April 1925 by Pratt, J.
(3) [1924] 1 K. B. 52.
(4) [1923] 1 K. B. 245.