The second appeal therefore fails and I would dismiss it with costs.

MOORE, J.—I concur in the conclusions arrived at by my learned colleague and in holding that this second appeal should be dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Boddam and Mr. Justice Bhashyam Ayyangar.

PALANIAPPA CHETTI (COUNTER-PETITIONER), PETITIONER, *v.*

ANNAMALAI CHETTI AND ANOTHER (PETITIONERS), RESPONDENTS.*

1903. September 11.

Criminal Procedure Code—Act V of 1898, s. 195—Charter Act—Revocation of sanction—Power of High Court.

Under sub-section (6) of section 195 of the Code of Criminal Procedure, a petition by way of appeal lies to the High Court in every case in which a Civil or Criminal Court subordinate to it, within the meaning of sub-section (7) (*a*) gives or refuses a sanction, whether in respect of an offence committed before it or of one committed before a Court subordinate to it, and, in the latter case, whether it gives a sanction refused by the Subordinate Court or revokes a sanction accorded by such Court.

Under clauses (*b*) and (*c*) of sub-section (1), the sanction may be accorded in the first instance by the Court to which the Court in which the offence was committed is subordinate, even though no application for sanction has been made to the latter Court. For the purposes of clauses (*b*) and (*c*) of sub-section (1), a sanction accorded by the High Court would operate as a sanction accorded by a Court subordinate to it, such as the District Court. An order passed by an Appellate Court is, in law, the order which ought to have been passed by the Subordinate Court, and will, in consequence, have the same efficacy and operation as the order which ought to have been passed by the latter.

Section 439 of the Code of Criminal Procedure provides that the High Court, as a Court of revision, may exercise the powers conferred on a Court of Appeal by section 195. In a case in which both the Original Criminal Court and the Appellate Criminal Court refuse sanction, the High Court, as a Court of revision, may call for the record and, if the refusal proceeds on an error of law, it may

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* Civil Miscellaneous Petition No. 1319 of 1902, Civil Revision Petition No. 25 of 1903, praying the High Court to set aside the order dated 5th November 1902, passed by H. Moberly, District Judge of Madura, in Civil Miscellaneous Petition No. 173 of 1902.

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accord the sanction which ought to have been granted by the Appellate Criminal Court and such sanction will be operative for the purposes of clauses (*b*) and (*c*) of sub-section (1).

A plaintiff in a suit applied for attachment before judgment and filed an affidavit in support of that application in which he stated that the defendants intended to alienate their properties with *mala fide* intentions. He did not state in the affidavit that this statement was based on what he had been told. He was, however, orally examined, and then deposed that he had heard that the defendants were intending to alienate property. The petition was dismissed. Thereupon sanction was asked for, the Subordinate Judge according sanction only for an offence under section 199 of the Indian Penal Code, and refusing sanction for offences under sections 193, 196 and 200. The sanction accorded was not based on the oral evidence but on the statement in the affidavit. The defendants appealed (under section 195 of the Code of Criminal Procedure), against the refusal to grant sanction for offences under sections 193, 196 and 200, to the District Judge, who accorded sanction for the prosecution of the petitioner under those sections also:

Held, on revision, that the District Judge had not exercised a sound discretion in according the sanction, for although the petitioner had not stated in his affidavit that the statements therein were made on hearsay, he had stated so in his oral evidence and the affidavit was not inconsistent with that evidence.

Whether a Village Magistrate is a magistrate within the meaning of section 197, clause (*a*) of the Code of Civil Procedure, as that expression is defined in the Imperial General Clauses Act.—*Quære*.

PETITION praying for the revocation of sanction accorded by the District Court for the prosecution of petitioner. The facts are fully set out in the judgment.

