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as administrator of the minor's estate appointed under Act X of 1864. The suit (No. 391 of 1876) was brought in the Court of the First Class Subordinate Judge at Dhulia, who allowed part of the plaintiff's claim. An appeal was thereupon preferred in the High Court by the nazir as the minor's administrator. The objection to the jurisdiction of the Subordinate Judge's Court was not taken either in the Court below or in the memorandum of appeal filed in the High Court. It appears to [643] have been taken at the hearing of the appeal which was heard by West and Pinhey, JJ., who gave the following decision :—

WEST, J.—Following the ruling in the case of *Bhaskar* v. *Guropa* (1) we must hold that the Subordinate Judge had not jurisdiction to entertain this suit. We, therefore, annul his proceedings, and direct that the plaint be returned to the plaintiff for presentation in the District Court.

Costs in the Court of first instance to be borne by the respondent. Each party to bear his own costs of appeal. [This case is also referred to in 4 B. 638 (640).]

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NOTE 3.—*Trimbak Nimbaji Bhase* v. *Shivram and others* (Small Cause Court Reference No. 5 of 1879), above referred to, was a suit filed in the Court of the Subordinate Judge of Sinnar, in the district of Ahmednagar, invested with the power of a Small Cause Court Judge. *One of the defendants being a minor*, the Subordinate Judge appointed the nazir of this Court as guardian of the minor in the suit, under s. 456 of Act X of 1877 as amended by s. 73 of Act XII of 1879. He then referred, for the opinion of the High Court, the following question, *viz.*, whether a Subordinate Judge, who has under the provisions of s. 456 of Act X of 1877 as amended by s. 73 of Act XII of 1879, appointed the nazir or any other officer of his Court to act as guardian for the suit of a minor defendant, has jurisdiction to hear the suit and pass a decree against that officer as guardian *ad litem* of the minor defendant.

The reference was considered by Pinhey and F. D. Melvill, JJ.

PINHEY, J.—The Court is of opinion that the question put by the Subordinate Court at Sinnar must be answered in the negative.

The Subordinate Court has no jurisdiction in the suit described. [This case is also referred to in 4 B. 638.]

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Before Sir Michael Roberts Westropp, Kt., Chief Justice, and Mr. Justice F. D. Melvill.

DESAI HIMATSINGJI JORAVARSINGJI (*Original Defendant*), *Appellant* v. BHAVABHAI KAYABHAI, &c., (*Respondents*).*

[14th July, 1880.]

Government grant subject to existing rights—Local cess—Bombay Act III of 1869, s. 8 *—Superior holder—Landlord and tenant—Wanta land—The Indian Contract Act (IX of* 1872), *ss.* 69 *and* 70.

The grant of a village by Government, whether native or British, is subject to all existing rights against Government, whether or not the deed of grant contains an exception or reservation of such rights. Government cannot, by alienating its own rights in a village, albeit that the *sanad* purports to grant the village as a whole, extinguish or affect any substantive right therein appertaining to third persons, or convey to the grantee any larger or better estate or interest than was vested in Government.

The plaintiffs sued to recover back from the defendant the amount levied by him as local cess on certain *wanta* lands belonging to the plaintiffs, the [644] defendant claiming to be the superior holder of the village in which the lands were situated. The amount was levied by the defendant through the assistance of the mamlatdar under Bombay Act III of 1869, s. 8. The defendant contended that, in consequence of a demand from Government, he had paid

*Appeal No. 24 of 1879.

(1) Printed Judgments of 1877, p. 84.

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local cess on the whole of his taluka, including the village in which the plaintiffs' lands were situated, and was therefore entitled, under ss. 69 and 70 of the Indian Contract Act (IX of 1872), to recover from them the amount which he paid to Government as a portion of the cess which rateably fell upon their lands. It was found that the defendant was not the proprietor of the lands held by the plaintiffs and that the relation of landlord and tenant did not exist between them; also that defendant paid local cess for the plaintiffs' lands fraudulently and with the intention of thereby making evidence of title to their lands, knowing that he had no lawful or just claim to them.

Held, that the defendant was not the superior holder of the lands, within s. 8 of Bombay Act III of 1869, and was, therefore, not entitled to the assistance of the revenue officers of Government to recover the cess provided by that section for superior holders as against tenants and occupants, although he might have paid the local cess due on the land in the plaintiffs' possession, and that consequently, the aid of the mamlatdar was illegally and improperly given to the defendant for the recovery of the amount from the plaintiffs.

