J. MacFarlan, F. P. Magistrate at Puná, tried the case, and, considering the charge proved, convicted the prisoner, and sentenced him to a term of rigorous imprisonment. 1869. REG. v. SIDDU BALNA'IK.

The case was reviewed by the High Court (FORBES, ERSKINE, and WESTROPP, JJ.), which did not interfere with the conviction and sentence, but directed the Magistrate to be informed that the charge should have stated that the articles found in the prisoner's possession was property stolen from A B, the owner thereof.

SAKHA'RA'M bin VITHOJI ..... *Appellant.* Nov. 19.
SADA'SHIV bin SAYA'JI ..... *Respondent.*

Agent's Court—Omission to secure Agent specific Jurisdiction—Act XV. of 1840—*Reg. XXIX. of* 1827—*Reg. XIII. of* 1830.

A *sanad* issued to an Agent of H. H. Holkar, under Act XV. of 1840 and Reg. XIII. of 1830, was held not to be invalidated by the omission to enter the Agent's name in any list of exempted or empowered persons under Regs. XXIX. of 1827 and XIII. of 1830.

The omission to secure the Agent any specific jurisdiction under Reg. XIII. of 1830 was held to disentitle him from exercising any but the most ordinary which could be exercised under that law.

THIS was an action of ejectment, instituted in the Court of the Nyáyádhish* of His Highness Holkar at Wápgám, to recover possession of certain lands situated in the village of Bibi, in Tarf Khed, within the Puṇá District, within the jurisdiction of the Nyáyádhish, who held office under a *sanad* issued by the Government of Bombay under Act XV. of 1840.

Sadáshiv bin Sayáji, the plaintiff, claimed the lands as held by him in person under a *miráspatra* or grant made to him on the 1st of June 1859, by an anthorised agent of the Holkar; the defendants, the occupants of the land, were stated in the plaint to hold as tenants-at-will of H. H. Holkar.

The village in which the lands in question are situated, and the village of Wápgám, where the Nyáyádhish held his Court, both belong to His Highness, though situated within British limits.

*न्यायाधीश—An administrator of justice, a magistrate, a judge—*Molesworth.*

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The defendants alleged they had held the lands in question for sixty or seventy years, and that the officer stated to have made the grant to the plaintiff had no power to do so.

The Nyáyádhish of His Highness gave judgment for the plaintiff, and his decision was confirmed on appeal by the Judge of the Puṇá District. The following is an extract from the judgment recorded by T. C. Loughnan, the District Judge of Puṇá :—

"The points in this case are—

"Is the *miráspatra* proved to be irregular and ineffective ?

"Should Sakhárám's (defendant below) occupation be respected ?

"The Court does not find that the *miráspatra* is either irregular or ineffective. It was issued on the 1st of June 1859, at a time when unquestionably the Mámlatdár who issued it was in the exercise of full power. The *miráspatra* quotes an order from the Court of Holkar as empowering the grant which the present authorities of Holkar refuse to communicate. Sakhárám, to remedy this difficulty, moved for a summons to His Highness Holkar himself, which the Nyáyádhish very properly refused to attempt to execute. The Court is of opinion that had the order been advantageous to Sakhárám it would certainly have been forthcoming; for, from the subsequent cancelment of the *miráspatra* (exhibit No. 54), it is to be presumed that the present managers of the State are anxious to uphold Sakhárám's cause.

"But without resting on this order, the exhibit just quoted sufficiently establishes the validity of the *sanad* (until sufficient indication of malversation be proved against the Mámlatdár who passed it) to prevent the Court from disregarding it; for in revoking the *miráspatra* it is distinctly recited that the ground of the revocation is, that in the order of the 6th of July 1854 the power granted to the Mámlatdár to convey a *mirás* tenure was confined to *gaṭkuli* land. Now in turning to this latter order (exhibit No. 63) it is found to quote a previous report of the Mámlatdár as containing proposals for granting in *mirás* the *"Pátilki" land*, and representing that the would - be purchasers were ready to pay the *nazzaráṇá* after a period of

two months, and in reference to this proposition it prohibits any other arrangement than the payment of the *nazaráná* in advance.

"The Court will admit that there are certain indications that the *miráspatra* might not have been granted, but for the efforts of the Mámlatdár, who is found to have been relieved of his duties fifteen days after the paper was granted; but it was incumbent on Sakhárám to prove that there existed manifest malversation on the part of this officer before the Court would be justified in disregarding the document. Had such been shown, then No. 54, the paper revoking the document, would have been effective; as it is, the Court is constrained to agree with the Nyáyádhish, that the cause for revoking the *miráspatra* is not sufficiently shown to give validity to the revocation. The Court cannot consider that a *miráspatra* can be cancelled at pleasure. There must be some material defect in the issue of it to justify its avoidance. Sakhárám's tenure, however long it may have continued, is only of the nature of a tenant-at-will, for he admits the land to have been a personal *mirás* of Holkar himself."

