Special Appeal No. 447 *of* 1863.

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June 29.

NASARVA'NJI PESTANJI, Manager of the Firm of Pestanji Kálábhái.....*Appellant.*

THE DEPUTY COMMISSIONER OF CUSTOMS, SALT, AND OPIUM.....*Respondent.*

Hak "Mogalái in Choki"—Preventing Levy of—Act XX. of 1839—*Acts VI., XVI., and XIX. of* 1844—*Reg. II. of* 1827, *Sec.* 43, *and VII. of* 1831, *Sec.* 31—*Act VIII. of* 1859, *Sec.* 6.

Held (*Tucker, J., dissentiente*) that all town duties, taxes, and cesses of every kind on trades or professions (and not merely such of them as were then levied by Government) were abolished by Act XIX. of 1844; and that a privilege enjoyed by a private person to levy certain fees on articles imported and exported through three of the city gates of Surat, and originating in an alienation by a former sovereign of a portion of the royal revenues derivable from that source, ceased from the date when the said Act came into operation; and, consequently, that the Court was not precluded from so deciding because the provisions of Act XX. of 1839 (empowering the Governor in Council of Bombay to prohibit the levy of haks and fees) had not been complied with in forbidding the levy of the fees in question.

Per Couch, J. :—The intention of the Legislature in 1844 appears from the language used by it in Act XIX. and from the recital in Act XVI. of that year, to have been, the import on salt being about to be increased, that, instead of leaving haks such as this to be abolished at different times, under the Act of 1839, they were then to be entirely abolished.

THIS was a special appeal from the decree of A. B. Warden, Judge of the Súrat District, in Appeal Suit No. 133 of 1859.

Nasarvánji brought the original suit in 1851, in the Court of the Assistant Judge of Surat, to recover six years' annual produce of a hak called "Mogalái in Choki:" stating that his father had purchased the hak from Mír Walí valad Mír Háidar, in A.D. 1825, and continued to realise the produce thereof up to the 11th of September 1844, when the Deputy Collector of Continental Customs and Excise (subsequently the Deputy Commissioner of Customs, Salt, and Opium), H. Hebbert, by a proclamation, forbade him to collect his dues any longer, under pain of punishment; that he remonstrated against this oppressive order, but obtained no redress; and,

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therefore prays that Government may be ordered to pay him the damages sustained in consequence, laying his claim at Rs. 725 per annum for six years, ending on the 11th of September 1850.

The Deputy Collector answered that, under Sec. 1 of Act XX. of 1839 (*a*), the Governor in Council was empowered to prohibit the levy of *haks* of every description; and that, under Sec. 2 of the same, no orders so issued could be questioned in a Court of Law; that again, under Act XIX. of 1844 (*b*), every kind of *dasturi* is abolished; that Nasarvánji had no valid title to the hak in dispute, and that the

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(*a*) A. D. 1839, *Act XX.*

Passed by the Honourable the President of the Council of India in Council on the 29th July 1839.

I. It is hereby declared and enacted that it shall be lawful for the Governor in Council of Bombay to issue orders prohibiting the levy of hucks and fees of every description, and customs, whether by land or sea, enjoyed by holders of rent-free lands or other persons, and of alienated shares of any item of revenue after the abolition or relinquishment thereof by Government.

II. And it is hereby enacted that the legality of any orders which may have been heretofore issued, or of any orders which, conformably with this Act, hereafter shall be issued, by the Governor in Council of Bombay for prohibiting the levy of any such hucks, or fees, customs, or alienated shares of any such item of revenue as aforesaid, shall not be questioned in any Court of Law.

III. And it is hereby enacted that whoever shall levy any such huck, fee, customs, or item of revenue after any such order prohibiting the same as aforesaid shall have been published in the *Government Gazette* of the Presidency of Bombay, and by notice fixed at the post or place at which it has heretofore been claimed or collected, shall be punishable as for an undue exaction, under Regulation XVII. of 1827, Section 16, of the Bombay Code, notwithstanding the offender be not a revenue officer of Government.

(*b*) *Act No. XIX. of* 1844.

Passed by the Governor General of India in Council on the 14th September 1844.

