

any local custom entitling them to do so (*Tucker v. Linger*(1)). Whether the tenant was or was not justified in digging up shells for cultivating the land properly and in a husband-like manner, the property in the shells is not in him, but in the landlord, or rather the plaintiff, the respondent, the assignee of the landlord (*Tucker v. Linger*(1); *Blwos v. Briggs Gas Coy.*(2)). In the absence of a local custom the defendants had not a right to convert the shells, which they dug up, to their own use. Section 43, Civil Procedure Code, is in our opinion no bar to any portion of the claim made in this suit, for it is admitted that even such portion was on the holding where it was stored up at the date of the former suit for injunction, but was removed and converted by the defendants to their own use only subsequent to the former suit.

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The revision petition therefore fails and is dismissed with costs.

APPELLATE CRIMINAL.

Before Mr. Justice Subrahmaniam Ayyar and Mr. Justice Davies.

JOHN MARTIN SEQUEIRA (COUNTER-PETITIONER), PETITIONER,
v.

1901.
February 14.

LUJA BAI (PETITIONER), RESPONDENT.*

Criminal Procedure Code—Act V of 1898, s. 195 (4)—Sanction to prosecute.

Clause (4) of section 195 of the Code of Criminal Procedure applies only to cases in which, at the time of granting sanction to prosecute, the offender is uncertain or unknown. Where there is no doubt as to whom the prosecution is to be directed against, the offender should be named.

APPLICATION under section 195, clause (4), of the Code of Criminal Procedure for sanction to prosecute petitioner for forgery.

The District Judge made the following order:—"It is not denied now that the words in the application for probate and in the vakalat, 'this cross is the signature of Luja Bai' were written by the counter-petitioner, though it is not admitted that they were. There is nothing at present on record to show that the counter-

(1) L.R., 8 A.C., 508.

(2) 33 Ch.D., 562.

* Criminal Miscellaneous Petition No. 144 of 1900 praying the High Court to revise the order of J. W. F. Dumergue, District Judge of South Canara, on Civil Miscellaneous Petition No. 224 of 1900.

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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 Davics and Mr. Justice Bhashyam Ayyangar.

MEIYYALU NADAN (PLAINTIFF), APPELLANT,

v.

ANJALAY AND ANOTHER (DEPENDANTS), 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.

* Second Appeal No. 1183 of 1900 against the decree of K. Ramachandrar Ayyar, Subordinate Judge of Negapatam, in Appeal Suit No. 695 of 1899 presented against the decree of V. Coopposwami Ayyar, District Munsif of Tiruturai pundi, in Original Suit No. 75 of 1899.