

WALLIS
AND
MUNRO, JJ.
—
ANDAKKAGARI
NAGI
REDDY
v.
BARAPPA OF
MEDIMAKULA-
PALLI.

ground. But in this case we can see no illegality and we are not prepared to interfere. We may observe that, if the appeal succeeds, the petitioners will not be called on to refund as section 250 (4) provides that the compensation shall not be paid to him until the appeal is decided. The petition is dismissed.

APPELLATE CRIMINAL.

*Before Sir Ralph Sillery Benson, Officiating Chief Justice, and
Mr. Justice Abdur Rahim.*

1909.
July 28.

KRISHNA REDDY AND OTHERS, PETITIONERS,

v.

EMPEROR, RESPONDENT.*

Criminal Procedure Code—Act V of 1898, s. 195—Superior Court has no jurisdiction to order further inquiry by Subordinate Court.

A superior Criminal Court to which an appeal has been preferred under section 195 of the Criminal Procedure Code against an order of an inferior Criminal Court granting sanction, has no power to take or call for further evidence. The power to do so given by section 428 is limited to appeals under that chapter.

PETITION, under sections 195 (b), 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the order of L. E. Buckley, District Magistrate of Salem, in Criminal Revision Case No. 31 of 1908, presented against the order of the Stationary Second-class Magistrate of Namakkal in Miscellaneous Case No. 10 of 1908.

The facts for the purpose of this case are sufficiently set out in the judgment.

K. Ramanath Shenai for petitioners.

The Public Prosecutor, *contra*.

ORDER.—In the case of *Rama Aiyar v. Venkatachella Pada-yachi*(1) it was held that a District Judge had no jurisdiction to order further enquiry by a District Munsif in regard to a matter dealt with by him under section 195, Criminal Procedure Code. It was held that such jurisdiction was not inherent, because not incidental to the proper exercise of the powers given

* Criminal Revision Case No. 83 of 1909.

(1) (1907) I.L.R., 30 Mad., 311.

to the District Court by the section, nor were they given by any section of the Civil or Criminal Procedure Code.

Though that was in a Civil Court and the present case arose in a Criminal Court, we think the same reasoning must be held applicable. The power to take, or call for, further evidence given by section 428, Criminal Procedure Code, is expressly limited to appeals under that chapter, *i.e.*, under chapter 31 of the Code. Section 195 is not part of that chapter nor does the section itself give any power to call for further evidence.

We must therefore hold that the District Magistrate had no power to make the order calling for further evidence. We set aside the order and direct the District Magistrate to restore the case to his file and deal with it according to law.

BENSON, C.J.,
AND
ABDUR
RAHIM, J.
KRISHNA
REDDY
V.
EMPEROR.

APPELLATE CIVIL.

*Before Sir R. S. Benson, Officiating Chief Justice, and
Mr. Justice Sankaran-Nair.*

CARALAPATHI CHUNNA CUNNIAH AND OTHERS (DEFENDANTS),
APPELLANTS,

1909.
August 25.

v.

COTA NAMMALWARIAH (PLAINTIFF), RESPONDENT.*

*Indian Succession Act, X of 1865, ss. 82, 187—Will—Bequest to widow,
how to be construed.*

Section 187 of the Succession Act does not debar a defendant from relying on a will, in respect of which no Probate or Letters of Administration have been taken out, as he is not seeking to establish a right as executor or legatee.

In a case to which the Hindu Wills Act applied, a testator made a bequest to his widow in the following terms:—"I give all the remaining properties of every sort which fell to my share to my wife Andalu. Therefore, the aforesaid Andalu herself should enjoy all the remaining properties":

Held, on the construction of the will, that the widow took only a limited estate. The operation of the ordinary rule of Hindu Law that a bequest to a wife, without words creating an absolute estate, conferred only a limited interest, was excluded by section 82 of the Succession Act. The fact that the donee was a widow, the absence of words of inheritance, and of words conferring powers of alienation were not sufficient to show that she took only a restricted interest.

* Original Side Appeal No. 12 of 1908.