registered mortgage of 1869; and that they afterwards made further advances to Pandoji on the same security in 1873. In the meantime, however, Pandoji had sold his equity of redemption to the plaintiffs in 1871. The District Judge held that as the plaintiffs had not given notice to the defendants of their assignment, they could not redeem the property, except on condition of paying the debt of 1873 as well as that of 1869. We do not feel sure whether the District Judge intended to hold that notice to the mortgagee in possession was necessary to complete the plaintiffs' title as assignees of the equity of redemption. By English law it is clear that the assignment of an equitable estate in immoveable property is complete without notice to the owner of the legal estate—*Wilmot* v. *Pike* (1), where the owner of the legal estate was the first mortgagee, as in the present case. Nor are we aware of any rule of Hindu law which requires us to hold differently as regards the necessity of notice to the person in possession whose position may be considered analogous to the holder of the [36] legal estate in English law. But, although notice to the defendants was not, we think, necessary to complete the plaintiffs' title as assignees of the equity of redemption, it is plain, upon general principles of equity, that if the plaintiffs' conduct was such as to amount to a standing by, and allowing the defendants to make further advances to Pandoji, under the supposition that he was still the owner of the equity of redemption, such conduct would give the defendants a better equity. If the property was standing in Pandoji's name in the Collector's books, the allowing it so to remain after the assignment would, in our opinion, be sufficient for the purpose. We must, therefore, send back the case for a finding on the following issues:—

1. Was the property standing in the name of Pandoji in the Collector's books when the assignment was made to the plaintiffs, and, if so, did it continue to stand in his name when the further advances were made by the defendants?

2. Were the plaintiffs aware of the negotiation for the further advances by the defendants to their uncle Pandoji in 1873?

The findings to be returned to this Court within two months. Parties to be allowed to give fresh evidence.

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12 B. 36.

CRIMINAL REFERENCE.

Before Mr. Justice West and Mr. Justice Birdwood.

QUEEN-EMPRESS *v.* TULJA AND OTHERS,* [14th July, 1887.]

Sanction to prosecute—Criminal Procedure Code (Act X of 1882), s. 195—Sub-Registrar—Forgery—Indian Penal Code (Act XLV of 1860), ss. 463, 467—Court—Judicial inquiry—Administrative inquiry.

A Sub-Registrar under the Registration Act (III of 1877) is not a Judge, and, therefore, not a 'Court' within the meaning of s. 195 of the Code of Criminal Procedure (Act X of 1882). His sanction is, therefore, not necessary for a prosecution for forgery in respect of a forged document presented for registration in his office.

The ruling in *In re Venkatachala* (2) dissented from.

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* Criminal Reference, No. 72 of 1887.

(1) 5 Hare's Rep. 14.

(2) 10 M. 154.

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The word 'Forgery' is used as a general term in s. 463 of the Indian Penal Code (Act XLV of 1860); and that section is referred to in a comprehensive sense in s. 195 of the Criminal Procedure Code (Act X of 1882) so as to embrace all species of forgery, and thus includes a case falling under s. 467 of the Indian Penal Code.

[37] The definition of "Court" given in the Evidence Act (I of 1872) is framed only for the purposes of the Act itself, and should not be extended beyond its legitimate scope.

Distinction between a *judicial* and an *administrative* inquiry pointed out.

[Diss., 15 M. 138 (F.B.); F., 14 Bom. L.R. 970=1 Bom. Cr. Cas. 214=13 Cr. L.J. 845=17 Ind. Cas. 717; 13 Ind. Cas. 275=10 M.L.T. 563=(1912) M.W.N. 3; R., 12 M. 201 (203); 13 Cr. L.J. 508=15 Ind. Cas. 652=23 M.L.J. 50=(1912) M.W.N. 473; 3 S.L.R. 66 (77); 16 Bom. L.R. 446.]

THIS was a reference by S. Tagore, Sessions Judge of Sholapur, under s. 215 of the Criminal Procedure Code (Act X of 1882).

