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value. The reports of those Madras cases do not show that any of the Calcutta decisions above mentioned or the Bombay decision were brought to the notice of the Madras High Court. We do not think that the concluding passage in section 246 of Act VIII. of 1859, which leaves it open to a party, against whom an order upon an application under that section has been made, "to bring a suit to establish his right at any time within one year from the date of the order," prevents a tribunal, before which such a party might have brought his suit if there had not been any application made under that section, from entertaining it. Whenever a person sues to recover property alleged to have been wrongfully taken from him, he sues to establish his right to it, and, if he did not so establish his right, he could not recover it *in specie* or compensation by way of damages for it. Whether the new Civil Procedure Code (Act X. of 1877) allows such a suit as the present, by an alleged owner, to be brought in a Court of Small Causes, it will be time enough to say when the question arises. And we refrain from giving any opinion on the question whether or not an attaching decree-holder, against whom an order has been made under section 246 of Act VIII. of 1859, can maintain a suit in the Court of Small Causes to establish his right to retain his attachment. We concur in the opinion of the Judge of the Court of Small Causes at Ahmedabad, that he may entertain the present suit.

[APPELLATE CIVIL.]

Before Mr. Justice West and Mr. Justice Pinhey.

November 19. KHANDO NA'RA'YA'N KULKARNI (ORIGINAL DEFENDANT), APPELLANT *v* APA'JI SADA'SHIV KULKARNI (ORIGINAL PLAINTIFF), RESPONDENT.*

Bombay Hereditary Offices Act III. of 1874—Jurisdiction—Suit for declaration of right to officiate as sole representative of a branch of a vatandár family.

From the date of the coming into force of the Bombay Hereditary Offices Act III. of 1874, it is not competent to the civil Court to entertain a suit for a declaration of right to officiate as the sole representative of a branch of a vatandár family, the Act constituting the Collector a judge for this and other purposes of the Act.

* Special Appeal No. 32 of 1877.

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THIS was a special appeal from the decision of C. F. H. Shaw, Judge of Belgaum, confirming the decree of the Subordinate Judge of Chikodi.

The plaintiff and the defendant were members of the same branch of a vatandár family, each holding an eighth share in a kulkarni vatan. The former in his plaint alleged that, as the representative of the eldest branch of the family, he was entitled to officiate solely, to the exclusion of the defendant, and by rotation with other branches of the family not before the Court. He asserted that the sole right in his branch belonged to him, and complained that the defendant, by getting his name entered in 1867 in the Collector's rotation list, had infringed that right. He, therefore, prayed for a declaration of his exclusive right to officiate in his branch.

The defendant denied the plaintiff's exclusive right, and contended that the civil Court had no jurisdiction to entertain the suit, the authority to take cognizance of it being vested in the Collector by Bombay Act III. of 1874.

Both the lower Courts allowed the defendant's objection, and rejected the plaintiff's claim.

Shámráv Vithal for the special appellant:—A long course of the decisions of the Bombay High Court shows that the civil Courts exercised jurisdiction in suits like the present before the passing of the Hereditary Offices Act: *Kushábá* v. *Collector of Puna*,[1] *Sangápá* v. *Sanganbusápá*.[2] Bombay Act III. of 1874 does not, in clear and explicit terms, deprive civil Courts of the jurisdiction which they have been exercising. It does not give to the Collector a new jurisdiction, but simply prescribes a procedure in the exercise of the jurisdiction which he possessed under Act XI. of 1843.

(1) Sp. Ap. No. 84 of 1876, decided 13th September 1876 by Westropp, C.J., and Nánábhái Haridás, J., p. 207 of printed judgments for 1876, not reported.

(2) Reg. Ap. No. 40 of 1875, decided by Westropp, C.J., and Nánábhái Haridás, J., on 20th September 1876, p. 214 of printed judgments for 1876, not reported. Both this case and the one cited above, seem to have been instituted while Act XI. of 1843 was in force, which Act was repealed by Bombay Act III. of 1874.

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Máneksháh Jehángirsháh, for the special respondent, was not called on.

WEST, J.:—In this case the owner of an eighth of a kulkarni's vatan sues the owner of another eighth share for a declaration of his right to officiate as the sole representative of the particular branch of the vatandár family to which they both belong. The lower Courts have rejected the claim as one of which their cognizance was barred by Bombay Act III. of 1874. In special appeal it is urged that the jurisdiction of the ordinary civil Courts over such cases, having been previously established and exercised in numerous decisions, could not be withdrawn except by an express enactment which the Vatandárs' Act does not contain. Though the Collector may have full power, it is argued, to determine who shall officiate, and even who shall be recognized as amongst the class of those capable of officiating, yet, as to the abstract rights of the sharers *inter se*, the civil Courts may pronounce still as they did formerly before the passing of the new Act.

