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juror, come to the conclusion that the plaintiff could have sold a cargo of Davison's coal arriving at the end of June at Rs. 15-12 per ton. I justify that finding, in point of law, by the consideration that this coal was selling at Rs. 17 per ton during the week ending 23rd June, and that the defendants have not established a greater fall than one rupee per ton the following week. I have taken off four annas per ton, feeling that there would probably have been a difficulty in selling the whole cargo at Rs. 16. This is almost the exact loss which the plaintiff sustained by not being able to satisfy his contracts for the 2,250 tons with the coal purchased from the defendants. I find the second issue for the plaintiff: and on the third, that the plaintiff be entitled to recover Rs. 1,250 from the defendants. I pass a decree for the amount, but make no order as to costs.

Attorneys for the plaintiffs: Messrs. *Turner and Hemming*.

Attorneys for the defendants: Messrs. *Roughton and Byrne*.

18 B. 315.

[315] APPELLATE CIVIL.

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

MANCHARAM PRANJIVAN (*Original Applicant*), *Appellant v. BAI MAHALI AND ANOTHER (Original Opponents), Respondents.\**

[11th April, 1893.]

*Succession Certificate Act (VII of 1889), s. 4 (a)—Preamble—Representative of a deceased person—Person claiming to be entitled to the effects of the deceased—Purchaser at sale in execution of a decree against a deceased person.*

A certain debt due to P. (deceased) was sold in execution of a decree against him and was purchased by M. In order to enable him to recover the said debt, M applied to the District Judge for a certificate under the Succession Certificate Act (VII of 1889). The Judge rejected the application on the ground that the applicant was not a representative of the deceased.

*Held*, reversing the decree, that the applicant having purchased at the auction sale the debt as part of the deceased's effects, which was sold as such by the Court, was entitled to a certificate under s. 4 (a) of the Succession Certificate Act (VII of 1889).

FIRST appeal from the decision of J. B. Alcock, District Judge of Surat.

A firm named Motiram Kevalbhai was indebted to the extent of Rs. 1,075 to one Punjia Jagjivan, deceased, against whom a money decree was obtained by one Nathu Kasan in the Court of the Small Causes at Surat. In execution of the said decree the debt due by the firm of Motiram to the deceased Punjia was sold by public auction and purchased by Mancharam Pranjivan, who presented an application to the District Judge for a succession certificate, under Act VII of 1889, in order to recover the debt due to the deceased. The District Judge rejected the application, holding that the applicant was not a representative of the deceased.

The applicant appealed.

*Govardhanram M. Tripathi*, for the appellant.—It is not necessary that the applicant for a certificate under the Succession Certificate Act (VII of 1889) should be the actual heir of the deceased. Section 4 (a) of the Act expressly contemplates applicants like the present, and in such

\* First Appeal No. 1 of 1893.

cases the preamble of the Act cannot be allowed to cut down the express enactment. In *Kirparam v. Nagindas* (1), the point has been virtually decided.

[316] There was no appearance for the respondent.

#### JUDGMENT.

SARGENT, C.J.—The District Judge dismissed the appellant's application for a certificate under s. 4 (a) of Act VII of 1889 on the ground that he was not a representative of the deceased Jagjivan, meaning, we presume, not his heir. The preamble to the Act speaks of representatives of the deceased. But s. 4 (a) expressly provides for the production of a certificate by a person suing the debtor of the deceased "who claims to be entitled to the effects of the deceased or to any part thereof." Here the appellant claims the debt as part of the deceased's effects which was sold as such by the Court and purchased by him at auction sale. In *Kirparam v. Nagindas* (1) it was apparently assumed, and we think correctly, that such a purchaser would require a certificate before the Court could pass a decree on the debt.

We must, therefore, reverse the decision of the lower Court and send back the case to be disposed of according to law without intending to express any opinion as to the merits. Costs to abide the result.

*Decree reversed.*

18 B. 316.

#### APPELLATE CIVIL.

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

LALITAGAR KESHARGAR (*Original Plaintiff*), Appellant v. BAI SURAJ (*Original Defendant No. 1*), Respondent.\*  
[18th April, 1893.]

*Husband and wife—Suit for restitution of conjugal rights—Cause of action—Jurisdiction.*

The plaintiff sued his wife for restitution of conjugal rights in the Court of the Subordinate Judge of Borsad, within whose local jurisdiction the plaintiff resided. The defendant contended (*inter alia*) that the Subordinate Judge of Borsad had no jurisdiction to entertain the suit, on the ground that she was living outside his jurisdiction. The Subordinate Judge dismissed the suit for want of jurisdiction. On appeal by the plaintiff, the decree was confirmed. On second appeal,

[317] *Held*, reversing the decree, that the Court of Borsad had jurisdiction. The cause of action, in a suit by a husband for restitution of conjugal rights, consists in the wife's absenting herself from her husband's house without his consent, and it must, therefore, be deemed to arise at his house.

SECOND appeal from the decision of T. Hart-Davies, Joint Judge of Ahmedabad.

The plaintiff sued his wife Bai Suraj and others for restitution of conjugal rights. The suit was filed in the Court of the Subordinate Judge of Borsad, within whose local jurisdiction the plaintiff resided.

\* Second Appeal No. 900 of 1891.

(1) P. J. for 1893, p. 55.