

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Per Curiam.—Act XX of 1864 is not superseded by Act X of 1877.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.

of acquittal as coming under the revision of the High Court, still the High Court would, for goods and sufficient reason, reverse an order of acquittal, following the ruling of Sir Barnes Peacock in *The Queen v. Gora Chand Gopee*.(1)

1879
EMPRESS
v.
MIRAJI
AHMED.

Per Curiam.—Since the decision in *The Queen v. Gora Chand Gopee* in 1866, referred to by the District Magistrate, the new Code of Criminal Procedure (Act X of 1872) has been passed. Under the Code provision is made for an appeal by Government in cases of improper acquittal. Seeing this, and that section 297 of the Code while it expressly gives power to the High Court to correct errors in cases of improper discharge, conviction and sentence, says nothing of improper acquittal, the intention of the Legislature seems to have been that there should be no interference with an acquittal, except on a formal appeal.

This is the construction most favourable to the liberty of the subject, and it is not likely that the power should have been given to reverse an acquittal without a right on the part of the accused to be heard by the High Court. Cases of improper reversal of a conviction stand on a special footing.

APPELLATE CIVIL.

(34)

Before Mr. Justice Melvill and Mr. Justice Pinhey.

RADHABAI, WIDOW OF TATYARAV (ORIGINAL DEFENDANT), APPELLANT,
v. NANARAV (ORIGINAL PLAINTIFF), RESPONDENT.*

Hindu Law—Property, ancestral and self-Joint Tenancy—Survivorship

When property is held in co-parcenary, the share of an undivided co-parcener who leaves no issue, goes; according to Hindu law, to his undivided co-parceners, whether the property is ancestral, or acquired by the co-parceners as joint tenants.

THIS was an appeal from the decision of Mr. Sandwith, Judge of Dharwar, confirming the decree of Gopal G. Phatak, Subordinate Judge, First Class, of Dharwar.

The plaintiff Nanarav sued Radhabai, widow of his brother

(1) 5 Cal. W. R. Cr. Rul. 45.
Second Appeal, No. 278 of 1878,