The accused Tulja and four others were charged, under s. 467 of the Indian Penal Code, with the forgery of a will purporting to be made by one Radha, deceased. On the 11th January, 1887, Tulja presented the will in question to the Sub-Registrar for registration under Act III of 1877. On the 15th of the same month, the complaint in the present case was lodged before the First Class Magistrate of Sholapur. It was contended, on behalf of the accused Tulja, both during the preliminary inquiry before the committing Magistrate and at the trial in the Court of Sessions, that the Sub-Registrar, acting under s. 41 of Act III of 1877, was a 'Court' within the meaning of s. 195 of the Criminal Procedure Code (Act X of 1882), and that, therefore, his sanction to prosecute the accused was necessary. In support of this contention the ruling in *In re Venkatachala* (1) was relied upon.

On this point the Assistant Sessions Judge made the following remarks:—

"This question, so far as the Bombay High Court is concerned, is clear of any judicial authority. The point is not very simple, and is, in my opinion, sufficiently important to be carefully noticed. Part VIII of the Registration Act relates to the 'presenting wills and authorities to adopt.' A Sub-Registrar is authorized by s. 40 to accept the presentation of wills by persons claiming under them. Under s. 41 the Sub-Registrar is authorized to satisfy himself as to (1) the due execution of them by the testators, (2) the death of the testators, and (3) the right of the persons presenting them to present them for registration. In the absence of any decision of the Bombay High Court on the point, it is, I think, proper for this Court to follow the Madras decision quoted by his pleader for the accused. The Madras High Court have held that 'a Sub-Registrar is legally authorized to take evidence under Part VIII of the Indian Registration Act for the purpose of satisfying himself upon certain points, and he is, therefore, when acting under s. 41 of Act III of 1877 a 'Court' within the meaning of the Indian Evidence Act. So far, therefore, as any action of the Sub-Registrar under [38] s. 41 is concerned, there can be no doubt that he has the power to issue sanction to prosecute, and, therefore, the absence of it is fatal to the trial. But I do not think that there are sufficient grounds for restricting the scope of s. 195 of the Criminal Procedure Code to action of the Sub-Registrar under s. 41 of Act III of 1877 only. If s. 41 covers the issue in a case of this kind, I submit that s. 40 also ought to cover it. The point for consideration is, therefore, narrowed

(1) 10 M. 154.

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to this : whether presentation of a will to a Sub-Registrar is a stop of the proceeding in the Sub-Registrar's Court. I am strongly of opinion that it is. If the Sub-Registrar's euquiry under Part VIII is of such an exceptional kind as to make it necessary to clothe it with the rights and obligations flowing from a proceeding of a Court, I think that the reason of the case requires that the presentation of the will which commences the proceeding ought to be treated as a part of the proceeding. The fact of presentation of a will is next in importance to that of the person entitled to present it as forming a part of the enquiry under s. 4. It would be highly improper to hold that for the purpose of accepting the presentation of a will the Sub-Registrar is no Court, but only when he takes the next step of enquiring into the matters of s. 41 he acts as a 'Court,' when as a matter of fact, his *caput* or *persona* of a Court is brought into existence by the very presentation of the will. Then, again, it seems to me subversive of all judicial and administrative principles to suppose that any person can defeat the object for which sanctions to prosecute have been instituted as conditions precedent, for a Sub-Registrar may or may not take steps under s. 41 on the same day that he accepts presentation of a will under s. 40. But if he postpones the enquiry under s. 41, any person by lodging a complaint of forgery may deprive the accused of the right to sanction from the Sub-Registrar if he on any enquiry thinks that the will is forged, or the protection of the refusal to sanction if the Sub-Registrar is satisfied that the will was genuine. If an action of that kind is allowable as based upon good law, then I have not the least hesitation in saying that the sooner it is amended the better it is for public morals or safety. For analogy take the case of a civil suit. If a plaint is based upon an alleged forged will, and presented to the Court, the Criminal Courts cannot take action in respect of the said will until the Civil Court issues any sanction to prosecute. That if it is alleged that before the Civil Court takes evidence the Criminal Courts are not estopped from taking the criminal action in the matter, the argument would be scouted as monstrous. It was urged by the Public Prosecutor that in a civil suit the proceedings commence with the presentation of the plaint. Just so, in any matter the first action of the party is the commencement of the proceeding ; and although the Registration Act does not expressly provide that the proceedings under it commence from the presentation of documents, yet it could not be otherwise than that, simply because all the administrative functions of the Sub-Registrar as an officer or a Court under the Act are called into play from the date and fact of presentation of a document. A presentation cannot be withdrawn. Even a deficit stamp duties can be enforced by the Sub-Registrar. There cannot, therefore, be the least doubt that the proceeding before the Sub-Registrar as a Court under Part VIII or as an officer under any other part of the Act commences from the presentation of a document, and includes that Act. If so, it [39] follows that the Magistrate had no jurisdiction to try or enquire into the complaint without the sanction of the Sub-Registrar. He ought to have waited to see what the Sub-Registrar was doing. Accepting, therefore, the correctness of the Madras ruling, I think that this committal must be held to have been without jurisdiction.

