

*Before the Officiating Chief Justice (Mr. Justice Innes) and
Mr. Justice Buxted.*

PROCEEDINGS, 2ND OCTOBER 1877.

IN THE MATTER OF—

Criminal Procedure Code, Section 473—Construction.

1877.
October 2.

The prohibition in Section 473 of the Criminal Procedure Code (Act X of 1872) is a personal prohibition.

UPON reading a letter from the District Magistrate of the Kistna District, requesting orders as to the meaning of the word "Court" in Section 473 of the Criminal Procedure Code (Act X of 1872), Counsel not appearing, the High Court made the following

RULING:—In this case a charge of using criminal force was preferred against a Police Inspector by a keeper of an arrack shop. The Head Assistant Magistrate, Mr. Sewell, inquired into the case and dismissed the charge as false.

On the application of the Police Inspector permission was granted by Mr. Sewell to the Police Inspector to prosecute the shopkeeper for an offence punishable under Section 211 of the Indian Penal Code. Proceedings were thereupon instituted in the Court of the Head Assistant Magistrate, and Mr. Sewell began to inquire into the case but left before the completion of the trial. Mr. Moore, who succeeded Mr. Sewell, took up the inquiry, and finding that the case was not a case which should be committed to the Court of Session but one triable by a 1st-Class Magistrate he submitted the Proceedings for the orders of the District Magistrate on the ground that the provisions of Section 473 of the Code of Criminal Procedure precluded him from trying an offence committed in contempt of the authority of his own Court. The case has been disposed of by being referred to the Joint Magistrate, but the District Magistrate requests for his future guidance to be informed whether the word "Court" in Section 473 is to be construed as referring to the office or to the person of the Magistrate or Judge before whom an offence of the class described in Section 473 of the Code is committed.

The High Court are of opinion that the prohibition in Section 473 is a personal prohibition, the mischief to be prevented being

1877
October 2.

that the same person should not decide a matter which he may have already prejudged. The definition of the words "Criminal Court" in Section 4 of the Code of Criminal Procedure admits of this construction.

APPELLATE CIVIL.

Before Mr. Justice Kindersley and Mr. Justice Bristow.

1877.
October 12.

VIRARAMUTHI UDAYAN AND ANOTHER v. SINGARAVELU

BY HIS MOTHER AND GUARDIAN SELIAM (1).

Sudra—Illegitimate son—Maintenance.

The illegitimate son of a Sudra, his mother having been a married woman at the time of her forming an adulterous connexion with his father, is entitled to maintenance out of his father's estate.

This was a Special Appeal against the decree of the Subordinate Judge of Tanjore, dated 27th June 1877.

Mr. Gould for the Appellant.

M. Jaggaran Pillai for the Respondent.

The facts sufficiently appear from the following

JUDGMENT:—The question in this case is whether the illegitimate son of a Sudra, his mother having been a married woman at the time of her forming an adulterous connexion with his father, is entitled to maintenance out of his father's estate. It was conceded that the adultery of the mother would be a bar to her son's inheritance; but in the case in which that proposition was laid down by this Court [*Venutichella Chetti v. Parvathammal* (2)] it was thrown out that the plaintiff might be entitled to maintenance out of the estate of his father, though not to a share. It was also intimated in the case of *Yettappti Naicker v. Venkata Subba Yettia* (3) that the right to maintenance followed upon the exclusion from inheritance, and it has been expressly decided by the High Court of Bombay in the case of *Rahi v. Govind Valad*

(1) Special Appeal No. 508 of 1877, against the decree of Arunachella Aiyar Subordinate Judge of Tanjore, dated 27th June 1877, confirming the decree of the District Munsif of Trivellur, dated 8th January 1876.

(2) 8 Mad. H. C. R., 134.

(3) 2 Mad. H. C. R., 293.