1875.
April 5.

[APPELLATE CIVIL JURISDICTION.]

Special Appeal No. 288 *of* 1874.

NILAVA′ KOM RACHAPPA′ .....*Plaintiff and Appellant.*

RUDRAYA′ BIN RACHAPPA′ and another. } *Defendants and Respondents.*

Registration Act XX. of 1866, *Section* 17—*Agreement relating to a family arrangement.*

Where a document was in the nature of a family arrangement, and drawn up mainly for the purpose of settling a widow's maintenance, though some right in immoveable property was created or declared by such instrument, and it was proved that the actual value of the whole of the immoveable property mentioned in the document exceeded Rs. 100, but there was no evidence to show that the value of the widow's right exceeded that sum :

Held that for the purpose of registration under Act XX. of 1866, the actual value of the whole immoveable property named in the document must not be taken to be the value of the right so created or declared.

THIS was a special appeal from the decision of S. Tagore, Assistant Judge of Belgaum in charge of Kaládgi, reversing the decree of the Subordinate Judge of Bágalkot.

Nilavá sued to obtain possession of a field and arrears of maintenance, according to the terms of two agreements (Nos. 3 and 4), executed to her respectively by her adopted son, Rudraya, and his natural father Gurubasayá. She chiefly relied upon Exhibit No. 3. The defendants denied the execution of the two documents, and objected to their being admitted in evidence, under Section 49 of Act XX. of 1866, as they were not registered as required by Section 17 of that Act. The following is an English translation of Exhibit No. 3 :—

"To

Nilavá kom Rachappá.

"I, Rudrayá bin Rachappá, * * * hereby execute this agreement to you, my adoptive mother. The following arrangements are made for your maintenance.

"I will supply you every year with three gonis jawari of 10 maunds (16 seers per maund) old measure for your subsistence.

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"You should dwell in the house in which you are now living for the term of your life. I will not deprive you of the house. If we both like to live together, we shall do so, or else you may occupy it alone as long as you live.

"I have made over to you another house which stands to the south of the above house for the expenses of clothing, &c.

"The following ornaments are made over to you for wearing. * * * *

"I will pay every year 4 rupees for holiday expenses.

"Thus the arrangements are made. I will make over to you the field of my adoptive father, Rachappá, which is situated at Mudapur, for your maintenance. If I fail to act up as above, I shall have no claim to it during your life time.

"Dated 14th July 1870."

The court of first instance held that exhibits 3 and 4 did not require to be registered, and, finding them proved, decreed the plaintiff's claim. In appeal, the question of registration was again raised with regard to Exhibit No. 3, and the Assistant Judge, deciding it affirmatively, threw out the plaintiff's claim in reversal of the first court's decree. He, however, held both the agreements (Nos. 3 and 4) proved, and expressed his opinion that the plaintiff's claim was correct and in accordance with the terms of Exhibit No. 3.

The special appeal was argued before KEMBALL and NA'NA'BHA'I HARIDA'S, JJ.

Dhirajlál Mathurádás (Government Pleader) for the appellant:—Exhibit No. 3 is an agreement within the meaning of Act. XX. of 1866, Section 18, Clause 7, and requires no registration. [NA'NA'BHA'I HARIDA'S, J., referred to *Wásudev Moreshvar* v. *Rámá*] (*a*).

Ghanashám Nilkant Nádkarni; *contra*, cited *Bhyrub Chunder Dass* v. *Kalee Chunder Chuckerbutty* (*b*) and *Nilmadhab Sing* v. *Fatteh Chand* (*c*).

(*a*) 11 Bom. H. C. Rep. 149. (*b*) 16 Calc. W. R. 56. Civ. Rul.
(*c*) 3 Beng. L. R., 310.

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KEMBALL, J. :—This is a suit brought by a widow against her adopted son and the natural father of that adopted son to obtain possession of a field of her late husband's, which the father of the adopted son had received possession of from her, promising, in consideration of such possession, either to provide her with maintenance, or, in default of such provision, to restore the field to her. She also claimed arrears of maintenance, and her suit was based on two documents, exhibits 3 and 4, one passed by the adopted son, defendant No. 1, and the other by his father, defendant No. 2. These two defendants denied every important allegation in the plaint, imputed adultery to the plaintiff, and contended that, as the documents above-mentioned had not been registered, they were inadmissible in evidence. The Subordinate Judge found that the documents did not require registration, and that the plaintiff completely established her case. In Regular Appeal, the Assistant Judge held that document No. 3 required registration, and threw out the claim on that ground, though he went on to find that the plaintiff had, if document No. 3 were admissible, a good claim against both the defendants. The question we have to determine is whether the Assistant Judge was right in rejecting document No. 3. He has grounded his decision on this point on the fact that the aggregate value of the two houses and the land comprised therein was shown by evidence to exceed Rs. 100, but we do not think that this is the proper way to test the necessity for registration. The document in question was in the nature of a memorandum of a family arrangement, and was drawn up mainly, as was No. 4, for the purpose of settling the widow's maintenance; and although it must be admitted that some right in immoveable property was created or declared by those instruments, it would be going too far to say that the actual value of the whole immoveable property named must be taken to be the value of the right so created or declared. There is no evidence to show that the value of the right to the immoveable property comprised in document, Exhibit 3, exceeded Rs. 100. We must, therefore, hold with the Subordinate Judge that it was ad-

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missible in evidence, although not registered. We come to the conclusion with the less hesitation as we feel satisfied of the justice of the plaintiff's claim. We, therefore, reverse the Assistant Judge's decree, and restore that of the Subordinate Judge with costs on the respondents.

[APPELLATE CIVIL JURISDICTION.]

April 8.

Special Appeal No. 81 *of* 1874.

TRIMBAK RA'NU .....*Plaintiff and Appellant* .....

NA'NA' BHAVA'NI and another. } *Defendants and Respondents.*

Regulation XVII. of 1827, *Section* 7, *Clauses* 1 *and* 2—*Bombay Act I. of* 1865—*Right of occupation—Miras land—Burden of proof.*

On the 28th August 1857, the plaintiff passed a *kabuláyat* to Government, and took possession of certain *Mirás* land, abandoned by the *Mirásdár* for four or five years previous to that date. The plaintiff continued in possession of his land, and paid the Government assessment from 1864 till 1872. In an action brought by the plaintiff to recover possession of the land, he alleged in the plaint that he had taken the defendants as partners in the cultivation of the land, and had been dispossessed by them. Both the lower courts rejected the claim. The Lower Appellate Court based its decision on the ground that as the plaintiff failed to prove the fact of his alleged partnership with the defendants he could not succeed, notwithstanding that court found in the plaintiff's favour the other facts stated above:

Held in special appeal that as the suit was one to establish title and recover possession, the Judge should, on the facts found, and having regard to Regulation XVII. of 1827, Section 7, clauses 1 and 2, and Bombay Act I. of 1865, have called upon the defendants to prove their claim to hold possession as against the plaintiff's right of occupation.

THIS was a special appeal from the decision of A. Bosanquet, District Judge of Ahmednagar, affirming the decree of Purushotam Shidheshwar Binivále, First Class Subordinate Judge at the same place.

Trimbak brought this suit to recover possession of a field (survey No. 59), and alleged that the field belonged to him; that about five years before the date of the suit he took the defendants into partnership with him and cultivated the field; that afterwards, when he proceeded to cultivate it alone, the defendants obstructed him in doing so, and dispossessed him of the land. The defence chiefly was that the field in dispute was the *mirás* land of one Khandu Go-