

1890
MARCH 17.
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APPEL-
LATE
CIVIL.
—
14 B. 581.

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.

JUDGMENT.

The following judgment of the Court (BIRDWOOD and JARDINE, JJ.) was delivered by

BIRDWOOD, J.—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. But in the present case the importation seems to have involved the possession of which the accused was convicted. We, therefore, reverse the sentence of Rs. 20 passed under s. 47 of the Act.

Sentence reversed.

14 B. 584.

ORIGINAL CIVIL.

Before Mr. Justice Farran.

RUSTOMJI FRAMJI (*Plaintiff*) v. BANOObAI (*Defendant*).*

[26th July, 1889.]

Practice—Civil Procedure Code (Act XIV of 1882), s. 640—Commission to examine witnesses—Grounds for granting commission.

A plaintiff applied, under s. 640 of the Civil Procedure Code (Act XIV of 1882), for a commission to issue for the examination of three female witnesses (Perozbai, Bachoobai and Awabai) at the residence of one of them (Perozbai). The grounds upon which he based his application were the following:—(1) that Perozbai had lost her husband ten months previously and was in mourning; that, according to Parsi usage, a widow observed mourning for two or three years, and during that time did not leave her house; (2) that Bachoobai was fifty-eight years of age and sickly [589] and physically unable to attend the Court; (3) that Awabai was about to go up-country, and could not stay in Bombay until the hearing.

Held, the circumstances alleged were not such as to justify the issue of a commission.

SUMMONS in Chambers. The plaintiff took out a summons calling on the defendant to show cause "why a commission should not issue for the examination, cross-examination and re-examination of Perozbai, widow of Maneckji Hormasji, Bachoobai, wife of Cooverji Nasservanji, and Awabai, wife of Rustomji Nasservanji, at the residence of the said Perozbai, widow of Maneckji Hormasji, &c., &c."

The plaintiff filed an affidavit in which he stated that he intended to examine the said Perozbai, Bachoobai and Awabai as his witnesses. He then set forth the grounds upon which he applied for the commission.

"3. The said Perozbai lost her husband about ten months ago and is at present in mourning. According to the usage and customs of the Parsi community, a widow observes mourning for from two to three years, and does not go out of the house until the period of mourning has expired. The said Perozbai cannot attend the Court for the purpose of giving evidence in the suit.

"4. The said Bachoobai is an old lady about fifty-eight years of age and is almost always sickly, and, therefore, physically unable to attend the Court.

* Suit No. 713 of 1889.

1890
MARCH 1.
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