The plaintiff claims a right to perform the duties of an hereditary office to the exclusion of the defendant. Such duties, section 24 of the Vatandárs' Act says, shall be performed "by the representative vatandárs." Section 25 makes it the duty of the Collector to determine "what persons shall be recognized as representative vatandárs," and in several following sections rules are prescribed for the performance of this duty under different circumstances. According to section 40, clause 1, when there is a rotation of office-holding amongst the vatandárs, as the plaintiff says there is in this case, the Collector is to call on the registered vatandárs to elect an officiator on the occurrence of each vacancy. If a proper election be not made, the Collector is to take other steps for providing for the vacant office. The requisite investigations are, according to section 73, to be recorded in writing; and by section 77 an appeal is provided from the Collector to the Revenue Commissioner. Section 72 makes the investigation a judicial proceeding for the purposes of sections 193 and 228 of the Indian Penal Code.

Although, therefore, the provisions of an Act which transfers a class of determinations from the ordinary Courts to Executive

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Officers are in some cases to be construed restrictively, (see *Winter* v. *Attorney General of Victoria*, (1)) it appears to us that in the present instance the intention of the Legislature to transfer the jurisdiction from the ordinary Judges to the Collectors is too clear to be doubted. The Collector was formerly a merely executive officer, with a certain legal importance attaching to his acts under sections 19 and 20 of Regulation XVI. of 1827, but subject to control in the performance of those acts by the Civil Court. He has now been made a Judge for the particular purposes of the Vatandárs' Act. His jurisdiction in that character could not be interfered with so long as it was exercised in the way provided by the Act. See *Caledonian Railway Co.* v. *Sir Wm. Carmichael*,(2) the principle of which is involved in the cases of *Bíroda Pershad* v. *Gora Chund*,(3) *Heera Chund* v. *Shama Churn*,(4) and *Rám Tarak* v. *Dinánáth*.(5) It is only essential that he conform to the mode of exercising his statutory power prescribed by the law which confers it. (See *per* Sir G. Jessel, M. R., in *Taylor* v. *Taylor*.(6))

It appears to us, then, that the civil Courts have no power to give to the plaintiff the declaration that he seeks, because not only can they not afford a consequential remedy, but because they can no longer establish a right which the Collector would be bound to respect. Every vatandár now is as against other co-vatandárs placed as regards the civil Courts in the same position that the rightful claimant to a *vadilki*, or right of eldership, formerly occupied. As the fact of being *vadil* gave to him in whom the quality was vested no preferential right beyond what appertained to the vatandárs generally, so now the relations of all the vatandárs *inter se* with reference to their recognition as representatives are placed entirely at the disposal of the Collector. The decision in *Abáji* v. *Niloji*,(7) therefore, applies to this case. That decision was recognized as binding in *Ningangavda* v. *Satyángavda*,(8) although another case was pointed to in which the right of action and the jurisdiction of the Court were recog-

(1) L. R. 6 P. C. 378.
(2) L. R. 2 Sc. Ap. 56.
(3) 12 Calc. W. R. 160 Civ. Rul.
(4) 12 Calc. W. R. 275 Civ. Rul.
(5) Beng. L. R. 184.
(6) L. R. 1 Ch. D. 426.
(7) 2 Bom. H. C. Rep. 342.
(8) 11 Bom. H. C. Rep. 232.

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nized where the active enforcement in detail of the decree sought would devolve on another authority.(1) In such a case a right would be constituted which the other authority would have to respect; here, however emphatically the Courts might pronounce in favour of the plaintiff's sole right according to custom and prescription to officiate as kulkarni, still as both parties are admittedly and equally co-vatandárs, the Collector, and the Collector alone, could admit either or both of them to the class of representatives capable of officiating under the present law. This he would have to do on an investigation made by himself, and according to his own judgment, not according to the view taken by this Court. Its decree in favour of the plaintiff would thus be purely abortive. The establishment of the new jurisdiction thus excludes the older one, and the claim was rightly rejected. We confirm the decree of the District Court with costs.

Decree affirmed.

(1) *Sadat Alikhan* v. *Khajeh Abdul Gani*, 11 Beng. L. R. 203 P. C.

Note.—In *Bhujang Hanmáji Kulkarni* v. *Sanjiv Baswant and another*, (special appeal No. 157 of 1877), decided by the same learned Judges on the 21st of November 1877, the plaintiff asked for a similar declaration as in the above case before the Bombay Hereditary Offices Act came into operation. Their Lordships allowed the claim, making (among others) the following remarks:—

"It is urged that the Bombay Vatandárs' Act has taken the matter out of the jurisdiction of the civil Courts. But the Act says nothing as to pending suits, and, in the absence of such a provision, this suit, which was instituted before the Act was passed, is to be disposed of according to the law as it stood when the litigation began. Taking it as a correct proposition that the right of action formerly subsisting has now been withdrawn, 'it is a general rule that when the Legislature alters the rights of parties by taking away or conferring any right of action, its enactments, unless in express terms they apply to pending actions, do not affect them.'—*Per* Sir G. Jessel, M. R., *In re Suche & Co.*, L. R. 1 Ch. D. 48.

"We must, therefore, reverse the decree of the District Court, and award to the plaintiff the declaration that he is entitled to a moiety of the office of kulkarni. This decree will not affect the exercise, by the Collector, of any powers vested in him by the Vatandárs' Act, the parties on both sides being acknowledged sharers of the *vatan*."