

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.

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

January 21.

*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Act XX of 1864 is not superseded by act X of 1877.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.

Vijor v. Jijilhai (1) followed.

THIS case was referred 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 Báلكrishna, 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 Rádhábái 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 1873.

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

1879

MURLIDHAR
AND VASUDEV

v.

SUPDU AND
BALKRISHNA.

Act XX of 1864. He held that the might sue, without any such certificate, under section 440 of Act X of 1877.

No counsel or pleader appeared on either side.

Per Curiam.—Act XX of 1864 is not superseded by Act X of 1877. From the frame of the present suit it appears that Radhabai claim to have charge of property in trust for her minor sons. If the whole estate is of greater value than Rs. 250, it is necessary, under section 2 of Act XX of 1864, that she should hold a certificate of administration. It is competent, however, to the Subordinate Judge, if there is any pressing necessity (owing to the operation of the law of limitation) that the suit should be brought at once, to accept the plaint and stay proceedings until Radhabai has obtained a certificate under Act XX of 1864. See *Vijkor v. Jijibhai*.(1)

APPELLATE CRIMINAL.

(33)

Before Mr. Justice West and Mr. Justice Pinkey.

EMPRESS v. MIYAJI AHMED.*

February 13.

The Code of Criminal Procedure (Act X of 1872), Section 297—Improper Acquittal—Appeal by Government.

The High Court cannot, under Act X of 1872, interfere with an improper acquittal, except on an appeal by the Government,

THIS was a reference by A. Clerke-Jervoise, Magistrate of the District of Thana, reporting, under section 296 of the Code of Criminal procedure, the proceedings of the Subordinate Magistrate, Second Class, at Bandora, before whom the accused Miyaji was charged with having encroached on a public street. The Subordinate Magistrate held that it was within the power of a private individual to renew obstructions or encroachments on public streets within municipal limits which might partially or entirely have been removed by time or accident. He accordingly acquitted the accused. The District Magistrate referred the case to the High Court, being of opinion that, although section 297 of the Code of Criminal Procedure did not mention orders

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

* Reference No. 14 of 189.