

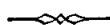
1866.
Ex parte
MANISHANKAR
HARGOVAN.

tained a *rule nisi* calling upon the widow to show cause, why the Senior Assistant Judge's order should not be set aside as irregular: no notice having been given to the applicant of the day when the case would be taken up by the Senior Assistant Judge; and the examination of witnesses having been referred to the Munsif.

The papers and proceedings having arrived, Lalitá did not appear to show cause.

PER CURIAM (WESTROFF and TUCKER, JJ.):—*Rule absolute.*

Feb. 14.

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Appeal under Act XXVII. of 1860.

LAKSHMI'BA'I KOM SANSHEDA'PPA'..... *Appellant.*
RUDRA'PPA' bin GANGA'PPA' *Respondent.*

*Certificate of Administration—Irregular Procedure—Act VIII. of 1859,
Sec. 334.*

In an application for a certificate of administration, the District Judge having delegated the examination of the witnesses in the case to the Názár of the court, and having, on the evidence so taken, made an order granting the certificate:—*Held* that the procedure was illegal; and that the order so passed must be annulled; and further proceedings for the investigation of the title directed, in which the witnesses should be examined by the Judge himself.

THIS was an appeal, under Sec. 6 of Act XXVII. of 1860, from an order made by C. F. H. Shaw, District Judge of Kaladgi: granting to the respondent a certificate to administer the estate of Gangáppá bin Murghyá, who died at Bagalkot on the 10th of October 1862.

The case was heard before TUCKER and WARDEN, JJ.

Reid (with him Nánábhái Haridás and Shántáram Náráyan), for the appellant:—There is one ground of objection which, though not set forth in the memorandum of appeal, is apparent on the record itself, and which goes to nullify the Judge's proceedings. The whole of the evidence in the case appears to have been taken, not by the Judge, but by the Názár. The Judge had no right, under the Act or otherwise, to delegate the examination of the witnesses to the Názár.

TUCKER, J.:—If the Judge has acted in the manner stated

a serious error in law would appear to have been committed. In a similar case, recently before the court, it was decided that the proceedings before the lower court should be annulled, on the ground that the trying-Judge, after issuing a notice, calling upon persons who contested the applicant's right, to appear before himself, had referred the inquiry to a Munsif, under circumstances which did not warrant the examination of witness by commission.

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Howard (with him *Dhirajlál Mathurádás* and *Fakírappá Lingáppá*), for the respondent :—The reference to the *Názar* in this case was at most an irregularity. It was not objected to at the time. The parties were perfectly satisfied with the way in which the evidence had been taken by the *Názar*. There was no objection made to the Judge's decision on that ground in the memorandum of appeal; and all irregularities not objected to at the time are cured after verdict. The objection, therefore, now comes too late, and the appellant must be confined to the grounds of objection specifically taken in the memorandum of appeal.

TUCKER, J. :—An objection not set forth in the memorandum of appeal may be urged, with the leave of the court, under Sec. 334 of Act VIII. of 1859; and the irregularity noticed by Dr. Reid is so great, that we allow the objection to be raised and argued.

No further argument was addressed to the Court in support of the procedure objected to.

PER CURIAM :—The Court is of opinion that there has been a substantial error in law in the procedure of this case; inasmuch as the Judge has omitted to take any evidence before himself, and has delegated the examination of the witnesses adduced by either party to the *Názar*, who was not competent by law to conduct such an inquiry.

The Court, therefore, annuls the order of the Judge, founded on the evidence so taken; and orders that the witnesses be examined *de novo* by the Judge in person, and that a new decision be passed on the merits. Each party to bear his own costs in the present appeal.

Order annulled.