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As to the fact that the second appeal in this case was disposed of on the ground that the High Court had not jurisdiction, we do not think it ought to affect the question. Again, after the appeal was disposed of on 26th June 1882, the respondent took no proceedings until 18th November, 1882,—a delay which he justified to the satisfaction of the District Judge on the ground that the amount of the judgment was but a small sum, and that he had not been aware, until informed by the Subordinate Judge at the hearing of the second suit instituted by the appellant on the 10th July, 1882, that the decree of the first suit would operate as *res judicata*. But to allow an applicant for review to plead his ignorance of the legal effect of the judgment as a justification of his delay, would be to expose the decree-holder to the possibility of a review for an indefinite period.

We must, therefore, discharge the order of the District Judge, and refuse the application for review, with costs on the respondent in the Court below and on appeal.

*Order discharged.*

## APPELLATE CIVIL.

*Before Mr. Justice West and Mr. Justice Nánabhái Hariddás.*

January 23.

THE COLLECTOR OF THANA, APPLICANT. v. BHASKAR MAHADEV SHETH, OPPONENT.\*

*Vatan—Bombay Hereditary Offices Act III of 1874, Sec. 10—Collector's certificate—Bombay Legislative Council—Extent of its power—Jurisdiction of High Court.*

The Bombay Legislative Council has authority to make laws regulating the rights and obligations of the subjects of the Bombay Government, but not to affect the authority of the High Court in dealing with them when made.

The High Court in its appellate jurisdiction is bound to administer the law as it subsists in the subordinate Courts.

The Collector when granting a certificate under section 10 of the Bombay Hereditary Offices Act (No. III of 1874) exercises a judicial function, and is subject to the supervision of the High Court; but the High Court will not interfere with his discretion, unless there is violent misuse of authority, obvious bad faith, or reckless disregard, or wanton perversion of the law on his part.

THIS was an application under section 622 of the Code of Civil Procedure (XIV of 1882).

\* Extraordinary Application, No. 81 of 1883.

The material facts are as follows :—

Bháskar Mahádev Sheth sued Náthia, Márria and Sinia in the subordinate Court at Bassein for possession of certain land. The subordinate Court and the District Court at Thána rejected the claim. The High Court in special appeal awarded the claim, and directed possession of the land to be given to Bháskar with mesne profits to be ascertained in execution. In execution of the decree of the High Court the Subordinate Judge of Bassein gave possession of the land to Bháskar on the 8th of April, 1879. Some years afterwards it came to the knowledge of the Collector of the district that the land so given was *vatan* land, and he, under section 10\* of the Bombay Hereditary Offices Act III of 1874, issued a certificate declaring it to be so, and therefore inalienable to the said Bháskar, and in 1883 applied to the Subordinate Judge to set aside the decision. The Subordinate Judge decided that the application should be made to the High Court. Hence the present application.

On the 23rd of September, 1883, the High Court granted a rule *nisi* calling on Bháskar Máhádev Sheth to show cause why the decree of the High Court should not be set aside.

*Máhádev Ohimnáji Apte* showed cause.—The question is, whether the High Court will now set aside its decree, and whether the

\* Section 10 of Act III of 1874 is as follows :—When it shall appear to the Collector that by virtue of, or in execution of, a decree or order of any British Court any *vatan*, or any part thereof, or any of profits thereof, recorded as in the revenue records or registered under this Act and assigned under section 23 of this Act as remuneration of an officiator, has or have, after the date of this Act coming into force, passed or may pass without the sanction of Government into the ownership or beneficial possession of any person other than an officiator for the time being; or that any such *vatan*, or any part thereof, or any of the profits thereof not so assigned has or have so passed into the ownership or beneficial possession of any person not a *vatandár* of the same *vatan*, the Court shall, on receipt of a certificate under the hand and seal of the Collector, stating that the property to which the decree or order relates is a *vatan*, or part of a *vatan*, or that property constitutes the profits or parts of the profits of a *vatan*, or is assigned as the remuneration of an officiator, and is therefore inalienable, remove any attachment or other process then pending against the said *vatan*, or any part thereof, or any of the profits thereof, and set aside any sale or order of any sale or transfer thereof, and shall cancel the decree or order complained of so far as it concerns the said *vatan*, or any part thereof, or any of the profits thereof.

