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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.

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record, on the ground that he had been adopted into another family, and had not any right to represent his brother Visaji, whose sole heir she alleged herself to be as his widow. Mr. Izon on the 6th of August 1879 made an order for the appeal [655] to be placed on the file again, and on the 10th of October following held that Balkrishna had not been adopted out of the family, and confirmed the decree made by Mr. Watt.

Lakshmibai thereupon appealed to the High Court, and prayed that Balkrishna's name might be removed.

Pandurang Balibhadra, for the appellant.

Manekshah T. Taleyarkhan, for the respondent.

JUDGMENT.

The judgment was delivered by

M. MELVILL, J.—The Code of Civil Procedure makes no provision for the procedure to be followed in the case of the death of a respondent. But s. 582 declares that an Appellate Court shall perform, as nearly as may be, the same duties as are imposed on Courts of original jurisdiction. The same section says that in ss. 363 and 365 the word "plaintiff" shall be held to include an appellant. It does not say that the same extension shall be given to the word "plaintiff" in s. 368, nor that the word "defendant" in that section shall include a respondent. We think, however, that a procedure analogous to that laid down in s. 368 must be applied in the case of the death of a respondent. An appellant, like a plaintiff, is the person who is interested in procuring the name of some person to be entered on the record, against whom he may proceed, and he is, therefore, the person who must take the first step. He must also, like a plaintiff, be at liberty to select any person whom he may think fit, as the proper person to defend the appeal. It is to his interest to select the real representative of the deceased respondent: for, if he fail to do so, any decree which he may obtain, reversing the original decree, will be of no effect as against the real representative. If he be in doubt as to who is the legal representative (and in the case of a Hindu family, in which so much depends upon the question of union or separation, he must often be in doubt), he may well enter the names of two or more persons, leaving it to any of the persons so named to object that he or she is not the legal representative of the deceased, and on that ground to decline to defend the appeal. Under this view, as the selection of a representative of the deceased respondent rests with the appellant, it follows that no person, other than the person selected by the appellant, has a right to force himself into the proceedings, and to claim to have his name entered as representative [656] of the deceased respondent, against the appellant's consent. If, however, the appellant consent (and it will generally tend to his security if he do consent) there would appear to be no objection to entering the name of such an applicant on the record, in addition to the name of the person selected as representative by the appellant. In the present case, no objection to the intervention of Balkrishna appears to have been taken by the appellant; and, consequently, the matter stands on much the same footing as if the names of both Balkrishna and Lakshmibai had been entered on the record on the appellant's application; and we may treat the question before us as if this had been the case. Under this view, the order of the District Judge, placing the names of both Balkrishna and Lakshmibai on the record, was perfectly right; and as the District Judge's order, which is appealed against, amounted to no more than this, there is nothing in that order which we are called upon to disturb. We must, however, express

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our opinion that the proceeding of the District Judge, in subsequently admitting a review of his decision in appeal, on the ground that it was necessary to determine, as between Lakshmibai and Balkrishna, whether or not Balkrishna was entitled to call himself a representative of the deceased respondent, was not such a proceeding as is contemplated by the law, and that his decision, that Balkrishna had not been adopted out of the deceased respondent's family, is extrajudicial and of no effect. Lakshmibai and Balkrishna were placed upon the record merely for the purpose of defending the appeal, and it may be that either of them, or that neither of them, is the legal representative of the deceased respondent. The merits of their respective claims was not a question into which the District Judge was called upon to inquire. The District Judge, in appeal, confirmed the decree which had been obtained by the original respondent. The decree in appeal does not, and cannot, determine whether Lakshmi, or Balkrishna, or a third party, is the legal representative, to whom the decree has been transferred by operation of law. That is a question which will have to be determined under s. 232, whenever application is made for execution. With these observations we confirm the order appealed against, with costs.

Order confirmed.

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4 B. 657.

[657] APPELLATE CRIMINAL.

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

EMPRESS *v.* SHANKAR.* [19th July, 1880.]

Falsification of record in order to conceal negligence—Forgery—Fraud—Indian Penal Code (XLV of 1860), ss. 463, 464.

Falsification of a record made in order to conceal a previous act of negligence not amounting to fraud, does not amount to forgery within the meaning of ss. 463 and 464 of the Indian Penal Code (Act XLV of 1860.)

[N.F., 11 Cr. L.J. 185=4 Ind. Cas. 1089=U.B.R. 1909, 4th Qr., Penal Code, 29; R., Rat. Unrep. Crim. Cases, 595 (597).]

THE accused was convicted by A. L. Spens, Sessions Judge of North Kanara, of forgery, and sentenced to undergo rigorous imprisonment for eighteen months and to pay a fine of Rs. 200, or, in default, to suffer additional similar imprisonment for six months.

The facts of the case, in so far as they are material for the purpose of this report, are as follows:—

The accused Shankar was an officiating forester of the Sidapur Taluka of the district of North Kanara. It was part of his duty to sell wood from the Government forest, and pass receipts to the purchasers, stating the quantity of wood sold and the price for which it was sold. In the performance of this duty the accused, on the 7th of February 1879, sold by auction the wood of a tree standing in the forest to one Ramaya, passing to him a receipt worded thus:—"That Ramaya bin Parmaya had bought khandis 0-1-3-9 of blackwood, in one piece, at an auction for Rs. 2-8-0, that the sale had been sanctioned by Mr. Stobie, Assistant Conservator of Forests, and that the wood had been handed

* Criminal Appeal No. 96 of 1880.