

APPELLATE CRIMINAL.

*Before Sir S. Subrahmaniam Ayyar, Officiating Chief Justice,
and Mr. Justice Russell.*

1903.
November
23, 30.

IN THE MATTER OF RAMASAMY CHETTY (PETITIONER),
APPELLANT.*

*Letters Patent, art. 15—"Criminal Trial"—Appeal—Order to furnish security
for keeping the peace—"Judgment."*

Petitioner had been ordered by a Head Assistant Magistrate to furnish security for keeping the peace, under section 107 of the Code of Criminal Procedure. The order was confirmed on appeal. An application to the High Court to revise the order came before a single Judge and was rejected. This appeal was filed against the last-mentioned order:

Held, that no appeal lay.

Per THE OFFG. C.J.—The order requiring security was an order in a criminal trial, and, in consequence, the order passed in revision was also an order in a criminal trial.

Per RUSSELL, J.—The order appealed against was not a "judgment" within the meaning of article 15.

ORDER requiring security for keeping the peace. The only question decided was whether an appeal lay. The facts are sufficiently set out in the judgment.

P. S. Sivaswami Ayyar for appellant.

Sir SUBRAHMANIAM AYYAR, OFFG. C.J.—The petitioner was ordered by the Head Assistant Magistrate of Madura to furnish security for keeping the peace under section 107 of the Criminal Procedure Code. On appeal to the District Magistrate the order was confirmed. The application for revision of the said order came on before Mr. Justice Benson and was rejected, apparently on the ground that sufficient cause was not shown for the interference of the Court by way of revision. The present petition purports to be an appeal against the order of the learned Judge.

The first question is whether an appeal lies in the matter, and it depends upon whether the order as to security is or is not one in a *criminal trial* within the meaning of article 15 of the Letters Patent. In construing these words, it is scarcely necessary to

* Appeal No. 50 of 1903, presented under section 15 of the Letters Patent against the order of Mr. Justice Benson in Criminal Revision Case No. 330 of 1903, preferred against the order of the District Magistrate of Madura, dated 9th February 1903.

say that it is not admissible to refer and to rely on the provisions of the Code of Criminal Procedure to which we were referred in the course of the argument. I do not, however, wish it to be understood that if in interpreting the Letters Patent reference to the Code of Criminal Procedure were admissible that would lead to a variation of the conclusion at which I have arrived, independently of the Code. Turning now to the Letters Patent, there is nothing in article 15 or in any other article thereof to show that the words "Criminal" and "trial" are used in any other than their general and ordinary sense as used in law. That the proceedings of the Magistrate, with reference to the security taken from the petitioner, are proceedings in a *criminal* matter or cause admits of no doubt. The very object of the proceeding is the prevention of certain crimes about to be committed with reference to the public peace, and it is the likelihood of a disturbance of public tranquillity that gives the Court jurisdiction. It is obvious that proceedings of this character held before Criminal Courts can be nothing but criminal proceedings.

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This was, if I understood Mr. Sivaswami Ayyar rightly, hardly denied. What he strongly contended for was that the investigation in question by the Magistrate was not a trial. Now, that term according to the passage from the Institutes quoted in Wharton's 'Law Lexicon' means "the examination of a cause, Civil or Criminal, before a Judge who has jurisdiction over it, according to the laws of the land." The explanation of the same term in 'Stroud' on the authority of the observations of Field, J., in *Gath v. Howarth*(1) is that it is the "conclusion by a competent tribunal of questions in issue in legal proceedings whether Civil or Criminal." Again in Bonviers' 'Law Dictionary' the term is stated on the authority of a decision in Massachusetts to mean, "the examination before a competent tribunal, according to the laws of the land, of the facts put in issue in a cause, for the purpose of determining such issue." These citations express in different words precisely the same idea and testing the present case with reference to it, but one conclusion is possible. The person before whom the proceedings are conducted is a Judge in every sense of the term; they commence by information laid before him, the law prescribes notice thereof to the accused party;

(1) 28 S.J., 427; W.N. (84), 99.

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evidence has to be recorded in his presence and judgment given; if the security or bail required to be furnished is not forthcoming imprisonment follows as a matter of course; finally an appeal is allowed in the matter. If a proceeding involving these requisites and incidents is not a *trial*, it is impossible to see what it is. I have no hesitation, therefore, in holding that the order of the Magistrate requiring security was an order in a criminal trial and consequently any order which may be passed on appeal or in revision in connection with such a proceeding is also an order in a criminal trial. I would accordingly reject this appeal.

RUSSELL, J.—I am of opinion there is no “judgment” in this case, and therefore there is no appeal under article 15 of the Letters Patent—*vide* a decision of a Bench of this Court in *Puthukudi Abdu v. Puvakka Kunhikutli*(1) following previous reported decisions on the same point.

I express no opinion on the question whether the proceedings in the lower Court were a trial or not.

I think the appeal should be rejected.

APPELLATE CIVIL.

*Before Sir S. Subrahmania Ayyar, Officiating Chief Justice,
and Mr. Justice Bhashyam Ayyangar.*

SUBBA PILLAI (PLAINTIFF), APPELLANT,

v.

RAMASAMI AYYAR (DEFENDANT), RESPONDENT.*

*Legal Practitioners Act—XVIII of 1879, s. 28—Agreement not filed in
Court—Contract Act—IX of 1872, ss. 217, 218—Lien.*

The Legal Practitioners Act does not enact that no claim by a pleader for professional services rendered or for recovery of out-fees advanced shall be sustainable unless an agreement in writing for the same has been entered into with the client and filed in Court, but only that an agreement, if any, in respect thereto, shall be void unless the same has been reduced to writing and filed in Court.

(1) I.L.R., 27 Mad., 340.

* Second Appeal No. 254 of 1902, presented against the decree of K. Ramachandra Ayyar, Subordinate Judge of Negapatam, in Appeal Suit No. 23 of 1901, presented against the decree of P. Narayana Chariar, District Munsif of Kumbakonam, in Original Suit No. 590 of 1899.