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Governor of Bombay in Council can, by an order of the Collector, require the Court to do so. The Collector has issued the certificate under section 10 of the Vatan Act. The subordinate Courts might, as held in *Gopál Hanmant Gumaste v. Sakháram Govind*<sup>(1)</sup> and *Jajjivan v. Ismáil Ali Khán*<sup>(2)</sup>, have no option but to upset their orders or decrees. But in this case the decree is a decree of the High Court, and with the authority of the High Court the Bombay Legislative Council cannot interfere. The Bombay Legislature has not the power of depriving the High Court of its superintending jurisdiction over the subordinate Courts—*Máhádáji Govind v. Sonubái Davlátá*<sup>(3)</sup>. The High Court has the power of seeing that the certificate of the Collector was lawfully issued, and to cancel it if it was not—*Rachápá v. Amingavda*<sup>(4)</sup>.

Hon. V. N. Mandlik (Government Pleader) for the Collector of Thána in support of the rule.—The policy of the Government since 1827 has been to reserve in its own hands the *vatan*s of its hereditary officers. By section 20 of Regulation XVI of 1827 provision was made for the remuneration of hereditary officers out of *vatan* lands, and for the lands not leaving the officers' families. By Act III of 1843, sec. 13, the fixing of remuneration was removed from liability to civil process of any Court of law. And I submit that section 10 of the existing Hereditary Offices Act III of 1874 has been construed in the same way. The cases cited are in my favour, and they rule unreservedly that the Collector's certificate is conclusive. Unless the certificate is, on its face, void, the Court cannot inquire into the basis on which it rests. In *Rachápá v. Amingavda*<sup>(4)</sup> the alienation of the *vatan* had been sanctioned by the Government; but, as there held, the words "without the sanction of Government" in section 10 qualify the whole section. The High Court has to administer the law obtaining in the subordinate Courts, which in this case requires that the decree passed by this High Court should be set aside.

The judgment was delivered by

WEST, J.—The objection that the Bombay Government could not legislate so as to bind this Court by a certificate of a Collector

(1) I. L. R., 4 Bom., 254.

(2) I. L. R., 4 Bom., 426.

(3) 9 Bom. H. C. Rep., 249.

(4) I. L. R., 5 Bom., 233.

under section 10 of Bombay Act III of 1874 is in one sense valid, while in another it is not. The jurisdiction of the High Courts rests on the Statute 23 and 24 Vic., c. 101, and the Letters Patent issued under that statute. The legislative power of the local Government rests on 23 and 24 Vic., c. 67, sections 42 and 43. Under these it cannot interfere with any Act of Parliament. The statute constituting this High Court and the Letters Patent give to the Court such jurisdiction as was possessed by the late Supreme and Sadar Courts together with a general power of appeal and superintendence over the Civil Courts of the Presidency of Bombay<sup>(1)</sup>. Any Act, therefore, of the local Legislature which should propose to cut down this jurisdiction would so far be *ultra vires* and inoperative.

But, then, it is to be remembered that this restriction of the one authority by the other relates only to matters of jurisdiction,—that is, of the exercise of the judicial function and matters ancillary to this. Granting the existence of any particular law, the mode in which it is to be interpreted, the jural relations it creates, the duties it imposes, and the way in which these are to be enforced,—all such questions have to be determined by the High Court, and any attempt by the local Legislature to control it in the exercise of these functions would be simply abortive. But a different proposition is stated when it is said that because in a given state of the law this Court may establish particular relations and issue particular commands which must be obeyed, that state of the law cannot be altered because the range of operation of the Court's powers will be altered at the same time. Such a construction of the statutes, as pointed out in the case of *Premshankar Raghunáthji v. The Government of Bombay*<sup>(2)</sup>, would make legislation by the local Government virtually impossible. It is plain on reflection that jurisdiction relates to authority in ascertaining and giving effect to the law as it is; and as the substantive law changes, while the jurisdictional power remains constant, the actual result must be variable. Thus legislation on the rights and obligations of its subjects by the Bombay Government in no way necessarily

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(1) Let. Pat., cl. 16, Stat. 24 and 25 Vic., c. 104, ss. 9, 15.

