

QUEEN-  
EMRESS  
of  
ARLAPPA.

The word presented evidently means that such petition shall be delivered to the proper officer of the Court either by the appellant or his pleader. Any other interpretation of the section would give rise to numberless difficulties. I hold, therefore, that a petition sent by post is not presented to the Court within the meaning of section 419, Code of Criminal Procedure.

SHEPARD, J.—I have had considerable doubts on this question, but am not prepared to differ.

### APPELLATE CRIMINAL—FULL BENCH.

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

1891.  
January 22.  
October 13.  
1892.  
January 8.

ATCHAYYA AND ANOTHER (ACCUSED NOS. 1 AND 2), PETITIONERS,

vs.

GANGAYYA (COMPLAINANT), COUNTER-PETITIONER.\*

*Criminal Procedure Code, s. 195—Registration Act—Act III of 1877, ss. 72-75—  
“ Court ”—Sanction prosecution for perjury.*

A Registrar, acting under Registration Act, ss. 72-75, is a Court for the purposes of Criminal Procedure Code, s. 195.

PETITION, under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the order of F. H. Hamnett, Sessions Judge of Godavari, dated 21st November 1890, passed on criminal revision petition No. 9 of 1890.

*Parthasaradhi Ayyangar and Srirangachariar for petitioners.*

*Mr. Wedderburn for respondent.*

This criminal revision petition having come on for hearing before MUTTUSAMI AYYAR and WILKINSON, JJ., their Lordships made the following order of reference to the Full Bench.

ORDER OF REFERENCE TO FULL BENCH.—The counter-petitioner denied the execution of an instrument of mortgage which was presented for registration to the Sub-Registrar of Rajahmundry by the second petitioner as the agent and on behalf of the first in July last. Thereupon the Sub-Registrar refused to register the document. The first petitioner then applied to the Registrar of Godavari district under section 73 of Act III of 1877 to establish

\* Criminal Revision Case No. 599 of 1890.

his right to have the document registered. That officer held an inquiry as provided in section 74 and refused to register the document on the ground that he was not satisfied that it had been executed. On the 10th October 1890, the petitioner brought a suit to enforce the registration of the document under section 77, and, on the same day, the counter-petitioner complained to the Joint Magistrate that petitioners and five others had forged the document and thereby committed an offence punishable under section 467, Indian Penal Code. On the 12th October 1890, the Joint Magistrate transferred the complaint to the Second-class Magistrate of Rajahmundry for disposal. On the 19th November the Subordinate Magistrate held on the authority of the decision in *Queen-Empress v. Sobhanadri*(1) that the complaint could not be entertained without the Registrar's previous sanction, and upon that ground he returned it to the counter-petitioner for want of sanction. On the 21st November last, the Sessions Judge of Godavari directed the District Magistrate under section 487 of the Code of Criminal Procedure to re-open the case and to order the Taluk Magistrate to deal with it under Chapter XVIII of the Code on its merits. He observed that the sanction of the Registrar was not necessary, and that it was not competent to the Second-class Magistrate to dismiss the case without inquiry into its merits after it had once been taken cognizance of by the Joint Magistrate. In support of his opinion that no sanction of the Registrar was necessary, he relied on the decision in *Queen-Empress v. Tulja*(2). The main question for decision is whether the sanction of the Registrar is necessary within the meaning of section 195, Criminal Procedure Code, cl. (c). The answer must depend upon the meaning of the words 'any proceeding in any Court in respect of a document given in evidence in such proceeding.' It must be in the affirmative if the proper construction is that the expression refers to a judicial proceeding or inquiry held before any officer in the course of which the document is given in evidence. If, on the other hand, the person holding the inquiry must be a Judge presiding over a Court ordinarily exercising judicial functions as in civil suits, the answer must be in the negative.

ATCHAYYA  
GANGAYYA.

On this question there is conflict of authority. In the case of *Venkatachala*(3) it was held that a Sub-Registrar acting under

(1) I.L.R., 12 Mad., 201.

(2) I.L.R., 12 Bom., 36.

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

·ATCHAYYA  
v.  
GANGAYYA.

section 41 of Act III of 1877 is a Court, the ground of decision being that the general expression Court is used in section 195 in preference to the more restricted description 'Court of Justice' that the Sub-Registrar who is legally authorised to take evidence under Part VIII of the Registration Act for certain purposes is a Court, when acting under section 41 of the Registration Act, within the meaning of the Indian Evidence Act, and that the document under consideration in that case was given in evidence in a proceeding in which the Sub-Registrar had to determine whether the document should or should not be registered.

