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declaration in terms of the 2nd, 3rd, and 4th heads of their prayer with costs of the suit both in the Courts below and before this Board.

Lord SAYESEN.

Solicitors for appellants: *Barrow Rogers and Nevile.*

Solicitors for respondents: *H. S. L. Polak.*

A.M T.

APPELLATE CRIMINAL—FULL BENCH.

Before Sir Murray Coutts Trotter, Kt., Chief Justice, Mr. Justice Spencer, Mr. Justice Kumaraswami Sastri, Mr. Justice Beasley, and Mr. Justice Srinivasa Ayyangar.

1924, December 17.

RAMAKRISHNA IYER (PETITIONER), PETITIONER,

v.

SITHAI AMMAL (COUNTER-PETITIONER), RESPONDENT.*

Criminal Procedure Code (Act V of 1898), sec. 195—Sanction—False charge of dacoity—Sanction granted by Sub-Magistrate—Prosecution in pursuance of sanction instituted before amendment of the Code as to sanction came into force—Application to District Magistrate to revoke sanction—Jurisdiction of District Magistrate to revoke sanction after amendment came into force—Right to apply to revoke sanction, whether mere matter of procedure or substantive right—Amendment of Code, effect of—General Clauses Act (X of 1887), sec. 6.

Where a Sub-Magistrate granted sanction under section 195, Criminal Procedure Code (V of 1898), for prosecuting a person under section 211, Indian Penal Code, for preferring a false charge of dacoity against another, and in pursuance of the sanction a prosecution had been instituted before the amendment of the Code repealing section 195 came into force, the District Magistrate had jurisdiction under section 195 (*b*) of the Code to revoke the sanction, notwithstanding that the

* Criminal Revision Case No. 392 of 1924 (Criminal Revision Petition No. 329 of 1924).

amendment had come into force before the date of the petition before him to revoke the sanction.

The right of a person to apply to higher authorities to revoke a sanction against him is not a matter of mere procedure, but is a substantive right vested in the party to invoke the aid of a higher tribunal, and it is not affected by a later amending statute in the absence of express words to that effect.

Colonial Sugar Refining Company v. *Irving*, [1905] A.C., 369, applied; *The Attorney General* v. *Sillen and others* (1864) 10 H.L.C., 704, referred to.

The same principle is involved and carried out by section 6 of the General Clauses Act (X of 1887).

PETITION under sections 435 and 439, Criminal Procedure Code (Act V of 1898), to revise the order of H. M. HOOD, the District Magistrate of Tanjore, in C.M.P. No. 2 of 1924 preferred against the order of V. SWAMINATHA AYYAR, Stationary Second-class Magistrate of Kumbakonam in M.C. No. 9 of 1923.

In this case the respondent Sithai Ammal preferred a complaint of dacoity against the petitioner (Ramakrishna Iyer) and some others before the Sub-Magistrate of Kumbakonam. Subsequently when the case came up for trial she filed a petition alleging that her witnesses had been tampered with and that the case might be thrown out. The case was dismissed, the accused being discharged. The petitioner applied to the Magistrate in M.C. No. 9 of 1923 for sanction under section 195 (*b*), Criminal Procedure Code, to prosecute the complainant (respondent) for preferring a false charge of dacoity against him; the Magistrate granted sanction on 4th August 1923. The prosecution of the respondent was instituted before the Court of the First-class Magistrate of Kumbakonam in C.C. No. 61 of 1923 on its file, before the 1st September 1923, when the amendment of the Criminal Procedure Code in respect of section 195 and other provisions came into force. The respondent had

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preferred a petition to the then District Magistrate (Mr. SHIELD) in C.M.P. No. 105 of 1923 on 22nd August 1923, to revoke the sanction; the learned District Magistrate, being under the wrong impression that the complaint was preferred subsequent to the coming into force of the amendment in the Code, held that as under the latter, no prosecution could be instituted under a sanction, but only by the written complaint of the Court, it was useless to go into the merits of the case and disposed of the petition on 11th September 1923 by observing in effect that there was no need to pass orders thereon. Subsequently, the respondent received from the First-class Magistrate of Kumbakonam a notice in the case (C.C. No. 61 of 1923) already instituted against her. Thereupon the respondent filed a Criminal Miscellaneous Petition No. 2 of 1924 before the District Magistrate (Mr. H. M. HOOD) to revoke the sanction granted by the Sub-Magistrate. The learned District Magistrate overruled a preliminary objection raised by the petitioner that this petition was a review of the order of his predecessor (Mr. SHIELD), and was therefore not maintainable under section 369 of the Code, and revoked the sanction. Against this order of revocation, the original petitioner preferred this petition.

