1867.
July 29.

Special Appeal No. 248 *of* 1867.

SHRI'PAT RA'MCHANDRA KULKARNI' .....*Appellant.*
VITHOJI valad MALHA'RJI PA'TI'L *et al. Respondents.*

Reg. VIII. of 1827*—Certificate of Heirship—Evidence.*

A certificate of heirship granted under Reg. VIII. of 1827 is not *primâ facie* evidence that the holder of it is the rightful heir of the deceased. The effect of such certificate is merely to give security to persons in possession of or indebted to the estate of the deceased in dealing with such holder as the legal representative of the deceased.

THIS was a special appeal from the decision of A. C. Watt, Acting Assistant Judge of Puná, in Appeal Suit No. 194 of 1864, reversing the decree of the Munsif of Junnar.

Dharmáji and Sokáji possessed some *mirás* lands in the village of Giroli. On their death one Bápuji was put up as their heir by Vamanáji Rámchandra and Shrípat Rámchandra. They claimed to have acquired possession of the land in question from the said Bápuji, and obstructed the special respondents, who claimed the same land through Tulsábái, who had obtained a certificate of heirship to the aforesaid Dharmáji and Sokáji.

The Munsif threw out the claim of the plaintiffs as not proved, but on appeal the Acting Assistant Judge held the claim proved. After discussing other evidence in the case, he observed as follows:—

"There is then the receipt book (exhibit No. 31); and that the part of it in which payments are said to have been made by Bápuji valad Dharmáji is false, there can, I think, be no doubt. The book, which purports to be one book, is sealed with different seals, fresh leaves have been taken out of some other book and added to it, and it is plain to see that the book has been tampered with.

"Now this defendant Vamanáji being the Kulkarni, nothing could be easier for him to do than to make up this book. The other evidence for the defendant is a letter from the Mámlatdár of Pábal to the Murbád Mámlatdár of

Thánà Zillá dated January 1859, in which he says that Tulsábái had married again; and the conclusion is that, as this was four months before the varaspatra, this deed could not have been executed, as Tulsábái after her second marriage would not have had authority to execute it. The Mámlatdár's report (exhibit No. 70) does not, however, I think, prove this, as he might be acting only on what he was told. Now the appellants adduce the following evidence:—1*st*, The varaspatra No. 2, which is dated April 26th, 1859, and this is proved by witnesses Nos. 25, 26, 27, and 28, who also state that, at the time this deed was written, Tulsábái had not married again. There is then the exhibit No. 3, the certificate of heirship, which Tulsábái got, to Dharmáji and Sokáji, dated August 1859. Now, although this certificate does not prove that Tulsábái was the heir to these people, still it shows that at that time she proved *primâ facie* to the Court that she was."

The case was argued before COUCH, C.J., and NEWTON, J.

Dhirajlál Mathurá-lás for the appellant.

Shántárám Náráyan for the respondents.

COUCH, C. J.:—In this case the Judge below has treated a certificate of heirship, under Reg. VIII. of 1827, as *primâ facie* evidence that Tulsábái, under whom the plaintiffs claim, was heir of Dharmáji and Sokáji. The question before us is whether he was right in doing so. The regulation says in the preamble: "Whereas, at the same time that it is in general desirable that the heirs, executors, or legal administrators of persons deceased should, unless their right is disputed, be allowed to assume the management, or sue for the recovery, of property belonging to the estate, without the interference of courts of justice, it is yet in some cases necessary or convenient that such heirs, executors, or administrators, in order to give confidence to persons in possession of, or indebted to, the estate to acknowledge and deal with them, should obtain a certificate of heirship, executorship, or administratorship from the Zillá Court." And further on—"And whereas, whenever there is no person on the spot entitled or willing to take charge of the

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property of a person deceased, or, when the right of succession is disputed between two or more claimants none of whom has taken possession, or where the heirs are incompetent to the management of their affairs and have no near relations entitled and willing to take charge on their behalf, or where a person possessed of property dies intestate and without known heirs, it is essential that the Zillá Court should appoint an administrator for the management of the estate."

The object of the regulation being thus stated, the first section provides that the party who is the heir may assume the right to, and may enter upon, the management of the property. But if he wishes other persons to be safe in paying to him the debts of the deceased, he can effect this only by suit; the particular procedure to be followed is then laid down in the subsequent sections; the object of the whole being to give security to persons in possession of, or indebted to, the estate of the deceased to acknowledge and deal with him as the representative of the deceased.

Then we come to Sec. 7, which distinctly provides—*First*, "An heir, executor, or administrator, holding the proper certificate, may do all acts and grant all deeds competent to a legal heir, executor, or administrator, and may sue and obtain judgment in any court in that capacity;" *Secondly*, "But as the certificate confers no right to the property, but only indicates the person who, for the time being, is in the legal management thereof, the granting of such certificate shall not finally determine nor injure the rights of any person, and the certificate shall be annulled by the Zillá Court upon proof that another person has a preferable right." All this shows clearly that it was not intended to do more by this certificate of heirship than to permit debtors to pay their debts, and others who had the possession of estates to give up the possession to the representative of the deceased, and relieve themselves from further liabilities.

There is some difference between this regulation and Act XXVII. of 1860; but the ground on which Sir Barnes Peacock bases his judgment in *Serinthia Pillay* v. *Moolooswamy*

and another (*b*) is, that a Hindú widow, as holder of a certificate under Act XXVII. of 1860, is not necessarily the proper person to continue a suit for the recovery of immoveable property; though she is entitled to do so as heir of the deceased if he died without issue and was the sole owner of the property. We hold, therefore, that the Judge was wrong in treating the certificate as *primâ facie* evidence.

This being the only ground taken before us, we reverse the decree of the lower court, and remand the case for retrial with reference to what is stated above. Costs to follow the final decision.

Decree reversed and suit remanded.

b) 8 Calc. W. R., C. R. 2.

Civil Petition.

Dec. 10.

RA'DHA'BA'I, widow of DA'MODHAR .....*Petitioner.*
RA'DHA'BA'I, widow of KRISHNANA'TH...*Opponent.*

Mesne Profits—Immoveable Property—Execution of Decree—Act XXIII. of 1861, *Sec.* 11.

Where a decree awarding possession of immoveable property is silent as to mesne profits accruing between the filing of the plaint and the execution of the decree, the Court executing the decree has no power to award such; the proper course for the plaintiff to adopt under such circumstances is to apply to the Court which passed the decree for a review, or else to file a separate suit.

Jivá Pátil Rahimná v. *Malukji Mant Nathuná* (*a*) overruled.

THIS was an application for the reversal of an order passed in appeal by R. W. Hunter, Acting Assistant Judge of Solápúr, in the matter of the execution of a decree.

The facts appear from the following judgment of the Acting Assistant Judge:—

"The original plaintiff sued the defendant and two others to recover possession of a field, and obtained a decree accordingly. The decree made no provision for mesne profits or rent from the date of the suit until the date of delivery of possession to the plaintiff.

(*a*) 3 Bom. H. C. Rep., A. C. J. 31.