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THE FIRST ASSISTANT COLLECTOR OF PRÁNT BASSEIN v. ARDESIR FRÁMJI MOOS.

"Can a reference by the Collector under section 15 of the Land Acquisition Act X of 1870 to the District Court be referred to, and disposed of by, the Assistant Judge?"

*Vásudeo Gopál Bhandárkar (amicus curiæ)* in support of the District Judge's opinion.

SARGENT, C. J.—We think that, although the expression "miscellaneous applications" in section 16 of Act XIV of 1869 may be large enough to include references by the Collector under Act X of 1870, the latter part of section 16, as it stood before that section was amended by Acts VII of 1889 and VIII of 1890, indicates that it was not the intention of the Legislature to empower a District Judge to refer to an Assistant Judge applications under special Acts for disposal.

*Order accordingly.*

## APPELLATE CIVIL.

*Before Mr. Justice Jardine and Mr. Justice Parsons.*

GURSA'NGA'YA, (ORIGINAL PLAINTIFF), APPELLANT, *v.* TAMANA, (ORIGINAL DEFENDANT), RESPONDENT.*

1891. *July* 8.

*Jurisdiction—Suit in which the right to an office and to its emoluments is in dispute—Civil Court's jurisdiction over such a suit.*

A suit in which the only question for decision was, whether or not the plaintiff was the *ayá* of a certain *math*, and entitled as such to receive certain fees on the occasion of marriages, is a suit of a civil nature in which the right to an office and thereby to certain fees is in contest. Such a suit is cognizable by a Civil Court. Its decision in no way involves any interference in a caste question.

SECOND appeal from the decision of C. H. Jopp, Assistant Judge of Sholápur-Bijápur, in Appeal No. 13 of 1889.

The plaintiff sued for a declaration that he was the *hiramath ayá* of the village of Tarnal, and that as such he was entitled to receive fees on the occasion of marriages in the Lingáyat caste in that village. The defendant having failed to invite him to his (*i. e.* defendant's) sister's marriage, and to pay him the fees, the plaintiff sought also to recover Rs. 1-0-9 as his fees for that occasion.

* Second Appeal, No. 310 of 1890.

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The defendant pleaded that the plaintiff was not the *ayá* of the village; that the *ayá* was one Gurubasaya, to whom he had paid the marriage fees; and that a Civil Court was not competent to try the suit.

The Court of first instance decreed the plaintiff's claim. In appeal, the Assistant Judge was of opinion that "the claim was one to a caste office, (to the office of *ayá* among Lingáyats), to perform the duties of the office, and to receive the fees. It was, therefore, under *Murári* v. *Suba*(1), a caste question." He, therefore, held that a Civil Court had no jurisdiction over the suit under section 21 of Regulation II of 1827. The decree of the first Court was reversed, and the suit dismissed.

Against this decision the plaintiff preferred a second appeal to the High Court.

*Mánekshán Jahángirshán* for appellant:—The only question that arises in this suit is whether the plaintiff is the *ayá* of the village and entitled as such to receive the fees he claims. Such a question it is clearly within the competence of a Civil Court to decide under section 11 of the Civil Procedure Code. The suit does not raise any caste question. Section 21 of Regulation II of 1827 does not, therefore, apply.

*Ghanashám Nilkanth* for respondent:—I contend that the suit does involve a caste question. The members of the Lingáyat caste have the right to appoint the *ayá* of the *math*. There is a dispute between the parties to the present suit as to the present incumbent of the office of *ayá*. The caste alone is competent to decide this question. It would be an interference in the affairs of this caste if the Civil Court were to entertain this suit.

PARSONS, J.—We think that the Assistant Judge wrongly dismissed this suit on the ground that a Civil Court had no jurisdiction to try it since it involved a caste question. Plaintiff sued to recover a sum of money from the defendant, alleging (1) that as *ayá* of the *hiramath* he was owner thereof and entitled to receive all fees payable thereto, (2) that on the occasion of marriages certain fees were payable thereto, (3) that the

(1) I. L. R., 6 Bom., 725.

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defendant's sister was married, and (4) that though fees were due from the defendant on account thereof, none were paid. The defendant did not deny that fees were payable by him to the *math* on account of the marriage; he contended only that one Gurubasaya and not the plaintiff was the *ayá* of the *math* and entitled to receive the fees on its behalf. The dispute was, therefore, confined to the consideration and decision of one question, namely, whether or not the plaintiff is the *ayá* of the *hiramath* entitled as such to receive the fees payable thereto by the defendant. This is a question of a purely civil nature, in which the right to an office and thereby to certain fees is in contest, and its decision in no way involves any interference on the part of the Court in a caste question, and this is so even if Mr. Ghanasham's contention that the caste has the right of appointing the *ayá* be assumed to be correct. We reverse the decree of the lower appellate Court and remand the appeal for a rehearing on the merits. Costs to abide the result.

*Decree reversed.*

## APPELLATE CRIMINAL.

### FULL BENCH.

*Before Mr. Justice Birdwood, Mr. Justice Jardine, and Mr. Justice Parsons.*

QUEEN-EMPRESS *v.* GOVIND AND OTHERS.*

1891.
*July* 9.

*Gambling Acts (Bombay Acts IV of 1887 and I of 1890), Sec. 12—Coins—Instrument of gaming—Meaning of the expression.*

A coin is not an "instrument of gaming" within the meaning of section 12 of Bombay Act IV of 1887 as amended by Bombay Act I of 1890.

The expression "instrument of gaming," as used in section 12 of the Act of 1887, means an implement devised or intended for that purpose.

*Imperatrix* v. *Vithal* (I. L. R., 6 Bom., 19) followed.

THIS was an appeal by the Local Government from an order of acquittal passed by C. Dallas Brown, Third Class Magistrate at Belgaum.

* Criminal Appeal, No. 97 of 1891.