Held, also, that the defendant was not a person "interested in the payment" of the money made by him to Government, within the meaning of s. 69 of the Indian Contract Act, assuming that a portion of that sum was demanded by Government in respect of the plaintiffs' *wanta* lands, and that they were "bound by law to pay" it to Government.

Held, further, that the defendant did not "lawfully" make the payment within the meaning of s. 70 of the Act, inasmuch as he did so fraudulently and dishonestly.

[R., 12 C. 213 (216); 13 C.L.J. 646=15 C.W.N. 332=9 Ind. Cas. 219; 5 Ind. Cas. 422 =7 M.L.T. 200; 7 O.C. 146 (149); D., 26 B. 504 (513.]

THIS was an appeal from the decision of Mukundrai Manirai, First Class Subordinate Judge of Ahmedabad, in suit No. 832 of 1876.

The plaintiffs Bhavabhai and Jalamsingji, who were the sons of a deceased garasia by name Kavabhai, sued for a declaration that they were the absolute owners of certain *wanta* lands, measuring about 1,350 bighas and situated in the village of Shavlana, in the taluka of Viramgam, and that their lands, were distinct from the *talpad* lands in the same village which belonged to the defendant. They also sued to recover back from the defendant the sum of Rs. 14-0-6, alleging that the money had been wrongfully levied from them by the mamlatdar of Viramgam on behalf of the defendant as superior holder of their lands. They alleged that [645] their proprietary right to the *wanta* lands in question was older than that of the defendant to the remaining land of the village.

The defence was that the Civil Courts had no jurisdiction under Bombay Act VII of 1863; that the suit was barred by limitation; that the plaintiffs held about 512½ bighas of land in a village in the defendant's taluka in return for service done by them; that they held no rent-free lands in the said village; that they were liable to pay the local cess under Bombay Act III of 1869; and that the defendant was the sole owner of the whole village.

The Subordinate Judge awarded the plaintiffs' claim with costs, with the exception of a small piece of ground which he held to be the common property of the plaintiffs and defendant. He made a decree accordingly on the 30th August 1879.

The defendant appealed to the High Court on the 15th November 1879. The original *sanad*, of which Ex. No. 11 was a copy, was produced at the hearing of the appeal.

Nanabhai Haridas (Government Pleader), for the appellant.—The defendant is the Inamdar and owner of the whole village in which the lands in dispute are situated, under the *sanad* (Ex. No. 11) granted to one of his ancestors by Raghunath Rao peshwa on the 16th May,

A.D. 1753. The contents of this document are fully confirmed by and agree with those of Ex. 129, which was produced from the Poona Daftar. The plaintiffs hold their lands in return for service rendered by them and their ancestors to the defendant and his ancestors. There is evidence in the case that such service was rendered by the plaintiffs' ancestors. The plaintiffs are liable to pay local cess on their lands under Bombay Act III of 1869. The defendant, as the superior holder of these lands, was entitled to the assistance of the revenue officers of Government, under s. 8 of the Act, in recovering from the plaintiffs the amount of the local cess paid by him (defendant) for their lands. He was obliged to pay the local cess on the whole of his taluka, including the village in which the lands in dispute are, in compliance with the demand of Government made in Ex. No. 51. He is therefore entitled, under ss. 69 and 70 of the Indian Contract Act, to recover back from the plaintiffs the amount payable on their lands on account of the local-cess fund.

[646] *Branson* (with him *Goculdas Kahandas*), for the respondents. —The *sanad* is not genuine. It was not produced in the previous litigation between the parties, and is produced for the first time in this suit. Even if it were genuine it is ineffectual, inasmuch as Raghunath Rao, by whom it purports to have been granted, was not the Peshwa at the date of its issue. As regards the local cess, it is found that plaintiffs and their ancestors have held the lands in dispute as their *wanta* without paying rent or rendering service either to the defendant or anybody else. He is not, therefore, their landlord or superior holder. It was consequently illegal for the mamlatdar to recover the local cess from the plaintiffs on behalf of the defendant under Bombay Act III of 1869. Supposing that he paid the local cess for the plaintiffs' lands, he made the payment with the dishonest object of thereby creating evidence of title to them. He is not, therefore, entitled to recover the amount from them under ss. 69 and 70 of the Indian Contract Act. Those sections do not apply to the present case. The learned counsel referred to *Jesingbhai and others* v. *Hataji* (1).