So early as 1881, a Divisional Bench of this Court held that a Registrar acting under sections 73, 74 and 75 of the Registration Act was a Court within the meaning of section 195, Criminal Procedure Code. Mr. Justice Innes observed 'a Registrar is empowered in a legal proceeding to give a definite judgment on the points mentioned in section 74 of the Registration Act. He is, therefore, a Judge, and his Court is a Court of Justice under the definitions of the Penal Code.' (*Weir's Criminal Rulings, 3rd edition, p. 844.*)

It was also held in *Queen-Empress v. Subba*(1) that a Sub-Registrar acting under section 34 of the Registration Act, 1877, is not a Court. It was observed that for certain purposes the Registration Act declared that the term 'judicial proceedings' shall include proceedings before Registering Officers, viz., in order to bring those proceedings within the purview of section 228, Indian Penal Code, and for other similar purposes, it declared that Registrars are and that Sub-Registrars are *not* to be deemed Courts, that the Registration Act did not constitute Registering Officers Courts generally, and that section 84 would be unnecessary if the Legislature regarded such officers as Courts.

In *Queen-Empress v. Sobhanadri*(2), the question whether a Sub-Registrar refusing to register a document, of which execution was denied was a Court, was again raised with reference to the decision of the Bombay High Court in *Queen-Empress v. Tulja*(3). It was pointed out in that case that a Sub-Registrar refusing to register a document on the ground that its execution was denied was *not* a Court; that there was no conflict in the course of decision in this Presidency, and that, though the Bombay case was

(1) I.L.R., 11 Mad., 3. (2) I.L.R., 12 Mad., 201. (3) I.L.R., 12 Bom., 36.

in conflict with the Madras decision *in re Venkatachala*(1), the question whether a Registrar acting under sections 73, 74 and 75 of the Registration Act, 1877, was a Court did not arise in the case then brought to notice. It will be noted that the expression 'any proceeding in any Court in which the document is given in evidence' was construed in the foregoing decisions to include a proceeding in which the Legislature authorised a person to hold a judicial inquiry, to record evidence and to form a judgment as to the right of the party to have the document registered, and that such authorisation was accepted as rendering him a Court for the limited purpose of that inquiry within the meaning of section 195, Criminal Procedure Code.

ATCHAYYA  
v.  
GANGAYYA.

The decision of the Bombay High Court rests on two principal grounds, viz., that the position of a Registrar as a Court is anomalous, that both in the Registration Act, s. 84, and in section 483 of the Code of Criminal Procedure, the Legislature has declared for what purposes he shall be deemed a Court, and that the decision that he may also be deemed a Court for other purposes is at variance with the principle, that an exceptional provision which is an 'excrescence' on the general rule ought not to be extended so as to derogate from it.

That such is the general principle was never doubted by this Court, the point as to which there is a difference of opinion being whether the word 'Court' in section 195 signifies any officer authorised to receive a document in evidence and to form an opinion as to whether there is a right to claim its registration, and thereby to make it the source of a jural relation, and whether the exceptions enumerated in section 84 are exhaustive.

A Registering Officer is expressly declared by section 84 of Act III of 1877 to be public servant as defined in the Indian Penal Code. There can, therefore, be no doubt that it is his ordinary status. The section then specifies two exceptions: the first has reference to the purposes of section 228 of the Indian Penal Code, and for those purposes, the Registrar's proceedings under the Registration Act are declared to be judicial proceedings; the second exception has reference to what are known as cases of contempt. For the purposes of those cases, section 84 declared that the Registrar shall be deemed, and that the Sub-Registrar shall

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

ATCHAYYA  
T.  
GANGAYYA.

not be deemed a Court, but section 483 of the present Code of Criminal Procedure vests a power in the local Government to direct that any Registrar or Sub-Registrar shall be deemed to be a Civil Court. There is nothing in section 84 of the Registration Act or in section 483 of the Code of Criminal Procedure to show that a Registering Officer may not be deemed to be a Court under section 74 of the Registration Act for the purposes of section 195 of the Code of Criminal Procedure; that it was not expressly included among the purposes specified in section 84 is the only circumstance in favour of the view taken in *Queen-Empress v. Tulja*(1)—is that circumstance of itself conclusive?

