APPELLATE CIVIL.

(18)

Before Sir M. R. Westropp, Kt., Chief Justice, and Mr. Justice Kemball.

1878
July 15.

DAUDSHA (ORIGINAL PLAINTIFF), APPELLANT, *v.* ISMALSHA (ORIGINAL DEFENDANT), RESPONDENT.*

Mahomedan Law—Appointment of a Kazi—Regulation XXVI of 1827—*Act XI of* 1864.

Where a *sanad* granted by the Emperor Aurangzib in A.D. 1693 did not purport to confer a hereditary *kazishíp*, but was a grant of the office of *kazi*, personally, to an ancestor of the plaintiff,—*held* that the subsequent recognitions or appointments of members of his family as *kazis* by native governments did not prove that the office was or could be made hereditary.

Regulation XXVI of 1827, relating to the appointment of *kazis*, was repealed by Act XI of 1864, whereby it is recited that it is inexpedient that the appointment of *kazis* should be made by Government. The continuance, therefore, by the Collector, of an allowance to the plaintiff in 1867 could not be regarded as a constructive appointment of him to be *kazi*.

Jamal Ahmed v. *Jamal Jallal* (1) L. R. 1 Bom. 633, followed.

THIS was a second appeal from the decision of R. F. Mactier, District Judge of Satara, reversing the decree of the Second Class Subordinate Judge of Wai.

The plaintiff Daudsha sued for a declaration that he had the exclusive right to perform the duties of *kazi*, and to take all the profits of the office in the town of Wai, in the district of Satara. The defence of Ismalsha was that he was the authorized *kazi* of Wai, and that, therefore, no other person was entitled to hold that office. The Subordinate Judge held the plaintiff exclusively entitled to the office of *kazi* as claimed by him, and passed a decree accordingly. In appeal the District Judge held that the plaintiff's suit as hereditary *kazi* did not lie, and threw out the claim.

V. M. Pandit for the appellant.—The *sanad* of A.D. 1693 was a hereditary grant, conferring the office of *kazi* on an ancestor of the appellant, Sayad Sharfudin Mahomed. That it was a hereditary grant, is evident from the fact that after Sharfudin the members of his family were appointed *kazis*, and their right to that office was thereby recognized by the former rulers of the country. The Collector of Satara in 1867 continued to the appel-

* Second Appeal, No. 138 of 1878.

lant the allowance attached to the *kazishíp*. The appellant, therefore, is entitled to be the *kazi* of Wai.

Ghanasham Nilkanth Nadkarni, for the respondent, relied upon *Jamal Ahmed* v. *Jamal Jallal*.(1)

WESTROPP, C.J.—The *sanad* granted by the Emperor Aurangzib in the 35th year of his reign,—*i. e.*, A. D. 1693—does not purport to confer a hereditary *kazishíp*. It manifestly is a grant of the office of *kazi* to Sayad Sharfudin Mahomed valad Sayad Abu Turab personally. The endorsements upon it refer to a previous *sanad* of the Fasli year 1028 (A. D. 1618) under the seal of Ibrahim Adilkhan II, which earlier *sanad* has not been produced, and we have not any evidence to show that it purported to grant the office hereditarily. The recognitions or appointments of members of the same family as *kazis* by native governments, do not prove that the office was or could be made hereditary. In fact, the necessity felt by the successive candidates of the family for applying, as they appear to have done, to the State for its sanction of the exercise by them of the office of *kazi*, tends to show that it could only be exercised on personal nomination and not by hereditary right. Exhibit 22 bears date in 1867. Regulation XXVI of 1827, relating to the appointment of *kazis*, was repealed by Act XI of 1864 whereby it is recited that it is inexpedient that the appointment of *kazi ool cozaat*, or of city, town or pargana *kazis*, should be made by Government. Hence the continuance, by the Collector, of an allowance to the plaintiff (exhibit 22) in 1867 cannot be regarded as a constructive appointment of him to be *kazi*. We see no grounds in this case for departing from the view expressed in *Jamal Ahmed* v. *Jamal Jalall*; (2) and it is neither alleged in the plaint, nor proved, that there is any local custom in Wái that the *kazishíp* is hereditary. It may well be doubted whether such a custom would be valid, having regard to the Mahomedan law. The decree of the District Judge is affirmed with costs.

Decree affirmed.

(1) I. L. R. 1 Bom. 633.

(2) I. L. R. 1 Bom. 633.