V. Krishnaswami Ayyar, *P. R. Sundara Ayyar* and *K. Jagannada Ayyar* for petitioner.

T. Rangachariar for respondents.

JUDGMENT—*In Civil Miscellaneous Petition No.* 1319 *of* 1902.—This purports to be a petition presented under section 195, Criminal Procedure Code, praying for the revocation of a sanction given by the District Judge of Madura for the prosecution of the petitioner for alleged offences under sections 193, 196 and 200 of the Indian Penal Code, which sanction had been refused by the Subordinate Judge's Court of Madura (East) in which it is alleged that the offences were committed. The respondents' pleader takes the preliminary objection that no petition lies to this Court under section 195, Criminal Procedure Code, inasmuch as the application for sanction has been considered and dealt with both by the Subordinate Judge's Court and the District Court, to which alone the Subordinate Judge's Court is 'subordinate' within the meaning of sub-section 7 (*a*) of section 195, Criminal Procedure Code. Taking

the converse of the present case, viz., a case of sanction having been given by the Subordinate Judge's Court and the same being revoked by the District Court under sub-section (6), he argues that the sanction prescribed by clauses (*b*) and (*c*) of sub-section (1) is a sanction to be accorded either by the Court in which the offence was committed or by the Court to which such Court is 'subordinate' within the meaning of sub-section 7 (*a*), that therefore a sanction accorded by the High Court in cases in which the offence was committed in a Court not 'subordinate' to it within the meaning of sub-section 7 (*a*), will be inoperative, that sub-section (6) is controlled by clauses (*b*) and (*c*) of sub-section (1), and that it should therefore be held that sub-section (6) does not contemplate a petition by way of appeal to the High Court in such cases. If this contention were well founded, it would no doubt follow that a petition to the High Court would not lie under sub-section (6) in the present case simply because the relief sought is the revocation of a sanction accorded by the District Court and not the granting of a sanction refused by the District Court. We are clearly of opinion that the argument advanced on behalf of the respondents is untenable and that under sub-section (6) a petition by way of appeal lies to the High Court in every case in which a Civil or Criminal Court subordinate to it within the meaning of sub-section 7 (*a*) gives or refuses a sanction whether in respect of an offence committed before it or of one committed before a Court subordinate to it, and in the latter case, whether it gives a sanction refused by the Subordinate Court or revokes a sanction accorded by such Court. Under clauses (*b*) and (*c*) of sub-section (1), the sanction may be accorded in the first instance by the Court to which the Court in which the offence was committed is subordinate even though no application for sanction has been made to the latter Court. The contention that for purposes of clauses (*b*) and (*c*) of sub-section (1) a sanction accorded by the High Court would not operate as a sanction accorded by a Court subordinate to it, viz., the District Court is manifestly untenable and proceeds on a misapprehension of the jurisdiction exercised by an appellate tribunal. An order passed by the Court of Appeal is in law the order which ought to have been passed by the Subordinate Court and will therefore have the same efficacy and operation as the order which ought to have been passed by the latter. A reference to section 439 of the Code of Criminal

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Procedure places the matter beyond all doubt. That section expressly provides among other things that the High Court, as a Court of revision, may exercise the powers conferred on a Court of Appeal by section 195. In a case in which both the Original Criminal Court and the Appellate Criminal Court refuse a sanction, the High Court, as a Court of revision, may call for the record and if the refusal proceeds on an error of law, it may accord the sanction which ought to have been granted by the Appellate Criminal Court and such sanction will of course be operative for purposes of clauses (*b*) and (*c*) of sub-section 1. We therefore overrule the preliminary objection and proceed to dispose of the petition on the merits.

The petitioner in a suit brought by him for about two lakhs of rupees against the respondents and others applied under section 483, Civil Procedure Code, for an attachment before judgment and in an affidavit which was filed in support of the petition he declared "that the defendants 1 to 11, without having good intention but with bad intention, were attempting to dispose of the immoveable properties belonging to them by alienation or otherwise." The petitioner was examined *vivâ voce* in support of his petition and deposed in his examination-in-chief that the defendants were, he heard, going to alienate their immoveable properties and in cross-examination stated that he knew this only from hearsay but could not remember the names of the persons who said so. The petition was dismissed. This application for sanction to prosecute was then brought and the Subordinate Judge granted sanction only for an offence under section 199, Indian Penal Code, and refused sanction for offences under sections 193, 196 and 200 of the Indian Penal Code, for reasons which it is unnecessary to go into. The sanction was not based upon any statement made by the petitioner in his oral evidence but upon the above-mentioned declaration made by him in his affidavit. The respondents preferred an appeal to the District Judge under section 195, Criminal Procedure Code, against the refusal of the Subordinate Judge to accord sanction under sections 193, 196 and 200, Indian Penal Code. The District Judge, holding that a Village Magistrate is a Magistrate within the meaning of clause (*a*) of section 197, Civil Procedure Code, accorded sanction for the prosecution of the petitioner, also under the above sections of the Indian Penal Code.

