APPELLATE CIVIL.

Before Mr. Justice Nánábhái Haridás and Mr. Justice Jardine.

1888. *January* 9.

VISHNU HARI KULKARNI (ORIGINAL PLAINTIFF), APPELLANT, *v.* GANU TRIMBAK (ORIGINAL DEFENDANT), RESPONDENT.*

Jurisdiction—Bombay Act III of 1874—*Vatandár kulkarni and rayat—Perquisites, right to.*

Bombay Act III of 1874 does not deprive the Civil Court of its jurisdiction to try the question whether a *vatandár kulkarni* is entitled to receive perquisites from his *rayat*.

SECOND appeal from a decision of M. B. Baker, District Judge of Násik.

The plaintiff, who was the hereditary *kulkarni* of the village of Maturi, in the Násik District, sued the defendant, who was a *rayat* of the village, to recover from him certain perquisites of corn and raw sugar, or the equivalent in money. The plaintiff alleged that from time immemorial these perquisites had been paid by each cultivator of the soil. The defendant denied that he had ever made any such payment to the plaintiff, and he contended that the Civil Court had no jurisdiction to try this suit.

The Court of first instance awarded the plaintiff's claim.

The District Judge, on appeal by the defendant, reversed the lower Court's decree.

The plaintiff appealed to the High Court.

Dáji Abáji Kharé for the appellant:—Act III of 1874 does not deprive the Civil Court of its jurisdiction to determine the right of a *vatandár kulkarni* to perquisites from his *rayat*. See rule on section 17 of the Revenue Rules.

Mahádev Chimnáji Apte for the respondent:—Such a suit cannot be tried by a Civil Court. Under section 17 of the Act the Collector is given the power of the Civil Court—*Khando Náráyan Kulkarni* v. *Apáji Sadáshiv Kulkarni*[1].

NA'NA'BHA'I HARIDÁS, J.:—Where the question between a *vatandár kulkarni* and a *rayat* is whether the former is entitled to re-

*Second Appeal, No. 482 of 1885.

(1) I. L. R., 2 Bom., 370.

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ceive any perquisites at all from the latter, we do not think the jurisdiction of the Civil Court to try that question is taken away by any provision of Bombay Act III of 1874. We, therefore, reverse the District Judge's decree, and remand the case, in order that he may determine, as the Subordinate Judge has done, upon the evidence in the case, what amount, if any, is due to the plaintiff for the year 1881-82, and pass a fresh decree accordingly, awarding costs, the Collector not having yet exercised his powers under section 17 of that Act. But neither this decree nor any the District Judge may make is to affect the Collector's powers under that section when he chooses to exercise them. Respondent to pay the costs of this appeal.

APPELLATE CIVIL.

Before Mr. Justice Nánábhái Haridás and Mr. Justice Jardine.

MUSA'JI ABDULLA' AND ANOTHER (ORIGINAL DEFENDANTS), APPELLANTS, *v.* DA'MODARDA'S (ORIGINAL PLAINTIFF), RESPONDENT.*

1888. *February* 7.

Practice—Appeal—Civil Procedure Code (Act XIV of 1882), *Secs.* 545, 244 (*Clause* 3), 588 *and* 2—*Order rejecting stay of execution appealable.*

An order by a District Judge, under section 545 of the Civil Procedure Code (Act XIV of 1882), refusing to stay execution is a decree as defined in section 2, and is, therefore, appealable.

THIS was an appeal from a decision of S. Hammick, District Judge of Surat.

The plaintiff obtained a decree against the defendant. The latter appealed. The plaintiff having applied for execution, the defendant applied for a stay of execution pending the appeal. The District Judge being, however, of opinion that no substantial loss would result to the appellants if execution were proceeded with, ordered execution to issue.

From this order the defendants appealed to the High Court.

Shántárám Náráyan, for the respondent, raised a preliminary objection that no appeal lay from such an order. This order is not a decree, and it is an order of a Court not executing the decree, and, therefore, not one within section 244 of the Civil Procedure Code (Act XIV of 1882). No appeal will, therefore, lie.

Mánekshá Jehángirshá, for the appellants, cited *O. Steel &*

* Appeal No. 82 of 1887.