1896.

IMPERATRIX v. JIJIBHAI GOVIND.

The Empress[1]. The positive prohibition under section 162, Criminal Procedure Code, cannot be set aside by reference to section 157 of the Evidence Act. This irregularity has not affected the merits and calls for no further notice. We confirm the conviction, but alter the substantive sentence of imprisonment to one of six months' rigorous imprisonment.

Conviction confirmed.

(1) I. L. R., 9 Cal., 455.

APPELLATE CIVIL.

Before Sir C. F. Farran, Kt., Chief Justice, and Mr. Justice Fulton.

RAMANGAVDA AND OTHERS (ORIGINAL OPPONENTS), APPELLANTS, *v.* SHIVAPAGAVDA (ORIGINAL APPLICANT), RESPONDENT.*

1896. *December* 18.

Vatan—Share of vatan—Vatan divided into takshims or shares—Decree by holder of one share against holder of other—Execution of decree—Collector's certificate forbidding alienation—Vatan Act (Bom. Act III of 1874), Secs. 4 and 10(1)—Validity of Collector's certificate.

There cannot be two separate vatans in connection with one hereditary office: therefore, when a vatan is broken up into shares or *takshims*, those *takshims* do not constitute separate vatans.

* Second Appeal, No. 591 of 1896.

(1) Section 4 of the Vatan Act (Bom. Act III of 1874):—

4. In this Act, unless there be something repugnant in the subject or context,

"Vatan property" means the moveable or immoveable property held, acquired, or assigned for providing remuneration for the performance of the duty appertaining to an hereditary office.

It includes a right to levy customary fees or perquisites, in money or in kind, whether at fixed times or otherwise.

It includes cash payment in addition to the original vatan property made voluntarily by Government, and subject periodically to modification or withdrawal.

"Hereditary office" means every office held hereditarily for the performance of duties connected with the administration or collection of the public revenue, or with the village police, or with the settlement of boundaries, or other matters of civil administration.

The expression includes such office even where the services originally appertaining to it have ceased to be demanded.

The vatan property, if any, and the hereditary office, and the rights and privileges attached to them together constitute the vatan.

1896.

RAMANGAVDA v. SHIVAPA-GAVDA.

Where the Collector's certificate under section 10 of the Vatan Act was based on a misunderstanding of the term "vatan,"

Held that his certificate was illegal and could not be accepted by the Court.

SECOND appeal from the decision of R. S. Tipnis, Assistant Judge (Full Power) of Sholápur-Bijápur at Bijápur, confirming the order of Ráo Sáheb Krishnarao M., Subordinate Judge of Bágalkot.

The pátilki vatan of the village of Murnal, táluka Bágalkot in the Bijápur District, was divided into two *takshims* (shares), one called the Lingáyat Takshim and the other Radi Takshim. These two *takshims* were held by two different families, who were in no way related to each other. In the year 1885, one Ramangavda, a representative of the Radi Takshim, got a decree against Shivapagavda, a member of the Lingáyat Takshim, for the recovery of certain lands which formed part of the Lingáyat Takshim. The Collector, however, issued a certificate under section 10 of the Vatan Act (Bom. Act III of 1874) forbidding the alienation. The certificate was in the following terms: —

"The lands below mentioned belong to the Lingáyat Takshim; therefore, they cannot be alienated to others than vatandárs of that same vatan. The decree should be set aside."

Relying on this certificate Shivapagavda applied to the Subordinate Judge to set aside the decree.

Section 10. When it shall appear to the Collector that by virtue of, or in execution of, a decree or order of any British Court any vatan, or any part thereof, or any of the profits thereof, recorded as such in the Revenue records or registered under this Act and assigned under section 23, as remuneration of an officiator, he or have after the date of this Act coming into force, passed or may pass without the sanction of Government into the ownership or beneficial possession of any person other than the officiator for the time being; or that any such vatan or any part thereof, or any of the profits thereof, not so assigned has or have so passed or may pass into the ownership or beneficial possession of any person not a vatandár of the same vatan, the Court shall, on receipt of a certificate under the hand and seal of the Collector, stating that the property to which the decree or order relates is a vatan or part of a vatan, or that such property constitutes the profits or part of the profits of a vatan, or is assigned as the remuneration of an officiator, and is therefore inalienable, remove any attachment or other process then pending against the said vatan, or any part thereof, or any of the profits thereof, and set aside any sale or order of sale or transfer thereof, and shall cancel the decree or order complained of so far as it concerns the said vatan, or any part thereof, or any of the profits thereof.

