

1884

QUEEN  
EMPERESS  
v.  
JETHMAL  
JAYRAJ.

committed in not refusing to take the complaint of the prosecutor until the Collector had given a sanction for the prosecution. Still it does not appear that the accused was prejudiced in his defence in any way by this irregularity \* \* \* \*. The conviction and sentence are confirmed and the petition of appeal is rejected. The convicting Magistrate below is directed in future to act in conformity with section 69 of the Stamp Act I of 1879."

The accused made an application to the High Court for revision.

*Ghanashám Nilkanth Nádkarni* for the applicant.—The proceedings of the Magistrate below are *ab initio* illegal. To prosecute a person for having committed an offence under section 64 of the Stamp Act the previous sanction of the Collector, as laid down in section 69, is necessary.

WEST, J.—The jurisdiction of the Magistrate in this case depended on sanction to the prosecution by the Collector. It was essential, therefore, that the record of the conviction should evidence such sanction. It does not contain any written sanction, nor any note even of sanction having been given to the prosecution. The conviction, therefore, must be reversed, as the trial was held without jurisdiction. The fine to be restored.

*Conviction reversed.*

## APPELLATE CIVIL.

*Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Kemball.*

June 27.

DHONDI JAGANNÁTH (ORIGINAL PLAINTIFF), APPELLANT, v. THE COLLECTOR OF SALT REVENUE AND THE SECRETARY OF STATE FOR INDIA IN COUNCIL (ORIGINAL DEFENDANTS), RESPONDENTS.\*

*Appeal—Objections to decree filed by respondent under section 561 of the Civil Procedure Code (Act XIV of 1882)—Withdrawal of appeal—Right of respondent to have objections decided.*

An appellant finding after the hearing had commenced that his appeal was hopeless, claimed the right of withdrawing the appeal in order to prevent the objections filed under section 561 of the Civil Procedure Code, (XIV of 1882) by the respondent against the decree from being heard.

\* Regular Appeal, No. 79 of 1881.

*Held* that after hearing of an appeal has commenced the appeal Court is seized of the respondent's objections and that the appeal cannot be withdrawn so as to prevent the objections from being heard and determined.

THIS was an appeal from the decision of C. B. Izon, Judge of Ratnágiri.

The appellant Dhondi and another person named Bábji alleged that they had a special and permanent right to manufacture salt in two salt-pans called Rámeshwar and Bráhman by virtue of a *sanad*, dated 1792 and "*kaul*" dated 9th April 1804, passed by the Diván of Sindhudurga. The defendants contended that the documents set up by the plaintiffs were not issued by officers authorized to make a perpetual grant, and that they did not confer the right asserted by the plaintiffs. The Judge found that the plaintiffs have proved a permanent right to manufacture salt in Rámeshwar, but not in Bráhman. He, therefore, awarded the plaintiff's claim in respect of the former salt-pan only.

The plaintiff Dhondi Jagannáth appealed to the High Court.

*Shántarám Náráyan* for appellant.—The District Judge misconstrued the *sanad* in holding that there was nothing in it to show a perpetual grant in respect to Bráhman.

[SARGENT, C. J.—We do not think so.]

I apply then to withdraw the appeal.

Ráv Sáheb V. N. Mandlík, Government Pleader, for the respondents.—I have filed objections under section 561 of the Code of Civil Procedure and claim to be heard upon them. We are entitled to have our objections heard and determined—*Vyankatramanáyá v. Kuppi* <sup>(1)</sup> and *Coomar Puresh Náráin Roy v. Messrs. R. Watson & Co. and others* <sup>(2)</sup>.

*Shántarám Náráyan*.—Under section 373 a plaintiff can withdraw his suit. Section 582 extends this right to an appellant in respect of his appeal and with the withdrawal of the appeal the respondent's right to object disappears. Section 561 of the Code allows a respondent, who has not appealed against any part of the decree, at the hearing to take objections. Where the appeal is withdrawn there has not been any effective hearing.

(1) 3 Mad. H. C. R., 302.

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SARGENT, C. J.—During the hearing of this appeal, the appellant, finding his own appeal to be hopeless, claimed the right to withdraw his appeal in order to prevent the respondents' objections being heard. In *Venkataramanaya v. Kuppi* <sup>(1)</sup>, the Court refused to allow the appellant under similar circumstances to withdraw his appeal; and we think that case was rightly decided. Both under section 348 of the Code of Civil Procedure of 1859 and section 561 of the present Civil Procedure Code, the respondent is entitled "upon the hearing of the appeal to take any objections which he could have taken by appeal;" and, therefore, as a necessary consequence, to have those objections heard and determined. When once the hearing of the appeal has commenced, the respondents' right to take his objections, which, up to the time of the hearing was an inchoate right, becomes perfected. Such is the distinction drawn by the Court of Calcutta in *Coomar Puresh Narain Roy v. Messrs. R. Watson & Co. and others* <sup>(2)</sup> where the Madras case is referred to and distinguished.

But it has been contended before us that an appellant is entitled as of right to withdraw his appeal at any time as a plaintiff is entitled to withdraw his suit under section 373, the provisions of that section being, it was contended, made applicable to appeals by section 582, and that if that were so, there being no longer an appeal, the respondents' objections could not be heard. We think, however, that even if the appellant could withdraw his appeal as of right, the respondents' right to take his objections would still remain intact, the hearing of the appeal having commenced. Section 561 does not say that the objections are to be taken after the appeal has been heard and determined, but "upon the hearing" of the appeal: in other words, when the hearing has commenced, the Court is seized both of the appeal and the cross objections, of which due notice has been given, and must dispose of them.

[The Court then proceeded to consider the merits of the case and varied the decree of the District Judge by disallowing the plaintiff's claim in respect of the salt-pan Rameshwar.]

*Decree varied.*

(1) Mad. H. C. R., 302.

(2) 23 Cal. W. R., 229.