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petitioner wrote those words but there is strong reason for thinking that the alleged marks were forgeries, and under section 195 (4), Criminal Procedure Code, I sanction the prosecution of the person who committed the forgeries for an offence punishable under section 465 of the Indian Penal Code."

Against this order, petitioner preferred this criminal revision petition.

Ayya Ayyar for petitioner.

K. Narayana Rao for respondent.

The Public Prosecutor (Mr. *E. B. Powell*) for the Crown.

JUDGMENT.—As the petitioner was not "a party to the proceeding in the Court" in the case in which the alleged forged will was produced, no sanction for his prosecution was required. Therefore the Judge was not competent to entertain the application for sanction. Even if he had been, he should have named the person against whom the prosecution was to be directed, as there was no doubt about who that person was. Clause (4) of section 195 of the Code of Criminal Procedure obviously applies only to cases where, at the time of granting sanction, the offender is uncertain or unknown.

The sanction in this case must therefore be revoked.

APPELLATE CIVIL.

Before Mr. Justice Davies and Mr. Justice Bhashyam Ayyangar.

1902. February 20.

MEIYYALU NADAN (PLAINTIFF), APPELLANT,

v.

ANJALAY AND ANOTHER (DEFENDANTS), RESPONDENTS.*

Registration Act—Act III of 1877, s. 17—Deed of gift of immoveable property—Registration by legal representative after death of donor—Validity of gift.

The voluntary registration of a deed of gift by the legal representative of the donor has the same effect as its voluntary registration by the donor himself in his life-time.

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* Second Appeal No. 1183 of 1900 against the decree of K. Ramachandra Ayyar, Subordinate Judge of Negapatam, in Appeal Suit No. 695 of 1889 presented against the decree of V. Cooppooswami Ayyar, District Munsif of Tiruturaipundi, in Original Suit No. 75 of 1899.

SUIT for a declaration that a certain house was liable under a decree which had been obtained by plaintiff against first defendant. The plaint stated that when the house in question was attached by plaintiff second defendant filed a claim petition, in consequence of which the house was released from attachment. Plaintiff now brought this suit, and contended that the house had belonged to the husband of first defendant, and that first defendant had enjoyed it since her husband's death; also, that the right set up by second defendant her daughter, was not legally complete, and that the house was therefore liable to the claim. First defendant was *ex parte*. Second defendant claimed that the house had been given to her by her deceased father, and that the deed of gift had been registered. The District Munsif found that the deed had not been registered or presented for registration by the father during his life-time, and that it had been registered after his death, on presentation of the document by his widow, the first defendant. He held that possession of the property could not pass till registration of it was effected, and that the gift was inoperative. He made the declaration. On appeal, the Subordinate Judge said:—"The object of registration is to secure legal efficacy to the transaction and it can be effected by the executant or by his heir-at-law. Section 25 of the Contract Act enjoins registration under the law for the registration of documents,—and Act III of 1877, the Registration Act, does not say that, unless registration by the executant is effected, such deeds lose efficacy. Section 123 of the Transfer of Property Act requires a gift to be effected by a registered instrument signed by the donor There is nothing here to require the donor himself to effect registration as the only means of rendering the deed valid. There is no difference in the language used in section 59, relating to registering a mortgage deed for Rs. 100 and more, and that in section 123,—and that a mortgage deed could be registered after the executant's death by the heir-at-law admits of no doubt. Right to claim specific performance in the one case and not in the other is based upon consideration and no consideration respectively and not upon who effected registration of the particular deed . . . . The deed of gift reads as a will coupled with language of immediate delivery and of protection of the executant and his wife by the beneficiary and is drawn upon a stamp of Rs. 10 value. But it was virtually a deed of gift with a burden or a settlement. Second defendant was the only child of her parents, and a maiden daughter

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living with them, married only four or five months after father's death. Her possession therefore commenced, so to speak, from the time of the deed and she has been living in the house included in the gift ever since." He reversed the District Munsif's decree and dismissed the suit.

Plaintiff preferred this second appeal.

A. J. Ambrose for appellant.

V. Krishnaswami Aiyar for second respondent.

JUDGMENT.—The voluntary registration of the deed of gift by the legal representative of the donor has the same effect as its voluntary registration by the donor himself in his life-time. There was, therefore, a valid gift to the second defendant.

The second appeal is dismissed with costs.

APPELLATE CIVIL.

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

1901. December 5.

APPATHURA PATTAR (PLAINTIFF), APPELLANT,

v.

GOPALA PANIKKAR (DEFENDANT), RESPONDENT.*

Evidence Act—Act I of 1872, ss. 63, 65, 90, 114—Copy of document—No evidence that original could not be produced—Secondary evidence—Presumption.

In a suit to recover possession of land, the defendant relied principally on a document which was filed in the Munsif's Court in support of his title. According to the evidence this document had been prepared with reference to a document of an earlier date. This earlier document was not produced, though it was admittedly in existence, nor was it shown that it could not have been produced. The Munsif decreed in plaintiff's favour. On appeal, a copy of the earlier document was produced and filed:

Held, that although the exhibit was admissible as secondary evidence, it was only secondary evidence of the contents of a document. There was no evidence that the document, of the contents of which the exhibit was evidence, was in fact executed in 1862 between the parties mentioned, and inasmuch as the exhibit was a copy and not the original, the presumption which, under section 90

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* Second Appeal No. 725 of 1900 against the decree of K. Krishna Rao, Subordinate Judge of South Malabar, in Appeal Suit No. 450 of 1899, reversing the decree of M. Subba Ayyar, District Munsif of Temelprom, in Original Suit No. 73 of 1898.