

[337] The Magistrate is mistaken in supposing that there is any conflict between the ruling of the 15th December 1879 and that of the 26th August 1881.\*

The question, whether imprisonment could be awarded in default of payment of fine imposed under Act XVII of 1840, was not considered in the Full Bench ruling of the 15th December 1879.

The imprisonment imposed by the High Court in default of payment of fine in the final paragraph of the Full Bench ruling was a legal sentence under the Act of 1852.† The charge in this case was under Act XVII of 1840, and the fine is beyond what is authorized by Madras Act VII of 1852.† We cannot, therefore, uphold the sentence as a legal sentence under the Act of 1852.

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[338] APPELLATE CIVIL.

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*The 21st December, 1881.*

PRESENT :

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND  
MR. JUSTICE MUTTUSAMI AYYAR.

Arumugam Pillai.....(Plaintiff), Appellant

*and*

Vijayammal and another.....(Defendants), Respondents.†

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*Madras Regulation XXIX of 1802, Section 7—“ Heirs ” to dismissed Karnam.*

The word “ heirs ” in Section 7 of Madras Regulation XXIX of 1802 means “ persons who, in the event of death, would inherit from the preceding incumbent.”

THIS was a suit to establish the plaintiff’s right to the office of Karnam of Elanthatanguli, a village formerly attached to the Ariyalur Istimrar Zamindari. Ramalingam Pillai, the undivided brother of the plaintiff, having been dismissed in 1877, after suit brought by the first defendant, the proprietor of the village, the claims of the plaintiff to succeed his brother were passed over by the first defendant in favour of the second defendant who was appointed Karnam.

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The accused was convicted of having manufactured earth-salt contrary to the provisions of Section 18, Regulation I of 1805, and was sentenced to pay a fine of 10 rupees, or, in default of payment, to suffer rigorous imprisonment for ten days.

The District Magistrate observes that the order of imprisonment in default of payment of fine is illegal on the ground that Act XVII of 1840, under which the punishment was ordered, provides for fine or imprisonment only being inflicted, and that the General Clauses Act I of 1868 (Section 5) does not render Sections 63 to 70 of Indian Penal Code applicable to enactments passed prior to its date.

This Court directs that the sentence be annulled, and the fine, if levied, refunded.

(( Section 1 of Act VII of 1852 is as follows :—“ Heads of District Police may hear and determine cases of offences against the Salt Laws, when the value of the salt in question shall not exceed 5 rupees, and may inflict punishment not exceeding ten days’ imprisonment with labour, or a fine not exceeding 3 rupees, commutable, if not paid, to imprisonment with labour for a period not exceeding ten days.”

Second Appeal No. 583 of 1881 against the decree of F. Brandt, District Judge of Trichinopoly, reversing the decree of S. Ramasami Mudaliar, District Munsif of Ariyalur, dated 21st March 1881.

The defendants pleaded, *inter alia*, that the plaintiff was not the heir of Ramalingam Pillai within the meaning of Regulation XXIX of 1802.

The Munsif held that the plaintiff was his brother's heir and decreed in his favour.

Upon appeal the District Judge, on the authority of *N. Krishamma v. N. Papa* (4 M. H. C. R., 234) held that the plaintiff could not possibly be said to be the heir of his living brother. The District Judge, moreover, considered that it was manifestly absurd to compel a proprietor to have recourse to legal proceedings to get rid of one Karnam simply to have the undivided brother of the dismissed man forced upon him, and that the Regulation contained nothing to show that when the office had been lost [339] through the neglect or incompetence of the holder for the time being, the proprietor of the estate was not at liberty to select whomsoever he pleased for the office. He accordingly dismissed the suit.

The plaintiff appealed to the High Court.

*Ambrose* for the Appellant.

or the Respondents.

The Court (TURNER, C.J., and MUTTUSAMI AYYAR, J.) delivered the following

**Judgment** — We are of opinion that the provisions of Section 7 must be read in connection with the preceding sections, and that the rule enunciated by it applies to vacancies in the office of Karnam whether occasioned by dismissal or by death. The term "heirs" in Section 7 must then receive an interpretation which would enable the application of the rule whether the vacancy occurs by dismissal or by death. It is not an overstained construction of the term "heirs" to hold that it means persons who, in the event of death, would inherit from their preceding incumbent. Adopting this construction, we must hold that the appellant, the undivided brother, is the heir of the dismissed Karnam, and he cannot be affected by the personal incapacity of his predecessor.

The decree of the Lower Appellate Court is set aside, and that of the Court of First Instance restored with costs in all Courts on the relief decreed.

#### NOTES.

[See, also, (1886) 9 Mad. 283.]