dispensed with before the commencement of the trial with the aid of assessors. It is only when proceedings are commenced at which the assessors can give their aid that the trial with their aid, as contemplated in ss. 268 and 284, can be said to have commenced. As the assessors are chosen under s. 272 only if the accused has refused to or does not plead to the charge or claims to be tried, it is clear that in a Court of Session the trial "with the aid of assessors" does not commence with the reading of the charge. When the Sessions Judge found that one of the assessors chosen by him could not attend at the trial, he clearly ought, in compliance with s. 284, to have chosen another in his place.

We set aside the proceedings of the Sessions Judge as illegal, and direct that the accused Bastiano be retried by the Court of Session. As the present Sessions Judge has already expressed an opinion on the merits of the case, we think it advisable that the accused be tried before another Sessions Judge.

Order of acquittal set aside.

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15 B. 516.

[516] REVISIONAL CRIMINAL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

IN RE JAMNADAS DULABDAS.* [1st December, 1890.]

*Bombay District Municipal Act (Bombay Act VI of 1873), s. 33—*Sanad *under the City Survey Act (Bombay Act IV of 1868)—The right of the Municipality to call for the production of the* sanad.

Under s. 33 of the Bombay District Municipal Act (Bombay Act VI of 1873) a Municipality has no right to insist on the production of a *sanad* issued under s. 10 of the City Survey Act (Bombay Act IV of 1868) before granting permission to build.

[F., 19 B. 27 (30).]

APPLICATION under s. 435 of the Criminal Procedure Code (Act X of 1882).

On the 13th September, 1889, the applicant gave notice to the Municipality of Surat of his intention to build a new house on the foundations of an old one which had been pulled down by orders of the Municipality on account of its dilapidated state.

On the 27th September, 1889, the Municipality called upon the applicant to produce the *sanad* issued to him under the City Survey Act (Bombay Act IV of 1868).

On the 27th February, 1890, the applicant applied for permission to rebuild his house, but without producing the *sanad*. The Municipality replied that until the *sanad* was produced, his application would not be granted.

On the 3rd April, 1890, the applicant furnished the Municipality with a plan of the proposed building, and renewed his application for leave to rebuild his house, stating that he had no *sanad* with him. On the 10th April, 1890, the Municipality replied to the same effect as they had done to his former applications.

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* Criminal Revision, No. 288 of 1890.

1890
DEC. 1.

REVISIONAL
CRIMINAL.

15 B. 516.

On the 9th May, 1890, the applicant gave the Municipality a final notice, informing them that he had commenced building his house.

The applicant was thereupon prosecuted, at the instance of the Municipality, for acting in contravention of s. 33 of the Bombay District Municipal Act (Bombay Act VI of 1873).

[517] The applicant was convicted by the Honorary First Class Magistrate, and sentenced to pay a fine of Rs. 15.

Against this conviction and sentence the present application was made to the High Court under s. 435 of the Code of Criminal Procedure.

Manekshah Jehangirshah, for accused.—Section 33 of Bombay Act VI of 1873 does not empower the Municipality to require the production of a *sanad* under the City Survey Act. The only information they are entitled to demand under that section is information regarding "the limits, design, and materials of the proposed building." But the *sanad* issued under the City Survey Act gives information not only about the limits of a building site, but also about the tenure on which it is held. The Municipality have clearly no right to ask for such information under the section. The section lays down certain conditions which the Municipality may insist upon for sanitary purposes. It does not empower the Municipality to raise questions of title

Shantaram Narayan, Government Pleader, for the Municipality.—The *sanad* under the City Survey Act specifies the limits of the building, and affords the most reliable and authentic information on which the Municipality can act in granting or refusing permission to build. The words of the section are wide enough to cover a case like this.

JUDGMENT.

