

Haridas in *Nathubhai v. Jhaver*, above cited, I feel a doubt whether the view taken by me is correct, and, therefore, think it right to obtain the orders of their Lordships the Judges of the High Court before finally disposing of the same."

The parties on either side put in no appearance before the High Court.

*Per Curiam*.—The Court thinks that *Nathubhai Bhañlal v. Jhaver Raiji*(1) and *Govindji Khimji v. Lakhmidas Nathubhai*(2) are sufficient authorities for holding that a married woman who contracts jointly with her husband is liable to the extent of her *stridhan* only.

(1) I. L. R., 1 Bom. 121.

(2) I. L. R., 4 Bom. 318.

### APPELLATE CIVIL.

Before Mr. Justice Melvill and Mr. Justice Nanabhai Haridas.

RAMCHANDRA, PLAINTIFF, v. BHIKIBAI, DEFENDANT.\*

April 4.

*Res judicata*—Effect of rejection of plaint for non-appearance of plaintiff—Possessory suit in Mamlatdar's Court and in Civil Court—Bombay Act III of 1876, Section 13—Specific Relief Act I of 1877, Section 9—Civil Procedure Code (Act X of 1877), Section 13.

A plaintiff, whose plaint has been rejected for default of appearance in the Mamlatdar's Court under Bombay Act III of 1876, section 13, cannot bring another possessory suit on the same cause of action in the Civil Court under section 9 of the specific Relief Act I of 1877; for the rejection of a plaint under section 13 of Bombay Act III of 1876 by reason of the failure of the plaintiff to attend with his proofs on the day appointed, is a hearing and final decision of the suit within the meaning of section 13 of the Code of Civil Procedure (Act X of 1877), and upon the rejection of the plaint the question in the suit becomes *res judicata*.

This was a reference from Rao Saheb V. M. Bodas, Subordinate Judge of Yeola, under section 617 of the Code of Civil Procedure.

The plaintiff sued, under section 9 of the Specific Relief Act (I of 1877), to recover possession of some immoveable property, alleging that he was dispossessed of the same otherwise than in due course of law within six months of the date of suit.

The defendant answered that the suit could not be maintained, as an exactly similar suit by the plaintiff against her on the

\* Civil Reference, No. 15 of 1882.

1822  
 RAMCHANDRA  
 v.  
 BHIKIBAI.

same cause of action and for the recovery of possession of the identical property had been dismissed by the Mamlatdar's Court at Yeola under section 13 of Bombay Act III of 1876, the said plaintiff having failed to appear before that Court on the day appointed for the hearing of the suit.

The plaintiff admitted that the Mamlatdar's Court did dismiss his suit two months before, and that he did not avail himself of the remedy given to a defaulting plaintiff by the last clause of section 13 of the Mamlatdar's Act for the rehearing of his suit.

Under these circumstances the Subordinate Judge felt a doubt as to whether the suit now brought under the Specific Relief Act would lie, and referred the matter for the orders of the High Court, expressing his own opinion that the suit would lie. He submitted that the Mamlatdar's action in rejecting the plaint under section 13 of Bombay Act III of 1876 was analogous to the action of the Civil Court in dismissing a suit under section 103 of the Code of Civil Procedure (X of 1877); that the rejection of the plaint in the former case was not the hearing and final decision of the matter in dispute; and that the plaintiff's failure to avail himself of the remedy provided in the last clause of section 13 of Bombay Act III of 1876 did not preclude him from bringing a second suit on the same cause of action. He said that if the Legislature had intended to preclude such a suit, it would have expressly made a provision to that effect, as it did in section 103 of the Code of Civil Procedure.

The plaintiff put in no appearance in the High Court.

*Pandurang Balibhadra* appeared for the defendant.

*Per Curiam.*—We entertain no doubt that it would be contrary to the intention of the Legislature to allow a plaintiff, whose plaint has been rejected for default in the Mamlatdar's Court under Bombay Act III of 1876, to bring another possessory suit on the same cause of action, in the Civil Court under section 9 of the Specific Relief Act, 1877. The rule of *res judicata* is laid down in section 13 of Act X of 1877, and we think that the rejection of a plaint under section 13 of Bombay Act III of 1876 is a hearing and final decision of the suit within the meaning of section 13 of the Code. It is certainly a final decision, and the

section of the Bombay Act itself treats the suit as having been heard, for it provides that the plaintiff may take certain steps to have the suit reheard. We, therefore, answer the question referred to us in the negative.

1882

RAMCHANDRA  
v.  
BHUKIBAI.

*Order accordingly.*

APPELLATE CRIMINAL.

*Before Mr. Justice Melvill and Mr. Justice Kemball.*

EMPRESS v. GASPAS D'SILVA.\*

*April 20.*

*Jurisdiction—Sanction to prosecute granted by District Judge—Power of same person as Session Judge to try the offence—Criminal Procedure Code (Act X of 1872), Sections 472 and 473.*

A District Judge who has, on hearing a civil appeal, sanctioned the prosecution of a party for forgery, is not debarred by section 473 of the Code of Criminal Procedure (Act X of 1872) from trying the offence in his capacity of a Session Judge.

The accused Gaspar D'Silva, a Portuguese shopkeeper in the city of Ahmednagar, was tried before W. Wedderburn, Session Judge, of having forged a receipt, and sentenced to suffer rigorous imprisonment for two years and a half.

On the 27th of August, 1876, the accused and another person executed to one Palanji a money-bond for Rs. 62-8-0, which they agreed to repay by monthly instalments of Rs. 4. They further stipulated that, in default of the payment of one instalment, interest at the rate of 2pies per rupee was to be charged, but that, in default of the payment of more than two instalments, the whole amount with interest was to become due and immediately recoverable. In November, 1878, the obligee Palanji sued the accused upon this bond in the Court of the Subordinate Judge of Ahmednagar, claiming the amount due on the bond, *minus* two instalments of Rs. 4 each—one received on the 7th of October, 1876, and the other on the 8th of November, 1876. In answer to this claim the accused put in a receipt which, on the face of it, showed a payment of Rs. 4 on the 7th of October, 1876, and a payment of Rs. 46 on the 8th of November, 1876. The Subordinate Judge

\* Criminal Appeal, No. 33 of 1882..