

Procedure Code, even property outside the jurisdiction of the Court in which a suit is pending, can be attached by that Court in anticipation of its judgment.

VEERAYYA  
v.  
ANNAMALA  
CHETTI.

The petitioner is thus entitled to a rateable share in the sum of Rs. 1,207-8-0, the amount available in Original Suit No. 21 of 1895, along with those other decree-holders of Krishnam Ramasamy whose claims to rateable distribution have been admitted by the District Judge of Nellore, and I direct accordingly. The order of the District Judge, dated 23rd December 1904, refusing the petitioner's application for a rateable distribution will therefore be set aside. The petitioner is entitled to the costs of this petition.

### APPELLATE CIVIL.

*Before Mr. Justice Sankaran-Nair and Mr. Justice Abdur Rahim.*

MUNIAPPAN CHETTI (SIXTH DEFENDANT), APPELLANT,

v.

BALAYAN CHETTI (PLAINTIFF), RESPONDENT.\*

1908  
August 3, 4.

*Civil Procedure Code, Act XIV of 1882, s. 108—Section applies to a defendant who has filed written statement.*

A defendant who had filed a written statement, but had not appeared at the hearing is entitled to apply under section 108 of the Code of Civil Procedure to set aside the decree passed against him.

THE facts are sufficiently set out in the judgment.

*T. R. Venkatrama Sastrî* for The Hon. the Advocate-General for appellant.

*K. Narayana Rao* for respondent.

JUDGMENT.—The appellant, the sixth defendant, filed a written statement, but failed to appear at any adjourned hearing, and a decree was passed against him in his absence. He has now applied under section 108, Civil Procedure Code, to set aside the decree passed, *ex parte*, against him. Following the decisions in *Ramanuja Reddiar v. Rangaswami Aiyangar* (1), *Jonardan Dobby v.*

\* Appeal No. 8 of 1908, presented under section 15 of the Letters Patent against the judgment of Mr. Justice Muoro, dated 10th January 1908, in Civil Revision Petition No. 292 of 1907.

(1) 18 M. L. J., 51.

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CHETTI.

*Ramdhone Singh*(1), *Hidreth v. Sayaji Piraji Contractor*(2), and *Shankar Dat Dube v. Radha Krishna*(3), which were apparently not cited before the learned Judge, we hold that the appellant is entitled to make this application. The lower Courts have not decided whether the appellant was prevented by sufficient cause from appearing when the suit was heard. It is also alleged that the application is barred by limitation. We therefore set aside the orders passed by the learned Judge and the Courts below and direct the District Munsif to restore the application to his file and dispose of it in accordance with law. Costs will abide the result.

### APPELLATE CRIMINAL.

*Before Mr. Justice Sankaran-Nair and Mr. Justice Abdur Rahim.*

CHINNA RAMANA GOWD

v.

EMPEROR.\*

1908  
August 3, 11.

*Penal Code, Act XLV of 1860, s. 211—False charge must be to one having authority to set criminal law in motion—Criminal Procedure Code, s. 162—Statement made under cannot be the basis of prosecution for false charge.*

A statement made under section 162 of the Code of Criminal Procedure in answer to questions put by a police officer making an investigation under section 161 of the Code of Criminal Procedure cannot be made the basis of a prosecution under section 211 of Indian Penal Code.

Information of an alleged dacoity was given to a Village Munsif who sent a report to the police. The police thereupon investigated the case and rejected it as false.

The informant was prosecuted under section 211 of the Indian Penal Code:

*Held*, that there was no institution of criminal proceedings by the informant, as the Village Munsif had no power to investigate in cases of dacoity.

The informant had made no 'false charge' within the meaning of section 211 as it was not made to one having power to investigate and send up for trial. The subsequent investigation was not the result of the information given but of the report sent by the Village Munsif.

*Karim Buksh v. Queen-Empress*, (I. L. R., 17 Calc., 574), followed.

(1) I. L. R., 23 Calc., 738.

(2) I. L. R., 20 Bom., 380.

(3) I. L. R., 203 All., 195.

\* Criminal Appeal No. 231 of 1908, presented against the sentence of A. T. Forbes, Esq., Sessions Judge of Bellary Division, in Case No. 26 of the Calendar for 1907.