We are clearly of opinion that the District Judge did not exercise a sound discretion in according sanction for the prosecution of the petitioner. Although in his affidavit he did not state that he based his statement made therein upon hearsay, yet the declaration in his affidavit is not inconsistent with his having based it upon hearsay, and in his examination as a witness he clearly stated in his examination-in-chief itself that his statement was based upon hearsay and the sanction sought for and accorded is not for having falsely deposed as a witness. The interests at stake in the suit were considerable and there is nothing whatever on the record to show that he acted dishonestly in applying for attachment before judgment and we do not think that the ends of justice demand that he should be prosecuted for the statement he made in his affidavit which statement it is clear he made only on hearsay. We therefore set aside the sanction granted by the District Judge for offences under sections 193, 196 and 200 of the Indian Penal Code.

Civil Revision Petition No. 25 *of* 1903.—This is a petition to set aside the sanction granted by the Subordinate Judge of Madura (East) for the prosecution of the petitioner under section 199 of the Indian Penal Code, which sanction was affirmed by the District Judge.

It is needless to repeat the facts which led up to this sanction as they have already been stated in our judgment in Civil Miscellaneous Petition No. 1319 of 1902.

It is unnecessary to consider and decide whether, as held by the District Judge, a Village Magistrate in this Presidency is or is not a Magistrate within the meaning of section of 197, clause (*a*), Civil Procedure Code, as that expression is defined in the Imperial General Clauses Act (Act I of 1868 and Act X of 1897) for we find that the affidavit in question was sworn to before a Village Munsif who perhaps is also a Village Magistrate and the expression "Village Munsif" is defined in the Madras Village Courts Act, 1888, as the Judge of the Court of a Village Munsif established under that Act and under clause (*a*) of section 197 of the Civil Procedure Code "any Court may administer the oath of the declarant" to an affidavit. Under sections 195 and 483, Civil Procedure Code, evidence may be given by affidavit in support of an application for attachment before judgment and if such affidavit is intended to be used in a judicial proceeding before a Court of Justice and the

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declarant has made a statement therein that is false to his knowledge touching any point material to the object for which the affidavit is to be used, the declarant will be guilty of an offence under section 199, Indian Penal Code. We cannot therefore hold that the Courts below acted illegally or with material irregularity in the exercise of their jurisdiction within the meaning of section 622, Civil Procedure Code, in granting and upholding the sanction for an offence under section 199, Indian Penal Code, and if the matter to which the sanction relates had not come before us on its merits in Civil Miscellaneous Petition No. 1319 of 1902 in which we have just held that the case was one in sanction for a criminal prosecution ought not to have been granted, we should have simply rejected this petition and should not have thought it necessary to exercise the extraordinary power of superintendence conferred on this Court by section 15 of the Charter Act.

As however we have already had to quash the sanction accorded in the same matter, though under different sections of the Indian Penal Code, we think it right and proper that in this case also, in exercise of our powers under section 15 of the Charter Act, we should set aside the sanction granted and we accordingly do so.

APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Moore.

1903. August 11, 12, 13, 28.

TOTTEMPUDI VENKATARATNAM (PLAINTIFF), APPELLANT,

v.

TOTTEMPUDI SESHAMMA AND OTHERS (DEFENDANTS), RESPONDENTS.*

Hindu law—Will by member of joint family—Nature of property bequeathed—Self-acquired or family property.

The question raised in a suit was whether certain property which a Hindu testator had purported to deal with by his will was his self-acquired property or was the family property of the testator and his son and grandson:

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* Second Appeal Nos. 798 and 799 of 1901, presented against the decrees of W. C. Holmes, District Judge of Kistna, in Appeal Suit Nos. 342 and 314 of 1900, presented against the decree of S. Gopala Chariar, Subordinate Judge of Kistna, in Original Suit No. 7 of 1899.