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as a right of way. In the one case as in the other a right affecting another person's property exists, and the fact that section 9 cannot be used for the vindication of one kind of easement leads to the belief that it was not intended to apply to any easement. Had there been such intention, language more suited for the purpose would, I think, have been used.

I would discharge the rule with costs.

APPELLATE CIVIL.

Before Mr. Justice Parsons, Acting Chief Justice, and Mr. Justice Ranald.

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March 13.

BHIMBHAT GOTKHANDI (ORIGINAL DEFENDANT), APPELLANT, v. BHIKAMBHAT AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Pensions Act (XXIII of 1871), Secs. 6 and 14⁽¹⁾—Rule (6)⁽²⁾ framed under the Act—Suit for recovery of varshitsan allowance—Collector's certificate—Cancellation of certificate by Revenue Commissioner.

When a certificate is granted by the Collector under section 6 of the Pensions Act (XXIII of 1871), the presumption is, until the contrary is shown,

* Second Appeal, No. 396 of 1898.

(1) Sections 6 and 14 of the Pensions Act (XXIII of 1871) :—

6. A Civil Court, otherwise competent to try the same (suits relating to pensions or grants), shall take cognizance of any such claim upon receiving a certificate from such Collector, Deputy Commissioner, or other officer authorized in that behalf that the case may be so tried, but shall not make any order or decree in any suit whatever by which the liability of Government to pay any such pension or grant as aforesaid is affected directly or indirectly.

14. The Chief Controlling Revenue Authority may, with the consent of the Local Government, from time to time make rules consistent with this Act respecting all or any of the following matters :—(1) The place and times at which, and the person to whom, any pension shall be paid, (2) inquiries into the identity of claimants, (3) records to be kept on the subject of pensions, (4) transmission of such records, (5) correction of such records, (6) delivery of certificates to pensioners, (7) registers of such certificates, (8) reference to the Civil Court under section six, of persons claiming a right of succession to, or participation in, pensions or grants of money or land revenue payable by Government, and generally for the guidance of officers under this Act.

All such rules shall be published in the local official gazette, and shall thereupon have the force of law.

(2) Rule (6) framed under the Pensions Act :—

(6) Any claim preferred to a Collector under section 5 of the (Pensions) Act may be

that the order for granting the certificate was made, as is contemplated by the 6th rule framed under the Act, with the previous sanction of the Revenue Commissioner by the Collector himself. But the Revenue Commissioner has no power vested in him to cancel a certificate granted by the Collector, and there is no rule which provides for the revision by the Revenue Commissioner of the Collector's action in granting certificates or for the cancellation by him of the certificates granted by the latter.

SECOND appeal from the decision of L. Crump, Assistant Judge of Bijápur.

The two plaintiffs sued the defendant to recover a share in a certain *varshásan* allowance which the defendant received from Government. The first plaintiff obtained from the Collector and produced to the Court the certificate required by section 6 of the Pensions Act (XXIII of 1871).

The Subordinate Judge passed a decree in the following terms:—

“I, therefore, declare that plaintiffs Nos. 1 and 2 are each entitled to receive $\frac{1}{4}$ th share in the cash allowance of Rs. 57 by executing this decree from time to time.”

The defendant appealed. Pending the appeal, the Revenue Commissioner cancelled the certificate which the Collector had granted to the first plaintiff. At the hearing of the appeal it was objected that the plaintiff, being now without the necessary certificate, could not maintain his claim. The District Judge confirmed the decision of the lower Court, and as to the certificate he said:—

“It is not disputed that plaintiff No. 1 obtained a certificate under section 6 of the Pensions Act. As far as he was concerned, the suit was properly entertained and the alleged cancellation or revocation of the same, after the decree had been passed, cannot oust the Court's jurisdiction. I am not aware of any provision of the law which allows a certificate to be cancelled or revoked. Plaintiff No. 2, however, never obtained any certificate at all, and the Court had no jurisdiction to try the case as far as she was concerned, but as plaintiff No 1 comes in as her

referred by him for inquiry to any Assistant or Deputy Collector or other officer subordinate to him, and every Assistant or Deputy Collector in charge of talukas may receive claims on behalf of the Collector and forward the same with his opinion, after inquiry, to the Collector; but every order for disposing of a claim or for granting a certificate under section 6, that a case against Government only or against Government and one or more private persons jointly may be tried, shall be made with the previous sanction of the Commissioner by the Collector himself.

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heir, and as the certificate authorizes him to sue defendant for a share of one-third in the *varshdāsan* allowance, the defect, if any, is cured."

The defendant preferred a second appeal.

Narayan G. Chandavarkar for the appellant (defendant).

Gokuldas K. Parekh for the respondents (plaintiffs).

PARSONS, C. J. (ACTING) :—This suit was filed by the plaintiff with the certificate of the Collector as required by section 6 of the Pensions Act, 1871. The contention of the appellant (or defendant) is that this certificate has been cancelled by the Revenue Commissioner since the decree of the lower Court, so that it is no longer in force, and that this Court, therefore, cannot take cognizance of the claim. We might be able to give effect to this contention if it were shown that the Revenue Commissioner had any power vested in him to cancel the certificate of the Collector, but this is not done. Section 6 requires the certificate of the Collector only. Section 14 gives power to the Chief Controlling Revenue Authority, with the consent of the Local Government, to make rules respecting the reference to the Civil Court of claims, but no rule has been made which provides for the revision by the Revenue Commissioner of the Collector's action in granting certificates or for the cancellation by him of certificates granted by the latter. There is a rule (6) which requires that every order for granting a certificate under section 6 shall be made with the previous sanction of the Commissioner by the Collector himself. We must presume in this case that the certificate was originally granted with this sanction, since there is nothing on the record to show the contrary. This being so, no power has been given to the Revenue Commissioner to revoke the certificate given by the Collector, and we must treat the alleged revocation order as null and void.

On the merits, therefore, the decree must stand. A slight alteration is required in its language, since the defendant's liability only accrues when he has received the allowance from Government; this can be made by adding after the words "from time to time" the words "when the said amount is received." We amend the decree by the insertion of these words. The appellant must bear the costs of this appeal.

Decree amended.