BIRDWOOD, J.—The applicant has been convicted under cl. 3 of s. 33 of Bombay Act VI of 1873 of building his house without the permission of the Surat Municipality. He gave specific notice on the 24th March, 1890, to the Municipality of his intention to build a house on the foundations of his former house, which the Municipality had, in August, 1889, caused to be pulled down on account of its ruinous state. The Municipality replied to this notice on the 10th April, 1890, to the same effect as they had replied to a former notice given with the same object. They said that the applicant must produce the *sanad* granted him under the City Survey Act, or else a memorandum of the measurements of his property made by the City Survey Department. The applicant says he has no *sanad*. He had, however, on the 3rd April furnished the Municipality with a plan [518] of the proposed house. His contention is that the order of the 10th April, virtually prohibiting the building of a house unless he produced a *sanad* or a memorandum of the measurements of his property, is illegal and that he is not punishable for disregarding it. This contention is, in our opinion, sound. Under cl. 1 of s. 33 of the Act, the Municipality were empowered to call on the applicant to furnish information as to the limits, design, and materials of the proposed building. The *sanad* granted to the applicant under s. 10 of Bombay Act IV of 1868 (if any *sanad* was granted him) would contain information as to the limits and tenure of his holding. But such information the Municipality is not empowered to call for under s. 33 of Bombay Act VI of 1873. It is only for building without a notice or without affording the information expressly prescribed by cl. 1 of s. 33 or in any manner contrary to a legal order of the Municipality that a person so building is punishable under cl. 3. The applicant gave

due notice on the 24th March. The information which he failed to afford was not information which the Municipality were empowered by cl. 1 to call for; and the Municipality could not legally prohibit the building of the house for failure to furnish information which they could not legally call for. If they had called for information as to the limits of the proposed building, they would have been within their rights, and if he had refused to give that information, the conviction would have been good. But they asked more than that, and their demand was outside the Act altogether. We reverse the conviction and sentence, and direct the fine paid to be refunded.

Conviction and sentence reversed.

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15 B. 519.

[519] APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.

MADHAVRAV MANOHAR (*Original Defendant. No.* 1), *Appellant v.* ATMARAM KESHAV AND OTHERS (*Original Plaintiff and Defendants Nos.* 2 *to* 9), *Respondents*; AND BALVANT BAJIRAV AND OTHERS (*Original Defendants Nos.* 3, 4, 6, 7 *and* 9), *Appellants v.* ATMARAM KESHAV (*Original Plaintiff and Defendants Nos.* 1, 2, 8, 10 *and* 11), *Respondents.** [2nd December, 1890.]

Suit for partition—Cash allowances payable from the Government Treasury—Saranjam—*Impartibility—Custom of the family as to partibility*—Vadil—*Vadilki—Senior member of the family—Right of eldership—Amount set apart for the celebration of a festival—Separate celebration of the festival after division—Expenses of the separate celebration—Expenses of collecting the* saranjam *and pension incomes —Omission of the lower Court to pass a decree for partition among all the co-sharers—Decree for partition among the co-sharers passed in appeal.*

Saranjams are *prima facie* impartible, the holders being required to make a suitable provision for their younger brothers. Where, however, it appeared that the members of a family had treated *saranjams* as partible over a long period of years and had dealt with them as such in effecting partitions of the entire family estate, which consisted both of incomes and *saranjams*,

Held, that the Court was justified in concluding that the *saranjams* were either originally partible or had become so by family usage.

The plaintiff, an undivided member of a Hindu family, sued his co-sharers for division of *saranjam* and other family property. The defendant No. 1 contended that the *saranjam* was impartible. In any case he claimed to retain certain sums in his capacity as the eldest representative of the family for the performance of certain offices.

Held, further, that the right of *vadilki* (eldership) had not lost its original character of impartibility, and that it was impartible and transmissible to the eldest representative of the family.

Where in a suit for partition a certain sum was claimed by the eldest representative of the family for the purpose of celebrating a certain festival.

Held, that the branches of the family being completely separated, each branch would celebrate the festival apart and would necessarily require funds for its separate celebration, and that, therefore, the sum claimed by the eldest representative for the celebration of the festival could not be left undivided.

The Court of first instance having omitted to decree the shares of the defendants other than defendant No. 1, who demanded partition, their shares were declared and allowed in appeal.

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* Appeals, Nos. 109 and 111 of 1884.