"The Public Prosecutor drew my attention to *Juggut Chunder* v. *Kasi Chunder* (1), and argued that no sanction was necessary on account of

(1) 6 C. 440.

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simple presentation of a will before the Sub-Registrar. But that case does not, in any way, support the position taken by the learned pleader. In that case, the suit was settled without any evidence being gone into. The High Court of Calcutta held that under the circumstances the Court could not form a correct judgment of the *bona fides* of the claim, and could not properly issue any sanction for giving false evidence, and more especially as the application, which commenced the proceedings, did not require verification, though it was verified. But in the present case there is nothing of this kind. It is for the Sub-Registrar to see whether he should or should not issue sanction, and not the Criminal Courts to question the legality of it. This case has nothing bearing upon the point at issue.

"It is quite clear that accused No. 1 was only the party to the proceeding before the Sub-Registrar, because she presented the will. The other accused were no parties, and, therefore, their committal is good at law in so far as they are concerned.

"The second argument of the Public Prosecutor, being the one chiefly relied upon by the committing Magistrate, does not appear to me to be sound.

"The document is, no doubt, the subject of the proceeding before the Sub-Registrar, but the proceeding is different from the document. Here is what the Madras High Court say at p. 188 of the judgment cited by the pleader for the accused :—'As the document has been given in evidence before him in a proceeding in which the Sub-Registrar had to determine whether the document should or should not be registered, it appears to us that his sanction is necessary to the enquiry."

The reference was argued before West and Birdwood, JJ., on the 14th July, 1887.

Hon. Rav Saheb *V. N. Mandlik*, for the Crown.—The complaint in this case is under s. 467 of the Penal Code. For a prosecution under that section no sanction is necessary.

Ganpat Sadashiv Rao, for the complainant.—A Sub-Registrar acting under s. 41 of the Registration Act (III of 1877) is not a 'Court' within the meaning of s. 195 of the Code of Criminal Procedure (Act X of 1882). Section 195 is to be read with s. 476 of the Code. The latter section specifies the Courts which are competent to deal with contempt cases. Section [40] 483 of the Code enables a local Government to make a Sub-Registrar a Civil Court in certain cases of contempt. He is, therefore, not a Civil Court in other cases. Section 75 of Act III of 1877 shows that even the Registrar when hearing an appeal against the order of a Sub-Registrar refusing registration, is not a Court, but is to be deemed "as if he were a Court." The functions assigned to the Registrar and the Sub-Registrar in the matter of registering documents are purely administrative, and not judicial. Neither the Registrar nor the Sub-Registrar adjudicates upon the rights of the parties to a document tendered for registration. Neither of the two is, therefore, a Judge or a Court The definition of a "Court" given in the Evidence Act (I of 1872) is confined to the purposes of that Act. In *Queen Empress* v. *Bharma* (1) a Full Bench of this Court held that a Magistrate taking down a statement under s. 164 of Act X of 1882 is not a Court. So, too, in *Queen Empress* v. *Ismal* (2) it was held that a police officer recording a statement under s. 161 of Act X of 1882 is not a Court. It follows, therefore, that every officer whose duty it is to record

(1) 11 B. 702. (2) 11 B. 659.

evidence is not a Court. The Madras High Court has, no doubt, held in *In re Venkatachala* (1) that a Sub-Registrar acting under s. 41 of Act III of 1877 is a Court. But that case, even if correct, is distinguishable from the present in this respect, that the Sub-Registrar has taken no action in the present case under s. 41 of Act III of 1877.

