

also during the last ten years of his life ceased to do the duties of kurnam, though his name was retained in the list of kurnams. The question is not whether the third defendant's right to claim the office is barred, but whether the Collector had no power to make the appointment.

The appointment of a stranger even by a zamindar when a vacancy exists would be open to no objection on the ground of its not being made within twelve years of the vacancy occurring, and we fail to understand why the appointment of an heir should be open to objection on this ground.

We set aside the decrees of both the lower Courts and direct that the suit be dismissed with costs throughout to be paid by plaintiffs (first and second respondents).

LAKSHMINA-
RAYANAPPA
v.
VENKATARAT-
NAM.

APPELLATE CRIMINAL.

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

QUEEN-EMPRESS

v.

THOMMAYYA CHETTI.*

1893.
August 30.
November 1.

*Indian Ports Act—Act X of 1889, s. 6, cl. k—Local Government's rules thereunder—
Boats plying and not plying for hire—'Ultra vires'.*

It is only with regard to boats plying for hire that section 6 of Act X of 1889 gives the Local Government authority to make rules. Rules purporting to make it obligatory on boat owners to ply for hire are *ultra vires*.

PETITIONS under sections 435 and 436 of the Criminal Procedure Code, praying the High Court to revise the finding and sentence of the First-class Sub-divisional Magistrate of Negapatam, passed in summary trials Nos. 1, 5 to 7 and 9 to 11 of 1893.

In these cases the owners of boats in the Port of Negapatam were fined various sums for refusing to take out their boats to a certain steamer, when called upon by the Port Officer to do so. The convictions were under rules 1 and 23 of the boat rules sanctioned

* Criminal Revision Cases Nos. 290 to 297 of 1893.

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in Madras G.O., No. 503, dated 16th November 1891, passed under section 6, clause k of Act X of 1889. The rules in question were as follows:—

“Owners of boats shall be subject to the control of the registering officer appointed by Government, and shall carry out at all times all orders issued by him in connection with the plying of their boats and which are not inconsistent with any of these rules, and shall supply the tindal of each registered boat with a printed copy of these rules and of any orders issued by the registering officer, which copy shall be shown by such tindal to any passenger by such boat demanding to see the same.

“No owner of a registered boat licensed to ply for hire, not being a steam launch, and no person in charge of such boat, shall refuse to let on hire such boat without having and assigning reasonable cause for such refusal to the satisfaction of the registering officer.”

Mr. Grant for petitioners.

The Acting Government Pleader and Public Prosecutor (*Subramanya Ayyar*) in support of the conviction.

COLLINS, C.J.—The accused were convicted for refusing to take out their licensed boats to certain steamers when called on by the Port Officer to do so. The Acting Sessions Judge, who refers this case, admits that the accused were rightly convicted under certain boat rules made by the Local Government under the powers given by section 6 of Act X of 1889, but suggests that those rules are *ultra vires*. Clause k is the clause in the Act under which the Local Government acted, and boat rules 20 to 23 are the rules under which the convictions took place. It is contended on the part of the accused that at the time the Port Officer issued his orders they were not plying, and that therefore the order of the Port Officer was not a lawful one. I do not think that there is any power in the Local Government to make rules compelling owners of licensed boats to ply their boats at all times, and if they have a discretion to ply or not, the Port Officer's orders to ply are not lawful orders. These boat rules 20 to 23 appear to be *ultra vires*, and the convictions must be set aside and the fines, if paid refunded. In summary trial No. 4 of 1893 if the boat was unseaworthy as it is stated, I agree with the Acting Sessions Judge that the complaint was vexatious and frivolous and ought not to have been made.

SHEPHARD, J.—I am of the same opinion. I think that the rules 1 and 23, so far as they purport to make it obligatory on boat owners to ply for hire, are *ultra vires*, and therefore void and of no effect. It is only with regard to boats plying for hire that section 6 of the Act gives the Government authority to make rules.

QUEEN-
EMPRESS
*.
THOMMAYYA
CHETTI.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Handley.

UPENDRA BHATTA (COUNTER-PETITIONER), PETITIONER,

v.

RANGANATHA BHATTA (PETITIONER), RESPONDENT.*

1893.
February 8.
March 8.

Code of Civil Procedure—Act XIV of 1882, ss. 244, 278 to 283—Questions to be determined by the Court executing a decree—Grounds of objection.

Where the question is whether the property in dispute belongs to the judgment-debtor or to his estate or not, and the question is raised in a proceeding in execution between parties to the suit or their representatives, it matters not on what grounds the objection is taken to the property being made the subject of execution, and the question is one to be determined in execution, and section 244 of the Code of Civil Procedure bars a separate suit. *Abedoonissa Khatoon v. Ameeroonissa Khatoon*(1) followed.

PETITION under section 622 of the Code of Civil Procedure, praying the High Court to revise the order of the District Judge of South Canara in civil miscellaneous appeal No. 88 of 1890.

The facts of the case appear sufficiently for the purpose of this report from the judgment of the High Court.

Pattabhirama Ayyar for petitioner.

Narayana Rau for respondent.

JUDGMENT.—The petitioner, Upendra Bhatta, obtained a money decree in original suit No. 206 of 1883 on the file of the District Munsif of Karakal against one Shridhara Bhatta. Shridhara Bhatta having died, execution was applied for against his sons, widow and undivided brothers as his heirs. In course of execution a certain piece of land called Mudanga bettu was attached and advertised for sale. Counter-petitioner, Runganatha Bhatta,

* Civil Revision Petition No. 33 of 1892.

(1) L.R., 4 I.A., 66.