S. T. Srinivasagopala Achariyar for petitioner.—The District Magistrate (Mr. HOOD) had no jurisdiction to revoke the sanction under the circumstances of this case. The sanction had been granted and prosecution had been instituted before the amendment of the Criminal Procedure Code, 1898, by Act XVIII of 1923 which came into force on 1st September 1923. When section 195 was repealed by the amending Act, the power to revoke ceased to exist. It is only a procedure as to how sanction can be revoked. After the amendment, a party against whom sanction is given, cannot

adopt the procedure under section 195 to revoke it any more than a party who is refused sanction can apply to higher authorities to grant sanction under the repealed section. A new procedure and remedy have been given under the amending statute (XVIII of 1923), which takes the place of the old procedure. Section 476 (*b*) after the amendment gives a new right of appeal. If the right to revoke was a vested right of appeal, a repeal may not affect such right but if it is mere procedure, it is affected retrospectively by the repealing statute. A remedy to revoke sanction by recourse to a higher Court is not a right of appeal. It is only procedure. No person has a vested right in procedure. See *Nataraja Pillai* v. *Rangaswami Pillai*(1), *Sesha Ayyar* v. *The Public Prosecutor*(2) and *Bapu* v. *Bapu*(3). The amending Act must be held to have restrospective effect, because an interval is given between the date of its receiving assent of the Governor-General (11th April 1923) and that of its coming into force (1st September 1923). The General Clauses Act (X of 1887) does not affect rights, but it does not create a right in a form of procedure. The general rule is that an Act prescribing procedure has a retrospective effect. See Craike's Interpretation of Statutes, pages 324 to 332.

J. C. Adam (*Public Prosecutor*) for the Crown.—Section 6 of the General Clauses Act (X of 1887) was not considered in *Nataraja Pillai* v. *Rangaswami Pillai*(1). Section 195 (1) (6) is not a matter of mere procedure. It gives a right or remedy in the case of a person against whom sanction has been given, but it is not a right in the case of an applicant for sanction. The latter has an alternative remedy given in the Code

(1) (1924) I.L.R., 47 Mad., 384. (2) (1924) 19 L.W., 463.
(3) (1916) I.L.R., 39 Mad., 750 (F.B.).

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as amended, but the person against whom sanction is given has no remedy under the new Act.

JUDGMENT.

COUTTS TROTTER, C.J.

COUTTS TROTTER, C.J.—In this case the Sub-Magistrate of Kumbakonam gave leave to the petitioner before us, one Ramakrishna Iyer, to prosecute the respondent, a woman called Sithai Ammal under section 211 of the Indian Penal Code for bringing against him a false charge of dacoity. The respondent thereupon went before Mr. SHIELD who was the then District Magistrate of Tanjore, and he passed an order on the 11th September 1923, the new Code of Criminal Procedure having come into force on the 1st of the month. The learned District Magistrate came to the conclusion that there was nothing for him to do. He was asked to revoke the sanction and he said "I am not going to revoke the sanction, there is nothing in it." It is admitted that the complaint had been filed before the 1st of September 1923. In that view,—we have found from the records it was wrong,—but that being his view and he presumably not being properly instructed on the facts, he supposed that no complaint had been filed before the new statute came into operation. He first outlines the procedure relating to such a complaint and says it would be regulated by the new Code. In point of fact, as we have already said, he was misinformed about that and the complaint had in fact been filed before the operation of the new Code. Mr. SHIELD having done nothing, the matter was brought before his successor as District Magistrate of Tanjore, Mr. HOOD; and Mr. HOOD after pointing out the incorrect assumption on which his predecessor had acted, disallowed the prosecution and revoked the sanction that was granted, rightly holding that he was not revising the order of

