have been the intention of the Legislature in enacting section 15 of Act X of 1876, we think that, in a suit by or against a Municipality, every individual Commissioner must be regarded as a party within the meaning of that section, and, consequently, that such a suit cannot be entertained by a Subordinate Judge or Court of Small Causes. We, accordingly, reverse the order of the District Judge, and direct him to receive the plaint.

Order accordingly.

APPELLATE CIVIL.

(31)

Before Mr. Justice West and Mr. Justice Penhey.

VISHVANTTH AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* MAHADAJI (ORIGNAL DEFENDANT), RESPONDENT.*

1879.
January 6.

Inamdar—Rights of Common.

Unless the terms of his *inam* grant authorize an *inamdar* to enclose a piece of land used immemorially as pasture ground by the inhabitants of his *inam* villages he cannot so at will merely by virtue of his being an *inamdar*.

THIS was a second appeal from the decision of Rav Bahadur Gopalrav Hari, Joint Judge of Thana reversing the decree of the Subordinate Judge of Panvel.

The plaintiffs were be the inhabitants and cultivators of the defendant's *inam* village of Chikle, in the Panvel Taluka, of the Kolba Collectorate. They alleged that they defendant enclosed and brought under cultivation a piece of land in the village which had been used by them from time immemorial as pasture ground and as a way of access for their cattle to the watering place.

The defendant stated that as *inamdar* of the village he was proprietor of all the soil comprised in the village, and could cultivate any land he pleased, or deal with it in any other way.

The Subordinate Judge awarded the claim, except as regards the right of way.

The Joint Judge reject the claim altogether. He said: "The defendant has cultivated the land at a considerable cost. He is *inamdar* and, therefore, proprietor of the soil. He has a perfect right to bring under cultivation such land as he likes, without

*Second Appeal, No. 308 of 1878.

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causing inconvenience to other people. It is proved by witnesses, some of whom are plaintiffs, that there is abundance of pasture and water in the village, and that the cultivation of the land in dispute did not cause any inconvenience."

Jan. 6.—*Manekshah Jehangirshah* for the appellants.—We admit that the defendant is an *inamdar* of our village. But he has not produced his *inam* grant to show exactly what rights and privileges he possesses. However, assuming that his grant confers upon him an unlimited right of dealing with the village lands, yet his grant cannot affect the immemorial right which we set up.

Nanabhai Haridas, Government Pleader, for the respondent.—It is admitted that the defendrnt is an *inamdar*, and he can bring any lands in his *inam* village into cultivation. The Joint Judge has proved that his doing so in this case has not caused inconvenience to any body.

The judgment of the Court was delivered by

WEST, J.—The reason assigned by the Joint Judge for reversing the decree of the Subordinate Judge are not, we think, correct. "The defendant," he says, "is *inamdar*, and, therefore, proprietor of the soil." The *inam* grant has not been produced, so that we are not in a position to say what it purports to confer on the grantee but it could not confer on him what belong to other people. Nor, except recording to the terms of his grant, could the *inamdar* have a "perfect right to bring under cultivation such lands as he likes, without causing inconvenience to other people." He might have this right, but he might be subject to rights of common, a slight encroachment on which would not cause apprecible inconvenience, but might yet be such an invasion as the English Common Law forbade, until it was modified by the Statute of Merton? Here the co-sharers of the defendant himself, who is *inamdar* only to the extent of a 7½pies' share, concur with the other witnesses in saying that the plot of land which he has enclosed has been immemorially used as pasture ground of the villagers, specially valuable because of the access it affords to drinking water. This is *primâ facie* proof of a right which there is nothing whatever to rebut, save the defendant's unascertained rights as an *inamdar*, which is a term of very loose and verying

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import. It has never, so far as we know, been held that every *inamdar*, without regard to the terms of his grant, may enclose at will, and in this case, if every sub-sharer of the *inam* may do so, there would obviously very soon be no pasture land left in the village at all.

We therefore reverse the decree of the Joint Judge and restore that of the Subordinate Judge, with costs.

Decree reversed.

APPELLATE CIVIL.

(32)

Before Mr. Justice Melvill and Mr. Justice Kemball.

January 21.

MURLIDHAR AND VASUDEV, MINORT, BY THEIR GUARDIAN AND MOTHER RADHABAI, PLAINTIFFS, *v.* SUPDU AND BALKRISHNA, DEFENDANTS.*

Minors—Act XX of 1864, *Section* 2—*Procedure—Civil Procedure Code (Act X of* 1877), *Section* 440.

Act XX of 1864 is not superseded by act X of 1877. Where, therefore, a widow claimed to have charge of property in trust for her minor sons, it was held necessary, under section 2 of Act XX of 1864, that she should obtain a certificate of administration, if the whole estate was of greater value than Rs. 250, and that it was competent to the Court, if there was any pressing necessity (owing to the operation of the law of limitation) that a suit should be brought at once, to accept the plaint and stay proceedings until the mother had obtained a certificate under Act XX of 1864.

Vijkor v. *Jijibhai* (1) followed.

THIS case was refferred for the opinion of the High Court by Gopál Amrit, Second Class Subordinate Judge at Yával, in the District of Khándesh, with Small Cause Court powers.

This suit was instituted by Rádhábái, a Hindu widow, as guardian of her minor sons Murlidhar and Vasudev, and sought to recover from the defenants, Supdu and Bálkrishna, Rs. 39-4-0, being principal and interests due on a money bond dated the 24th July 1875. The question submitted by the Subordinate Judge was whether Rádhábai could sue, as guardian of her minor sons, without a certificate of administration, as required by section 2 of

* Small Cause Court Reference, No. 16 of 1878.

(1) 9 Bom. H. C. Rep. 310.