

1891.

QUEEN-  
EMPRESS  
v.  
ABDUL  
RAHIMAN.

the utmost that the Magistrate could pass, it follows that the offence was one that could not be adequately punished by the Presidency Magistrate. He had, therefore, no jurisdiction to try the accused, but was bound, in law, to have committed him for trial to the High Court. I may add that, according to my experience, cases of cutting off a woman's nose are invariably, throughout the Presidency, committed to the Court of Session, and the punishment awarded is much more than two years' rigorous imprisonment.

The Court accordingly quashed the conviction and sentence, and directed the Magistrate to commit the prisoner for trial by the High Court.

*Conviction and sentence quashed.*

REPORTER'S NOTE.—The prisoner was subsequently brought up for trial before Bayley, J., and a common jury, and on conviction was sentenced by that learned Judge to eight years' rigorous imprisonment.

## APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.*

1891.  
September 14.

GOVINDRAV KRISHNA RATBA'GKAR, (ORIGINAL PLAINTIFF), APPELLANT, v. BALU BIN MONAPA, (ORIGINAL DEFENDANT), RESPONDENT.\*

*Ināmdār—Ināmdār's assignee—Suit to recover enhanced rent—Land Revenue Code (Bombay Act V of 1879), Secs. 85, 86 and 87—Assistance of the Collector—Ināmdār not a party to the suit—Objection not taken at the hearing, or in memorandum of appeal—Objection too late in appeal—Waiver.*

Sections 86 and 87 of the Land Revenue Code (Bombay Act V of 1879) do not make it compulsory on the *ināmdār*, or his assignee, to ask for the assistance of the Collector to recover enhanced rent from the tenants. If the *ināmdār*, or his assignee, had made a demand on the tenants for the enhanced rent through the hereditary patel, or village accountant, as required by section 85 of the Code, and they had refused, he would have become at once entitled to his ordinary civil remedy.

Objection as to the absence of legal demand for enhanced rent not being taken,

*Held*, that the suit was properly tried by the Court of first instance on the merits.

The lower appellate Court having dismissed the suit on the ground that the *ināmdār* was not a party to the suit, a point on which no issue was raised, al-

\* Second Appeal, No. 501 of 1890.

though it had been taken in the written statement, and which was not made a ground of appeal,

*Held*, that the point must be considered to have been abandoned at the trial; it was, therefore, not open to the lower appellate Court to dismiss the suit on that ground.

THIS was a second appeal from the decision of T. Hamilton, Esq., Acting District Judge of Belgaum.

Suit to recover enhanced rent by the assignee of an *inámदार*.

The plaintiff, Govindráo Krishna Ráibágkar, alleged in the plaint that he was the assignee of the *inámदार* of the village of Bedag, and was, therefore, entitled to recover enhanced rent from the tenants of the village, under an agreement entered into with him by the *inámदार*.

The defendant, Bálu bin Monápa, (deceased, represented by his son Keru,) disputed the plaintiff's right to sue, denied all knowledge of the agreement mentioned in the plaint, and contended that the *inámदार* had no right to enhance the rent, and that the latter should be made a party to the suit.

The Subordinate Judge (Ráo Sáheb Hanmant S. Fadnis) found that the plaintiff was entitled to sue, and for the enhanced rent; he, therefore, awarded the claim.

The defendant appealed to the District Court, which reversed the decree, holding that the *inámदार* was a necessary party to the suit; and that the suit, as framed, would not lie.

The District Judge observed in his judgment as follows:—

“2. By section 85 of the Land Revenue Code, an *inámदार* is bound, under penalties, to collect his dues through the hereditary village officers. If his tenants fail to pay up, the *inámदार* can proceed under sections 86 and 87 to recover his dues with the assistance of the revenue authorities, and from the third paragraph of the latter section it would appear that he cannot have recourse to a suit until he has failed to recover the whole amount claimed by him in the ordinary manner: see *Ganesh Hathi v. Mehta Vyankatrám*<sup>(1)</sup>.”

Against the decree of the District Court the plaintiff appealed to the High Court.

(1) I. L. R., S. Bom., 188.

1891.