1896.

RAMANGAVDA v. SHIVAPAGAVDA.

The decree-holders contended that there was no objection to the alienation of the property to them, as they were the vatandárs of the same vatan, and entitled to have the property made over to them in accordance with the decree.

The Subordinate Judge, however, acting on the Collector's certificate declared that the decree could not be executed, in so far as it related to the lands mentioned in the certificate.

On appeal by the opponents the Judge confirmed the order.

The opponents preferred a second appeal to the High Court.

Branson with *Dattatraya A Idgunji* for appellants (the decree-holders) :—The owner of a *takshim* (share) of a vatan is a vatandár of the whole vatan. Each *takshim* does not form a separate vatan. The office connected with the two *takshims* is the same. There cannot be different vatans for the same office. The certificate of the Collector is, therefore, illegal, and cannot be given effect to. Civil Courts have the right to question the validity of the Collector's certificate—*Shankar Gopal* v. *Babaji*[1]; *Bhau Balaja* v. *Nana*[2]; *The Collector of Thana* v. *Bhaskar Mahadev*[3].

Inverarity with *Vasudev G. Bhandarkar* for respondent (applicant) :—The certificate issued by the Collector is in accordance with section 10 of the Vatan Act. It states that the property is vatan and, therefore, not alienable. The Collector considered that the land in question belonged to one *takshim*, and that such *takshim* was in itself an independent vatan. In his opinion the two *takshims* were distinct and separate, and could not be intermixed. He treated them as two vatans. He may be wrong, but the Civil Courts cannot interfere with his decision. The parties aggrieved may appeal to the Commissioner or Government. As long as the certificate stands, the Civil Courts cannot go behind it. The technical requirements of the certificate being complied with, the Civil Courts are bound to accept it as valid.

FULTON, J.:—The definition of "vatan" in section 4 of Bombay Act III of 1874 shows that there cannot be two separate vatans

(1) I. L. R., 12 Bom., 550. (2) I. L. R., 13 Bom., 343.
(3) I. L. R., 8 Bom., 251.

1896.

RAMANGAVDA v. SHIVAPAGAVDA.

in connection with one hereditary office, or, in other words, that when a vatan is broken up into shares or *takshims*, those *takshims* do not constitute separate vatans. The definition states that the vatan property, if any, and the hereditary office and the rights and privileges attached to them together constitute the vatan, and is inconsistent with the supposition that there can be two separate vatans connected with the same office. The material part of the Collector's judgment which has been set forth in the decision of the Assistant Judge is as follows:—"The land is not assigned for the payment of an officiator, but it is part of the vatan of the Lingáyat *takshim* of the pátilki vatan of Murnal, táluka Bágalkot, and it is likely to pass into the hands of the representative of Ramangavda, who is not a vatandár of the Lingáyat Takshim of that vatan, but is a vatandár of the Radi Takshim. I accordingly issue another certificate to that effect to the Subordinate Judge."

Very possibly, if there had been different offices to which the separate *takshims* were severally attached, the finding of the Collector, that the two *takshims* constituted separate vatans, might have been binding on the Courts as suggested by Mr. Justice Birdwood in his decision on an earlier stage of this litigation, P. J. for 1890, p. 263, but as the Collector has clearly decided that the two shares are merely *takshims* appertaining to one pátilki, it is impossible to say that it appeared to him that by virtue of the decree complained of, any part of the vatan was likely to pass into the hands of a person not a vatandár of the same vatan. He doubtless thought that this was the case, but it was in consequence of his understanding the meaning of the word "vatan" in a sense different from that in which it is used in the Act.

Under these circumstances we think that as the Collector's decision was based on a misunderstanding of the term "vatan," and as under the circumstances section 10 of the Act gave him no jurisdiction to issue a certificate, it is not open to the Court to accept that certificate.

We, therefore, reverse the decrees of both Courts and reject the application with costs on the applicant throughout.

Decree reversed.