JUDGMENT.

The following is the judgment of the Court, delivered by

WESTROPP, C.J.—The plaintiffs, by their plaint, pray for a declaration that the lands (about 1,350 bighas) comprised within the four boundaries mentioned in the plaint, and situated in the village of Shavlana, are their *wanta* lands and distinct from certain other lands in the same village held by the defendant, and that he has not any right to levy from the plaintiffs any moneys as local cess in respect of their said *wanta* lands, and they further seek to recover from the defendant Rs. 14-0-6 wrongfully levied on his behalf as alleged superior holder of those lands by the mamlatdar of the pargana of Viramgam from the plaintiffs.

The defendant, by his written statement, denies that the four boundaries mentioned in the plaint comprise so much as 1,350 bighas, or more than about 512½ bighas held by the plaintiffs, and that they hold those lands, not as rent-free *wanta* lands, but from the defendant and in return for service which they render to him, that he (the defendant) is sole owner of the whole village of **[647]** Shavlana, and that under Bombay Act III of 1869 he was entitled to levy from them the local cess mentioned in the plaint. He also made points as to jurisdiction and limitation, which

(1) 4 B. 79.

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however, were not relied on for him by his learned pleader on the hearing of this appeal before us.

The main question in this suit is this: Is the defendant, as regards the lands, the subject of the plaint, 'a superior holder' within the meaning of s. 8 of Bombay Act III of 1869?

The plaintiffs are garasias, and claim to be absolute owners of about 1,350 bighas of *wanta* land in the village of Shavlana, of the taluka of Patedi, pargana of Viramgam and district of Ahmedabad, and contend that their proprietorship of the *wanta* land is far more ancient than that of the defendant of the rest of the village. *Wanta* (*i.e.*, revenue-free), land found to exist in Gujarat and Kathiawar, its history, and the terms '*talpad*,' '*garas*' and '*garasia*,' have been discussed so fully in *Dolsang Bhavsang* v. *The Collector of Ahmedabad* (1), that we limit our quotations as to the nature of *wanta* land to the following passages from the report of Mr. Peile on the Talukdars of the Zilla of Ahmedabad (2). In paragraphs 2, 3 and 4 of his memorandum on *wanta* lands he says: "In the present day the term '*wanta*' is used in Kathiawar to denote the land which a proprietor reserves for his own subsistence when he sells his estate. It is understood to be free of all taxes. The important thing to observe is, that it is essentially what remains to the owner of the soil, and not what he sells or assigns."

"The well-known account of the origin of *wanta* in Gujarat corresponds to this definition. The first Mahomedan invaders found the country partitioned out into estates of large or small chiefs, whom they forcibly deprived of all but a fourth part," &c.

"Of course, the *wanta* of the present day is very different from that fixed by the Mogul. The *wanta*-holders have none of them [648] documentary titles, as far as experience has gone; and the limits of their holdings and payments must be accepted according to the first trustworthy record prepared under British rule." He then in certain tables shows that in the district of Ahmedabad alone (omitting fractions) there appear, according to the alienation lists, to be 1,81,402 bighas of *wanta* land of the ordinary annual value of Rs. 1,88,164, of which *wanta* land there are in Viramgam 46,768 bighas of the ordinary annual value of Rs. 36,008, and there are 22 villages in Viramgam in which such *wanta* land exists. Then in para. 14 he says: "I believe that the presence of these *wanta* lands marks the course of conquest much more completely than a superficial view would now suggest, and that no other theory will explain it. There is little doubt that the whole of the smaller chiefs of Dholka were entirely, and the larger chiefs partially, put down, and pensioned off with *wanta*: and it is a matter of tradition that the present Mehvasi country in Viramgam once paid a regular rent (*takshim juma*) to the Mogul. In later days, when the Mogul Empire fell to pieces, the *talpad* part of the villages was seized either by the holders of the adjoining *wanta* or by new clans. In Dholka the Waghelas took back their own estate; but in Viramgam the best share was owned by a new clan, the Koli Thakurras, at the beginning of the eighteenth century. In this district, therefore, the original jhalas are the *uanta*-holders, and the more recent Thakurras the talukdars."