(2) 8 Bom. H. C. Rep., A. C. J., 195.

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infringes on the authority of the High Court, unless the powers of the latter in dealing with the law, when made, are in some way affected.

In the present case the Collector of Thána, sending a certificate under section 10 of Bombay Act III of 1874, asks us to set aside an order made by the Court, directing that possession of certain property of Náthia should be given to Bháskar, a purchaser from him. It is said the Collector thus seeks to supersede the powers of this Court either without any semblance of right at all, or else under an enactment which for that very reason is so far invalid. It is admitted the Collector could stop the action of a subordinate Court, or get it reversed, in the mode he has adopted; but in the High Court it is urged this is inadmissible. This Court, however, in exercising its appellate jurisdiction is bound to administer the law as it subsists in the subordinate Courts <sup>(1)</sup>. Part of that law is that the holder of any portion of a *vatan* may not alien it except to a member of the *vatan*dár family; and should any such portion pass, or be in danger of passing, from the family through a decree, the Collector is empowered to prevent this by his certificate that the property belongs to a *vatan*. This being the law in the Court below, is law for the same case here: the liability to the Collector's interference on behalf of the public has accompanied the litigation throughout, and is part of the law that we have to apply. The Collector is to act when it shall appear to him that this is right and necessary in the public interest. He is called on to make some inquiry, and thus exercising a judicial function, he is subject to superintendence and control by this Court, as is every functionary should he make his authority a mere cloak for illegal and wholly unreasonable proceedings. No one can, under such circumstances, escape supervision and control: if an executive officer, he is liable to a suit for bad faith or a palpable abuse of his power; if a judicial officer, he is subject directly to the superintending power of this Court. But where there is no violent misuse of authority, no obvious bad faith in a pretended exercise of statutable powers, and no wanton perversion of the law, the Collector, acting in good faith, must be allowed to discharge at his discretion and

(1) *Let. Pat.*, cl. 21.

with full effect the duty assigned to him. In the present case we cannot discover that there has been, on the Collector's part, any wilful or reckless disregard of the law. His certificate, therefore, is decisive of the character of the property, and we only carry out the general purpose of the Legislature in a matter quite within its competence by cancelling the decree made by this Court in so far as it assigns to Bháskar possession of the land declared by the Collector to be *dadan* property. Costs on opponent.

*Rule made absolute.*

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## APPELLATE CIVIL.

*Before Mr. Justice West and Mr. Justice Nánábha'i Hariddás.*

WISHWÁMBHAR PANDIT ALIAS NA'NA MA'HÁRA'J (ORIGINAL DEFENDANT), APPELLANT, v. PRABHA'KAR BHAT BIN JANÁRDAN BHAT (ORIGINAL PLAINTIFF), RESPONDENT.\*

January 28.

*Registration—Suit to compel registration—Necessary party—Jurisdiction—Appeal—Act of 1877, Sec. 77.*

An appeal lies from a decree in a suit under section 77 of the Registration Act (No. III of 1877) to obtain registration of a document.

To such a suit the registering officer or the Government is not a necessary party, and the proper *forum* for it is the Court of the lowest competent jurisdiction.

THIS was an appeal from the decision of C. F. H. Shaw, directing registration of a document.

The plaintiff alleged that on the 3rd of April, 1878, the adoptive mother of Wishwámbhar Pandit, *inámdár* of Kunur, executed at Kolhápur, beyond British India, a deed of gift in his favour; that on the death of the lady on the 27th of April, 1879, the said Wishwámbhar Pandit inherited all her property, and on the 9th of June, 1879, ratified the deed of gift; that on the 18th of August, 1880, this deed was brought into British territory, and on the 13th of December following,—that is, within four months of the arrival of the deed in British India,—the plaintiff presented it for registration to the Kárwár sub-registrar; but, in default of the appearance of Wishwámbhar Pandit to attend before him in time, the registration of it was refused on the 12th of September, 1881;

\* Regular Appeal, No. 114 of 1882.