An Act for abolishing Town Duties and Mookauts, and all Taxes upon Trades and Professions within the Presidency of Bombay.

It is hereby enacted that from the 1st day of October 1844 all Town Duties, *Kusub Veeras, Mohturfas, Ballootee* Taxes, and Cesses of every kind on Trades or Professions, under whatsoever name levied, within the Presidency of Bombay, and not forming a part of the Land Revenue, shall be abolished.

annual sum at which he laid his claim to arrears was not admitted to be correct, and, therefore, could be established by proof.

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The Assistant Judge, J. Gibbs, held that the validity of Nasarvánji's title to the hak in dispute was not matter for decision in the suit; that the Acts quoted by the Deputy Collector did not authorise the abolition of the said hak; and that the amount claimed per annum was correct. He, therefore, decreed in Nasarvánji's favour.

On appeal, W. E. Frere, Judge of Súrat, referred the case back to the Assistant Judge, in order that it might be decided whence Mír Tegbeg Khan, from whom, it was said, the hak descended to Mír Walí, from whom Nasarvánji's father bought it, derived his right, and what the right was; whether Government had abolished or relinquished the levy of any haks on their part, before they made Nasarvánji give up his right; and whether this be a town duty or not.

The Assistant Judge, on further investigation, insisted that the validity of Nasarvánji's title could not be raised in this case, and gave no opinion about it; but he held that Government had abolished no levy of their own, of which the hak in dispute formed part: therefore, Act XX. of 1839 did not apply; and that the said hak was not a town duty, such being, as he understood it, a levy on articles coming into a town only, whereas this hak was a levy on articles going out of the town also: therefore, Act XIX. of 1844 did not apply either. He, accordingly, again decreed in Nasarvánji's favour.

The Deputy Commissioner again appealed to the same Judge, who decided that the prohibition by the Deputy Collector of the levy of the hak was not according to law, and that Nasarvánji was entitled to the full amount of damages claimed by him. He held that the words in Sec. 1 of Act XX. of 1839, "after the abolition or relinquishment thereof by Government," applied to the levy of haks, fees, and customs therein mentioned, as well as to the levy of

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"alienated shares of any item of revenue;" and agreed with the Assistant Judge that it had not been shown that Government had abolished any hak on their part entitling them to abolish the hak in dispute. He also held that it was not proved that the levy made by Nasarvánji was a town duty, and, therefore, Act XIX. of 1844 did not apply; or that the amount claimed by Nasarvánji was excessive; and, lastly, that the Deputy Collector was not entitled in this case to call upon Nasarvánji to prove his title. He, accordingly, affirmed the Assistant Judge's decree.

The Deputy Collector thereupon appealed to the Sadr Diváni Adálat (c), which annulled the decrees of the courts below, and referred the case back, on the ground that the Assistant Judge was wrong in holding that the validity of Nasarvánji's title was not a question to be decided in the suit; being of opinion that Nasarvánji should prove his title before he could recover damages.

On re-investigation of the case, the Assistant Judge, W. Sandwith, held that Nasarvánji had established his title, and that the amount sued for was correct; but that the Governor in Council had authority, under Act XX. of 1839, to prohibit the levy of the hak in dispute. He, therefore, threw out Nasarvánji's claim.

From this decree Nasarvánji appealed to the Judge of Súrat, on the ground that the Assistant Judge had gone beyond his authority in entering on the question of law, the same having been already decided in his, Nasarvánji's, favour by the Sadr Diváni Adálat in another case (d), in which he was the plaintiff; and that the meaning of Act XX. of 1839 was also settled in that case.

The decision recorded in appeal by the Zillá Judge, H. Hebbert, was as follows:—

"The first question for decision in this case is, whether or not Nasarvánji has established his title to the hak in dispute,

(c) Present: M. Larken, W. H. Harrison, and M. A. Coxon, Puisne Judges.

(d) Selected Cases for 1820-40, p. 259.

and what was the nature of that hak; a second question is, whether or not the Right Honourable the Governor in Council had the authority to prohibit the levy of that hak; and a third, whether this has been lawfully done.

