

AYLING
AND
SPENCER, JJ.
—
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should, for instance, be driven to the conclusion that the word appeal was used in two different senses in the same Act. We are also conscious of the fact that in the present instance it may be said that there has been an appeal under the Letters Patent but it is evident that the decision of this Court cannot provide a new starting point in a case where the order appealed against did not give any.

This appeal is dismissed with costs.

APPELLATE CRIMINAL.

Before Mr. Justice Sundara Ayyar and Mr. Justice Ayling.

1911.
Sept. 6.

JAMNA DOSS (RESPONDENT, AGENT AND WITNESS FOR THE
PLAINTIFF), APPELLANT,

v.

A. M. SABAPATHY CHETTY (PETITIONER, SECOND DEFENDANT),
RESPONDENT.*

Criminal Procedure Code (Act V of 1898), sec. 195, cl. 7 (c).—Order granting sanction by Presidency Small Cause Court—Appeal to High Court—Jurisdiction to Appellate and not Original Side.—‘Principal Court of Original Jurisdiction’, meaning of.

From an order of the Presidency Small Cause Court giving or refusing sanction, an appeal lies to the High Court generally and not to any particular branch of it. But the jurisdiction it exercises being Appellate and not Original, it is the Appellate side alone that can dispose of such matters. The effect of clause 7 (c) of section 195, Criminal Procedure Code, is merely to designate the Court to which an appeal lies under that clause and not to describe the nature of the jurisdiction, which it exercises in dealing with orders of the Small Cause Court. Its effect is only to make the High Court the appellate tribunal.

See Bollock Singh v. Ramdhan Bania, [(1910) 14 C.W.N., 806], followed.

Per curiam.—When one Court deals with a judgment of another Court having power to confirm or to set it aside, the jurisdiction it exercises is appellate jurisdiction. Original jurisdiction is the jurisdiction in original proceedings instituted in the Court, whether suits, petitions or other proceedings. The Original Side of the High Court is not a different Court from the Appellate Side: the Court is one; but it exercises both original and appellate jurisdiction.

* Appeal Against Order No. 184 of 1910.

APPEAL against the order of J. H. BAKEWELL, the Chief Judge of the Court of Small Causes, Madras, dated the 26th October 1910, according sanction for the prosecution of the appellant Jamna Doss, the agent and witness for the plaintiff in Suit No. 10215 of 1910, on the file of the Court of Small Causes, Madras, for offences under sections 193 and 194 of the Indian Penal Code.

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The facts of the case are sufficiently stated in the judgment.

The Hon. Mr. T. Richmond and the Hon. Mr. L. A. Govindaraghava Ayyar for the appellant:

S. Subbiah Chetty for the respondent.

JUDGMENT.—[After finding on the facts that the sanction granted must be quashed, the judgment continued.]

A preliminary objection was raised by Mr. K. Ramanath Shenai that this Bench sitting on the appellate side of the Court has no power to hear this appeal. The appeal is preferred under section 195 of the Criminal Procedure Code. Clause 7 (c) of that section provides "where no appeal lies, such Court (i.e., the Court granting the sanction) shall be deemed to be subordinate to the principal Court of original jurisdiction within the local limits of whose jurisdiction such first-mentioned Court is situate." According to this clause, an appeal against an order of the Small Cause Court granting sanction would lie to the High Court because the High Court is the principal Civil Court of original jurisdiction within whose jurisdiction the Presidency Court of Small Causes is situate. Mr. K. Ramanath Shenai contends that the Court to which the appeal lies is the Original Side of the High Court. This argument is based on the assumption that the Original Side of the High Court is a different Court from the Appellate Side. This, in our opinion, is quite fallacious. The Court is one but it exercises both original and appellate jurisdiction. In interpreting section 591 of the repealed Code of Civil Procedure (Act XIV of 1882) which lays down that no appeals shall lie from appellate orders passed under section 588, it has been pointed out by this Court that the section would not apply to orders passed under section 588 by a Judge of this Court, because section 591 deals with appeals from one Court to another while the High Court is one Court by whomsoever the jurisdiction of the Court may be exercised whether by a single Judge or by a bench of more than one Judge. We therefore are of

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opinion that there is no foundation for the argument that the appeal lay to one particular branch of this Court.

It is next contended that as the appeal lies to the High Court as the principal Civil Court of Original Jurisdiction we as a Bench constituted to exercise appellate jurisdiction have no power to hear the case. In our opinion the effect of clause 7 (c), section 195, Criminal Procedure Code, is merely to designate the Court to which an appeal lies under that clause and not to describe the nature of the jurisdiction which it exercises in dealing with the orders of the Small Cause Court. Its effect is only to make the High Court the appellate tribunal. When the High Court deals with a sanction granted by the Small Cause Court, does it exercise original or appellate jurisdiction? As we understand the matter when one Court deals with a judgment of another Court, having power to confirm or to set it aside, the jurisdiction it exercises is appellate jurisdiction. Original jurisdiction is the jurisdiction in original proceedings, *i.e.*, proceedings instituted in the Court whether suits, petitions, or any other proceedings. We cannot agree that in deciding whether we should revoke the order of the Presidency Small Cause Court granting sanction against the appellant or refuse to do so we are exercising any original jurisdiction, though we are acting as the High Court which under clause 7 (c) of the section is invested with the power of dealing with cases of sanction granted or refused by the Presidency Small Cause Court. Being of opinion that power of this Court to deal with a sanction granted by another Court comes within the purview of its appellate and not original jurisdiction, we hold that we have the power to hear and dispose of the appeal and disallow the preliminary objection. The view we have taken is in accordance with the judgment of PUGH, J., of the Calcutta High Court reported in *Sew Bollock Singh v. Ramdhan Bania*(1) where the learned Judges point out that the High Court acts in the exercise of revisional jurisdiction in dealing with cases under section 195, Criminal Procedure Code.

(1) (1910) I.L.R., 37 Cal., 714.