

APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

CHENBASAYA (Original Plaintiff), Appellant v. RUDRAPA,
(Original Defendant), Opponent.* [17th March, 1890.]

APPEL-
LATE
CIVIL.
14 B. 581.

Mamlatdars' Act (Bombay Act, III of 1876), ss. 5 and 8—Amendment of plaint—Mamlatdar's power to order a plan to be appended to the plaint.

In a possessory suit filed under Bombay Act III of 1876, the Mamlatdar has no power to order the plaintiff to append a plan to the plaint, showing the situation of the property in dispute. If the plaint is defective in its statement of the necessary particulars as to the nature and situation of the property, the amendment contemplated by the Act is an amendment in writing on the face of the plaint.

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

[582] The plaintiff sued for possession of certain land in the Mamlatdar's Court at Hubli.

The Mamlatdar, finding the plaint defective, directed the plaintiff to attach a plan to the plaint, showing the situation of the property in dispute and allowed him three days' time to do so.

The plaintiff not having complied with this order, the Mamlatdar rejected the plaint.

Against this decision the plaintiff made an application to the High Court under its extraordinary jurisdiction.

A rule *nisi* was issued, calling upon the defendant to show cause why the Mamlatdar's decision should not be set aside.

Narayan Ganesh Chandavarkar, showed cause.—The plaint in this case is defective. It does not give a sufficiently accurate description of the property in dispute. The Mamlatdar has, therefore, power, as every other Court has, to require the plaintiff to attach a plan to the plaint. It is the practice in the Dharwar District to have a plan annexed to the plaint in similar cases. And this practice has been followed in the present case. There is nothing illegal in this procedure. If the plaintiff refuses to obey the Mamlatdar's order, he must take the consequences.

Balaji Abaji Bhagvat, contra.—Under s. 5 of Bombay Act III of 1876 the plaint itself should give the necessary particulars as to the nature and situation of the property in suit. If the particulars are not fully set forth, the amendment should be made on the face of the plaint itself. The Act does not authorize the Mamlatdar to require a plan to be annexed to the plaint.

JUDGMENT.

BIRDWOOD, J.—The Mamlatdar has rejected the plaint because, after three days' time had been allowed the plaintiff for the purpose, he refused, on the day after time was allowed, to append a plan to the plaint, showing the situation of the property of which possession was sought. The Mamlatdar considered that the plaint was defective, because it was not accompanied by such a plan. But, under s. 5 of

* Application No. 223 of 1889 under extraordinary jurisdiction.

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Bombay Act III of 1876, it was necessary that the plaint itself should contain particulars as to the nature and situation of the property of which possession was sought. If it was defective in its statement of the necessary [583] particulars, the Mamlatdar could, under s. 8, have required the plaint to be amended within three days. It was not apparently intended by the Legislature that any necessary amendment should take any other form than that of an amendment in writing on the face of the plaint. It would often be difficult for plaintiffs in remote villages in the Mofussil to provide themselves with plans to illustrate their plaints. The Mamlatdar's order requiring the plaintiff to append a plan to the plaint was not, in our opinion, warranted by the Act; and we, therefore, reverse his order rejecting the plaint, and direct him to proceed with the case according to law. Costs to be costs in the cause.

Order reversed.

14 B. 583.

CRIMINAL REFERENCE.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

QUEEN-EMPRESS *v.* CHAND VALAD KITAB.*

[1st March, 1890.]

Bombay Abkari Act (V of 1878), ss. 43 and 47—Illegal importation of liquor—Illegal possession of liquor—When separate offences.

A man who illegally imports liquor may keep it in his possession for some time after he imports it. The importation and possession in such a case would be distinct offences under ss. 43 and 47, respectively, of the Bombay Abkari Act (V of 1878).

But where the importation involves possession of liquor, the accused can only be convicted of the offence under s. 43 of the Act.

THIS was a reference by W. W. Loch, District Magistrate of Khandesh, under s. 438 of the Code of Criminal Procedure Code (Act X of 1882).

The accused was convicted by T. Walker, Magistrate (First Class) of Khandesh, of illicit importation of liquor from foreign territory and also of illegal possession of the same under ss. 43 and 47, respectively, of the Bombay Abkari Act (V of 1878), and sentenced to pay a fine of Rs. 20 for each offence.

The District Magistrate referred the proceedings of this case to the High Court on the following ground, as stated by him :—

[584] "It appears to me doubtful whether a person who has been convicted of one of the offences under s. 43 as to the illicit import, transport, manufacture or sale of liquor, ought also to be convicted under s. 47 for the illegal possession of the liquor. The illegal possession is a necessary element of the offences under s. 43, where the amount is above that allowed by the rules, and it ought not, in my opinion, to be treated as a separate offence. Section 47 was intended to meet cases where no offence could be proved, except that of having more liquor than the quantity permitted by the rules."

There was no appearance for the Crown or for the accused.

* Criminal Reference No. 18 of 1890.