

The Madras Act VIII of 1865 expressly limits the appeal to the Civil Court, and the power vested in a Civil Judge to transfer appeals to a Principal Sadr Amin is given by clause 3, Section 8, Act VII of 1843, and is confined to "any appeals from District Munsifs which may be filed in a Zillah Court."

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of 1868.

We are therefore of opinion that the decree by the Principal Sadr Amin was made without jurisdiction and is a nullity, and the order now appealed from must be set aside, and the appeal set down for hearing in due course in the Civil Court.

### Appellate Jurisdiction. (a)

*Criminal Petition No. 247 of 1868.*

PANCHANADA TAMBIRAN.....*Petitioner.*

A Criminal Court inflicting a fine for contempt of Court should specifically record its reasons and the facts constituting the contempt, with any statement the offender may make, as well as the finding and sentence.

Where this course was not adopted, the High Court set aside the order inflicting a fine.

**T**HIS was a petition against an order of the Session Judge of Madura, dated 13th October 1868.

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The petitioner preferred a charge of criminal trespass under Section 447 of the Indian Penal Code against one Chappani Muthu Pillay. The charge was dismissed by the Assistant Magistrate of Madura, whereupon the petitioner presented a petition to the Court of Session complaining of the dismissal of the charge, and asking the Court of Session to direct the committal of the defendant for trial by that Court under Section 434 of the Code of Criminal Procedure upon a charge of dacoity, and also to ask for the sanction of the High Court to institute criminal proceedings against the Deputy Collector who had investigated a charge preferred by the defendant Chapani Muthu Pillay against the petitioner which was also dismissed, founded upon their irregularity and illegality of the Deputy Collector's proceedings.

• (a) Present : Scotland, C. J. and Collett, J.

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The Session Court rejected the petitions by an order dated 10th July 1868. The petitioner presented another petition to the Session Court asking for authenticated copies of certain orders passed upon his petitions and the return of certain documents which had been filed with the petitions. This petition was rejected on the ground that it was insufficiently stamped.

In the course of the proceedings connected with the petitions, the Session Judge of Madura fined the petitioner Rupees 50 for a contempt of Court, the nature of which did not appear, and the amount of the fine was paid.

On the 10th October 1868, the petitioner applied to the Acting Session Judge for a copy of the order fining him, and praying that the amount of the fine should be returned to him.

Upon this petition, the Acting Session Judge passed an order dated 13th October 1868, setting forth that no written order had been passed imposing the fine, as ought to have been done under Section 163, Code of Criminal Procedure, but an entry in the accounts showed that the fine had been collected. The Acting Session Judge had no means of judging of the merits of the case nor of remitting the fine, as the order imposing it had been passed by his predecessor.

The petitioner presented a petition to the High Court under Section 404 of the Criminal Procedure Code, praying that the fine collected from him without any written order authorizing its imposition should be ordered to be returned to him, and also asking for permission to prosecute the Deputy Collector and others.

*Karnakara Menon*, for the petitioner.

The Court delivered the following

JUDGMENT :—It appears from the return made by the Acting Session Judge that the fine of 50 Rupees was levied from the petitioner for some alleged contempt of Court. The law requires that a Criminal Court inflicting a fine for contempt of Court should specifically record its reasons, “the facts constituting the contempt with any statement the offender may make as well as the finding and sentence.

In this case no reasons have been recorded, and we must therefore suppose that there was in fact no good ground for fining the petitioner. The order must be set aside. It is accordingly ordered that the order of the Session Court fining the petitioner be, and it hereby is quashed, and that the fine levied be returned to the petitioner.

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## Appellate Jurisdiction (a)

*Special Appeal No. 369 of 1868.*

PUDIYAR VASUDAVAN NAMBU DRIPAD. *Special Appellant.*

KEYAKA KOVILAGATHA VALIA RANY } *Special Respondents.*  
and 5 others..... }

The provisions of Section 170 of the Code of Civil Procedure ought to be exercised with the most temperate discretion.

Where the Court might have treated one of the defendants as in default and passed judgment against him under the above Section, but instead of doing so passed over the default and made an order adjourning the further hearing of the suit, and on the day to which the hearing was adjourned disposed of the suit under Section 170,

*Held* that the Court by its own act was not in a position to treat the defendant as in default.

THIS was a Special Appeal against the decision of G. R. Sharpe, the Civil Judge of Calicut, in Regular Appeal No. 54 of 1868, modifying the decree of the Court of the District Munsif of Calicut in Original Suit No. 1,368 of 1861.

1869.  
February 12.  
S. A. No. 369  
of 1868.

*The Advocate General and Karnakura Menon* for the special appellant, the second defendant.

*Sanjiva Row*, for the 1st, and *Parthasarthy Aiyangar*, for the 3rd special respondent, the plaintiff and the 39th defendant.

The facts appear from the following

JUDGMENT :—In this suit judgment was given against the 2nd defendant under Section 170, Civil Procedure Code, on two alleged grounds of default; (1) that he failed to attend to give evidence in accordance with a summons; and (2) that he failed to produce a certain document. It now turns out on further enquiry that the 2nd defendant never was served with any summons, but merely with a

(a) Present: Scotland, C. J., and Ellis, J.