

## [APPELLATE CIVIL JURISDICTION.]

*Before Sir M. R. Westropp, Knt., Chief Justice, and Mr. Justice Nánábhái Haridás.*

NARHAR GOVIND KULKARNI (DEFENDANT AND APPELLANT) *v.*  
NÁRÁ'YAN VITHAL (PLAINTIFF AND RESPONDENT).\*

1877.  
February 14.

*Hindu Law—Adoption—Prohibition by Government—Kulkarni vatan—Act XI. of 1843—Bombay Act III. of 1874, Sections 33, 34 and 35.*

The sanction of Government to an adoption by a *Kulkarni* or his widow, or by a coparcener in a *Kulkarniship* or his widow, is not necessary to give it validity, nor has Government any right to prohibit or otherwise intervene in such an adoption.

THIS was a special appeal from the decision of E. Cordeaux, Assistant Judge at Sholápur, in the district of Poona, affirming the decree of Ganpatráo Amrit Mánkar, 2nd Class Subordinate Judge at Mádhe.

The plaintiff Náráyan brought this suit for a declaration that he was the adopted son of Vithal Kulkarni, deceased, and was entitled as such to certain *Kulkarni vatan* specified in the plaint. He alleged that he had been adopted by Ambábái, widow of Vithal Kulkarni, and sued for the declaration because the defendant Narhar had been illegally recognized by the Collector as entitled to hold the *Kulkarni vatan*. The defence of Narhar, among other things, was that the plaintiff's adoption was invalid, inasmuch as it had been strictly prohibited by the Government. Among the issues raised by the first court, the 4th was, whether Government refused to sanction plaintiff's adoption, and if it did, whether the adoption was invalid by reason of such refusal. The Subordinate Judge after taking evidence held that the prohibitory orders of Government did not make plaintiff's adoption invalid, and, accordingly, made a decree in his favour. The following is an extract from his judgment bearing on this point:—

“ My finding upon the 4th issue is in favour of the plaintiff. Exhibits 13, 60, and 68, which are extracts from Government records, show that Ambábái applied to Government for permission to adopt a son; but her application was rejected. However, the want of Government sanction to the adoption would not invalidate it. A

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formal adoption is not invalid because it has not received the sanction of the ruling power,—*Ramchandra Vassudev v. Nanaji Timaji*,<sup>(1)</sup> which case is exactly on all fours with the present. The Hindu Law does not require the sanction of the ruling power for adoption. The adopter has only to announce his intention to the Raja or King, 'restricted, according to the remark of Nanda Pandit, to the Chief of the town or village.' Mitakshara, Chap. I., Sec. XI., Pl. 13, and annotations thereto; Stokes' H. L. Books, p. 417. The announcement is only to be made for the sake of publicity, and with a view to avoid future disputes and litigation, and may be dispensed with: 1 Str., H. L., p. 94. There is no law, or custom having the force of law, that has superseded the Hindu Law on this point. The Bombay High Court, on the contrary, have upheld the Hindu Law in the decision quoted above with regard to this question."

In appeal only the question of the invalidity of the plaintiff's adoption was raised and argued. The Assistant Judge confirmed the decree of the Lower Court with the following remarks on the question of adoption:—

"The ruling of the Bombay High Court in *Ramchandra Vassudev v. Nanaji Timaji* is to the effect that 'a formal adoption is not invalid, because it has not received the sanction of the ruling power, and (where the ruling power does not interfere) an adoption without such sanction entitles the adopted son to succeed to property of the nature of a service *vatan*.' The question now is whether the ruling power having interfered and repeatedly prohibited the adoption; the adoption is invalid.

"After considering this point I have come to the conclusion that the view of the law taken by the Subordinate Judge is correct, viz., that the adopter has only to make an announcement of the fact of the adoption to the ruling power, for the sake of publicity, and with a view to avoid future disputes and litigation, and which may be dispensed with. The rights of Government, with regard to service *vatans*, are totally distinct from the rights of individual *vatanlars* to adopt according to their law and their religion. Bombay Act III. of 1874 has come into force since this case arose, and it is quite clear, from the provisions of that Act, that Govern-

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ment do not claim any power whatever to prohibit an adoption made by any representative *vatandar* or his widow.