(1) 4 B. 367 = Printed Judgments for 1879, p. 455; and see *Shaik Gulam Mohidin* v. *The Collector of Ahmedabad*, 12 B.H.C.R. Appx. 276.

(2) No. CVI of Selections from Records of Bombay Government, N. S. pp. 48, 49, 50, 52, 55.

The defendant is a holder of *talpad* lands in the same village of Shavlana, and claims to be inamdar of that village. In support of that claim he produced Ex. No. 11, which the Subordinate Judge (Mr. Mukundrai Manirai) appears to have regarded as an original document, but which is only a copy of a *sanad* produced by the defendant to, but not filed by the predecessor of, Mr. Mukundrai Manirai, when that predecessor permitted the copy, Ex. No. 11, to be filed as evidence in this case. That original *sanad* was not seen by, or produced to, Mr. Mukundrai Monirai until after he had given his judgment in this case, as he has informed this Court, when it caused the original *sanad* to be produced by the defendant on the hearing of this [649] appeal and also to be shown to Mr. Mukundrai Manirai. The plaintiffs impeach the genuineness of that *sanad* which purports to be granted by Raghunath Bajirao *alias* Raghunath Rao, and bears a date equivalent to the 16th of May, A.D. 1753. That date precedes by twenty years his attainment of the dignity of Peshwa (August, A.D. 1773), and the plaintiffs also rely on the circumstance that the alleged *sanad* was not produced in former litigation as to the *wanta* land of this village which took place between the ancestors of the plaintiffs and the defendant.

For the defendant, on the other hand, it is contended that Raghunath Rao may have been authorized by the Peshwa, reigning at the date of the *sanad*, to grant it, and that Ex. 129, which is a copy of a memorial or entry in the Poona Daftar, and contains matter confirmatory of the *sanad* (but is not, as erroneously described by the Subordinate Judge, a copy of the *sanad*), strongly supports the genuineness of the *sanad*. We, however, think it unnecessary to express any opinion as to its authenticity. It purports to continue to Nathu Bhavsing, desai of the pargana of Viramgam, an ancestor of the defendant, with thirteen other villages, the village of Shavlana, to be held on military service tenure, and is silent as to the existence of *wanta* lands in that or the other villages. That silence, however, is of no importance; for litigation previous to this suit(1) between an ancestor of the plaintiffs and an ancestor of the defendant, which culminated in a decree of the Sadar Adalat made on the 20th of March 1832, established that certain land, other than that now in dispute (said on behalf of the defendant to be building-sites) was *wanta* land, and the property of the plaintiffs' ancestor. This shows that the silence of the *sanad* as to *wanta* land cannot sustain an inference that there is none in the village. And it is notorious that the grant by Government, whether native or British, of a village is subject to all existing rights against Government, whether or not the deed of grant contains an exception or reservation of such rights. Government cannot, by the alienation of its own rights in a village, albeit that the *sanad* purports to grant the village as a whole, extinguish or affect any substantive right therein appertaining [650] to third persons, or convey to the grantee any larger or better estate or interest than was vested in Government (2). Further, Exs. 40 and 42 (records of Government) show that in the village of Shavlana there is a *nuksan* of Rs. 1,663 in respect of that village. This *nuksan* (or loss) indicates the amount by which the land revenue payable in respect of the village falls short of what would be chargeable if all of the land in the village were fully assessed. It has been admitted on the hearing of this appeal (in accordance with evidence in the case to the same effect and

(1) Exhibits 18 and 79.

(2) Elph. Hist. Ind. (4th ed.) p. 74; Mill. Hist. Ind. by H.H. Wilson, (5th ed.), Vol. I. 213, note (e); 12 B.H.C.R. Appx. p. 39; 1 B. 528.

