

contended that the [166] mere issue of a notice under s. 216 before that date could not take the application out of the scope of the new Code.

No doubt the Full Bench case was much stronger than the one we are now considering; but it seems to us that the principles on which that case was decided, are equally applicable here. All proceedings commenced and pending when Act X of 1877 came into operation are, under Act I of 1868, s. 6, to be governed in their course and conduct by the Act theretofore in force, the general rule of construction contained in that section not being affected or varied by ss. 1 and 3 of Act X of 1877. We are unable to see the force of the argument that there could be no proceeding commenced until the warrant of attachment was placed in the hands of the *nazir*: the only authority cited in support of this proposition (1) has really no application whatever to this case and it seems to us that a *bona fide* application for enforcement of a decree in a particular way, coupled with an order of the Court in furtherance of that object, as much constitutes a proceeding in execution commenced and pending as the issue of a warrant; so long as it is a part of the course of proceedings, it is difficult to see how the nature of the Court's order can effect the question.

We must, therefore, hold that the right which the decree-holder undoubtedly had, under Act VIII of 1859, to satisfy his decree out of the pension in question was, under the circumstances of the case, preserved to him, and the rule must be made absolute with costs.

Order accordingly.

4 B. 167.

[167] APPELLATE CRIMINAL.

Before Mr. Justice M. Melvill and Mr. Justice F. D. Melvill.

EMPRESS v. IMAMBU,* [20th November, 1879.]

Poisonous drugs—Bombay Act VIII of 1866—Jurisdiction.

Convictions under s. 11 of Bombay Act VIII of 1866 (Poisonous Drugs Act) can only be obtained outside the Town and Island of Bombay before Magistrates of the first class.

THIS was a criminal review by the High Court, which sent for the papers in the case on an examination of the criminal calendar of the Second Class Magistrate of Indi, within the district of Kaladgi, who had tried and convicted the accused under s. 11 of Bombay Act VIII of 1866, of having sold poisonous drugs without a license, and sentenced him to pay a fine of Rs. 15. It appeared doubtful whether the Second Class Magistrate had jurisdiction to try the case.

There was no appearance either on behalf of the accused or on that of the Crown.

PER CURIAM.

The Court annuls the conviction and sentence for want of jurisdiction.

By s. 11 of Bombay Act VIII of 1866 the conviction must be had before "a Magistrate." Section 2 of the Act defines a Magistrate as "a

* Criminal Review No. 224 of 1879.

(1) 2 B. H. C. R. 146.

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 4 B. 167.

person invested with the powers of a Magistrate under the Code of Criminal Procedure." The Code of Criminal Procedure in force at the time when Bombay Act VIII of 1866 was passed, was Act XXV of 1861, and s. 16 of that Act provides that the words "the powers of a Magistrate" shall imply "the full powers of a Magistrate." It follows that a conviction under s. 11 of Bombay Act VIII of 1866 can only be had before a Magistrate, first class.

Order accordingly.

4 B. 168 (F.B.).

[168] FULL BENCH—APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Acting Chief Justice, and Justices
 M. Melvill, Pinhey and F.D. Melvill.

BAI JAMNA AND ANOTHER, Applicants, v. BAI JADAV, Opponent.
 [1st December, 1879.]

Mamlatdar's Court—High Court—Jurisdiction—City—House—Regulation XVII of 1827, Ch VIII—Act XVI of 1838—Bombay Act V of 1864—Bombay Act VI of 1876.

The intention of Bombay Act III of 1876, as stated in the preamble, was not to abolish the old Mamlatdar's Courts and create new Courts under the same name, but was to bring into one consolidating and amending Act so much of the old law and such new law as appeared necessary for the continued regulation of the existing Courts. The High Court is, therefore, not deprived of the powers of superintendence and revision which it exercised over the Mamlatdar's Courts previously to the passing of that Act.

Per PINHEY and F. D. MELVILL, JJ.—Under Bombay Act III of 1876 the Court of a Mamlatdar has, for purposes of the Act, jurisdiction in a town or City situated within the ordinary limits of his taluka.

The word "premises" used in s. 4 of the Act includes "houses;" and the jurisdiction of the Mamlatdar's Court, consequently, extends over a house for purposes of the Act.

It being not denied that the city of Ahmedabad is within the limits of the Daskroi taluka, the jurisdiction of the Court of the Daskroi Mamlatdar extends over a house in the city of Ahmedabad.

[F., 5 B. 137; R., 7 B. 341 (345) (F.B.); 25 B. 318 (323) (F.B.); 31 B. 545=9 Bom. L.R. 1028; D., 13 B. 552.]

THIS was an application for the exercise of the High Court's extraordinary jurisdiction and for the reversal of the decree of the Daskroi Mamlatdar.

One Ranchhod Anopchand, an inhabitant of the city of Ahmedabad, died, leaving him surviving two widows, Bai Jadav and Bai Jamna, and his mother, Bai Suraj. Differences having arisen between the widows, Bai Jadav was expelled from the family residence. She, therefore, within six months of the event sued Bai Jamna and Bai Suraj in the Court of the Mamlatdar of Daskroi, at Ahmedabad, under Bombay Act III of 1876, and prayed to be restored to the joint possession of the house with the defendants. The Mamlatdar made a decree in her favour. Section 19 of the [169] Act forbids an appeal from an order passed by a Mamlatdar under the Act; the defendants, therefore, by their pleader, Mr. Nana-bhai Haridas, moved the High Court for a rule calling on the plaintiff to show cause why the decision of the Mamlatdar should not be set aside,

* Extraordinary Application No. 80 of 1879.