"As to the first question, the Court, regarding as it does all *haks, lavazim,* and such like, as of the nature of immoveable property, is of opinion Nasarvánji has established his title. It apears the hak in dispute was, with other property, first mortgaged to Nasarvánji's father on the 11th of September 1811; that it was again re-mortgaged to him, with other property, on the 18th of October 1816: and that it was finally sold to him on the 23rd of August 1825. It only appears to have been in Nasarvánji's and his father's possession since the date of the sale, but it would seem to be undeniable that it has been collected from the date of the first mortgage. From this date up to the 11th of September 1844, when the Deputy Collector first forbade its continued realisation, is a period of thirty-three years, and, under Reg. V. of 1827, Sec. 1, uninterrupted possession for so long by Nasarvánji, and those from whom he derives, is sufficient proof of a right in the hak. There are no sanads or other such documents produced, but their absence is of no moment to Nasarvánji. Under the above circumstances, it rests with those who contest his right to disprove it, and the Deputy Collector has failed to do this.

"The nature of the hak was that of a town duty. It was a tax levied on certain articles passing into or out of the city by three particular gates, known as the Salábatpúrá, the Serái, and the Delhi gates. It has been objected that the hak differed from a town duty, in that Government did not collect a tax on *all* the articles on which Nasarvánji did; but the Court cannot see the force of this objection. All taxes collected, as this hak and the town duties were, are essentially the same. In the Court's judgment a difference in the articles taxed no more constitutes a difference between the hak in dispute and the town duty, than a difference in the rate of the taxes would do; neither affects the nature of the taxes.

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"As to the second question, the Court is of opinion the Right Honourable the Governor in Council had authority to forbid the levy of the hak in dispute. The Court reads Act XX. of 1839, Sec. 1, as the present Assistant Judge has done. The Court considers that the punctuation positively forbids the construction put upon that section by Messrs. Frere and Gibbs.

"Besides which, the Court considers the very nature of haks and fees forbids that construction also, unless it be supposed the Legislature did not know what they were legislating about when enacting the Act in question. Haks and fees may be said, as a rule, never to have formed part of any item of revenue, but to have been created at the very time they were given away. Except, therefore, in ignorance, no legislature in enacting a law authorising the abolition of haks and fees would tack on thereto a condition it was impossible to fulfil; and again, read as it has been contended it should be, the section under discussion would not, in the Court's judgment, be sense. It would run thus: 'It shall be lawful for the Governor in Council of Bombay to issue orders prohibiting the levy of haks and fees of every description after the abolition or relinquishment thereof by Government.' It may reasonably be asked, what is Government first to abolish? and, again, how can Government relinquish that which does not belong to it? The Court understands the aforesaid section to invest the Right Honourable the Governor in Council with arbitrary power to prohibit the levy of haks and fees of every description, as also land or sea customs held by anybody, and alienated shares of any item of revenue after abolishing or relinquishing its own share in that item of revenue. So reading it, the Court, as above remarked, considers the Right Honourable the Governor in Council could prohibit the levy of Nasarvánji's hak in dispute.

"Had the Court a doubt, which it, however, has not, as to the authority of the Right Honourable the Governor in Council to prohibit the levy of Nasarvánji's hak before the enactment of Act XIX. of 1844, by which all town duties

were abolished, it could have none as to His Lordship's authority to do it afterwards, as, per the notification in the *Government Gazette* of the 27th of January 1848, under date the 22nd idem, was done.

"As to the third question, the Court finds that the then Deputy Collector forbade the levy of the hak in dispute by Nasarvánji under date the 11th of September 1844, and that in the *Government Gazette* of the 27th of February 1851 it was notified, under date 21st idem, that this order had been confirmed by Government from the date of its being issued. Whether the order was only then confirmed, or the confirmation only then notified, does not appear. The notification was not essential to the validity of the confirmation, though it was as a preliminary to any one being punished for infringing the order. At all events, Act XX. of 1839, Sec. 2, forbids any Court of Law to question orders confirmed, as the one alluded to has been.