GOVINDRÁV  
KRISHNA  
RÁIBÁGKAR  
v.  
BÁLU  
BIN MONÁPA.

1891.

GOVINDRÁV  
KRISHNA  
BÁTRÁ'GKAR  
v.  
BÁLU  
BIN MONA'PA.

*Ganesh Rámchandra Kírtoshkar* for the appellants :—The lower Court wrongly held that for the recovery of rent we ought to have proceeded under sections 86 and 87 of the Land Revenue Code (Bombay Act V of 1879). Those sections merely provide an additional remedy to an *inámdár* who does not wish to have redress through a Civil Court. The lower Court objects to our suit, because, in the first instance, we did not go to the revenue authorities,—that is, to a *Mámlútdár*,—for assistance ; but, we submit, that it is not compulsory upon an *inámdár* to seek the assistance of the revenue authorities for redress. Section 85 of the Code lays down that an *inámdár* should demand rent in the manner provided therein. Failure to comply with the provisions of that section would make an *inámdár* liable to punishment ; but, if the tenants fail to pay rent after an *inámdár* has complied with the provisions of that section, then there is nothing in the Code to prevent an *inámdár* having recourse to a civil suit. The respondent did not allege, in his written statement, that no proper demand was made. He merely disputed our right to recover rent as assignee of the *inámdár*. The District Judge has relied upon the decision in *Ganesh Hathí v. Mehta Vyankatrám*<sup>(1)</sup>, but it is not applicable to the present case.

The question as to whether an *inámdár's* assignee has the right to recover rent, was not raised in the Court of first instance, though the respondent had taken that point in his written statement. Even in his memorandum of appeal in the lower Court the respondent had not taken that point. It, therefore, seems that the point was abandoned.

There was no appearance for the respondent.

SARGENT, C. J.:—We gather, from the judgment of the Acting Judge, that he considered a suit would not lie by the *inámdár*, and, therefore, not by his assignee, unless he had previously proceeded under sections 86 and 87 of the Bombay Revenue Code of 1879. But those sections do not make it compulsory on the *inámdár* to ask for the assistance of the Collector. If the *inámdár*, or his assignee, had made a demand on the tenants for the enhanced rent

(1) I. L. R., 8 Bom, 188.

through the hereditary patel, or village accountant, as required by section 85, and they had refused, he would have become at once entitled to his ordinary civil remedy. No objection was taken by the written statement, or by the issues, to the plaint on the ground that no legal demand had been made; and the suit was, therefore, properly tried by the Subordinate Judge on the merits. As to the *ināmdār* being a necessary party, although the point was taken in the written statement, it must be considered to have been abandoned at the trial, as no issue was raised respecting it; and it was not even made a ground of appeal. It was, therefore, certainly not open to the appeal Court to dismiss the plaint on that ground, although it might have made him a party had it considered it necessary for the proper adjudication of the suit. This would have been, in our opinion, the more advisable course. We must, therefore, reverse the decree of the Court below, and send back the case for a retrial on the merits, after making the *ināmdār* a party to the suit as co-plaintiff; or, in the event of his refusing to be joined as such, then as a defendant. Costs to abide the result.

1891.

GOVINDRÁV  
KRISHNA  
RÁ'IBAGKAR  
v.  
BÁLU  
BIN MONA'PA.

*Decree reversed and case sent back.*

## APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.*

GHANASHA'M LAKSHMANDA'S, (ORIGINAL PLAINTIFF), APPELLANT,  
v. KÁ'SHIRA'M NAROBA, (ORIGINAL DEFENDANT), RESPONDENT.\*

1891.

October 7.

*Decree, adjustment of—Bond—Civil Procedure Code (Act XIV of 1882), Sec. 258 amended by Act VII of 1888, Sec. 27.—Recognition of adjustment by a Civil Court, except in execution.*

Where under a bond a decree was adjusted by making a small deduction, and by providing for the payment of the balance as part of the entire amount of the bond,

*Held*, that since the amendment made in section 253 of the Civil Procedure Code (Act XIV of 1882) by section 27 of Act VII of 1888 (Act amending the Civil Procedure Code of 1882) such adjustment may be recognized by a Civil Court, except in execution.

\*Second Appeal No. 628 o 1890.