On the other hand, the words, as if he were a Civil Court, are used in section 74, and they are susceptible of the construction that they signify that he shall be deemed a Civil Court for the purpose of the inquiry contemplated by sections 73 to 75.

Again, the subject-matter of the inquiry is a civil right—a right to have the document registered and to invest it with a capacity to generate a jural relation under the provisions of the Registration Act. The procedure prescribed for the investigation of the right is also judicial. The application for registration is required to be verified as a plaint, the Registrar is authorised to summon and enforce the attendance of witnesses, and to compel them to give evidence, and he is empowered to order by whom costs are to be paid. Such costs are declared to be recoverable as if they had been awarded in a suit under the Code of Civil Procedure. In the event of registration being refused after inquiry, a suit is permitted to be brought in a Civil Court to obtain a decree directing that the document be registered. The intention is to constitute the right to have the document registered into a civil right, to protect it by creating a right of suit, to authorise a judicial inquiry in the first instance by the Registrar, and to allow a regular suit in the nature of an appeal from his judgment when he refuses registration.

Again the intention of the Legislature in prescribing a previous sanction by section 195 is as stated in *re Gyan Chunder Roy v. Protap Chunder Dass*(2) to ensure that the person resorting to criminal prosecution acts *bonâ fide* and not from a vindictive feeling, and not to prevent his adversary from taking

(1) I.L.R., 12 Bom., 36.

(2) I.L.R., 7 Cal., 208.

any further legal proceeding which he is entitled to take. The decision that a Registrar acting under section 74 is a Court for the purposes of section 195 is in furtherance of that intention. Again, the words used in section 469 of the former Code of Criminal Procedure were 'any Civil or Criminal Court.' Whilst the words used in section 195 are proceeding in 'any Court' in which the document is given in evidence and the difference in the language used in the present Code appears to be significant. In *Queen-Empress v. Tulja*(1), the inquiry contemplated by sections 73, 75 appears to have been regarded as administrative and a reference is made to the case of *The Queen v. Price*(2).

ATOHAYYA  
v.  
GANGAYYA.

The inquiry distinguished by Mr. Justice Blackburn from a judicial inquiry was as to whether certain facts existed and whether in consequence the event in which a statute cast an obligation on a body of persons to do a certain thing had occurred. In the same case he compares the language of 15 and 16 Vict., c. 57, with that of 26 and 27 Vict., c. 29, and observes that under the former enactment, the Commissioners had a discretion to decide whether a witness was entitled to a certificate of indemnity, whereas under the latter enactment, they had no such discretion but were bound to give a certificate if the witness answered certain questions and those answers criminated him. The distinction pointed out appears to be between an inquiry as to certain matters of fact in a case in which the Commissioners had no discretion to exercise and no judgment to form, but were enjoined to do a certain thing in a certain event as a matter of duty, and an inquiry in a case in which the Legislature authorised them to form a judgment and to grant or withhold a certificate on that judgment. In the latter case, the inquiry was regarded as judicial, and this appears to us to support the view taken by this Court.

The question, however, is not free from difficulty. On the one hand, section 84 of the Registration Act and section 469 of the Code of Criminal Procedure lend support to the opinion expressed by the Bombay High Court which appears to have been concurred in by a Divisional Bench of this Court in *Queen-Empress v. Subba*(3). On the other hand, the language and the presumable intention of section 195 of the Code of Criminal Procedure, the definition of Court contained in the Evidence Act,

(1) I.L.R., 12 Bom., 36. (2) L.R., 6 Q.B., p. 418. (3) I.L.R., 11 Mad., 8.

ATCHAYYA  
v.  
GANGAYYA.

and the character of the inquiry prescribed by sections 72 to 75 of the Registration Act and several considered decisions in this Presidency seem to support the view that the Registrar acting under those sections is a Court for the purposes of section 195, Code of Criminal Procedure. Under these circumstances, we consider it desirable to refer to the Full Bench the question whether a Registrar acting under sections 72 to 75 of the Registration Act is or is not a Court for the purposes of section 195 of the Code of Criminal Procedure."

Upon this reference the case came on for hearing before a Full Bench composed of COLLINS, C. J., MUTTUSAMI AYYAR, PARKER and SHEPHARD, JJ.

*Srirangachariar* for petitioners.

