

and cannot be made after evidence has been taken for the complainant and process issued. In order to make such reference, s. 202 provides that process may be postponed. We set aside the order of the Joint Magistrate and direct him to proceed according to law.

SADAGOPÁ-
CHÁRYÁR
v.
RAGAVÁ-
CHÁRYÁR.

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Parker.*

VENKAYYA (DEFENDANT No. 2), APPELLANT,

and

SUBBARÁYUDU (PLAINTIFF), RESPONDENT.*

1886.
March 4.

Regulation XXIX of 1802, s. 7.

The office of karnam in a zamindari village having been held by three brothers jointly in hereditary right, the zamindar on the death of one brother did not fill up the vacancy considering that the work could be well conducted by the two survivors.

On the death of the survivors their sons succeeded to the office. The zamindar subsequently desiring to reappoint a third karnam nominated an outsider to the joint tenancy of the office :

Held, that as there were heirs of the last holders in existence, the appointment was invalid.

APPEAL from the decree of T. Rámaswámi Ayyangár, Subordinate Judge at Cocanada, confirming the decree of Y. Jánakirá-máyyar, District Múnsif of Amalapúr, in suit 1074 of 1882.

The plaintiff, Nedunnuri Subbaráyudu, sued (1) the Rájá of Pittapúr and (2) Nedunnuri Venkayya to have the appointment made by defendant No. 1 of defendant No. 2 to the office of karnam in the village of Nedunnúr in the zamindari of Pittapúr cancelled, and to establish plaintiff's right to the said office.

The Lower Courts decreed the claim.

Defendant No. 2 appealed.

The facts necessary for the purpose of this report appear from the judgment of the Court (Collins, C.J., and Parker, J.).

Subba Ráu and Appadorai Ayyar for appellant.

Kristna Ráu for respondent.

* Second Appeal 757 of 1885.

VENKAYYA
 v.
 SUBBA-
 RAYUDU.

JUDGMENT:—The office of karnam in this zamíndári village was hereditary in the plaintiff's family. It was originally held by three brothers, but on the death of one of them without issue the rájá considered that the work could be well conducted by the remaining two, and that it was not necessary to appoint a third. These two were succeeded in due course by their sons, of whom one—the plaintiff's father, Buchanna—has now resigned in consequence of old age.

The plaintiff's elder brother was appointed to succeed his father.

The rájá now wishes to reappoint a third karnam and has nominated an outsider to the joint tenancy of this hereditary office.

Such a course is opposed to s. 7, Regulation XXIX of 1802, which provides that the heirs shall be chosen except in the case of incapacity. It has been held by this Court in *N. Krishnamma v. N. Papa* (1) that the word "heir" means "next of kin," and judged by this ruling plaintiff is the proper person to be nominated, since his brother and cousin are already karnams and his father has declared himself incapable from old age—*vide* also *Arumugám Pillai v. Vijayammál.* (2)

The appellant has no preferential claim as an heir, and the appeal must be dismissed with costs.

APPELLATE CRIMINAL.

Before Mr. Justice Kernan and Mr. Justice Muttusámi Ayyar.

1886.
 April 2.

QUEEN-EMPRESS

against

DORASÁMÍ.*

Penal Code, s. 75—Trial of prisoner of offence under ch. XII or XVII after previous conviction.

If a prisoner is to be tried for an offence punishable under s. 75 of the Indian Penal Code, a separate charge under that section must be framed and recorded.

APPEAL from the sentence of the Presidency Magistrate's Court, Black Town, in calendar case No. 20239 of 1885.

(1) 4 M.H.C.B., 234.

(2) I.L.R., 4 Mad., 338.

* Criminal Appeal 71 of 1886.