Civil Petition.

1865.
Sep. 14.

Ex parte RA'YACHAND AMICHAND.

Rejection of Plaint—Non-production of Documents—Appeal—Jurisdiction—Act VIII. of 1859, *Secs.* 29 *to* 34, 39, *and* 372——*Act XXIII. of* 1861, *Secs.* 35—*Act XIV. of* 1859, *Sec.* XIV.

Held that the court to which a plaint is presented has no authority to reject it, merely because the document upon which the plaintiff sues is not produced with the plaint, as directed by Sec. 39 of Act VIII. of 1859; and that the High Court has power to set aside such an order of rejection, as well as the decision of the District Court confirming it in appeal, and to direct that the plaint be received.

THIS was an application to set aside an order passed by the Munsif of A'mulner, on the 25th of March 1865, rejecting a plaint presented to him by the petitioner, on the ground of its not being accompanied by the document upon which the suit was based; as well as an order passed by the Acting District Judge of Khándesh, confirming that order on appeal.

At the time of presenting the plaint, the document sued upon was not in the possession of the petitioner, but of the Collector, to whom it had been sent for the purpose of being stamped.

Shántárám Náráyaṇ, for the applicant :—The Court has power to interfere under Reg. I. of 1827, Sec. v., Cl. 2. Moreover, Sec. 372 of Act VIII. of 1859 gives a special appeal "from all decisions passed in regular appeal by the courts subordinate." In all cases in which power is given to the court of first instance to reject a plaint, a regular appeal lies from the order rejecting the plaint to the court above, under Sec. 36 of Act VIII. of 1859.

WESTROPP, J. :—The court below had not any jurisdiction to reject a plaint, under Secs. 29 to 34, inclusive, of Act VIII. of 1859, for such a cause as that assigned for the rejection of the plaint in the present case. Nor does Sec. 39 give any such power.

The legal consequence of the non-production at the presentation of the plaint, of the document sued upon, or of any

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other document intended to be relied upon by the plaintiff in support of his action, is that he cannot afterwards produce it in evidence, at the hearing, without the sanction of the court. But when a sufficient excuse is given for the non-production of the document in the first instance, the court is bound to give its sanction to its being received in evidence; if there be no other reason, than its previous non-production, for its inadmissibility.

In the present case, the plaintiff gave what, if true, was a very good excuse for the absence of the document upon which the action is said to have been brought; and one which would have fully entitled him to call upon the court to admit the document in evidence, if otherwise unobjectionable, at the hearing. He was not bound to defer the institution of his suit until the return of the document by the Collector.

It manifestly was not intended by the Legislature that a party having a right of action should not be at liberty to commence his suit, until he had collected all his documentary evidence. The Legislature merely intended to place a check upon the fabrication of evidence; and to exclude documents, not produced in the first instance, unless a good and sufficient reason were given for their absence. Were it otherwise, plaintiffs might, notwithstanding the assistance given to them by Sec. 14 of Act XIV. of 1859, be seriously prejudiced by the operation of the Law of Limitation.

We have no doubt as to our having jurisdiction in the present case, if not under Sec. 372 of Act VIII. of 1859, or Sec. 35 of Act XXIII. of 1861 (as we think we have), at all events under Reg. I. of 1827, Sec. v., Cl. 2, to set aside the decisions of the courts below, and to direct that the plaint should be received.

WARDEN, J., concurred.

Application granted.