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with the finding of the Subordinate Judge) that, for the extensive lands within the village of Shavlana held by the plaintiffs from ancient times, neither they, nor their predecessors in title, pay any land revenue or rent. An attempt has been made, on behalf of the defendant, to prove that the plaintiffs and their said predecessors have rendered quasi-military or police service to the ancestors of the defendant in respect of the land held by the plaintiffs, but we concur in the opinion of the learned Subordinate Judge that the evidence to that effect is undeserving of belief, and that the attempt has wholly failed. The deposition of the defendant, in which he states that he heard from his late father that the plaintiffs formerly paid to the desais, his predecessors, a plough-tax, is unsupported by evidence and inconsistent with the admission made on the hearing of this appeal. The levity which promoted the defendant, a native of Gujarat and a desai, to affect an ignorance of what *wanta* land is, the nature and large extent of which is so well known in that province, renders his evidence of little weight. Many witnesses on behalf of the plaintiffs have deposed that the lands within the four boundaries named in the plaint are now and have been traditionally known as *wanta* and held by the plaintiffs and their ancestors and their tenants. The fact that the Chief of Dhrangadra receives *haks* from the defendant out of the village of Shavlana a right which that chief seems to have vindicated successfully in the Civil Courts tends to support the history of the village as given by the plaintiffs' witnesses. We do not think it necessary to refer in greater detail to the evidence, but deem it sufficient to state that we concur [651] generally in the view taken of it by the learned Subordinate Judge, with, however, this exception, that we are unable to discern in that evidence any adequate reason from severing from the rest of the land, contained within the four boundaries named in the plaint, the triangle of land marked A, B, C, in the map (Ex. 158). The defendant did not in his written statement attempt to set up any special case as to that triangle, or to distinguish it in anywise from the rest of the land claimed in this suit by the plaintiffs. The defendant denied that there is any *wanta* land whatever in the village. The evidence on behalf of the plaintiffs appears to us to have satisfactorily established that the whole of the land lying within the four boundaries stated in the plaint, and claimed by the plaintiffs as *wanta*, is so. The learned Subordinate Judge, in excepting the triangle, appears to us to have proceeded mainly on the ground of convenience to the villagers residing on the *talpad* land, rather than upon any solid basis of evidence—a *ratio decidendi*, which we are unable to adopt. Neither party in the suit set up the case that the triangle was appropriated to common use.

The land in dispute being established to be *wanta*, in respect of which neither rent nor service is renderable or has been rendered to the defendant or his predecessors in title by the plaintiffs or their predecessors in title, and the defendant not being in any respect the proprietor of it, the relation of landlord and tenant does not exist between the defendant and the plaintiffs; and although it may be that the *wanta* land in the possession of the latter is, under s. 6 of Bombay Act III of 1869, liable to local cess (a point which it is unnecessary now to decide and on which we give no opinion), yet the defendant cannot be regarded as the superior holder of that land within the scope of s. 8 of the same Act; and therefore, although he may have paid local cess, which should have been borne by the *wanta* land in the possession of the plaintiffs, he is not entitled to the assistance of the revenue officers of Government to recover that cess provided by that section for superior holders as against tenants and

occupants. The aid of the mamlatdar, accordingly, was illegally and improperly given to the defendant for the recovery, from the plaintiffs, of the local-fund cess alleged to have been paid by [652] defendant to Government in respect of the *wanta* land of the plaintiffs.

A defence, however, to the present suit to recover back the money levied on behalf of the defendant from the plaintiffs by the mamlatdar—apparently not set up in the Court below—has been raised here, *viz.*, that under ss. 69 and 70 of the Indian Contract Act (IX of 1872) the defendant was entitled to recover the local cess paid by him in respect of the *wanta* land. Even if that were so, the defendant would not have been justified in resorting to the summary levy, by the mamlatdar, of the amount to which a superior holder is entitled; for, as we have shown, no tenancy whatever exists between the defendant and the plaintiffs, and the only remedy open to the defendant would have been a civil suit to recover money paid by him to the use of and for the plaintiffs. But, further, we are of opinion that, under the circumstances which exist in this case, such an action would not have been sustainable by the defendant. He points to Ex. 51, a letter of the 16th July 1873, written to him by the mamlatdar of Viramgam, demanding, on behalf of Government, Rs. 7,902-0-3 as local-fund cess in respect of the whole taluka of Patedi, including the village of Shavlana, and, therefore, the defendant contends, including the *wanta* lands of the plaintiffs. Assuming that portion of that sum was called for by Government in respect of those *wanta* lands, and that the plaintiffs were "bound by law to pay" that portion to Government, we think that the defendant was not a person "interested in the payment" of that money within the meaning of s. 69 of the Indian Contract Act. He was not lawfully compellable to pay the money to Government in respect of land of which he is not and never was proprietor, and which could not have been granted to him by Government, inasmuch as it was not vested in Government, but in the plaintiffs and their predecessors in title. Nor, if the Rs. 7,902-0-3 include local cess in respect of the *wanta* lands of the plaintiffs, is it to be supposed that Government would have persisted in demanding from the defendant so much of it as was charged in respect of those lands, if the defendant had candidly informed Government, as he ought to have done, that those lands belonged to the plaintiffs, and that the defendant had no right whatever, to them, and, therefore, could not legally be required to [653] pay local cess in respect of them. This, however, he did not do. And we cannot regard the defendant as having 'lawfully' made that payment within the meaning of s. 70 of the same Act, inasmuch as we are most clearly of opinion that he did so fraudulently and dishonestly and with the deliberate intention of manufacturing evidence of title to the *wanta* land of the plaintiffs, to which he well knew that he had not any lawful or just claim whatever. Not only did he omit to inform Government that the *wanta* land belonged to the plaintiffs, and that he received neither rent nor service from them in respect of it, but he used his best endeavours to prevent them from obtaining a *sanad* from Government, under the Summary Settlement Act, in respect of it. This the Exs. 38 and 39, taken together, show. The fact that Government referred the parties to a Civil Court for the settlement of their dispute as to the *wanta* land leads us to the conclusion that Government had not any desire to precipitate the solution of the question as to who was primarily liable to Government for the local cess, and would have attended to any proper representations on the subject made by the defendant, who seems, however, to have eagerly grasped at the opportunity of paying that cess