“I may observe that the words in brackets, ‘where the ruling power does not interfere,’ which I have quoted above, do not appear in the High Court’s decision, nor can they be gathered from that decision. They seem to have been introduced by the Reporters.”

*Máneksháh Jehangirsháh* for the special appellant:—The property in dispute is a *Kulkarni vatan* for which service is rendered to Government. The Government, therefore, ought to have the right to say from whom they will take the service. Government expressly prohibited *Ambábái* from adopting a son, and she had no right to force upon the State a servant whom it did not want. The appellant is the *vatandar* selected by the State.

*The Honourable Rao Sahab V. N. Mandlik* for the respondent:—Government has no right to prohibit an adoption by a *vatandar*. Sections 34 and 35 of Bombay Act III. of 1874 allow freedom of adoption. The learned pleader also referred to Steele’s Hindu Law, page 51, para. XL., 1st edition; page 45, para. XL., 2nd edition.

WESTROPP, C. J. :—It is unnecessary to resort to the doctrine of *factum valet* (if it be at all admissible in such a case) to uphold the adoption made by *Ambábái*, the adoptive mother of the plaintiff (respondent).

What may be or have been the right of Government to regulate adoption by the owners of principalities, is a point which it is unnecessary for us to consider. We have here simply to deal with the office of a *Kulkarni* and its appendant rights or *vatan*. No authority either in a text book of Hindu Law nor in the reports has been cited to show that the sanction of Government to an adoption by a *Kulkarni*, or his widow, or by a coparcener in a *Kulkarniship*, or his widow, is necessary to give it validity, or that Government has any right to prohibit or otherwise intervene in such an adoption. It has been argued for the appellant (the defendant) that Government ought to have a voice in such a matter in order to insure to itself a succession of suitable hereditary officers. No such right of intervention in adoption was

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claimed for Government by Act XI. of 1843, when, if such a right existed, we might fairly expect to find that it would have been recognized; and Sections 33 and 34 of Bombay Act III. of 1874 are inconsistent with the existence of any such right. The provisions of these sections seem to be in accord with the passage in Steele's Hindu Law, page 51, para. XL., 1st edition; page 45, para. XL., 2nd edition, where it is said: "It is enjoined that notice of an adoption should be given to the relations within the Sagotra Sapindas, and to the Raja, though no provision appears in case of their disapprobation, even in adoption by widows." Those Acts made sufficient provision for securing to Government the services of competent officiators: so that no such objection, in that respect, as suggested by the appellant's pleader, can arise. In the case of *Ramchandra v. Nanaji*<sup>(1)</sup> the defence was that the adoption had been disallowed by Government; but that defence failed in the High Court. That, like the present case, related to *vatan* appendant to the office of *Kulkarni*. We affirm the decrees of the Courts below with costs.

*Decrees affirmed.*

## [APPELLATE CRIMINAL JURISDICTION.]

*Before Mr. Justice Melvill and Mr. Justice Kembell.*

REG. v. HANMANTA',

AND

APPEAL BY THE GOVERNMENT AGAINST THE ACQUITTAL OF  
 HANMANTA' AND OTHERS.

February 26,

*The Code of Criminal Procedure (Act X. of 1872), Sections 344, 345, 347, 452, et seq.—The Indian Penal Code (Act XLV. of 1860), Section 378—The Indian Evidence Act (I. of 1872), Section 32, Clause 2 and Section 34—Joint trial of separate offences—Condonation of irregularity where accused not prejudiced—Account books—Entries by persons having no personal knowledge—Account books kept by a servant or agent of a firm relevant as admissions—Evidence of accused illegally pardoned—Theft.*

The accused persons were tried on 27 charges, comprising the offences of theft, abetment of theft, and receiving stolen property, in 1872-73; similar offences in 1873-74; similar offences in 1874-75; the giving and receiving of gratifications to and by public servants in 1874-75; and, finally, the fabrication and abetment of

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