1873.

Fatma Kom Nabi Saheb v. Darya Saheb and the Collector of Kaladgi.

such there be, who claim to be his heirs, and to direct that, after the making of those amendments, this cause and all the proceedings therein be transferred to the Court of the Subordinate Judge of Bagalkot for retrial on the merits The parties respectively to be at liberty to give such further evidence as they may be advised and as may be legally admissible. Costs of suit and of this appeal to follow the result of the rerial.*

Decree reversed and case remanded.

1873. April.

[APPELLATE CIVIL JURISDICTION.]

Special Appeal No. 337 *of* 1871.

VRIJAVALABHDÁS KHUSHÁLDÁS.....*Appellant*
THE COLLECTOR OF AHMEDABAD.....*Respondent.*

Bombay Act IV. of 1868, See. 4—Non-liability to pay assessmen —Possession.

Where land in a Town in the Presidency of Bombay was found to have been in plaintiff's possession from 1858 to 1871 without any payment by him of Land Revenue to Government :—

Held that it was not liable to pay assessment under Bombay Act IV of 1868.

THIS was a special appeal from the decision of F. D. Melvil, District Judge of Surat, in Appeal No. 273 of 1871, reversing the decree of M. H. Scott, Assistant Judge in the same district.

Vrijavalabhdás brought this suit to obtain a declaration that he was entitled to hold, free of assessment, a certain piece of ground in the town of Ahmedabad belonging to him, and to recover back Rs. 178-8-0, which he had paid, under protest, in obedience to an order of the defendant, on acount of assessment on the ground.

**Vide infra* p. 192 and p. 194

1873.

Vijavalahbdas Khushaldas v. The Collector of Ahmedabad.

The Assistant Judge found in plaintiff's favour, holding him entitled to the declaration sought by him and to receive back the amount claimed. This decree, however, was reversed on appeal.

The appeal was argued before WESTROPP, C. J., and MELVILL, J.

Anstey (with him *Nagindas Tulsi das*) for the appellant:—Under Bombay Act IV. of 1868, Section 4, the plaintiff's claim ought to have been awarded at once, as that section preserves existing rights. The plaintiff has been in possession under the deed of sale for more than 12 years without ever having paid assessment on the ground in question. The *onus* lies on Government to show that assessment has been paid: *Heera* v. *Lokenath* (*a*).

Mayhew, Legal Remembrancer. (with him, *Dhirajlal Mathuradas*, Government Pleader) for respondent.

PER CURIAM:—Inasmuch as it appears that the plaintiff has held under the deed of sale and been in possession of the land mentioned in the plaint, from the year 1858 to the time of the filing of the plaint (1st August 1871), without paying land revenue to Government, and the land, therefore, is exempted from assessment under Bombay Act IV. of 1868, Sec. 5. cl. 1, para. 2. this Court reverses the decree of the District Judge and restores that of the Assistant Judge with costs.

Decree reversed with costs

(*a*) 2 Calc. W. Rep. 135 Civ. Rul.