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to Government with the purpose, as already said, of manufacturing evidence of title to the *wanta* land. The letter of the Mamlatdar (Ex. 51) is silent as to the *wanta* land of the plaintiffs, and contains nothing to lead us to the conclusion that Government would have proceeded to extremities against the defendant to levy local cess in respect of that land, if he had exercised due candour in the matter.

We vary the decree of the First Class Subordinate Judge by declaring that all of the land in the plaint, described as *wanta* land, and comprised within the four boundaries therein specified, is the *wanta* land of the plaintiffs, and that the defendant has not any right, title, estate or interest therein, or in any part thereof, or any right to levy or recover local cess in respect of the same land or of any part thereof. In other respects we affirm the said decree, and we direct the defendant to pay to the plaintiffs their costs of this appeal and their costs of the 23rd day of June 1880.

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4 B. 654=5 Ind. Jur. 481.

[654] APPELLATE CIVIL.

Before Mr. Justice M. Melvill and Mr. Justice Kemball.

LAKSHMIBAI, *Appellant v.* BALKRISHNA, *Respondent.** [3rd August, 1880.]

Practice—Appeal—Procedure in case of the death of respondent pending an appeal—Civil Procedure Code (Act X of 1877), ss. 363, 365, 368 and 582.

Procedure analogous to that laid down in s. 368 of the Civil Procedure Code (Act X) of 1877 in respect to the death of a defendant must be applied in the case of the death of a respondent. Where, therefore, a respondent dies during the pendency of an appeal, it is for the appellant to take the initiative, and he is at liberty to select one or more persons to defend the appeal; and no person, other than the person so selected, has a right to force himself into the proceedings and to claim to have his name entered as representative of the deceased respondent, against the appellant's consent. Persons so introduced on the record may or may not be the real representatives of the deceased respondent, but the merits of their claim to be such on the ground of any right or *status*, such as that of adoption, is immaterial to the determination of the appeal.

[F., 8 C. 440=10 C.L.R. 437; R., 7 A. 693 (F.B.)=1885 A.W.N. 169; 10 A. 223 (F.B.); 9 B. 151; 13 B. 22; 8 M. 300; D., 10 B. 663.]

THIS was an appeal against an order made by C. B. Izon, Judge of Ratnagiri, granting a review of the appellate decree of his predecessor, A. C. Watt.

This action was brought by one Pandurang and continued after his death by his son Visaji against Atma, in the Court of the Subordinate Judge of Malvan, to recover possession of some lands as mortgagee. The Subordinate Judge allowed the claim. The defendant appealed to the District Judge. Before the decision of the appeal Visaji died, and on the application of the appellant the name of his brother Balkrishna was entered as respondent on the record. Subsequently Visaji's widow Lakshmibai made an application to be made a respondent, and her application was granted. On the merits of the appeal Mr. Watt confirmed the decree of the Subordinate Judge.

Lakshmibai then made an application to Mr. Izon to review the decision of Mr. Watt, and strike out the name of Balkrishna from the

* Appeal from Order No. 4 of 1880.