R. G. Mundle, for the accused.—Section 195 of Act X of 1882 applies to offences described by s. 463 of the Penal Code. The offence of forging a will is an offence described in s. 463. The Evidence Act defines a Court so as to include all persons legally taking evidence. A Sub-Registrar is a public officer empowered by law to take evidence under s. 41 of Act III of 1877. His proceedings are judicial under s. 228 of the Penal Code. His Court is a Court as defined by the Evidence Act—*In re Sardharee Lal* (2). In the present case he has acted under s. 41 of Act III of 1877. The case of *In re Venkatachala* (1) is, therefore, on all fours with the present case.

JUDGMENT.

[41] WEST, J.—This is a reference by the Sessions Judge of Sholapur under s. 215 of the Criminal Procedure Code (Act X of 1882).

The question for decision is, whether a Sub-Registrar for the purposes of the present case is to be regarded as a Judge, and the proceedings held before him as judicial proceedings in a Court, so that no prosecution for forgery can proceed without his sanction, in respect of a forged document presented for registration in his office?

It might have materially assisted the Court if the Sessions Judge, instead of adopting the somewhat superficial reasoning of the Assistant Sessions Judge, had entered on an independent investigation of the question from the standpoint of his own wider knowledge and riper experience.

The expression forgery is used as a general term in s. 463 of the Indian Penal Code, and that section is referred to in a comprehensive sense in s. 195 of the Criminal Procedure Code, so as to embrace all the species of forgery afterwards provided for as to punishment, and this includes a case falling under s. 467 of the Indian Penal Code.

Therefore, if the Sub-Registrar is a Court, and the document was presented to him as to a Court, then his sanction is undoubtedly required for the prosecution of the accused Tulja, under ss. 109 and 467 of the Indian Penal Code (Act XLV of 1860).

The question, therefore, is whether the Sub-Registrar is, or is not, a Court. It appears to us that some confusion has arisen in the mind of the Assistant Judge between a judicial and an administrative inquiry. An inquiry or trial under the Code of Criminal Procedure, in which evidence is legally taken, is for the purposes of the Code included in the term "judicial proceeding." But this does not involve the consequence that other inquiries are judicial proceedings, and that the functionaries holding them are Judges or Courts.

In the case of *The Queen* v. *Price* (3) Blackburn, J., says :—"Where the common law or the legislature has cast on a person the [42] obligation, where certain facts exist, not to form his opinion or exercise a discretion, but to do a certain thing, then, no doubt, there is a preliminary inquiry whether those facts exist, and no doubt the person called

(1) 10 M. 154. (2) 22 W.R. Cr. R 10. (3) L.R. 6 Q.B. 418.

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upon to perform the obligation must, to some extent, exercise common sense, and see whether the facts do exist." But this, as the learned Judge shows, is quite different from a judicial inquiry. It is the object to which an inquiry is pointed that determines the nature of it. A policeman before he arrests a person often has to make an inquiry, but is not, therefore, a judge—*Queen-Empress* v. *Ismal* (1). An inquiry is judicial if the object of it is to determine a jural relation between one person and another, or a group of persons; or between him and the community generally; but, even a judge, acting without such an object in view, is not acting judicially. *Forbes* v. *Ameeroonissa Begum* (2) affords an instance of non-judicial functions being ascribed to a judge. The Sub-Registrar has not to determine the jural relations between parties arising out of the documents presented for registration. He merely makes an inquiry to satisfy himself whether he is justified in registering the document presented for that purpose. The Registrar, also, in determining whether a document should be registered or not, on an appeal being preferred against the decision of the Sub-Registrar on that point, even if he takes evidence, does so, not as a Court, but under s. 75 of Act III of 1877 "as if he were a Court." His inquiry is analogous to one by the Registrar of this Court as to whether a clerk or other subordinate has done his duty properly. No judicial function is exercised. Although it appears, from s. 483 of the Criminal Procedure Code, that the Local Government may constitute a Sub-Registrar a Court for the purpose of certain sections, as those dealing with contumacious contempts, still, from the fact of that section being deemed necessary, it is to be implied that he is not to be considered a Court for ordinary purposes. A provision that a particular officer may, for particular purposes, be deemed a Court, does not warrant an extension of that provision so as by inference to produce a group of rules in conflict with the general system. A provision such as that contained in s. 483 of the Criminal Procedure Code is an excrescence [43] on the general system, and exceptional provisions are not to be drawn out into all their logical consequences. "*Quod contra rationem juris recipitur non producendum est ad consequentias.*"

