

1884

QUEEN
EMPRESS
v.
PIRYA GOPAL

be quite free in dealing with a case in its ultimate stage of appeal or revision. The Bombay cases are generally, but by no means exclusively, cases of review and reference of proceedings of Second and Third Class Magistrates—see *Empress v. Bhagván*⁽¹⁾; *Queen Empress v. Joti Rájník*⁽²⁾. The practice of other provinces, though not of Bengal, allows a superiority of the District Magistrate. The District Magistrate's order in the present case under section 436 cannot be deemed beyond his jurisdiction, and the commitment made by a First Class Magistrate in pursuance of that order cannot be quashed.

(1) I. L. R., 7 Bom., 379.

(2) I. L. R., 8 Bom., 338.

APPELLATE CIVIL

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Kemball.

September 16.

NILKANTH ANA'JI KARGUPI (ORIGINAL PLAINTIFF), APPELLANT,
v. BASLINGA AND TWO OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

*Vatan—Officiator's remuneration—Civil process—Bombay Act III of 1874,
Secs. 5, 7, 10 and 13.*

The power of the Collector to procure the removal of the process of the Civil Court, or to get the Court to set aside a sale under section 13 of the Bombay Hereditary Offices Act No. III of 1874, extends to any *vatan*, or any part thereof, or any of the profits thereof, assigned or not assigned as remuneration of an officiator; but the exemption from liability to the process of the Civil Court extends only to such *vatan* property, or profits, thereof, as have been assigned as remuneration of an officiator.

THIS was a second appeal from the decision of C. F. H. Shaw, District Judge of Belgaum, amending the decree of A. M. Cantem, Subordinate Judge of Belgaum.

The plaintiff sued to recover Rs. 1,009-8-0 due upon a mortgage bond, dated 4th March, 1876, from the defendants personally and by a sale of the *patelki* lands mortgaged. The defendants denied the genuineness of the bond, and asserted that the plaintiff, not being a member of the *vatandár* family, the alleged alienation, without the sanction of Government, was invalid, and that some of the lands alleged to have been mortgaged were assigned by the Collector as remuneration to the officiating *vatandár*.

*Second Appeal, No. 348 of 1883.

The Subordinate Judge found the bond proved ; and that under the Vatan Act there was no objection to the sale of the lands mentioned in the plaint. He, therefore, made a decree directing the defendants to pay Rs. 1,009-8-0 personally and by a sale of the lands. The District Judge amended this decree by removing from liability the *vatan* lands mortgaged, on the authority of section 5 of the Vatan Act.

The plaintiff appealed to the High Court.

Ganesh Rámchandra Kirloskar for the appellant.—The provisions of Bombay Act III of 1874 do not prevent the Court from selling property not actually assigned to the officiating pátel as his remuneration. The District Judge erred in holding that the plaintiff could recover his dues from the properties of the defendants, except those in dispute.

Mahádev Chinnáji Apté for the respondents.—Section 5 of Bombay Act III of 1874 is conclusive. In the absence of the sanction of Government the lands cannot be sold.

The judgment of the Court was delivered by

SARGENT, C. J.—It is only *vatan* property which has been assigned as remuneration of an officiator which is not liable to process of a Civil Court—section 13 of Bombay Act III of 1874. With respect to the rest of the *vatan* property, there is no provision in the Act exempting it from such liability, although the Collector under section 10 may, if he thinks proper, remove any process pending, and set aside any sale. The District Judge was wrong, therefore, in restricting plaintiff's power of realizing his money-decree to the defendant's property other than the *vatan* property. The decree must, therefore, be amended by omitting those words. Parties to pay their own costs of this appeal.

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