*The Acting Advocate-General* (Hon. Mr. Wedderburn) for respondent.

COLLINS, C. J.—The question referred to the Full Bench is whether a Registrar acting under sections 72 to 75 of the Registration Act is or is not a Court for the purposes of section 195, Code of Criminal Procedure.

The facts of the case are fully set out in the order of reference made by MUTTUSAMI AYYAR and WILKINSON, JJ.

The question is undoubtedly one of some difficulty, as there is no definition of a "Court" either in the Registration Act or in either of the Codes.

By section 3 of the Evidence Act, a "Court" includes all persons except arbitrators legally authorised to take evidence. A "Court of Justice" is defined by the Indian Penal Code, s. 20, and is more restricted in its application.

Are we then at liberty to apply the definition of "Court" given in the Evidence Act to the Registrar acting under sections 72 to 75 of the Registration Act? It is argued that the definition of "Court" given in the Evidence Act is framed only for the purposes of the Act itself and cannot be applied to cases under the Registration Act (see *Queen-Empress v. Tulja*(1)). If this argument prevailed the difficulty in holding the Registrar's inquiry to be a "Court" would be much increased. The duties of the Registrar on the point in question are defined by sections 72 to 75 of the Registration Act and are as follows:—

(1) I.L.R., 12 Bom., 36.

“An application shall be made to him in writing, and the statements in the application shall be verified in the manner required by law for the verification of plaints. He shall then inquire—(1) whether the document has been executed; (2) whether the requirements of the law have been complied with so as to entitle the document to registration. If he finds the document has been executed and that certain requirements have been complied with he shall order the document to be registered.

“The Registrar has power to summon and enforce the attendance of witnesses, he can compel them to give evidence ‘as if he were a Civil Court,’ and he has also a discretion as to the costs.”

It is therefore clear to my mind that the Registrar exercises more than mere administrative functions—in the examination of witnesses he is bound to observe the rules of evidence, and he is to consider the weight and credibility of the evidence and form his own conclusions. The learned Judges in *Queen-Empress v. Tulja*(1) appeared to consider the Registrar’s functions purely administrative and the fact appears to have mainly influenced their judgment.

It appears also that in the former Code of Criminal Procedure the words used in section 469 were “any Civil or Criminal or Revenue Court,” whilst in section 195 of the present Act the words used are “any Court.” I assume that it was the intention of the Legislature to give the word “Court” a more extended meaning than it had in the former Act, I am of opinion, therefore, that I am entitled to hold that the definition of “Court” used in the Evidence Act applies to the Registrar holding an inquiry and taking evidence under the Registration Act, and I therefore answer the question in the affirmative.

MUTTUSAMI AYYAR, J.—For the reasons recorded in the order of reference to the Full Bench I am of opinion that the question must be answered in the affirmative.

PARKER, J.—The question referred to the Full Bench is whether a Registrar acting under sections 72 to 75 of the Registration Act is or is not a Court for the purposes of section 195 of the Criminal Procedure Code. The reference has been made in consequence of the decision in *Queen-Empress v. Tulja*(1) in which the decision of this Court in *Venkatachala in re*(2) was dissented

(1) I.L.R., 12 Bom., 36.

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



ATCHAYYA  
v.  
GANGAYYA.

from. The question, therefore, for decision is in what sense the word "Court" is used in section 195, Criminal Procedure Code. The Code does not contain any definition of the term, and it is used in more than one meaning in some places as signifying a personal judicial authority and in others a place. In section 352 the same word is used in the two significations, but when used as signifying a person it does not appear to be synonymous with "Court of Justice" as defined in section 20 of the Indian Penal Code. The term "Court of Justice" (section 20, Indian Penal Code) necessarily denotes a "Judge" as defined in section 19. Now, illustration (d) to section 19 declares that a Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial is not a Judge. The explanation to section 193, Indian Penal Code, makes it clear, however, that a preliminary inquiry under Chapter 18 of the Procedure Code is a stage of a judicial proceeding. There is, again, no doubt that a Committing Magistrate is a Court within the meaning of the term as used in the Evidence Act and a Criminal Court within the definition of section 6 of the Code of Criminal Procedure. He is also referred to as a Court in sections 342 to 344 of the Criminal Procedure Code. The contention, therefore, that the term "Court" in the Criminal Procedure Code, section 195, is necessarily identical with Court of Justice as limited in the Indian Penal Code definition cannot be supported.

