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the proviso at the close of cl. 13, points to Mr. Wallace and his representatives, as the legal holders of the shares, being the only persons in the contemplation of the parties. Lastly, the very form of the consideration provided by cl. 13 for the transfer of the other assets, shows that the object the company had in view was to afford an inducement to Mr. Wallace and his executors to continue on the register as the holders of the shares.

These inferences as to the intention of the parties are entitled to special consideration from the circumstance that the agreement is not an inartificial document such as is often found in transactions of this nature, but a highly artificial instrument—the work obviously of a skilled draftsman. We are of opinion, therefore, that Mr. A. F. Wallace, by his attorney, the plaintiff, is still holding the shares within the contemplation of cl. 13 of the agreement, and the plaintiff is, therefore, entitled to a declaration in the terms of the prayer of his plaint. We do not, however, think it advisable for the Court to express an opinion as to the construction of the expression “executor and administrator,” a question which may never arise in the future, and is not raised by the pleadings.

We must, therefore, vary the decree by omitting the part of it which follows after the words “is still payable to the plaintiff as administrator of W. Wallace as in the plaint mentioned,” but in other respects the decree is confirmed. Respondents to have their costs of this appeal.

Attorneys for the appellant: Messrs. *Craigie, Lynch and Owen.*

Attorneys for the respondent: Messrs. *Little, Smith, Frere and Nicholson.*

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[224] APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and
Mr. Justice Birdwood.*

DAJI NILKANTH NAGARKAR AND OTHERS (*Original Plaintiffs*),
Appellants v. GANPATRAO NILKANTH NAGARKAR (*Original
Defendant*), Respondent.* [30th September, 1891.]

Jurisdiction—Court of Agent for Sirdars in the Deccan—Suit in that Court—Pensions Act (XXIII of 1871), s. 4, applies to such suit—Collector's certificate—Reg. XXIX of 1827, ss. 4 and 6—Ordinary Rules—Reg. II of 1827.

A suit brought against a *sirdar* in the Court of the Agent for Sirdars in the Deccan, of the class specified in s. 4 of the Pensions Act (XXIII of 1871), requires a Collector's certificate, as provided by s. 6 of that Act.

THIS was an appeal from the decision of G. C. Whitworth, Agent for Sirdars in the Deccan at Poona.

Suit for an account and recovery of income.

The plaintiffs alleged that they and the defendant Ganpatrao Nilkanth Nagarkar, deceased (pending appeal to the High Court), who was a third class *sirdar*, were co-sharers in certain *jaghir, inam, saranjam* and other properties situate in the Ahmednagar District; that partition had taken place between the co-sharers, and that they had been separately receiving the income of their respective shares; that for the sake of convenience the lands had not been actually partitioned, and that the

income thereof had been collected with the assistance of a clerk named Gangadhar Balkrishna Godbole, who was appointed by all the co-sharers; that, latterly, this clerk in collusion with the defendant, who was the senior representative of the family, and under whom the clerk acted, declined to render accounts, &c. The plaintiffs therefore brought this suit for an account, &c. They further stated that the defendant being a third class *sirdar* was amenable to the jurisdiction of the Agent for Sirdars in the Deccan, and that they had therefore filed the suit against him in the Agent's Court and a separate suit against the clerk, Gangadhar Balkrishna, in the Subordinate Judge's Court.

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The defendant, Ganpatrao Nilkanth Nagarkar, contended (*inter alia*) that as some of the property in dispute was *service vatan*, [225] the suit must fail for want of the Collector's sanction under the Pensions Act (XXIII of 1871).

The Agent for Sirdars held that the suit was barred owing to the plaintiffs' failure to produce the Collector's certificate under s. 4 of the Pensions Act (XXIII of 1871). On the authority of the case of *Babaji Hari v. Rajaram Bullal* (1) he dismissed the claim.

The plaintiffs appealed to the High Court.

