

1893  
 NOV. 21.  
 —  
 APPEL-  
 LATE  
 CIVIL.  
 —  
 18 B. 749.

therefore, be treated as a nullity and ought not to be admitted to probate—*Anmoda Sundari Dabi v. Jugutmoni Dabi* (1). See also Williams on Executors, p. 53.

### JUDGMENT.

PARSONS, J.—The District Judge was wrong in refusing to grant probate because the testatrix had no power to dispose of some or even all of the property she purported to dispose of. See *Hormusji v. Bai Dhanbaiji* (2). We, therefore, reverse his order and direct that he hear and dispose of the application according to law.

Costs to abide the result.

*Order reversed.*

18 B. 751.

### [751] CRIMINAL REVISION.

*Before Mr. Justice Parsons and Mr. Justice Candy.*

QUEEN-EMPRESS *v.* DANSANG DADA.\* [22nd November, 1893.]

*Criminal Procedure Code (Act X of 1882), s. 423, cl. (b)—Sentence—Alteration of sentence in appeal—Appellate Court's power to alter a sentence of fine into one of imprisonment.*

A Sessions Judge has no power to enhance a sentence in appeal, by altering a sentence of fine into one of imprisonment.

[F., L.B.R. (1893—1900) 423 (425); R., 18 A. 301 (302).]

THIS was an application under s. 435 of the Code of Criminal Procedure (Act X of 1882) under the revisional jurisdiction of the High Court.

The accused Dansang Dada and six others were convicted by the First Class Magistrate of Dhandhuka of the offence of voluntarily causing hurt under s. 323 of the Indian Penal Code (XLV of 1860). They were sentenced each to pay a fine of Rs. 51, or in default to suffer rigorous imprisonment for one month and fifteen days. They were also ordered to execute a bond for Rs. 100 for keeping the peace for a period of two years under s. 106 of the Code of Criminal Procedure (Act X of 1882).

On appeal the Sessions Judge upheld the convictions, but with respect to the sentences he passed the following order:—

“The offence is not one which, in my opinion, can be properly punished by a pecuniary fine. I, therefore, alter the sentence in each case from a fine of Rs. 51 to rigorous imprisonment for one month, leaving the order as to surety bonds unaltered.”

Against this order the accused made the present application under the revisional jurisdiction of the High Court, contending that the Sessions Judge's order for alteration of the sentence in appeal was illegal, as it amounted to an enhancement of the sentence.

*Branson* (with him *Ganpat Sadashiv Rao*), for accused.

*Kalabhai Lallubhai*, for complainant.

\* Criminal Revision No. 327 of 1893.

## JUDGMENT.

PER CURIAM:—The sentence of the Sessions Judge is illegal, as he had no power to enhance, by altering a sentence of fine into one of imprisonment. We, therefore, reverse the sentence of the Sessions Judge and restore that of the First Class Magistrate.

1893  
Nov. 22.  
CRIMINAL  
REVISION.  
18 B. 751.

18 B. 752.

## [752] APPELLATE CIVIL.

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

APPA (Plaintiff) v. SADU (Defendant).\* [30th November, 1893.]

*Watandar and deputy—Agreement for payment by deputy to the watandar out of the cash allowance for procuring the deputy's nomination—Watandar's Act (Bombay Act III of 1874), ss. 7† and 23‡.*

An agreement between the watandar and a deputy nominated by him for the payment by the latter to the former, in consideration of procuring such nomination, of a sum of money out of the cash allowance received by the deputy as remuneration assigned to his office is not legal, being contrary to the spirit of s. 7 read with s. 23 of the Watandars' Act (Bombay Act III of 1874).

REFERENCE from Rav Saheb Bhau Yeshwant Gupte, Subordinate Judge of Kada, under s. 617 of the Code of Civil Procedure (XIV of 1882).

The Subordinate Judge referred the following question for the decision of the High Court:—

Whether an agreement between a watandar and the deputy nominated by him for the payment by the latter to the former of a sum of money out of the cash allowance, received by the deputy as remuneration assigned under s. 23 of the Bombay Watandars' Act (III of 1874), as consideration for procuring such nomination, is opposed to law?

With respect to the question referred, the Subordinate Judge made the following remarks:—

[753] "The language of s. 7 of Bombay Act III of 1874, which forbids alienation or assignment of the watan property assigned under s. 23 of the Act as remuneration to an officiator, is also sufficiently wide to include every species of alienation or assignment within the prohibition, and, unless there is any reason to place a restricted construction on these

\* Civil Reference No. 9 of 1893.

† Section 7 of the Watandars' Act (Bombay Act III of 1874):—7. Watan property assigned under s. 23 of this Act as remuneration of an officiator, and the profits of watan property so assigned, shall not be alienated or assigned to any person whatever without the sanction of Government.

‡ 23. Subject to the provisions of this Act and of any other law for the time being in force regarding service-inams, cash allowances and pensions, it shall be the duty of the Collector to fix the annual emoluments of officiators, appointed under the provisions of this Act, and to direct the payment thereof to the officiators for the time being.

It shall be lawful for the Collector for this purpose to assign the watan property, or the profits thereof, towards the emoluments of officiators. The existing assignments shall, until altered by competent authority, be taken to have been made under this section. With the sanction of Government the Collector may, as occasion arises, alter the assignment and may increase or diminish it in value, such increase or diminution being made rateably among the holders in proportion to the profits derived by such holders respectively from the watan.