In order to ascertain the sense in which the word is used by the Legislature in section 195 it will be useful to compare the present Criminal Procedure Code with its predecessor, Act X of 1872. Both the Codes have contained provisions for requiring previous sanction to certain prosecutions and also prescribing the procedure to be followed when a prosecution is instituted by a Court *suo motu*. The sections dealing with these matters in the old Code X of 1872 are sections 467 to 471. Sections 467 to 470 are reproduced in section 195 of the present Code and section 471 (as to prosecutions instituted by the Court itself) in section 476 of the present Code. It will be noticed that section 468 of the old Code declared that a complaint of an offence against Public Justice, when such offence is committed before or against any Civil or Criminal Court, should not be entertained except with the sanction of the Court, whereas the corresponding provision in the present Code (section 195 d) requires the same sanction when such offence is committed "in or in relation to any proceeding in any Court."

The words used in the latter Code are therefore wider in their signification. There is a similar alteration in regard to complaints of offences relating to documents—compare section 469, Act X of 1872 with section 195, clause (c) of the present Code. But in re-enacting the procedure to be followed when the Court itself acts we do not find the powers given to “any Court” but to “any Civil, Criminal or Revenue Court.” Had the enumeration of the three classes of Courts, Civil, Criminal or Revenue, been absolutely exhaustive of all possible Courts, it is only reasonable to suppose the Legislature would have used the term ‘any Court’ as it did in section 195. The difference in language leads to the supposition that there may be Courts as created and defined by the Legislature on which it was not intended to confer the powers given in section 476, Criminal Procedure Code.

This supposition appears reasonable when it is remembered in what terms the Legislature defined the word “Court” for the purposes of the Indian Evidence Act (section 3) in which enactment the term simply means all persons except arbitrators legally authorised to take evidence. In this sense a Commissioner holding an inquiry under Act XXXVII of 1850, a Settlement officer under Act XXVII of 1860, a Forest officer under section 59, Madras Act V of 1882, and a Registrar under sections 72 to 75 of the Registration Act are all Courts, though it may be, they are not invested with powers to take action under section 476, Criminal Procedure Code, as Civil, Criminal or Revenue Courts. The Proceedings before these officers are judicial in their character and false evidence given before them is punishable under section 193, Indian Penal Code, Explanations 2 and 3—as given in a stage of a judicial proceeding, though not given before a Court of Justice.

The view that the term Court in section 195, Criminal Procedure Code, was intended to include all persons except arbitrators legally authorised to take evidence is strengthened when the principle of that section is considered. The restriction was obviously intended “to prevent prosecutions for acts done or evidence given at the suit of disappointed or hostile parties, and it was intended to protect parties against reckless or groundless Criminal Proceedings. Sanction is required in order to ensure that the prosecution should not in such cases be instituted unless there was ground sufficient in the opinion of the proper officer to justify such proceeding”—*vide* remarks of Kernan and Muttu-

ATCHAYYA  
"GANGAYYA.

sami Ayyar, JJ., in *Vasteia Putturaiya v. Lakshmi Narayana Kachinthaiya*(1). The word 'Court' in section 195 is used strictly with reference to offences of fabrication of evidence and of documents used in evidence, and, therefore, it seems not unreasonable to hold that the term is used—like the term "evidence"—in the same sense as in the Indian Evidence Act. The Registrar is a public servant—section 84, Act III of 1877; and it would seem anomalous if the Legislature had made his sanction a condition precedent in case of disobedience of summons (section 174, Indian Penal Code), or refusal to give evidence or to take oath (section 178), but yet had required no such sanction for the far graver offences mentioned in clauses *b* and *c* of section 195—alleged to have been committed in relation to a proceeding before him, which proceeding is a stage of a judicial proceeding.

It was moreover urged before the Full Bench that the words "as if he were a Civil Court" in section 75 of the Registration Act signify that a Registrar should be deemed a Civil Court for the purposes of the inquiry contemplated by sections 73–75. The argument was that the proceedings before the Registrar are judicial and the inquiry judicial, and the right sought to be enforced was a legal right, registration being necessary to give legal validity to the document.

