to order the arrest of the person concerned and does not provide that he may detain him in custody until the completion of the enquiry; but assuming that a person so arrested is entitled to be released on bail under section 496, we do not think that this anomaly is sufficient to justify us in not giving effect to the clear words of section 107 clause (4) which entitle the Magistrate to detain the person concerned in custody in cases to which that clause is applicable. The question is not covered by any previous decision. It was left expressly undecided in *Chidambaram Pillai* v. *Emperor*(1). In *Mewa Lal Thakur* v. *The Emperor*(2), all that was held was that bail cannot be demanded from a person against whom proceedings under section 107 are contemplated but no proceedings have been drawn up or issued. In *Raghunandan Pershad* v. *Emperor*(3) the Calcutta High Court held that except in the special circumstances referred to in clauses (3) and (4) of section 107 and which were admittedly not applicable to that case, the law did not empower a Magistrate to detain a person in custody until the completion of the enquiry, and that the Magistrate was bound to grant bail. On the whole we are of opinion that in this case the Joint Magistrate had the right to refuse to enlarge the petitioner on bail and we therefore dismiss this petition.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Sadasiva Ayyar.

ANDIAPPA PILLAI (BY HIS AUTHORISED AGENT SENTHIVELU PILLAI) (PLAINTIFF), APPELLANT,

v.

MUTHUKUMARA THEVAN AND ANOTHER (DEFENDANTS), RESPONDENTS.*

1912. February 14 and 17.

Civil Procedure Code (Act XIV of 1882), sec. 568—"or for any other substantial cause," effect of—Power of an appellate court to admit additional evidence—'Other' not ejusdum generis—'to enable it to pronounce judgment', meaning of—Appellate Court, all powers of original court rest in.

An Appellate Court has power to admit further evidence under the clause "or for any other substantial cause" in section 568, Civil Procedure Code, which cause need not be *ejusdem generis* with the causes stated in the previous part of the section.

(1) (1908) I.L.R., 31 Mad., 315. (2) (1906) 11 C., W.N., 415.
(3) (1905) I.L.R., 32 Calc., 80.
* Second Appeal No. 805 of 1910.

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Kessowji Issur v. *G.I.P. Railway Company* (1907) I.L.R. 31 Bom., 381 (P.C.) explained and distinguished.

Per SADASIVA AYYAR, J.—The expression "to enable it (the appellate court) to pronounce judgment" means to enable it to pronounce a *satisfactory* judgment; an appellate court has all the powers of an original court.

SECOND APPEAL against the decree of F. H. HAMNETT, the District Judge of Madura, in Appeal No. 512 of 1908, presented against the decree of T. K. SUBBA AYYAR, the District Munsif of Manamadura, in Original Suit No. 93 of 1907.

The facts of this case are set out in the judgment of SADASIVA AYYAR, J.

T. Rangachariar and *K. V. Krishnaswami Ayyar* for the appellant.

V. V. Srinivasa Ayyangar for the respondents.

BENSON, J. BENSON, J.—The substantial question argued in this Second Appeal is whether the District Judge was right in allowing fresh evidence to be adduced at the hearing of the appeal.

It is contended for the appellant that the District Judge was wrong in so doing and that his procedure was not in accordance with section 568 of the Code of Civil Procedure (Act XIV of 1882), as explained by the Privy Council in *Kessowji Issur* v. *G.I.P. Railway Company* (1).

I am unable to accept this contention. The circumstances under which the additional evidence in that case was admitted were wholly different from the circumstances in the present case. In the present case, the District Judge after hearing the arguments by the pleaders on both sides observed that the District Munsif had not sufficiently considered the *olugu* account (Exhibit I) that he had, in fact, misunderstood it, that only part of it was filed and that certain documents which the appellant before him then produced would show that the District Munsif's explanation of it could not be correct. The District Judge also did not think that there could be two different tenures (*pannai* and *kudi* lands) in one and the same survey number, and he desired the remainder of the *olugu* account to be filed in order to see whether such entries could be found in other numbers entered in that account. It seems to me to be clear that the District Judge was in doubt as to whether there could be *pannai* and *kudi* lands in the same number

(1) (1907) I.L.R., 31 Bom., 381 (P.C.).

and required further evidence in order to clear up this point. He also required further evidence to test the District Munsif's explanation of the effect of certain entries in the *olugu* account, which explanation seemed to the District Judge to be wrong. He, therefore, needed or required the further evidence mentioned in his order to be produced in order to enable him to properly decide the appeal before him.