his predecessor, Mr. SHIELD, because the petition was not considered by Mr. SHIELD and there was no order of Mr. SHIELD to revise. It is now sought to be said before us that that action of Mr. HOOD was illegal and without jurisdiction and that the sanction granted by the Second-class Magistrate of Kumbakonam must stand. It is best to begin with a citation of the material sections of the old and new Codes. Under the old Code of Criminal Procedure, section 195, the machinery for dealing with certain offences, of which the one in question in this case was one, was that, before the prosecution could be launched, it was an essential condition precedent either that the previous sanction of the Court should have been obtained, obviously by one of the parties, or that the Court should *suo motu* make a complaint. By sub-section (6) it is provided that

"any sanction given or refused under this section may be revoked or granted by any authority to which the authority giving or refusing it is subordinate (and no sanction shall remain in force for more than six months from the date on which it was given, provided that the High Court may for good cause shown extend the time)."

The new Code envisages an entirely different state of things and for all practical purposes it abolishes sanction entirely. It provides a substitute, for the condition precedent is not a sanction but a complaint in writing by the Court before which such proceeding as the matter arose out of is tried or by the Court to which that Court is subordinate. The argument put before us is this, that as the complaint in this case was filed before the coming into operation of the new Code and as the sanction required by the old Code was dispensed with and abolished by the new Code, therefore it abolished the power to revoke the sanction which was conferred by the old Code; and it is said that that must be so, because this power to invoke the Court to interfere

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with the sanction of the Court below is not a right vested in anybody but a mere matter of procedure. That undoubtedly was definitely held by a bench of this Court in *Nataraja Pillai* v. *Rangaswami Pillai*(1). It is said that there is another authority in favour of the present appellant, which is *Sesha Ayyar* v. *The Public Prosecutor*(2). We do not think that that decision under the circumstances in which it was given really applies to this case at all, because it is quite apparent from the concluding sentences of Mr. Justice KRISHNAN'S judgment, which was the only one that was pronounced in the case, that the Court was under the misapprehension that the prosecution in that case had been launched after the new Code came into force. That is a supposition which we now know to be wrong and we are not prepared to say that we should differ from the decision in the case; but as it was based on an incorrect supposition the decision is not really before us and does not give us any assistance one way or the other.

What are the principles guiding such matters as this? The line of distinction is very clearly laid down in a series of English cases of great authority which we respectfully follow and the distinction drawn is between a matter of substantive right and a matter of mere procedure. The main cases that have been referred to are *Gardner* v. *Lucas*(3) and *The Attorney-General* v. *Sillen and others*(4).

Their Lordships in *Gardner* v. *Lucas*(3) lay down the general principle that rules of procedure are always retrospective in their operation, unless there is good reason why they should not be.

(1) (1924) I.L.R., 47 Mad., 384.
(2) (1924) 19 L.W., 463.
(3) (1878) 3 App. Cas., 582.
(4) (1864) 10 H.L.C., 704.

Lord BLACKBURN says: —"The general rule not merely of England and Scotland but, I believe, of every civilized nation is expressed in the maxim *Nova constitutio futuris formam imponere debet non praeteritis. Prima facie* any new law that is made affects future transactions, not past ones. Nevertheless, it is quite clear that the subject matter of an Act might be such that, though there were not any express words to show it, it might be retrospective. For instance, I think, it is perfectly settled that, if the Legislature intended to frame a new procedure that instead of proceeding in this form or that, you should proceed in another and a different way, clearly there by-gone transactions are to be sued for and enforced according to the new form of procedure. Alterations in the form of procedure are always retrospective unless there is some good reason or other why they should not be. Then, again, I think that, where alterations are made in matters of evidence, certainly upon the reason of the thing, and I think upon the authorities also, those are retrospective, whether civil or criminal.

But where the effect would be to alter a transaction already entered into, where it would be to make that valid which was previously invalid, to make an instrument, which had no effect at all, and from which the party was at liberty to depart as long as he pleased, binding, I think, the *prima facie* construction of the Act is that it is not to be retrospective and it would require strong reasons to show that it is not the case. The Lord President has put instances which show the reason and object for this ruling; we must apply the ordinary rule in considering statutes and say it is not retrospective for such a purpose as this, there being no evidence of an intention upon the face of the language to make it retrospective."

