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issued by it in regard to the making of any new works or alterations, is an offence under the law. I have, therefore, refused to entertain the complaint in respect to the above two notices."

No one appeared either to support or oppose the reference.

PER CURIAM :—The Court concur in the ruling and the reasons given for it by the Second Class Magistrate of Násik, Ráv Sáheb Shridhar Gundo, viz., that clause 1 of section 74 of the Municipal Act, Bombay, No. VI. of 1873, applies only to the second clause of section 39 of the same Act.

Proceedings returned.

[APPELLATE CIVIL.].

Before Sir M. R. Westropp, Knt., Chief Justice, and Mr. Justice Melvill.

January 23.

VA'SUDEV ANANT (ORIGINAL DEFENDANT), APPELLANT, *v.* RA'MKRISHNA AND SHIVRA'M NA'RA'YAN (ORIGINAL PLAINTIFFS), RESPONDENTS.*

RA'MKRISHNA AND SHIVRA'M NA'RA'YA'N (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* THE GOVERNMENT OF BOMBAY (ORIGINAL DEFENDANT), RESPONDENT.†

Bombay Act II. of 1863, *Section* 6, *Clause* 2—*Non-recognition of adoption by Civil Court—Inám Commissioner's decision—Act XI. of* 1852.

The provision in Bombay Act II. of 1863, section 6, clause 2, as to non-recognition of adoption by any civil Court, relates only to the question of the assessability of lands when raised between Government and a claimant of exemption.

It is not open to a party to rely upon a provision, of which Government only is entitled to take advantage.

In an enquiry under Act XI. of 1852 the *Inám* Commissioner, on the 30th January 1865, decided that a certain *inám* village should be continued to the male descendants of the original grantee; *held* that the decision of the *Inám* Commissioner was only intended to regulate the duration of the exemption of the *inám* village from assessment, and not to regulate the enjoyment of it as between the heirs of the original grantee.

THESE were cross appeals from the decision of R. F. Mactier, District Judge of Satara.

The facts, so far as they are material to this report, are these:—Rámkrishna, Vásudev, and Shivrám, the parties to these appeals, were the sons of Náráyan Dáji. Náráyan had an elder brother,

* Regular Appeal No. 15 of 1877. † Regular Appeal No. 35 of 1878.

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Anandráv, who, having no issue, adopted (as a son) Vásudev, Nárá-yan's second son. The village of Koliwádi was, in A.D. 1725, granted in *inám* to Rámchandra Govind, great-grandfather of Anandráv and Náráyán, and was sucessively held by Rámchan-drá's son and grandson. It was entered in the joint names of Anandráv and Náráyan, after their father's death. Anandráv died in 1862, and the Collector of Satara entered the name of Vásu-dev as his (Anandráv's) heir and successor in respect of half the *inám* village. In an enquiry by the *Inám* Commissioner under Bombay Act XI. of 1852, that officer decided in the 30th January 1865 that the *inám* village should be continued to the male descen-dants of the original grantee. In March 1868, the Revenue Com-missioner reversed the order of the Collector, and directed Vásu-dev's name to be removed from the Government books as holder of half the *inám* village. After several unsuccessful attempts, Vásu-dev presented a petition to Government for a re-consideration of his case; whereupon Government, on the 27th May 1872, reversed all the previous orders in Vasudev's case, and directed that his (Vásudev's) name should be entered in the *inám khata* of the village jointly with that of Náráyan, as had been the case before the Revenue Commissioner's orders. Rámkrishna and Shivrám, therefore, brought the present suit, claiming to be entitled to the whole *inám* village, (including the half already in their enjoyment), and praying for possession of the half held by Vásudev. They based their suit on the ground that Vásudev had no claim to the *inám* village as Anandráv's adopted son, under Bombay Act II. of 1863, section 6, clause 2. They made Government a party defendant to the suit on account of its order of the 27th May 1872. One of the issues framed by the District Judge was, "does the fact of the defendant Vásudev, being an adopted son, bar his claim under Bombay Act II. of 1863, section 6, clause 2?" The Judge's finding on this issue was "that Vásudev, having been adopted, has lost his claim to share in this property, being debar-red from succeeding in the line of his natural father by Hindu law, and in the line of his adoptive father by section 6, clause 2, of Bombay Act II. of 1863." The Judge awarded the plaintiff's claim as against Vásudev, and dismissed their suit with costs as against Government.