"It only remains to notice what Nasarvánji has urged in his petition of appeal. The Court does not think the Assistant Judge went beyond his authority in entering on the point of law. The Judges of the Sadr, by annulling all the former decrees, evidently left the whole case to be gone into *de novo*; otherwise they must be understood to have differed from those who had before tried the case, and to have held their reading of the law wrong, which would have put Nasarvánjí out of court at once. Again, the Court does not regard the decision alluded to by Nasarvánji as decisive. It is impossible to say how far the illegality of the order issued by Mr. Pelly, it not having been confirmed by Government, influenced the Judges who gave that decision.

"Under the above view, the Court affirms the Assistant Judge's decree, with costs."

Against this decision a special appeal, No. 4314, was admitted in the Sadr Diwání Adálat on the grounds:—"(1) That the Judge was in error in adjudicating in this case, inasmuch as he was himself a defendant in the original suit.; (2) that Act XX. of 1839 has been misinterpreted; (3) that the

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Judge has not decided all the points necessary to enable the Court to arrive at a decision; (4) that Act XX. of 1839 is not applicable to this case; (5) that the interpretation of 'town duties' is erroneous; (6) that the interpretation of Act XIX. of 1844 is erroneous: (7) that the decision is opposed to the ruling in No. 62 of Selected Cases for 1820-40 (Reprint), p. 259; and (8) that the case is opposed to the judgment of the Privy Council in the case of *Sambúlál Girdharlál* v. *The Collector of Súrat.*" (*e*)

The decision recorded by the Court (*f*), on the 18th of August 1862, was as follows:—

"The first among several objections taken to the decision in this case is that the Judge was in error in adjudicating therein, inasmuch as he was himself a defendant in the original suit; and we are called upon to dispose of this objection at once, because it has been represented to us on the part of the respondent, the Deputy Commissioner of Customs, Salt, and Opium, that he has no desire to throw any technical obstacles in the way of the rehearing of the case on the ground of Mr. Hebbert's previous official interest therein."

[The previous stages of the suit are here referred to.]

"The decisions of the Assistant Judge in original suits were appealable to the Zillá Judge, and to him only. (*g*) By the law as it at present stands (*h*), the Sadr Court may order that the cognisance of any appeal, which may be instituted in any court subordinate to it, shall be transferred to any other court also subordinate to it, and competent, in respect of the value of the appeal, to try the same; but no such provision existed in the Code of 1827. If it appeared whilst a suit was pending before a Native Judge (*i*) that the said Native Judge was personally interested in the suit, he was bound to stay further proceedings, and send up such

(*e*) Printed *post* in note to *The Collector of Surat* v. *The Heiresses of Kúvarbái.*

(*f*) Present: A. K. Forbes and H. Newton, Puisne Judges.

(*g*) Reg. VII. of 1831, Sec. 4. (*h*) Act VIII. of 1859, Sec. 6.

(*i*) Reg. II. of 1827, Sec. 43.

suit to the Zillá Judge, and the Zillá Judge either tried it himself, or referred it to other competent authority; but there was no provision for the adoption of such a course in the case of any but a Native Judge, and express authority for the transfer having been given in that particular case, it could not be assumed in the case of a Zillá Judge. The appeal must, in fact, have been tried by Mr. Hebbert, or Mr. Hebbert must have been temporarily removed from his office by the Government, and another gentleman must have been appointed to that office by the Government for the special purpose of trying the appeal. We hold, therefore, not only that Mr. Hebbert was not in error in hearing the appeal against the decision of the Assistant Judge, but that it was incumbent upon him to hear it.

"There is, however, a further question for consideration, viz., what notice is to be taken of the Deputy Commissioner's consent to the rehearing of the case on the ground of Mr. Hebbert's previous official connection with it.

