

1870.
Nov. 22.

Referred Case.

THE COLLECTOR OF THA'NA' *Petitioner.*
GANA' RA'MJI PA'TIL *Opponent.*

*Fee of Pleader—Registration Petition—Act XX. of 1866, Sec. 84—
Act I. of 1846.*

The fee to be allowed to a Pleader upon a petition to the Court to establish the right to have a document registered under Act XX. of 1866, Sec. 84, is one-fourth of the fee allowable in a regular suit, as is provided by Act I. of 1846, Sec. 7.

CASE stated for the decision of the High Court, under Sec. 28 of Act XXIII. of 1861, by W. M. P. Coghlan, Judge of the Tháná District.

The applicant, the Collector of Tháná, presented an instrument, executed in his favour by Ganá Rámji Pátíl on the 24th of December 1868, conveying to him absolutely certain land in the village of Nahávi, in the Tháná District, for registration before the Sub-Registrar of Karanjá, who refused to register the same, on the ground that Ganá Rámji Pátíl had declined to sign an indorsement on the said instrument. The applicant thereupon appealed to the Registrar, who confirmed the Sub-Registrar's order of refusal. The applicant, accordingly, applied to the District Judge to set aside the order of the Registrar, and order the instrument to be registered.

The Judge, after hearing the Government Pleader for the petitioner, and Mr. Govind Bábá for the opponent, made an order by which he directed that the orders of the Registrar and Sub-Registrar should be set aside, and that the Sub-Registrar do register the instrument: costs on the respondent.

On the motion of the *vakíl* for the opponent, the District Judge submitted the following question of law:—"I have allowed full Pleader's fees in this case. It is contended for the respondent that this is not a regular suit, and, therefore, under Act I. of 1846, Sec. 7, one-fourth fee only should be allowed. It is argued that in Act XVI. of 1864 a matter of this nature was denominated a regular suit, but that in the Act which superseded that statute, Act XX. of 1866, the

Legislature have deliberately substituted the word 'petition' for 'regular suit,' intending to show that one-quarter fee alone is leviable. I am clear that, under Act XVI. of 1864 a full fee was payable, and it has been so ruled in *Mowla Buksh v. Bahadoor Ali Khan (a)*.

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"The procedure now under Act XX. of 1866 is exactly the same as it was under Act XVI. of 1864. The only question is whether the word 'petition' being used instead of 'regular suit' takes away the right to full fee. I do not think that the change in the name of the proceeding can take away the right to full fee. If such a proceeding was a regular suit under Act XVI. of 1864, this is *really* one now, although it is called a petition. I am inclined to think that the change in nomenclature had not a change in Pleader's fee in view, but was adopted to distinguish between an action of this kind and an ordinary regular suit under the Civil Procedure Code."

PER CURIAM (GIBBS and MELVILL, JJ.):—The Court does not agree with the District Judge, and is of opinion that, a petition having been substituted by Act XX. of 1866 for a regular suit as the remedy for a refusal to register a document, under the provisions of Sec. 7 of Act I. of 1846, the amount allowed for Pleader's fees should be one-fourth of what it would have been in a regular suit.

Special Appeal No. 405 of 1870.

Dec. 5.

UJI, daughter of Hargovan Ranchhod
et al. *Appellants.*
 HA'THI LA'LU *Respondent.*

Nátrá Marriage—Permission by Caste—Divorce—Immoral Custom.

A custom which authorises a woman to contract a *nátrá* marriage without a divorce, on payment of a certain sum to the caste to which she belongs, is an immoral custom, and one which should not be judicially recognised.

THIS was a special appeal from the decision of F. D. Melvill, Acting Judge of the district of Ahmedábád, in

(a) 9 Cal. W. Rep., Civ. R. 101.