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that the decree in question had been fully satisfied, but it appears to have overlooked the interest which was due at the date of the decree and for payment of which the decree provides as well as for payment of future interest.

We reverse the decree of the lower appellate Court and remand the case that an account may be taken of what is due under the decree and an order may be made for its realization.

Decree reversed and case remanded.

APPELLATE CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Hosking.

RAOJI (ORIGINAL PLAINTIFF), APPELLANT, v. GENU (ORIGINAL DEFENDANT), RESPONDENT.

Vatan—Vatandár—Vatandár family—Hereditary Offices (Bombay Act III of 1874), Sec. 25 1.—Suit for declaration of right to represent family—Jurisdiction of civil Court.

The plaintiff sued for a declaration that the branch of the Gavda family which he represented was older than that represented by one of the defendants. The object which he desired to obtain by a declaration in that form was to influence the Collector in determining whether he should be recognized as the representative vatandár in respect of the four annas' share which the Gavd² family possessed in a pátelki vatan.

Held that the civil Court had no jurisdiction to entertain the suit, since the declaration sought, if made, would in effect be a declaration of plaintiff's status as representative vatandár. This, however, equally with the duty of ascertaining the custom of the vatan as to service was a duty which by section 25 of the Bombay Hereditary Offices Act (Bombay Act III of 1874) was imposed on the Collector and not upon the civil Court.

SECOND appeal from the decision of A. Steward, District Judge of Poona, reversing the decree of Ráo Sáheb D. G. Medhokar Subordinate Judge of Junnar.

The plaintiff sued for a declaration that the branch of the Gavda family represented by him was older than that repr

* Second Appeal, No. 666 of 1895.

(1) Section 25 of the Bombay Hereditary Offices Act (Bom. Act III of 1874) :—

25. It shall be the duty of the Collector to determine, as hereinafter provided, the custom of the vatan as to service, and what persons shall be recognized as representative vatandárs for the purpose of this Act, and to register their names

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sented by the defendant. He stated that the Gavda family had a four annas' share in the *patelki vatan* at Edgaum; that it was customary for the eldest branch to hold that share; and that fifteen or twenty years previously the defendant's father, taking advantage of the plaintiff's absence from the village, had by false representations got the four annas' share entered in his name as the representative of the eldest branch of the family; that the defendant's father was now dead and that he (the plaintiff) had applied to the Collector to have his name entered as representative of the family and that the Collector referred him to a civil Court to prove his right to represent the family.

The defendant denied the statements of the plaintiff and pleaded that the claim was barred, and was not one which could be entertained by a civil Court.

The Subordinate Judge found that the plaintiff represented the elder branch of the family of the parties; that his cause of action arose when the defendant applied to the Collector for the registration of his name as representative *vatandár* after the death of his father; that the claim was not time-barred and that it could be entertained by a civil Court. He, therefore, made the declaration sought for.

On appeal by the defendant the Judge reversed the decree and dismissed the suit, holding that it was not cognizable by a civil Court.

The plaintiff preferred a second appeal.

Narayan M. Samarth, for appellant (plaintiff):—The main question is whether a civil Court has jurisdiction under the present Vatan Act (Bombay Act III of 1874) to entertain a suit for such a declaration as this. We submit that it has. Under the old Vatan Act (XI of 1843) civil Courts had no jurisdiction to entertain such a suit—*Abaji v. Nilaji*⁽¹⁾; *Yesaji Apaji v. Yesaji Nilaji*⁽²⁾. But the present Vatan Act, which is applicable to this case, has made changes in the old law: see sections 24 to 30 of the Act. Under section 42 of the Specific Relief Act (I of 1877) we are entitled to bring such a suit. The discretion of the

⁽¹⁾ 2 Bom. H. C. Rep., A. C. J., 342.

⁽²⁾ 8 Bom. H. C. Rep., A. C. J., 35.

