

ANNÁJI
v.
RÁMÁ KURUP. money and abandon part of his claim, but sought to declare the whole property liable to sale.

He could not be said to abandon any portion of his claim by stating that he desired to sell this property to liquidate his decree to the extent of Rs. 2,500 only. The only possible decree was that the property was or was not liable to sale.

The Court (*Brandt and Parker, JJ.*) delivered the following

JUDGMENT:—The claim in suit was not in respect of a sum of money, but for a declaration that certain property is liable in execution of a decree already obtained, and the appellant cannot be said to have abandoned a part of his claim when he expressed his willingness to forego proceedings against the property attached by him in excess of the sum of Rs. 2,500.

Being of opinion that it was not open to the District Múnsif to decide the suit in respect of which he had not otherwise jurisdiction, by reason of the appellant's signifying his willingness not to claim anything in excess of Rs 2,500 out of the sum which might be realized by the sale of the property in suit, we upheld the decree of the Lower Appellate Court and dismiss the appeal with costs.

APPELLATE CRIMINAL.

Before Mr. Justice Brandt and Mr. Justice Parker.

*In re VENKATÁCHALA PILLAI AND OTHERS.**

1887.
January 19.

*Criminal Procedure Code, s. 195—Registration Act, s. 41—Sanction of Registrar—
Condition precedent to trial for forgery of will registered.*

A Sub-registrar acting under s. 41 of the Registration Act, 1877, is a "Court" within the meaning of s. 195 of the Code of Criminal Procedure.

CASE referred to the High Court by J. A. Davies, Acting Sessions Judge at Tanjore.

The facts were stated as follows:—

"In this case, five persons have been committed for trial on a charge of forging a will, punishable under s. 489 of the Indian Penal Code.

"The will alleged to be a forgery was duly registered by the Sub-registrar of Máyaveram, under s. 41 of the Registration Act, after satisfying himself that it was genuine.

* Criminal Revision Case 478 of 1886.

“Exception is taken by the prisoners’ vakil to the commitment on the ground that the Sub-registrar acting under s. 41 of the Registration Act is a ‘Court,’ and his sanction to the prosecution is accordingly required before this Court can take cognizance of the offence according to the terms of s. 195, clause (c) of the Code of Criminal Procedure, and that such sanction is wanting in the present case.

“Section 537 of the Code of Criminal Procedure declaring that no finding, sentence or order, &c., shall be reversed or altered for the want of any sanction under s. 195, refers only to proceedings in appeal or revision, or when sentences are submitted for confirmation under Chapter XXVII, and it is therefore inapplicable here. The objection that has been taken appears to have been also raised before the Committing Magistrate, but he has not noticed it. The question for determination simply is whether a Sub-registrar acting under s. 41 of the Registration Act of 1877 is or is not a ‘Court’ within the meaning of clause (c) of s. 195 of the Code of Criminal Procedure.

“There is no definition of the word ‘Court’ in the Code of Criminal Procedure, and it is used ambiguously. In some places it means a personal judicial authority and in others a place. It seems to have this second signification in s. 195 itself, ‘proceeding in any Court;’ and compare s. 352, ‘the place, in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open Court.’ The last clause of s. 4 however provides that ‘all words and expressions used herein and defined in the Indian Penal Code and not hereinbefore defined shall be deemed to have the meaning respectively attributed to them by that Code.’

“But neither in the Penal Code is there any definition of ‘Court’ There is a definition of ‘Court of Justice’ in s. 20, but that term is evidently not synonymous with ‘Court,’ for by illustration (d) of s. 19 giving the definition of Judge which enters into the composition of the definition in s. 20, it is declared that ‘A Magistrate exercising jurisdiction in respect of a charge on which he has power, only to commit for trial to another Court, is not a Judge.’ If the expression ‘another Court’ does not sufficiently imply that such Magistrate is himself a Court, the doubt is set at rest by a reference to s. 6 of the Code of Criminal Procedure which describes all Magistrates as Courts—and it is only

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to them that power is or can be given to commit for trial under s. 206 of the same Code. Therefore though Magistrates when holding preliminary inquiries, are not 'Courts of Justice' they are 'Courts,' and so it follows that the terms are not identical.

"Looking elsewhere for a definition of 'Court' we find none in the General Clauses Act, but we do find one in the Evidence Act of 1872. 'Court' is there defined in s. 3 to include 'all Judges and Magistrates and all persons, except arbitrators, legally authorized to take evidence.' A Sub-registrar is generally so authorized under s. 63 of the Registration Act of 1877, besides a special authorization in ss. 33 and 35. The High Court of Calcutta have accordingly ruled that a Sub-registrar is a Court within the meaning of the Criminal Procedure Code. *Sardhari Lal, in re* (13 B.L.R. Appendix, 40).

"Though this ruling was passed when the Criminal Procedure Code of 1872 was in force and that Code does not contain like the present Code the reference to the Penal Code for definitions yet as the Penal Code is silent in the matter, as I have shown, there is nothing to affect the validity of the ruling.

