

APPELLATE CIVIL.

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

BA' LKRISHNA CHIMNA'JI (ORIGINAL PLAINTIFF), APPELLANT, v. BA' LA'JI RA' MCHANDRA AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

1884

August 4.

Vatan—Bombay Hereditary Offices Act, No. III of 1874, Sec. 35—Suit for a share and entry of name in place of deceased *vatandár*—Heir—Adopted son.

Section 35 of the Bombay Hereditary Offices Act (No. III of 1874) only contemplates the intervention of a Civil Court for the purpose of establishing the right of the claimant to be regarded as the adopted son of the deceased registered *vatandár*. When the claimant's suit is not limited to that object, but asks for a declaration of his share in the *vatan* and of his title to have his name entered in the *vatan* register, the suit is beyond the jurisdiction of the Civil Court.

THIS was a second appeal from the decision of R. F. Mactier, Judge of Sátára, confirming the decree of the Subordinate Judge of Wái.

The plaintiff alleged that he was the adopted son of Chimnáji, a registered *vatandár* who had died. He sued the defendants for a declaration of his fourth share in the *vatan* and to establish his title to have his name entered in the *vatan* register. The defendants contended that the suit was not maintainable under the Bombay Hereditary Offices Act (No. III of 1874).

Both the lower Courts rejected the claim as beyond the competency of the Civil Courts.

Shivráam Vithal Bhandárkar for the appellant.—Section 34 of Bombay Act III of 1874 provides that where a registered *vatandár* adopts an heir the Collector shall register his name, if such adoption be reported to the Collector within three months. If such report be not made within this time, section 35 prohibits the Collector from recognizing the adoption without a certificate of heirship on the decree of a Court. The present plaintiff claims his share by virtue of his adoption by the deceased, and his suit is maintainable.

Mánesháh Jehángirsháh Táleyárhán for the respondent.—The suit is not for establishing the adoption. It is for a declaration of the plaintiff's share in the *vatan* and for establishing his claim to have his name registered by the Collector in the *vatan*

* Second Appeal, No. 270 of 1883.

1884 register, and is not maintainable—*Khando Nārāyan Kulkarni v. Apāji Sadāshiv Kulkarni*⁽¹⁾ and *Chinto Abāji Kulkarni v. Lakshmibāi kom Sakhārām Antāji*⁽²⁾.

BĀLKRISHNA
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v.
BĀLĀJI
RĀMCHANDRA

The judgment of the Court was delivered by

SARGENT, C. J.—In this case plaintiff had applied to the Assistant Collector to have his name entered on the register of representative *vatandārs*, as the heir of Chimnāji, a registered *vatandār*, which was objected to by the defendants. By his present plaint he claims to be entitled to have his name entered in place of his father, and prays for a declaration that he is entitled to a one-fourth share in the *kulkarni vatan* and to have his name entered in the *vatan* register. The Subordinate Judge held that plaintiff ought to have sued to establish his right to be the adopted son of Chimnāji, and rejected his plaint. The District Judge held that the plaintiff's claim to have it declared that plaintiff is a one-fourth sharer in a *vatan* would not lie in a Civil Court, and confirmed the decree of the Subordinate Judge.

The decisions in *Khando Nārāyan Kulkarni v. Apāji Sadāshiv Kulkarni*⁽¹⁾ and *Chinto Abāji Kulkarni v. Lakshmibāi*⁽²⁾ show that since the passing of Act III of 1874, Civil Courts will not declare that persons are entitled to share in a *vatan* solely with the view to inducing the Collector to place them on the register. But it is said by the appellant that those decisions are not applicable when the object of the suit is to have the plaintiff's name placed on the register as the heir of a deceased registered *vatandār*, a case which is specially provided for by section 35 of the Act of 1874. That section however only contemplates the intervention of a Civil Court for the purpose of establishing the right of the claimant to be regarded as the adopted son of the deceased registered *vatandār*; and the plaintiff's suit ought, therefore, to have been limited to that object and nothing more. It is true that the Court cannot make a declaration of his right to a one-fourth share of the *vatan*, without first determining whether he is the adopted son of Chimnāji. But

(1) I. L. R., 2 Bom., 370.

(2) I. L. R., 2 Bom., 375.

the declaration prayed for would, on the above authorities, be beyond the Court's jurisdiction, and, consequently, no decree could be made in the suit as at present framed, in which plaintiff's title as adopted son could be embodied. We must, therefore, confirm the decree of the District Court, with costs.

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v.
BALAJI
RAMCHANDRA.

Decree confirmed.

REVISIONAL CRIMINAL.

Before Mr. Justice West and Mr. Justice Nánábhái Haridás.

QUEEN EMPRESS v. JETHMAL JAYRAJ.*

August 24.

Stamp Act I of 1879, Secs. 64 and 69—Refusal to give receipt—Sanction of Collector necessary before prosecution—Jurisdiction, want of.

Prosecution for an offence committed in contravention of section 64 of the Stamp Act I of 1879 cannot be instituted unless with the previous sanction of the Collector under section 69 of the same Act.

THIS was an application for exercise of the powers of the High Court in its revisional criminal jurisdiction.

One Chunilál Márvádi and the accused Jethmal carried on a certain partnership business. On dissolution of the business the accounts were closed and Chunilál paid the accused Rs. 404 adn asked for a receipt which the accused refused to give. Thereupon Chunilál lodged a complaint against the accused before the Second Class Magistrate at Shevgaon in the Nagar District. At the trial the accused alleged that he offered to give a receipt for the amount as a part payment of the sum of Rs. 1,201 which he alleged was due from Chunilál. The Magistrate was of opinion that a receipt acknowledging the sum of Rs. 404 at least, ought to have been given, and that as the accused refused to give it, he had committed an offence under section 64 of the Stamp Act I of 1879. Accordingly the Magistrate sentenced the accused to pay a fine of Rs. 50 or in default to undergo one month's rigorous imprisonment.

The accused presented an appeal to the District Magistrate of Nagar who rejected it with the following remarks:—

“The offence complained of was evidently (from evidence recorded) committed; but an irregularity appears to have been

* Application for review, No. 163 of 1884.