as now set forth, we should certainly not be prepared to hold that it is not open to the appellants to contend that the self-acquisitions of Sankaran Nambudri passed on his death to his own immediate heirs and not to his illom if this contention had been raised either before the Court of First Instance or the lower Appellate Court. From the records however it is clear that this plea was never even suggested till this case came before us on second appeal. Such being the case we must refuse to refer this point, as we have been requested to do, to the lower Courts for enquiry and decision.

As regards interest we accept the view of the Subordinate Judge as set forth in paragraph 9 of his judgment.

The second appeal is dismissed with costs.

APPELLATE CRIMINAL.

Before Mr. Justice Subrahmania Ayyar and Mr. Justice Benson.

KING-EMPEROR

v.

THAMMANA REDDI AND TWO OTHERS, ACCUSED.*

1901. January 18.

Criminal Procedure Code—Act V of 1898, s. 250—Frivolous or vexatious accusations—Case instituted on "information given to a Magistrate"—Information to a Village Magistrate—Discharge of accused—Order awarding compensation—Validity.

A Village Magistrate is not a Magistrate within the meaning of section 250 of the Code of Criminal Procedure; and where a case has been instituted in consequence of a complaint made to a Village Magistrate, who sent a report to the police, who submitted a charge sheet, the person who complained to the Village Magistrate cannot be ordered, under section 250, to pay compensation to the accused if the latter are discharged.

CASE referred for orders of the High Court. The facts appear from the letter of reference, which was as follows:—

"Section 250 of the Code of Criminal Procedure directs the award of compensation for frivolous or vexatious accusations in any case instituted by complaint as defined in the Criminal

* Case referred for the orders of the High Court under section 438 of the Criminal Procedure Code by C. R. Mounsey, District Magistrate of Coimbatore, in his letter, dated 13th November 1900, Reference on Criminal Revision No. 52 of 1900.

KING-EMPEROR v. THAMMANA REDDI.

Procedure Code or upon 'information given to a Police officer or to a Magistrate.' In Criminal Case No. 117 of 1900 on the file of the Taluk Second-class Magistrate of Bhaváni, a case of house-breaking and theft in a building (sections 454 and 380, Indian Penal Code) the accused were discharged under section 233, Criminal Procedure Code, and the prosecution witness No. 2 was ordered by the Taluk Magistrate (second class) to pay compensation of Rs. 40 to each of the accused. The complaint in this case was originally made to the Village Magistrate, who sent a report to the police. The police investigated the case and submitted a charge sheet to the Taluk Magistrate. The Taluk Magistrate was of opinion that the case was instituted upon information given to a Magistrate—the Magistrate in this case is a Village Magistrate or in other words head of a village. Under section 1 of the Criminal Procedure Code nothing contained in that Code in the absence of any specific provision to the contrary shall apply to heads of villages in the Presidency of Fort St. George. I am of opinion that the information in this case was not given to a Magistrate, as the word Magistrate is used in section 250, Criminal Procedure Code, and that the award of compensation is not authorized by the Code. The case seems really to have taken up owing to a Police officer making a report. The judgment of the Taluk Second-class Magistrate contained the following paragraphs 21 and 22:—'I discharge the accused under section 233, Criminal Procedure Code. I called on prosecution witness No. 2 who informed the Village Magistrate about the alleged house-breaking and theft and on whose information all proceedings have been taken to show cause why he should not be ordered to pay compensation to the accused. He repeats that his complaint is true. I have written in great detail the reasons for disbelieving the complaint. The accused were arrested by the police on 9th October 1899, and produced before this Court and were let out on bail on 11th October 1899. They have been thus subjected to considerable humiliation. I have considered over the matter of awarding compensation and believe such patently vexatious charges should be put down. Taking all the circumstances into consideration, I direct that prosecution witness No. 2 do pay to each of the accused Rs. 40 under section 250, Criminal Procedure Code.'"

Mr. *W. Barton*, for the Public Prosecutor, for the Crown.

Mr. *C. Krishnan* for the accused.

JUDGMENT.—We think that the view of the District Magistrate is correct. We set aside so much of the Second-class Magistrate's order as was made under section 250, Criminal Procedure Code, and direct that the amount, if any, levied as compensation be refunded.

APPELLATE CIVIL.

Before Mr. Justice Bhashyam Ayyangar and Mr. Justice Moore.

CHALADOM THOLAN AND ANOTHER (DEFENDANTS), PETITIONERS, 1902. February 3.

v.

KAKKATH KUNHAMBU (PLAINTIFF), COUNTER-PETITIONER.*

Civil Procedure Code—Act XIV of 1882, s. 43—Former suit for injunction to restrain defendants from removing shells stored on certain land—Dismissal as not maintainable—Subsequent conversion by defendants of the shells—Suit for their value—Maintainability—Agricultural tenants—Right to dig shells.

Though a tenant of lands for the cultivation of paddy may, possibly, be justified in digging up shells from the land for the cultivation of the land in a proper and husband-like manner, the property in the shells so dug up is (in the absence of local custom) not in the tenant but in the landlord, and the tenant has no right to convert them to his use.

Defendants, who held land for the cultivation of paddy, had dug up from the land shells which are used for the manufacture of lime, and stored them on the land. The landlords had let the right to dig these shells to plaintiff, who, in conjunction with the landlords, and while the shells were still on the land, sued for a perpetual injunction restraining defendants from digging shells and also to restrain them from carrying away those which they had already dug, and which were stored on the land. That case was dismissed as not being one in which an injunction could be granted. Subsequently to its dismissal, defendants removed the shells, and converted them to their own use. Plaintiff now sued for their value; when it was pleaded that the suit was barred by section 43 of the Code of Civil Procedure.

Held, that the suit was not barred.

SUIT to recover the value of shells (used for the manufacture of lime), which had been removed by defendants (petitioners) from certain land. This land was held by defendants as agricultural tenants for the cultivation of paddy. Plaintiff (respondent) was

* Civil Revision Petition No. 230 of 1900 under section 25 of Act IX of 1887 praying the High Court to revise the decree of M. Mundappa Bangera, District Munsif of Tellicherry, in Small Cause Suit No. 250 of 1900.