"We think that the circumstances of this case are very peculiar. It is undoubtedly undesirable that any person should exercise judicial functions in a case, in which he has a beneficial or even an official interest. In the present case Mr. Hebbert was officially, though not beneficially, concerned, but his proceedings in the matter, strictly legal as they were, are still liable to the remark that he may have formed his opinion as a party, and may not have been able wholly to divest himself of that opinion as a Judge. It has been remarked to us that Nasarvánji, the present appellant, voluntarily brought himself before Mr. Hebbert as Judge of Súrat by appealing to the Zillá Court, with the full knowledge that Mr. Hebbert must hear the appeal; but undoubtedly Nasarvánji was compelled either to forfeit his right of appeal altogether, or to exercise it by appealing to Mr. Hebbert; and if he had not appealed in the zillá, he could not have brought the case before us. Mr. Hebbert also was by law required to place on record the grounds of his decision, and could not, therefore, as might otherwise have been desirable, have given a merely formal confirmation of his Assistant's

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judgment, and thus allowed the case to come for adjudication before this court without any expression of opinion by himself. It was very desirable that the case should, if possible, have been heard before some other Judge than Mr. Hebbert, who had been previously concerned in it as a party in his then official capacity; and it is now, we consider, advisable that this patent defect in the proceedings should, if practicable, be cured. We consider that by consent of the parties the defect may be cured, and on the ground of that consent, and of the exceptional circumstances of the case, we decide upon remanding the case for a rehearing in appeal, without expressing our opinion upon any of the points urged in appeal, except the first, and leaving them all for the decision of the lower court."

Upon the rehearing in appeal, on the 30th of March 1863, A. B. Warden, District Judge of Súrat, recorded the following finding:—

"The points for decision are:—first, whether the appellant, Nasarvánji, has established his right to the hak in dispute; secondly, whether the prohibition of the levy of the hak has been made according to law, and if not, to what damages the appellant, Nasarvánji, is entitled.

"With regard to the first point, it appears that the hak in dispute was first mortgaged to the appellant Nasarvánji's father on the 11th of September 1811; that it was again re-mortgaged to him on the 18th of October 1816; and that it was finally sold to him on the 23rd of August 1825. It appears to have been in the possession of the appellant, Nasarvánji, and of his father, since the date of the sale, but it has been collected from the date of the first mortgage. From this date up to the 11th of September 1844, when the Deputy Collector forbade its continued realisation, is a period of thirty-three years, and, under Reg. V. of 1827, uninterrupted possession for so long, by the appellant, Nasarvánji, and those from whom he derives, is sufficient proof of a right in the hak. It rests with the respondent, the Deputy Collector, to disprove the appellant Nasarvánji's right; but this he has failed to do.

"With reference to the second point, the Court holds that the prohibition of the levy of the hak by the Deputy Collector of Customs was not according to law. Act XX. of 1839 most certainly requires Government to relinquish their haks before prohibiting holders of rent-free lands, or other persons, from levying such haks as they hold; and this Government does not appear to have done: therefore, this Act is not applicable. The Deputy Collector has failed to prove that the hak in question was a town duty; therefore, Act XIX. of 1844 is not applicable either to this case.

"The appellant, Nasarvánji, has claimed damages to the amount of Rs. 725 per annum, being the sum for which he had leased the hak for six years; the Court, deeming him entitled to the same, reverses the Assistant Judge's decree, and awards the appellant, Nasarvánji, Rs. 4,350, with costs."

Against this decision the present special appeal was preferred to the High Court: the grounds of objection being:— That the Judge was in error in holding in and by his said decree: (1) that the plaintiff, Nasarvánji, had established a good title in himself to the hak, called Mogalái in Choki; (2) that Reg. V. of 1827 was applicable in this suit, and that he misconstrued and misapplied the said Regulation; (3) that the prohibition of the levy of the said hak by the Deputy Collector of Customs and Excise, alleged in the plaint to have taken place on the 11th of September 1844, was not according to law; (4) that the said hak is not a town duty, within the meaning of Act XIX. of 1844. That the Judge had, in and by his said decree, (5) misconstrued Act XX. of 1839 and (6) misconstrued Act XIX. of 1844; and that (7) he erroneously refused to apply the said Acts to this suit, whereas he ought to have held that the levy of the said hak was lawfully prohibited by the said Deputy Collector, under and by virtue of the same Acts, or one of them.

The case was heard before COUCH and TUCKER, JJ.

Dhirajlál Mathurádás for the appellant.

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Reid, Shántárám Náráyan, and *Dádábhái Frámji* for the respondent.

Cur. adv. vult.