BENSON, J.

There was, in my opinion "substantial cause" for admitting the further evidence within the meaning of section 568 of the Civil Procedure Code, 1882, I do not think that the words "or for any other substantial cause" in that section should be construed in the narrow sense suggested by the doctrine of *ejusdem generis*, so as, in effect, to confine them to causes of the same kind as those stated in the earlier part of the section.

I would, therefore, confirm the decree of the District Judge and dismiss the Second Appeal with costs.

SADASIVA AYYAR, J.

SADASIVA AYYAR, J.—The Lower Appellate Court reversed the District Munsif's judgment and dismissed the plantiff's suit, mainly on the strength of some additional evidence which the Appellate Court received during the hearing of the appeal. The only arguable ground in this Second Appeal is whether the District Court was so entitled in law to take and consider such additional evidence.

It has been held by the Privy Council in *Kessowji Issur* v. *G.I.P. Railway Company*(1) that Appellate Courts have no jurisdiction to allow parties to adduce further evidence unless section 568, Civil Procedure Code, 1882 (Order XLI, rule 27, Civil Procedure Code, 1908) allows it. That section, as explained by the Privy Council, allows the Appellate Court to admit such further evidence if (*a*) the First Court had improperly refused to admit evidence, or if (*b*) the Appellate Court, on looking into the evidence as it stands, finds some inherent *lacuna* or defect which has to be filled up and supplied by fresh evidence before the Appellate Court finds itself in a position "to pronounce judgment," or if (*c*) there is any other substantial cause, and if in each case the reasons for admitting further evidence are recorded.

In *Kessowji Issur* v. *G.I.P. Railway Company*(1), their Lordships of the Privy Council found (*a*) that the First Court

(1) (1907) I.L.R., 31 Bom., 381 (P.C.).

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SADASIVA AYYAR, J.

had not improperly refused to admit evidence (*b*) that the Appellate Court, *before looking into the evidence as it stood*, had admitted further evidence on a preliminary application (*c*) that there was no other substantial cause for admitting fresh evidence as the Original Court had on an application for review, refused to grant review or to take the further evidence offered, ... and (*d*) that the Appellate Court recorded no reasons before admitting such further evidence.

In the present case, I am inclined to hold on a careful perusal of the record that the District Court felt such serious doubts about the difficult and unusual tenure on which the disputed land No. 76 was held (partly *pannai* and partly *kudi*) that it directed and authorized further evidence to be received on both sides. The learned District Judge frankly says in one portion of his judgment that it appeared to him "improbable at first that the same field would contain *pannai* and *kudi* land," and that he had to change his opinion on further arguments. The expression "to enable it (the Appellate Court) to pronounce judgment" cannot surely mean "pronounce some judgment whether or not such judgment reasonably satisfied the mind and conscience of the Court pronouncing it that it has done its duty to find out the truth and mete out justice." In the Privy Council case in *Kessowji Issur* v. *G.I.P. Railway Company*(1), the Appellate Court allowed further evidence to be adduced without the learned Judges applying their minds to the question whether they required further evidence to pronounce a satisfactory judgment and hence their Lordships of the Privy Council disallowed the procedure.

Even supposing that I am wrong in my view as to the meaning of the phrase "to enable it to pronounce judgment," see *Subba Naidu* v. *Ethirajammal*(2), where two learned Judges of this court have differed as to the meaning of this clause (*b*) of section 568. There is the other phrase "for any other substantial cause" in the same clause (*b*) which enables the Appellate Court to receive further evidence. I am unable to adopt the doctrine of *ejusdem generis* in construing such a wide expression "any other substantial cause" Original Courts have, in

(1) (1907) I.L.R., 31 Bom., 381 (P.C.). (2) (1912) 22 M.L.J., 14.