From this decision a Special Appeal was preferred to the High Court.

The appeal was heard before ERSKINE and TUCKER, JJ.

Dhirajlál Mathurádás, for the appellant, contended that the Nyáyádhish had not jurisdiction to hear the case; that the Judge had misconstrued exhibit No. 63; that the Mámlatdár who granted the *miráspatra* on behalf of Holkar's Government to the respondent (original plaintiff) had no authority to do so; and that His Highness had repudiated his acts.

ERSKINE, J., delivered judgment:—A *sanad* was granted, under Act XV. of 1840, to the Agent of H. H. Holkar, under which the provisions of Reg. XIII. of 1830 became applicable to his case, and he became invested with the powers therein contemplated.

Reg. XIII. of 1830 empowers Government to grant to *jahágirdárs*, &c. named in their list, *sanads*, authorising them to try all original suits filed in their Courts, or referred to them by the Judge or Agent.

The list of persons so empowered is apparently to be framed by selection from the list of persons exempted from

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the jurisdiction of the Civil Courts under Reg. XXIX. of 1827. But the list of empowered persons unlike that of exempted persons, is to be in four (and not in three) classes; the first class consisting of persons whose decisions are on special grounds to be final; the second and third classes consisting of persons (included respectively in the first and second classes of the list of exempted persons) from whose decisions an appeal is to lie to the Agent; and the fourth class consisting of persons (included in the third class of exempted persons) from whose decisions an appeal is to lie to the Judge.

The Agent of H. H. Holkar, it appears, has received from Government a *sanad* under Act XV. of 1840. But it appears likewise that his name has not been included by Government in any list of exempted or empowered persons.

Two questions have, therefore, been raised *in limine*, viz. —

1*st*—Whether the omission to include H. H. Holkar's Agent in any Government list invalidates his *sanad*, and so disables him from exercising any of the kinds of jurisdiction specified in Reg. XIII. of 1830.

2*nd*—If it does not, which kind of jurisdiction is the said Agent entitled to exercise under that Regulation.

The Court is of opinion that the omission to assign H. H. Holkar's Agent to any particular class of empowered persons (*Jahágirdárs, Saranjámdárs, and Inámdárs*) cannot be held to invalidate his *sanad*, or disable him from exercising a general jurisdiction under Act XV. of 1840 and Reg. XIII. of 1830, but that the omission to secure to the said Agent any specific or superior kind of jurisdiction under the latter Regulation, by including his name in any particular list, prevents the Court from recognising in him any jurisdiction except the most ordinary one which can be exercised under that law, viz., the power of passing judgments, from which an appeal will lie in ordinary course to the Judge.

The Court is confirmed in these views by the fact that, up to the time when these questions were raised, appeals from H. H.'s Agent to the Judge, and special appeals to the Sadr Diváni Adálat were repeatedly admitted and disposed of.

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The preliminary points being thus determined, the Court proceeds to deal with this special appeal on its merits, and finds that the Courts below were in error in holding that the *miráspatra* or grant was issued by the Mámlatdár with authority, on the ground that he was empowered to issue it by the order from H. H. therein specified, whereas the said order (exhibit 63) had been superseded by a later one (exhibit 62), likewise produced by the plaintiff, the effect of which was to leave the Mámlatdár without authority.

The Court accordingly reverses the decrees of the Courts below, and throws out the original claim with costs.

Decree reversed.

Nov. 25.

REG. v. MIR SA'HEB KA'SSAMI'A and another.

Subordinate Magistrate—Jurisdiction—Act III. of 1857, Sec. 13.

The repealing section of Act XVII. of 1862 does not affect the power of a Subordinate Magistrate under Sec. 13 of Act III. of 1857.

THE accused in this case were charged—Mir Sáheb, under Sec. 323 of the Penal Code, with "voluntarily causing hurt," and both accused, under Sec. 13, Act III. of 1857, with "forcibly carrying away stray cattle from a cattle-pound" at Jambúsar, in the Broach District.

The cases were tried by the Second Class Subordinate Magistrate at Jambúsar; and the prisoners, being convicted as charged, were sentenced, Mir Sáheb to twenty-five days', and the other prisoner to twenty days' simple imprisonment.

An appeal was entered against these convictions and sentences to the Joint Magistrate of the District, who annulled the same, under Sec. 427 of the Criminal Procedure Code, as he considered that Sec. 13, Act III. of 1857 had been repealed by Act XVII. of 1862, but did not consider it necessary to direct the re-trial of the case, as the prisoners had nearly completed their term of imprisonment when the appeal was decided.