COUCH, J. :—I think it is unnecessary to give any opinion upon the construction of Act XX. of 1839, which is so loosely worded, that, in the absence of any preamble, it is impossible to say with any degree of certainty what was the intention of the Legislature: because the proclamation of the 11th of September 1844 was not made in accordance with its provisions, which require the order prohibiting the levy to be issued by the Governor in Council; nor was the order of the 7th of September 1844, referred to in the order of the 11th of September, an order prohibiting the levy within the meaning of the Act, being only an order to suspend the collection pending the decision of the Government. That such a proclamation was not sufficient was decided in 1840 by the Sadr Court, in an appeal between J. H. Pelly, Esq., Collector of Customs for Guzerat and the Konkan, and the present plaintiff, and reported at page 259 of the Bombay Selected Cases, in which judgment I concur. But I am of opinion that this hak, which the plaintiff collected at three gates of Surat upon certain goods entering in or going out through the gates, was abolished by Act XIX. of 1844.

The intention of the Legislature is to be discovered from the language it has used, and it appears from that to have been that all taxes, and cesses, "under whatsoever name levied, within the presidency of Bombay, and not forming part of the land revenue," should be abolished. Supposing the plaintiff's hak, which is said by Mr. Justice Tucker in his judgment to be of the nature of a town duty, did not come within the term town duties—and there seems to be no sufficient reason for saying that it did not—still the subsequent words would include it, and they appear to me to have been used with the intention of providing for any tax which possibly might not come within the words which had been before used. No distinction is made in the Act between town duties and other taxes and cesses belonging to the Govern-

ment, and those belonging to private persons, and if the plaintiff's hak did not come within the words of the Act, neither would a similar hak belonging to the Government, and collected at the other gates of Súrat, if there were one, come within them; but it certainly appears from the recital in Act XVI. of 1844 (*j*) to have been the intention of the Legislature to abolish such duties. And the omission to provide for compensation cannot raise any inference that Act XIX. of 1844 was not intended to apply to private persons, as there is the same omission in Act XX. of 1839.

In my opinion, the intention in 1844, the impost on salt being about to be increased, was, that, instead of leaving haks such as this to be abolished at different times under the Act of 1839, they were then to be entirely abolished. I think the Judge of the District Court was right in finding, upon the evidence in the suit, that the plaintiff was entitled to the hak, but that he was wrong in holding that it was not abolished by Act XIX. of 1844; and, consequently, that the plaintiff is only entitled to recover damages for the loss of his hak from the 11th of September 1844 to the 1st of October 1844, when that Act came into operation.

TUCKER, J.:—I am of opinion that the plaintiff in this suit was, at the time when Act XX. of 1839 came in tooperation, in possession of a privilege to levy certain "haks" or fees on articles imported and exported through three of the city gates of Surat; and that this right originated in an assignment of the royal revenues derivable from this particular source, which had been made by a former Nawáb of Súrat to his (the Nawáb's) brother, and which had been purchased from the descendants of the grantee by the plaintiff's father. The Act quoted declares that "it shall be lawful for the Governor in Council of Bombay to issue orders prohibiting the levy of hucks and fees of every description, and customs, whether by land or sea, enjoyed by holders of

(*j*) "Whereas by Act VI. of 1844 all Inland, Transit, and Town Duties levied on behalf of the Government of the East India Company within the limits of the territories subordinate to the Presidency of Fort St. George were abolished, and the impost on Salt manufactured and sold within the

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rent-free lands, or *other persons*, and of alienated shares of any item of revenue after the abolition or relinquishment thereof by Government"; and it further enacts "that the legality of any orders which may have been heretofore issued, or of any orders which, *conformably with this Act*, hereafter shall be issued, by the *Governor in Council of Bombay*, for prohibiting the levy of any such hucks, or fees, customs, or alienated shares of any such item of revenue as aforesaid, shall not be questioned in any Court of Law."

Now, I consider that the haks which the plaintiff levied were in the nature of town duties, and that they formed a portion of an item of revenue raised from this source at all the entrances to the city, which portion had been alienated by a former sovereign; and I, consequently, hold that it was competent to the Governor in Council of Bombay, under this Act, after relinquishing the Government share of the town duties, to prohibit the levy by the plaintiff of any haks which partook of that character.