Inverarity, (with him the *Hon'ble Ráo Sáheb V. N. Mandlik*,) for Vásudev.

K. T. Telang, (with him *Shántárám Náráyan*,) for Rámkrishna and Shivrám.

Nánábhái Haridás (Government Pleader) for the Government of Bombay.

WESTROPP, C. J. :—We think that the decision of the *Inám* Commissioner of the 30th January 1865 was only intended to regulate the duration of the exemption of the village of Koliwádi from assessment, and not to regulate the enjoyment of it as between the heirs of the original grantee. There was not, in fact, any question, then, before the *Inám* Commissioner as to the right of Vásudev as adopted son of Anandráv. We are further of opinion that the provision in Bombay Act II. of 1863, section 6, clause 2, as to non-recognition of adoption, by any civil Court, &c., relates only to the question of the assessability of lands when raised between Government and a claimant of exemption. Here Government has recognized Vásudev as the adopted son of Anandráv, has permitted him to hold the lands free from assessment, and admits his title. It is not open to the plaintiffs to rely upon a provision of which Government only is entitled to take advantage. As, for the foregoing reasons, we think that the plaintiffs must fail in this suit, it is unnecessary for us to consider whether the provision of Bombay Act II. of 1863, section 6, clause 2, as to non-recognition of adoption, is retrospective, *i. e.*, as to whether it is applicable to an adoption made before that Act came into force; or the question whether Náráyan, the original plaintiff, having given Vásudev in adoption to Anandráv, he (Náráyan) and his sons Rámkrishna and Shivrám, who claim through him, would not be estopped from disputing the right of Vásudev to succeed to Anandráv's moiety of the *inám* village. Upon these points we give no opinion. We reverse the decree of the District Judge, and dismiss the suit. We direct the plaintiffs, Rámkrishna and Shivrám, to pay the costs of the suit and of regular appeal No. 15; but as regards regular appeal No. 35 of 1877 we direct that the fees payable to the respective pleaders for the Collector in the District Court and in this Court be calculated on the sum of Rs. (130) one hundred and thirty, that being the amount which the stamp

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of Rs. (10) ten placed by the plaintiffs on their plaint and memorandum of appeal No. 35 of 1877, so far as they seek a declaration against Government, would cover.

Order accordingly.

[APPELLATE CIVIL.]

Before Sir. M. R. Westropp, Knt., Chief Justice, and Mr. Justice Melvill.

January 31.

MUNSUK MOSUNDA'S (PLAINTIFF) *v.* SHIVRA'M DEVISING (DEFENDANT).*

Jurisdiction—Execution of a decree beyond the local jurisdiction of a Court of Small Causes in the Mofussal—Civil Procedure Code (Act X. of 1877), Sections 223 to 229, and Section 648.

Small Cause Courts in the Mofussal are not at liberty to execute decrees against moveable property beyond their local jurisdiction.

THIS case was referred for the opinion of the High Court by Cursetji Manekji, Judge of the Small Cause Court at Ahmedabad, under section 617 of Act X. of 1877.

The plaintiff had obtained a money decree in the Small Cause Court at Ahmedabad against the defendant, who resided at Dholka, and who had no property, moveable or immoveable, within the jurisdiction of the Court in which the decree was obtained. In execution of that decree the plaintiff applied for a certificate against the defendant's moveable property in Dholka. In submitting the case the Judge made the following remarks :—

"The question for the opinion of the High Court is,—has this Court power to grant a certificate against moveable property found beyond its local limits? I am of opinion that a Court of Small Causes has now no power to issue such a certificate.

"Under the old Civil Procedure Code (VIII. of 1859) the decree of a Court of Small Causes was capable of being executed against the judgment-debtor's moveable property out of the decree-making Court's jurisdiction (see an anonymous case in IX. Calc. W. R. p. 175 Civ. Rul.; and also *P. Venkatasubiá* v. *Sivárámáppá* (1)), and it has hitherto been the practice to issue certificates, under the pro-

* Small Cause Court Reference No. 127 of 1877.

(1) 4 Mad. H. C. Rep. 331.