If the Sub-Registrar is anomalously regarded as a judge for particular purposes, that does not constitute him a judge for other purposes. It is opposed to the general principles of jurisprudence to build a system on an exception; or, as Burke has put it, "it is against all genuine principles of jurisprudence to draw a principle from a law made in a special case." Nor is the general law altered or controlled by partial legislation made without special reference to it—*Denton* v. *Lord John Manners* (3). This principle was recently applied in the case of *Jivan Bhaga* v. *Hira Bhaiji* (4). The same principle has been several times applied to the Dekkhan Agriculturists' Relief Act in its relations to the general law.

The present case has been put before us very imperfectly, but it is clear that the Sub-Registrar did not enter into any inquiry at all. Even in making an inquiry it would not be proper to declare him a judge on the strength of the definition of Court given in the Evidence Act, as that definition is framed only for the purposes of the Act itself, and should not be extended beyond its legitimate scope—*Attorney-General* v. *Moore* (5). Special laws must be confined in their operation to their special object. An exception to a rule must not be permitted to absorb the rule.

(1) 11 B. 659. (2) 10 M.I.A. 340. (3) 27 L.J. Ch. 199 and 623.
(4) Printed Judgments for 1887, p. 201. (5) L. R. 3 Ex. Div. 276.

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The Sub-Registrar not being for general purposes a Court, he does not become one by making an inquiry for the purpose of ascertaining whether he is justified in registering a document presented for registration, much less is he a Judge, when not even making an inquiry. Nor do the provisions in the Code of Criminal Procedure as to cases of contempt before a Registrar constitute that officer a judge or Court for general purposes.

We are of opinion, therefore, that the sanction of the Sub-Registrar is in no way necessary for the prosecution of the accused Tulja. The commitment was legal; and we direct that the Sessions Court do receive the commitment and proceed with the trial.

Trial ordered.

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12 B. 44.

[44] APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nanabhai Haridas.

RANGO JAIRAM (*Plaintiff*) v. BALKRISHNA VITHAL (*Defendant*). *
[21st July, 1887.]

Jurisdiction—Decree—Execution—Attachment of assets of a judgment-debtor outside the jurisdiction of the attaching Court—Practice—Procedure.

The plaintiff having obtained a decree against the defendant in the Court at Bhusaval, sought to execute it by attaching a moiety of the defendant's pay. The defendant was a sorter in the Railway Mail Service, and travelled between Bhusavar and Nagpur, at which latter place he resided and received his pay. By an order of attachment issued, at the plaintiff's instance, by the Bhusaval Court to the defendant's disbursing officer at Nagpur, a moiety of the defendant's pay having been withheld by that officer, the defendant applied to the Bhusaval Court to cancel the order, contending that it was illegal, as neither he nor his disbursing officer resided at Bhusaval. On reference to the High Court,

Held, that the order of attachment was *ultra vires*, as neither the defendant nor his disbursing officer resided within the jurisdiction of the Bhusval Court. The proper procedure was to send the decree of the Bhusaval Court for execution to Nagpur, where the disbursing officer resided, and the defendant's pay was available for satisfaction of the decree.

[R., 28 B. 198; 39 C. 104=14 C.L.J. 228=16 C. W.N. 402=2 Ind. Cas. 417; 11 C.P. L.R. 148.]

THIS was a reference by Rav Saheb Dwarkanath Narayan Ranadive, Subordinate Judge of Bhusaval, under s. 617 of the Civil Procedure Code (Act XIV) of 1882. The reference was as follows :—

"In this case the plaintiff applied to the Second Class Subordinate Judge at Bhusaval, in execution of his decree against the defendant, who is described as an inhabitant of Bhusaval, and consequently within the jurisdiction of his Court, and who is a sorter in the Railway Mail Service, for an order to the defendant's disbursing officer to attach and send to the Court a moiety of the defendant's pay. The order was sent, and had been obeyed.

"The defendant, however, appeared on the 27th March, 1887, and applied for the withdrawal of the order attaching his pay, on the ground

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* Civil Reference. No 20 of 1887.