The only questions, then, which are left to be determined are:—When did the Government relinquish its share of town duties? and when did it prohibit the levy of the haks in the manner provided by the Act? It seems to me to be quite clear that the town duties collected by Government were not abolished till the passing of Act XIX. of 1844, and that the first order made by the Governor of Bombay in Council, conformably with the Act XX. of 1839, was the proclamation of the 22nd of January 1848, and that, therefore, the plaintiff's rights were not legally extinguished till the promulgation of that order. An attempt has been made to show that a proclamation made by the Deputy Collector of Customs of Súrat

said territories was raised to a rate more in accordance with the tax on the same article borne by other divisions of the British Possessions: and whereas, although inquiries which have been instituted as to the origin and extent of certain town duties and local cesses within the Presidency of Bombay, with a view to their abolition, have not yet been completed, it is nevertheless expedient, in order to equalise the average prices of Salt within the Presidencies of Fort St. George and Bombay, to increase as well the Customs duty on imported Salt as the Excise duty heretofore and at present payable on Salt that may be delivered from any Salt Work within the territories subject to the Government of the Presidency of Bombay."

on the 11th of September 1844, founded on a proclamation made by Government on the 7th of the same month, and published in the *Government Gazette*, was a sufficient compliance with the terms of the Act, and that the legality of this order cannot be questioned in a Court of Law. I am of opinion, however, that this proposition cannot be maintained. There was no prohibition in the Government proclamation of any levy of haks by private persons, and it is clear, from the words of the proclamation itself, that the Government had not at that time permanently abolished or relinquished town duties, but had merely suspended their collection for a time. Neither proclamation was, therefore, in conformity with the provisions of the Act, nor had either any legal effect so far as the plaintiff's rights were concerned. The plaintiff is consequently entitled to damages for the wrongful suppression of his privilege prior to its extinction by process of law.

I would, therefore, modify the decree of the District Judge, and decree to the plaintiff the amount which he would have realised from the hak between the 11th of September 1844 and the 22nd of January 1848, at the rate specified in the plaint, namely, Rs. 725 per annum, with interest at nine per cent. per annum, from the date at which each year's income accrued due, up to the date of this decree, and further interest at six per cent. per annum on the entire sum awarded, from the date of the decree to the date of payment, and direct that the defendant bear all the costs of the litigation. I consider that the costs of the appeal to Mr. Hebbert, and the special appeal against that Judge's decision, should be borne by the defendant, as, under the Bombay Regulations, the plaintiff had no option but to appeal to the Zillá Judge for the time being.

Since writing the above minute I have learned that my colleague Mr. Justice Couch considers that the plaintiff's right to levy haks ceased on the promulgation of Act XIX. of 1844. I would, therefore, add that I am of opinion that the said Act only abolished the duties, taxes, and cesses levied by Government, and that, reading this Act in conjunction with Act XX. of 1839, I arrive at the conclusion that, to

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complete the extinction of the alienated haks and duties, it was necessary that a prohibitory order should be issued in the manner provided for by the statute of 1839. The requirements of the law appear to have been complied with by the issue of the proclamation of the 22nd of January 1848.

The two Judges having differed, the case was referred to FORBES and NEWTON, JJ., on the point, whether the plaintiff's rights to the haks claimed ceased from the date when Act XIX. of 1844 became law, or from the 22nd of January 1848. Their decision was as follows :—

We are of opinion that the language of Act XIX. of 1844 is too large to bear the construction that it abolished the duties, taxes, and cesses levied by Government only; and we consider that the plaintiff's rights to the haks claimed ceased from the date when Act XIX. of 1844 became law.

The decree of the Court was as follows :—

The Court amend the decree of the District Judge by awarding damages, at the rate of Rs. 725 per annum, for the loss by the plaintiff of his hak, from the 11th of September to the 1st of October 1844 (20 days, Rs. 40), with interest thereon, at nine per cent. per annum, from the 1st of October 1844 up to this date, and costs of the suit, including the various appeals, and interest on the sum awarded, including costs, at six per cent. per annum, from this date until payment.

Decree amended.