order to do justice (which is the main object for which all courts exist), the power to send for and inspect documents on the records of any court *of its own motion* (Order 13, rule 10, Civil Procedure Code, 1908): they may ask "any person present in court" to give evidence or produce any document then in his possession (Order 16, rule 7), and may put any questions, relevant or irrelevant, to witnesses (Indian Evidence Act, section 165). The new section 151 of the Civil Procedure Code, 1908, which merely gives express sanction to what has always been implied, namely, to the doctrine that Courts of justice possess inherent powers to do all things necessary to mete out justice provided they do not exceed their jurisdiction might also be referred to in this connection. An Original Court can reconsider its own judgment on review on fresh evidence which it might allow a party to adduce if such evidence was not within his power to produce at the original hearing. An Appellate Court has all the powers of an Original Court to do justice (Order 41, rule 33).

In the case before the Privy Council, the Original Court refused an application for review of its judgment on further evidence offered and yet the Appellate Court (without assigning reasons admitted fresh evidence and hence the Privy Council criticized the Appellate Court's procedure. But, surely their Lordships did not mean to give lesser powers to an Appellate Court to admit fresh evidence *than the Original Court would have had in the case of a review*. The Original Court could admit fresh evidence on a review, subject only to certain conditions and for certain substantial causes. The Appellate Court is, on principle, entitled to do so for the same substantial causes. If the Appellate Court after it pronounces a judgment could review its own decision on fresh evidence offered after satisfying the stringent conditions imposed on the party applying for a review, why should it not do so during the first trial itself of the appeal?

In the present case, I am of opinion that the Lower Court admitted additional evidence for such substantial causes as well justify a review by the Original Court (*see* the allegations in the affidavit put in by the plaintiff before the hearing of the appeal in the Lower Court explaining why he was unable to produce the additional evidence, Exhibits 2 to 5, before). The District Judge has given reasons in his longer order of 30th

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September 1909 for admitting the further evidence though not in the shorter order of the same date endorsed on the defendant's application. I would, therefore, dismiss the Second Appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Sundara Ayyar.

1912. February 28.

SESHAGIRI ROW (DEFENDANT), APPELLANT,

v.

VAJRA VELAYUDAM PILLAI (PLAINTIFF), RESPONDENT.*

Limitation—Suit filed after limitation in wrong court—Return for presentation to proper court—Bar of limitation in spite of Limitation Act (XV of 1877), sec. 14.

If a plaint is returned for presentation to the proper court on the ground of absence of jurisdiction in the court to which it was originally presented, the suit when presented to the new court is a new suit and cannot be regarded as a continuation of the infructuous suit in the wrong court.

This is the basis of section 14 of the Limitation Act (XV of 1877). Hence if the suit when originally filed in the wrong court would have been ordinarily barred by limitation as being barred during the holidays of that court, after which alone it was filed, the suit when filed in the new court must be held to be barred in spite of section 14 of the Limitation Act.

Mohidin Rowthen v. *Nallaperumal Pillai* [(1911) 21 M.L.J., 1000], followed.

Takuroodeen Mahomed Eshan Chowdry v. *Kurimbux Chowdry* [(1865) 3 W.R. (C.R.), 20]. *Khelat Chunder Ghose* v. *Nuseebunnissa Bibee* [(1871) 16 W.R (C.R), 47], and *Assan* v. *Pathumma* [(1899) I.L.R., 22 Mad., 494], distinguished.

SECOND APPEAL against the decree of S. AUTHINARAYANA AYYAR, the acting Temporary Subordinate Judge of Coimbatore, in Appeal No. 47 of 1909, presented against the decree of T. A. RAMAKRISHNA AYYAR, the District Munsif of Coimbatore, in Original Suit No. 958 of 1907.

The facts of this case are stated in the judgment.

T. Subrahmanya Ayyar for appellant.

V. Viswanatha Sastri for respondent.

BENSON AND SUNDARA AYYAR, JJ.

JUDGMENT.—The facts of this case are quite similar to those in *Mohidin Rowthen* v. *Nallaperumal Pillai*(1), and according

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* Second Appeal No. 483 of 1910.

(1) (1911) 21 M.L.J., 1000.