Ganesh Ramchandra Kirloskar (with *Purushottam Parashuram Khare*), for the appellants:—The Collector's certificate is not required for a suit in the Agent's Court. It is necessary for a suit filed in an ordinary civil Court, but the Court of the Agent for Sirdars is not such a Court. The appointment of the Agent is made under s. 3 of Reg. XXIX of 1827, and ss. 4 and 6 lay down what suits shall be tried by the Agent and not by civil Courts. Under s. 4 of the Pensions Act a civil Court cannot maintain a suit without the Collector's certificate, but the Agent's Court not being a Court contemplated by the Act, a suit filed in his Court cannot fail for want of the certificate, the Agent being invested with a special jurisdiction. The Pensions Act cannot take away a jurisdiction which is specially created under a prior enactment (Reg. XXIX of 1827) for particular purposes. *Khusaldas v. Sakharam Ramchandra* (2) shows that the Court of the Agent was not considered to be a Civil Court under s. 284 of the Civil Procedure Code Act VIII of 1859.

In any case, we contend that the Agent was wrong in dismissing our suit wholly, as our claim includes certain other property to which the Pensions Act is not applicable, and the Agent ought at least to have proceeded to determine the suit with respect to that property.

Mahadeo Chimnaji Apte, for the respondent:—The Pensions Act lays down that no Civil Court shall entertain a suit without the Collector's certificate. There is no distinction drawn between the Court of a Subordinate Judge and that of the Agent for [226] Sirdars. The provisions of the Pensions Act apply to all Courts of civil jurisdiction, and what is to be determined is whether a particular Court is a Civil Court under Reg. II of 1827; and if so, s. 21 of the Regulation and s. 4 of the Pensions Act apply to suits brought in such a Court.

The plaintiffs brought the present suit to recover damages. The defendant has died, and the cause of action does not survive against his sons; moreover, owing to the defendant's death, the jurisdiction of the Agent ceases, because, though the defendant was a *sirdar*, his sons are not.

(1) 1 B. 75.

(2) 12 B.H.C.R. 212.

JUDGMENT.

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SARGENT, C. J.—Having regard to the general scope and object of Reg. XXIX of 1827, we think that the expression "Ordinary Rules" as used in s. 4 of that enactment means the rules for the time being in force determining the jurisdictions of the Judges referred to in that section (1). We cannot hold that the Agent for Sirdars was intended to exercise jurisdiction only in such cases of a civil nature as the Civil Courts were empowered by Reg. II of 1827 to take cognizance of. The object of the Regulation was clearly to invest the Agent with such jurisdiction as would for the time being, but for the enactment of the Regulation, be vested in the Civil Courts. If, after the passing of the Act, the jurisdiction of the Civil Courts were to become in any way modified, the jurisdiction of the Agent would be similarly modified. Section 4 of Act XXIII of 1871, being now a part of the "Ordinary Rules" determining the jurisdiction of the Civil Courts, is applicable therefore to the Agent's Court, though that Court is not a Civil Court in the ordinary acceptation of the term. As the plaintiff had obtained no certificate from the Collector as regards so much of the claim as is affected by the Act of 1871, the Agent has rightly held that in respect of such claim the suit is barred.

The Agent should, however, have dealt with that part of the claim which is not affected by the Act, and he was wrong, we [227] think, in dismissing the whole of the plaintiffs' claim. We must, therefore, reverse his decree and remand the case for a re-hearing. Costs to abide the result.

At the hearing of the appeal it was objected for the respondent that the defendant being now dead, and the suit being one for damages, does not survive against the son. This is a question that must be dealt with by the Court below when the appeal is reheard.

Decree reversed and case remanded.

17 B. 227.

APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and
Mr. Justice Birdwood.*

KADAPPA (*Plaintiff*) v. MARTANDA (*Defendant*).*
[11th February, 1892.]

Stoppel—Suit on a document executed by defendant in which he was described as a trader—Plea in suit that he was an agriculturist—Dekkhan Agriculturists' Relief Act (XVII of 1879).

The mere fact that the defendant described himself in the instrument, on which the suit was brought, as a trader, would not of itself estop him from pleading at the trial that he was an agriculturist, and entitled to the protection of the Dekkhan Agriculturists' Relief Act (XVII of 1879). There must be evidence to show that by describing himself as a "trader" he represented himself as a trader, and intended that that representation should be acted on by the plaintiff.

* Civil Reference No. 23 of 1891.

(1) Section 4 of Reg. XXIX of 1827 is as follows:—

An agent of Government shall be specially appointed for the purpose of receiving, and trying, and deciding all complaints of a civil nature which would under the ordinary rules be cognizable by either of the Judges of Poona and Ahmednagar against any of the persons contemplated in the preceding section.