

**Queen-empress Vs. Tulja and ors.**

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**Court :** Mumbai

**Decided On :** Jul-14-1887

**Reported in :** (1888)ILR12Bom36

**Judge :** West and ;Birdwood, JJ.

**Appellant :** Queen-empress

**Respondent :** Tulja and ors.

**Judgement :**

**West, J.**

1. This is a reference by the Sessions Judge of Sholapur under Section 215 of the Criminal, procedure Code (Act X of 1882).
2. 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?
3. 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.

4. The expression forgery is used as a general term in Section 463 of the Indian Penal Code, and that section is referred to in a comprehensive sense in Section 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 Section 467 of the Indian Penal Code.

5. 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 Sections 109 and 467 of the Indian Penal Code (Act XLV of 1860).

6. 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.

7. In the case of *The Queen v. Price* L.R. 6 Q.B. 418 Blackburn, J., says: 'Where the common law or the legislature has cast on a person the 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 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* I.L.R., 11 Bom., 659. 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* 10 M.I.A., 340 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 Section 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 Section 483 of the Criminal Procedure Code, that the Local Government may constitute a Sub-Registrar a Court for the purposes 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 section 483 of the Criminal Procedure Code is an excrescence 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 consequentialia.'

8. 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* 27 L.J. Ch. pp. 199 and 623. This principle was recently applied in the case of *Jivan Bhaga v. Hira Bhajji* Printed Judgments for 1887, p. 201. The same principle has been several times applied to the Dekkhan Agriculturists' Relief Act in its relations to the general law.

9. 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 L.R., 3 Ex. Div., 126. 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.

10. 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.

11. 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.

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