It appears to me there is some difficulty in adopting this view. The words "as if he were a Civil Court" would seem to imply that the Registrar was not one, and the words have reference only to the procedure to enforce the attendance of witnesses and compel them to be examined. If the Registrar can give a definitive judgment upon a civil right, he would be a Judge within the definition of section 19 of the Indian Penal Code, and, therefore, a "Court of Justice" under section 20. The registration of a document is merely a consequence of the Registrar finding that the document is genuine. But his finding upon that point is not a definitive decision which, in the absence of an appeal, can make the matter *res judicata* between the parties.

In the view I have taken, however, it is not necessary to decide this point. I still adhere to the view taken in *Venkatachala in re*(2) to which I was a party. Holding that the term 'Court' in section 195 has the same meaning as that assigned to it in

(1) Weir's Cri. Rulings (Ed. 3), 849.

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

section 3 of the Indian Evidence Act, I would answer the question referred to the Full Bench in the affirmative.

ATCHAYYA  
v.  
GANGAYYA.

SHEPARD, J.—It is argued as well with reference to the provisions of the Registration Act as with reference to certain sections of the Criminal Procedure Code that the Registrar, acting under section 72 of the Act, is not a Court within the meaning of section 195 of the Code.

Considering, first, the provision of the Act, I observe that the methods and procedure which a Registrar entertaining an application under section 72 is enjoined to follow are precisely those which a Judge trying a civil suit has to pursue. The application has to be written and verified like a plaint—the Registrar has power to summon and enforce the attendance of witnesses and to compel them to give evidence ‘as if he were a Civil Court’—he also has power to adjudicate on the subject of costs. Moreover, as is pointed out in the order of reference, the subject-matter of inquiry is a civil right. The claim, which the holder of a registrable instrument has to have that instrument registered, may be compared with that of a person entitled to be registered as a parliamentary voter. In both cases, in order to constitute a certain legal relation, the law requires registration, and registration must, in the case of dispute, necessarily be proceeded by an inquiry. When it is found that the lines upon which that inquiry must proceed are those which are followed in the adjudication of an ordinary civil suit, it seems to me that as the public officer who conducts the inquiry discharges all the functions of a Court, he must also be deemed to be a Court, unless a clear intention to the contrary is indicated by the Legislature.

It is said that the language of section 84 of the Act and also of section 483 of the Code indicates such intention. These sections have reference to proceedings for contempt for which provision is now made by sections 480 and 482 of the Code. It is argued that, if the Registrar, acting under section 72 was a Court, there was no occasion for the provision in section 84 that he should be deemed to be a Court within the meaning of the law relating to proceedings for contempt,—and again, that there was no occasion to confer on the local Government power to constitute a Registrar a Court for the same purpose, as has been done by section 483 of the Code. I confess that I was at first inclined to accede to this argument, but, on consideration, seeing that, in

ATOHAYYA  
v.  
GANGAYYA.

other respects, the Registrar is in all essentials, a Court, I am not disposed to give weight to the circumstance that the Legislature doubted whether the Registrar was a Court, or thought it expedient to leave it to the Government to say whether he should be ranked as a Court, with reference to a particular purpose. I do not think that circumstance can be considered conclusive to show that the Legislature in passing the Registration Act did not intend the Registrar to be a Court for other purposes than those referred to in section 84.

For this reason, I think, that the decision of this Court mentioned in the order of reference ought to be followed, and that the question referred to us should be answered in the affirmative.

This petition having come on for final disposal, the Court delivered the following judgment.

JUDGMENT.—The only parties to these proceedings are the first and second defendants. So far as they are concerned the order of the Sessions Judge must be set aside inasmuch as the sanction of the Registrar is required by section 195, Criminal Procedure Code, for their prosecution. The order of December 3rd, 1890, staying proceedings is discharged.

---

## APPELLATE CIVIL.

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

KYD AND ANOTHER (PLAINTIFFS),

v.

MAHOMED (DEFENDANT).\*

*Stamp Act—Act I of 1879, sched. II, art. 2—Exemption—Agreement for the sale of goods.*

An agreement for the sale of goods does not require a stamp under the Indian Stamp Act, although it contains provisions as to the warehousing and insurance of the goods previous to delivery.

CASE stated under section 69 of the Presidency Small Cause Court Act, 1882, and section 617 of the Code of Civil Procedure by P. Srinivasa Rau, Second Judge of the Small Cause Court, Madras, in his letter, dated 13th February 1891, No. 129, in the matter of Small Cause suit No. 20431 of 1890 on his file.

---

\* Referred Case No. 5 of 1891.