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The other rule is best illustrated by the decision of the Privy Council in *Colonial Sugar Refining Company* v. *Irving*(1). That was a case in which the opinion of their Lordships was delivered by Lord MACNAGHTEN and he lays down the principle in language so clear that I cannot possibly do better than adopt it :—

"As regards the general principles applicable to the case there was no controversy. On the one hand it was not disputed that if the matter in question be a matter of procedure only, the petition is well founded. On the other hand, if it be more than a matter of procedure, if it touches a right in existence at the passing of the Act, it was conceded that, in accordance with a long line of authorities extending from the time of Lord COKE to the present day, the appellants would be entitled to succeed. The Judiciary Act is not retrospective by express enactment or by necessary intendment. And therefore the only question is, was the appeal to His Majesty in Council a right vested in the appellants at the date of the passing of the Act, or was it a mere matter of procedure? It seems to their Lordships that the question does not admit of doubt. To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right is a very different thing from regulating procedure. In principle their Lordships see no difference between abolishing an appeal altogether and transferring the appeal to a new tribunal. In either case there is an interference with existing rights contrary to the well-known general principle that statutes are not to be held to act retrospectively unless a clear intention to that effect is manifested."

There is one other passage which I should like to quote and it is from a judgment of Lord WESTBURY, in the well-known case of *The Attorney-General* v. *Sillen and others*(2) and it is quoted in Stroud's Judicial Dictionary, 2nd Edition, Vol. 1, at page 98 :—

"The right of appeal is only by statute. It is not in itself a necessary part of the procedure in an action but is the right of entering a Supreme Court and invoking its aid and interposition, to redress the error of the Court below. It seems absurd to denominate this paramount right part of the practice of the inferior tribunal."

(1) [1905] A.C., 369. (2) (1864) 10 H.L.C., 704.

Now turning again to the Indian authorities what do we find? The learned Judges in *Nataraja Pillai* v. *Rangaswami Pillai*(1) seem to me to base their observations on the following passage in the judgment of Sir ARNOLD WHITE, Chief Justice, in *Bapu* v. *Bapu*(2) :—

"We think, however, that the power conferred on this Court by section 195 (6) of the Criminal Procedure Code is not a part of the Appellate and revisional jurisdiction of this Court conferred by chapters 31 and 32 of the Code of Criminal Procedure."

It follows therefore it was concerned with the question of what was the proper procedure. However, the matter is not directly before us, though Sir ARNOLD WHITE, Chief Justice, was quite right in thinking that the power conferred was not a part of the appellate and revisional jurisdiction under chapters 31 and 32 of the Code. But that is not the question we have to determine. The question we have to decide is whether this was a right of entering the Superior Court and invoking its aid and interposition to redress the error of the Magistrate's Court below and therefore it seems to us that, on principle and those very weighty authorities, we ought to hold that this is not a case of procedure but it is a case of a real right to invoke the aid of a higher tribunal. We are also of opinion that those principles are really involved and carried out by section 6 of the General Clauses Act X of 1887, because what that section says is this:

"Where this Act or any Act of the Governor-General in Council or Regulation made after the commencement of this Act repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not

(*a*) revive anything not in force or existing at the time at which the repeal takes effect; or

(1) (1924) I.L.R., 47 Mad., 384. (2) (1916) I.L.R., 39 Mad., 750 (F.B.).

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(*b*) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder: or

(*c*) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed;

(*d*) . . . .

(*e*) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

That is the shortest method of dealing with this matter, namely to base our decision on the words of that section, but, as in our opinion a very important legal principle is involved, we have thought it better to state that principle with reference to the pronouncements of the very eminent Judges whose judgments we have quoted. Mr. Srinivasagopala Achariyar conceded that, apart from the question of jurisdiction, he could not argue that Mr. HOOD'S order was not right in other respects.

The result will be that this petition is dismissed.

SPENCER, J.
KUMARASWAMI SASTRI, J.
BEASLEY, J.
SRINIVASA AYYANGAR, J.
} We agree.

K.R.