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Collector arises after the civil Court has determined the right of eldership—*Rangrav Venklesh v. Krishnarav Gopal*⁽¹⁾; *Dadaji v. Bhaskarrav*⁽²⁾.

Ganpat S. Rao, for the respondent (defendant):—Sections 25 and 26 of the Vatan Act empower the Collector to inquire into the custom with respect to a vatan. Therefore, a civil Court has no jurisdiction to entertain a suit with respect to a custom relating to a vatan. On the death of defendant's father, who was the representative vatandár, the Collector was bound to enter defendant's name as the representative vatandár—*Khando Narayan Kulkarni v. Apaji Sadashiv Kulkarni*⁽³⁾; *Ramchandra v. Anant*⁽⁴⁾; *Balkrishna v. Balaji*⁽⁵⁾; *Govind v. Bapuji*⁽⁶⁾.

Further, we submit that on the face of the plaint the claim is time-barred. Plaintiff's cause of action accrued to him when defendant's father was recognized as the representative vatandár fifteen or twenty years before the institution of the suit, or when Act III of 1874 came into force.

FARRAN, C. J.:—The plaintiff in this suit sued for a declaration that the branch of the Gavda family which he represented was elder than that represented by the first defendant Genu. This plaintiff confined his prayer to that relief. The object which he desired to obtain by a declaration in that form was (as is shown by the statements in the plaint) to influence the Collector in determining whether he should not be recognized as the representative vatandár in respect of the four annas' share which the Gavda family possess in the pátelki vatan at Edgaum. There has been no certificate of the Collector put in showing what the custom of the vatan as to service is, nor has either of the lower Courts found upon that question. The plaintiff in his plaint alleges that it is customary for the representative of the elder branch of the Gavda family to be the representative vatar of its four annas' share. The first defendant denies that such is the custom. The Subordinate Judge made a declaration in plaintiff's favour deeming that it was competent for a Court to give the plaintiff relief in that form. The Di-

(1) P. J., 1877, p. 98.

(2) P. J., 1878, p. 64.

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

(4) I. L. R., 8 Bom., 25.

(5) I. L. R., 9 Bom., 25.

(6) I. L. R., 18 Bom., 516.

Judge, holding a contrary opinion, reversed the decree of the Subordinate Judge, and dismissed the suit. Hence this appeal.

Now section 25 of the Bombay Hereditary Offices Act (III of 1874) enacts that it shall be the duty of the Collector to determine as thereafter provided the custom of the vatan as to service and what persons shall be recognized as representative vatandárs for the purposes of the Act and to register their names. The sections which follow (26 to 30) lay down elaborate rules to guide the Collector in ascertaining what the custom of the vatan which he is to follow is. When he has ascertained it, section 25 still imposes upon him the duty of determining what person shall be recognized as representative vatandár and of registering his name.

In the present case, a declaration of eldership would only assist the plaintiff if the custom of the vatan is for the service to be performed by the representative of the elder branch. It is conceded that the civil Courts have not jurisdiction to enter upon an inquiry whether such is the custom of the vatan or not. Assuming that it is, the decree of the civil Court declaring the plaintiff to represent the elder branch would be, in effect, a decree declaring him to be the representative vatandár in the vatan family. That, however, equally with the duty of ascertaining the custom of the vatan, is a duty, which by section 25 of the Act is imposed on the Collector and not upon the civil Court. We think that the civil Courts are not entitled to assume a jurisdiction which the Legislature has entrusted to other authorities. The law upon the subject appears to us to be accurately stated by West, J., in *Ramchandra v. Anant* (1) in this short sentence—"Bombay Act III of 1874 in giving the Collector jurisdiction to pronounce who amongst the vatandárs shall be representatives does not give him jurisdiction to determine who in particular cases shall be vatandárs within the definition given in the Act." We, therefore, confirm the decree of the lower Subordinate Court with costs.

Decree confirmed.

(1) I, L. R., 8 Bom., at p. 26

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