

## APPELLATE CRIMINAL.

Before Sir Charles A. Turner, Kt., Chief Justice, and  
Mr. Justice Hutchins.

QUEEN-EMPRESS

against

SUBBA AND OTHERS.\*

1884.  
August 22.

*Criminal Procedure Code, s. 195—Sanction to prosecute—Registration Act, 1877—  
Act III of 1877, s. 34—Forged document registered by Sub-Registrar.*

A Sub-Registrar acting under s. 34 of the Registration Act, 1877, is not a "Court" within the meaning of s. 195 of the Code of Criminal Procedure.

CASE reported for the orders of the High Court under s. 438 of the Code of Criminal Procedure by the Acting Sessions Judge of Coimbatore.

The case was stated as follows:—

"The complaint was one of forgery under s. 467 of the Indian Penal Code. The document had been duly registered by the Sub-Registrar of Kangayam, but had not been filed in any Civil, Criminal, or Revenue Court. The Acting Joint Magistrate held that he had no jurisdiction to entertain the complaint since sanction had not been granted by the Sub-Registrar under s. 195 of the Code of Criminal Procedure.

"Section 195, clause (c) of the Code of Criminal Procedure, provides that no Court shall take cognizance of such offence without previous sanction, 'when such offence has been committed by a party to any proceedings in any Court in respect of a document given in evidence in such proceedings.' The questions, therefore, are (1) whether the Sub-Registrar is a Court? (2) and whether the document was given in evidence in any proceeding?

"The Acting Joint Magistrate points out that, under the old Procedure Code (Act X of 1872), s. 469, the offence must have been committed in a Civil or Criminal Court, whereas the wording of s. 195 of the present Code 'any Court' is much wider. Taking the definition of the word 'Code' as defined in

\* Criminal Revision Case 362 of 1884.

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s. 3 of the Evidence Act, he holds that the Sub-Registrar is a 'Court,' being a person legally authorized to take evidence.

"In High Court Proceedings of 12th May 1881, No. 962 (*vide* Weir's Criminal Rulings, page 400), it was held that a Registrar acting under ss. 73, 74 and 75 of the Registration Act was a 'Court' within the meaning of s. 469 of the old Criminal Procedure Code, but that the Sub-Registrar was not. The Indian Evidence Act was in force at the date of that ruling, and it must be supposed that the Judges had in view the definition of 'Court' in s. 3 of that Act. The Judges there point out that the Registrar is a Judge, because he determines a question between the parties and the document is given in evidence before him as to its being executed.

"The duties of a registering officer are defined in s. 34 of the Indian Registration Act. Even supposing a Sub-Registrar to be a 'Court' within the meaning of s. 3 of the Evidence Act, I doubt if the document can be said to be 'given in evidence in any proceeding before him.' The Sub-Registrar has only to inquire upon certain points. If execution be denied, he cannot register and has no power to take evidence whether or not the document was really executed, but he may examine witnesses (s. 35) as to the identity of the parties before him, but on no other point. He cannot, therefore, take any evidence with respect to the document itself, and I doubt, therefore, whether the document can be said to be 'given in evidence in a proceeding before him.'

"On these grounds it appears to me that the sanction of the Sub-Registrar was not necessary for the entertainment of the complaint, and as the point is one of importance, I refer the matter for the orders of the High Court."

*Rámá Ráu* for the accused.

The Court (Turner, C.J., and Hutchins, J.) delivered the following

JUDGMENT:—The Sub-Registrar is not a Court.

For certain purpose it has been declared that the term "Judicial proceedings" shall include proceedings before Registering officers, namely, in order to bring those proceedings within the purview of s. 228, Indian Penal Code; and for other similar purposes it has been declared that Registrars are and that Sub-Registrars are not to be deemed a Court, namely, to extend to the Registrar the power of punishing for contempt. These provisions

do not constitute Registering officers "Courts" generally, and, on the other hand, they would be unnecessary if the legislature regarded such officers as "Courts." The Joint Magistrate's order is set aside and he is directed to proceed with the inquiry.

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## 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.*

GOVINDAYYAR (PLAINTIFF No. 2), APPELLANT,

and

DORASÁMI AND OTHERS (DEFENDANTS), RESPONDENTS.\*

1884.  
October 9.  
1887.  
April 29.

*Hindú Law—Adoption among Brahmans—Datta Homam, when it may be dispensed with.*

The ceremony of Datta Homam is not essential to a valid adoption among Brahmans in Southern India, when the adoptive father and son belong to the same gotra. *Singamma v. Ramanuju Charlu*(1) approved and followed. *Shoshinath Ghose v. Krishnasunderi Dasi*(2) considered.

SECOND appeal from the decree of H. Wigram, District Judge of Coimbatore, in Appeal Suit No. 279 of 1883, affirming the decree of T. Ramasámi Ayyangár, District Munsif of Coimbatore, in Original Suit No. 579 of 1882.

This was a suit by the plaintiffs for the recovery of certain lands conveyed to them by defendant No. 4, the widow of one Súlár Subba Ayyar, deceased. Defendant No. 1 contended that he was the heir of the deceased Súlár Subba Ayyar, being his son by adoption. The parties were Brahmans; and defendant No. 1 belonged previously to his adoption to the same gotra as the late Súlár Subba Ayyar.

The Lower Courts found that the adoption of defendant No. 1 was valid, although the ceremony of Datta Homam had not been performed.

The plaintiffs preferred this second appeal.

This second appeal came on for hearing before Collins, C.J., and Kernan, J.; who referred to the Full Bench the question of the validity of the adoption of defendant No. 1.

\* Second Appeal No. 465 of 1884. (1) 4 M.H.C.R., 165. (2) I.L.R., 6 Cal., 381.