

1889

SEP. 26,

APPEL-  
LATE

CIVIL

14 B. 371.

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## [371] APPELLATE CIVIL.

*Before Mr. Justice Jardine and Mr. Justice Candy.*VORA ISABALLI (*Plaintiff*) v. DAUDBHAI MUSABHAI AND OTHERS  
(*Defendants*).<sup>\*</sup> [26th September, 1889.]*Mamlatdar—Mamlatdar's decree, by whom it may be questioned—Reference by Collector—Practice—Procedure—Act III of 1876.*

A party aggrieved by a Mamlatdar's decree may apply to the High Court to set it aside, or may question its validity by a suit in a Civil Court.

But where a Collector referred the record and proceedings in a case decided by a Mamlatdar under Act III of 1876, in order that the decree might be set aside as *ultra vires*, the High Court declined to interfere.

REFERENCE from W. Woodward, Esq., Acting Collector of the Panch Mahals.

The Collector referred the record and proceedings in a case decided by a Mamlatdar under Bombay Act III of 1876 to the High Court that it might reverse, under its extraordinary jurisdiction, his order which the Collector thought to be *ultra vires*.

## OPINION.

JARDINE, J.—Since *Mahadaji v. Sonu* (1) was decided, Reg. II of 1827, s. 5, cl. 2, has been repealed. Any party aggrieved by the Mamlatdar's decree might have applied to this Court to set it aside and its validity may be questioned by suit in a Civil Court. We decline to interfere.

14 B. 371.

## APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice and Mr. Justice Hart.*BAROTE GAGA PARSHOTAM (*Plaintiff*) v. SEPOY PANJU  
RAMJAN (*Defendant*).<sup>†</sup> [19th September, 1889.]*Small Cause Court—Jurisdiction—Act IX of 1887, s. 33—Construction.*

Section 33 of Act IX of 1887 precludes a Subordinate Judge, invested with Small Cause Court powers under s. 28 of Act XIV of 1869, from entertaining a counter claim beyond the pecuniary limits of his Small Cause Court jurisdiction.

[*Appr.*, 5 Bom.L.R. 398 (404).]

THIS was a reference from Khan Saheb Jehangirsha Edalji Modi, Subordinate Judge of Viramgam, under s. 617 of the Civil Procedure Code.

[372] The question referred for the High Court's decision was:—

Whether a Subordinate Judge, invested with the powers of a Small Causes Court under s. 28 of Act XIV of 1869, can, after the passing of Act IX of 1887, yet entertain counter claims beyond the pecuniary limits of his Small Cause Court jurisdiction?

\* Civil Reference, No. 17 of 1889.

† Civil Reference, No. 11 of 1889.

(1) 9 B. H. C. R. 249.