"As the Evidence Act is an Act of general application, the definition it gives of the word 'Court' should, I think, be taken in the absence of any other definition either in the Code of Criminal Procedure, or in the Penal Code, or in the General Clauses Act, as what the Legislature intended the word should ordinarily signify, when not otherwise defined for the purposes of any particular Act.

"It might be answered that the Legislature clearly did not contemplate Sub-registrars or Registrars as 'Courts' under the Criminal Procedure Code, or they would not have declared they should be deemed as such only in certain instances (*vide* last clause of s. 84 of the Registration Act as modified or impliedly repealed by s. 483 of the Code of Criminal Procedure). But this doubt was considered in the case of Registrars by the Madras High Court in their proceedings, No. 962, dated 12th May 1881 (Weir's Criminal Rulings, pages 399-401), and it was there held that a Registrar was a 'Court' under the Criminal Procedure Code in other cases than those contemplated by the Legislature when framing s. 84 of the Registration Act.

"At any rate I am bound by the Calcutta High Court decision, there being none to the contrary by the Madras High Court, to hold that the Sub-registrar is a 'Court' under the Criminal

Procedure Code, and as such under s. 195, clause (e), his sanction was required for this prosecution.

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“ But it is still further contended that even under the Madras High Court Ruling referred to above a Sub-registrar should be considered a Court when he acts under s. 41 of the Registration Act in respect to the registration of wills presented by third parties. It was held by the High Court in the said proceedings that a Registrar acting under ss. 73, 74 and 75 of the Registration Act was a Judge, and thereby a Court of Justice within the meaning of the Penal Code, and it is now urged that although with respect to an ordinary document, the Sub-registrar is ‘*functus officio*’ as the High Court have said, yet that in regard to wills he has the same powers as the Registrar under ss. 40 and 41 of the Registration Act. In the case of an ordinary document when its genuineness is disputed, the Sub-registrar has no power to proceed further. He is to refuse registration. But, in the case of a will, the Registration Act confers on him extended powers. He can go into evidence and find the document to be genuine or otherwise. His powers in regard to wills do not in any way differ from those of the Registrar. So that if a Registrar is a Judge and a Court when acting under s. 41 of the Act, by analogy of the reasoning that he is a Judge and a Court when acting under ss. 73, 74, and 75, so also is the Sub-registrar. I think there is much force in this argument, and I take it as a second or additional ground for holding that the Sub-registrar when acting as he was in this case under s. 41 of the Registration Act was a ‘Court’ and therefore his sanction was required for the prosecution.

“ I therefore refer this case to the High Court for the purpose of quashing the commitment under s. 215 of the Code of Criminal Procedure.”

Bhāshyam Ayyangār for the accused.

The Acting Government Pleader (Mr. *Powell*) for the Crown.

The judgment of the Court (Brandt and Parker, JJ.) was delivered by

PARKER, J.—We are of opinion that the term “Court” in s. 195 of the Criminal Procedure Code is not restricted to a “Court of Justice” as defined in the Indian Penal Code. Section 6 of the Code of Criminal Procedure clearly contemplates the existence of Courts constituted under other laws, and the Legislature

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has seen fit to use the general expression "Court" in preference to the more restricted description "Court of Justice." A Sub-registrar is legally authorized to take evidence under Part VIII of the Indian Registration Act for the purpose of satisfying himself upon certain points, and he is, therefore, when acting under s. 41, Act III of 1877, a "Court" within the meaning of the Indian Evidence Act. As the document has been given in evidence before him in a proceeding in which the Sub-Registrar had to determine whether the document should, or should not, be registered, it appears to us that his sanction is necessary under s. 195 of the Code of Criminal Procedure before a Court can take cognizance of an offence alleged to have been committed by a party to that proceeding.

The Judge having reported that all the accused were parties to the proceedings the commitment is quashed.

APPELLATE CIVIL—FULL BENCH.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, Mr. Justice Kernan, Mr. Justice Muttusámi Ayyar, Mr. Justice Brandt and Mr. Justice Parker.

1887.

January 18.

REFERENCE UNDER STAMP ACT, s. 49.*

Stamp Act, s. 3, clause 4 (b)—Bond.

A executed a document, by which he promised to pay on demand Rs. 16 to B. The writer of the document signed the document as writer, for the purpose of attesting A's signature :

Held that the document was liable to stamp duty as a bond.

CASE referred under s. 49 of the Indian Stamp Act, 1879, by J. D. Goldingham, District Judge of Bellary.

The case was stated by K. Lakshmana Ráu, District Múnsif of Narain Deverkeri, as follows :—

"In small cause No. 57 of 1886, the plaintiff sues upon an instrument which secures the repayment of Rs. 16. It bears date 21st September 1883 and is payable to the payee. It does not contain the words 'payable to bearer or order.' It bears the signature of its executant, as well as the signature of its

* Referred Case 4 of 1886.