

JUDGMENT :—Although the documents are styled releases, we are of opinion that they are really instruments of partition.

REFERENCE  
UNDER STAMP  
ACT, s. 46.

The parties purport to be co-owners of the property and in that capacity agree to divide the property in severalty.

This arrangement falls within the definition of “instrument of partition” in clause 11, s. 3 of the Stamp Act.

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## APPELLATE CRIMINAL.

*Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.*

QUEEN-EMPRESS

v.

SOBHANADRI.\*

1889.  
Feb. 11.

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*Criminal Procedure Code, s. 195—Sanction to prosecute—Registration Act—Act III of 1877, ss. 34, 35, 41—Forged document—Registered by Sub-Registrar.*

A mortgagor was charged with making a fraudulent alteration in his mortgage-deed which was then registered by a Sub-Registrar :

*Held*, that the sanction of the Sub-Registrar was not necessary for a prosecution on a charge of forgery.

*Venkatachala in re* (I.L.R., 10 Mad., 154), *Queen-Empress v. Subba* (I.L.R., 11 Mad., 3) explained.

CASE reported for the orders of the High Court by W. A. Happell, District Magistrate of Godávári, under s. 438 of the Code of Criminal Procedure.

Rallabhandi Sobhanadri was charged in the Court of the Sub-Magistrate of Kothapetta with committing forgery by fraudulently altering a mortgage-deed. The mortgage-deed was subsequently registered. The question arose whether the Magistrate had jurisdiction to take cognizance of the offence for want of sanction under s. 195 of the Code of Criminal Procedure.

The case was stated as follows :—

“The complainant, Tadigadapa Gopalakrishnamma, who attested a mortgage-deed executed by the accused Rallabhandi Sobhanadri, on 30th October 1888 in favor of Vogeti Ramakrishnayya, asserts that, after the deed was executed but before it was registered, the

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\* Criminal Revision Case No. 34 of 1889.

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accused struck out the words 'Tadigadapa Gopalakrishnamma Garu's inam,' and inserted the words 'my inam field' instead, that he did so with a dishonest intention, viz., to assert his claim to field 557 which belonged to the complainant, and that he thereby committed forgery. This mortgage-deed has been registered by the Kothapetta Sub-Registrar; and if a Sub-Registrar is a Court within the meaning of s. 195 of the Code of Criminal Procedure, then the Sub-Magistrate had no power to entertain the complaint without the Sub-Registrar's sanction.

"In 1881 Mr. Justice Innes decided that a Sub-Registrar is not a Court (see Weir's Criminal Rulings, 1882, page 400). A few years later a Divisional Bench of the High Court in *Queen-Emress v. Subba*(1) decided that a Sub-Registrar is not a Court. In 1886 another Divisional Bench of the High Court in *Venkatachala in re*(2) decided that a Sub-Registrar is a Court. The latest ruling, however, is that of the Bombay High Court in *Queen-Emress v. Tulja*(3), and they ruled that a Sub-Registrar is not a Court within the meaning of s. 195 of the Code of Criminal Procedure. My own opinion is that a Sub-Registrar is not a Court. That was the opinion I held in 1886 and which I communicated to the Mayavaram Sub-Magistrate, who, in consequence, committed a certain forgery case to the Tanjore Sessions; but that opinion was overruled by Brandt and Parker, JJ., in *re Venkatachala*. Their ruling, though the latest passed by the Madras High Court is opposed to two previous rulings of the same Court and to a ruling of the Bombay High Court. I therefore request that the question be referred to the High Court for an authoritative ruling."

Counsel were not instructed.

The further facts appear from the judgment of the Court (Muttusami Ayyar and Parker, JJ.).

JUDGMENT.—The decision of Turner, C.J., and Hutchins, J., now reported in *Queen-Emress v. Subba*(3), was not overlooked in the case *in re Venkatachala*(2), but the ground on which it was distinguished was that in the earlier case, the Sub-Registrar was acting under part VI (ss. 34-35) of the Registration Act and in the latter case under part VIII (s. 41).

(1) I.L.R., 11 Mad., 3.

(2) I.L.R., 10 Mad., 154.

(3) I.L.R., 11 Mad., 3.

In the former case, the Sub-Registrar could not determine whether or not the document was executed, and if execution was denied, he was obliged to refuse registration. The document could hardly therefore be said to be given in evidence before him by a party to any proceeding; whereas in the latter case (that of a will), s. 41 makes it incumbent upon the Sub-Registrar to satisfy himself that the document has been really executed by the testator, and the document has to be given in evidence before him in a proceeding in which the Sub-Registrar has to determine whether it shall or shall not be registered. A Sub-Registrar acting under s. 41 is exercising similar powers to a Registrar acting under ss. 73-75, as to which see High Court Proceedings, 12th May 1881, No. 962(1). We think, therefore, the Joint Magistrate is in error in saying that the two rulings of this Court are in conflict, though we agree with him that in the case under reference the sanction of the Sub-Registrar is not necessary. The Bombay case, *Queen-Empress v. Tulja*(2), is no doubt in conflict with the Madras decision in *in re Venkatachala*, it may be well if the point again arises that the question should be reconsidered.

QUEEN-  
EMPRESS  
v.  
SOBHANADRI.

## APPELLATE CIVIL—FULL BENCH.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Muttusami Ayyar, Mr. Justice Parker and Mr. Justice Wilkinson.

REFERENCE UNDER S. 39 OF ACT V OF 1882.\*

*Forest Act—Act V of 1882 (Madras), s. 6—Tree patta—Occupier of land.*

The holder of a tree patta is a known occupier of land within the meaning of s. 6 of the Madras Forest Act.

1888.  
Sept. 11.  
1889.  
Feb. 15.

CASE stated for the opinion of the High Court by G. MacWatters, Collector of Salem, under s. 39 of the Madras Forest Act.

This case depended on the construction of the last clause of s. 6 of the Madras Forest Act. The question referred was whether Madhava Rau and eleven others, who held a joint patta with him of certain tamarind trees, were entitled to be served with a notice

(1) Weir's Criminal Rulings, 3rd ed., p. 844. (2) I.L.R., 12 Bom., 36.

\* Referred Case No. 3 of 1887.