CASES

DECIDED IN THE

ORIGINAL CIVIL JURISDICTION

OF THE

HIGH COURT OF BOMBAY.

Referred Case.

1868.
Feb. 28.

NA'RA'YAN KRISHNA LAUD *v.* GERARD NORMAN, Collector of Bombay.

Jurisdiction—Small Cause Court—Revenue—Collector—Act IX. of 1850, *Sec.* 25—*Reg. XIX. of* 1827, *Sec.* 2—*Act VII. of* 1836, *Sec.* 1.

The Collector of Bombay, *bonâ fide* believing that certain land upon which a quarry had been opened by the plaintiff was Government waste land, by his servants forcibly stopped the quarrying operations of the plaintiff, "for the purpose" (the Collector stated in his evidence) "of preserving the land for Government, as land from which revenue might in future be collected."

In an action of trespass brought against him by the plaintiff, it was held that this act of the Collector was not "a matter concerning revenue" within the meaning of Sec. 25 of Act IX. of 1850, and that the jurisdiction of the Small Cause Court was, therefore, not excluded.

Held also, upon the *facts* stated in the case, that the possession of the plaintiff of the land in question was sufficient to entitle him to maintain an action of trespass against the Collector.

The Revenue Court, under Sec. 2 of Reg. XIX. of 1827, has not exclusive jurisdiction over the Collector of Bombay for *all* acts done by him in his official capacity.

Semble, Sec. 1 of Act VII. of 1836 (*a*) was retrospective only in its operation, and is now obsolete.

CASE stated for the opinion of the High Court, pursuant to the provisions of Sec. 55 of Act IX. of 1850, and Sec. 7 of Act XXVI. of 1864, by John O'Leary, Acting First Judge of the Bombay Court of Small Causes :—

"This was a summons for Rs. 101, damages sustained by the plaintiff by reason of the defendant having wrongfully

(*a*) Since repealed by Act VIII. of 1868.—ED.

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stopped certain blasting operations carried on by the plaintiff on the lands of the plaintiff, within the Mahim District, and for the defendant having wrongfully taken possession of certain tools and implements belonging to the plaintiff.

"The case came on for hearing before me on the 4th of February 1867.

"*The Government Solicitor*, for the defendant, objected that this court had no jurisdiction to try the case.

"In support of this objection he cited Reg. XIX. of 1827; Act VII. of 1836, Ch. I., Sec. 1; and Act IX. of 1850, Sec. 25.

Mr. *Marriott*, for the plaintiff, contended that this was not a matter of revenue, and that the court had jurisdiction.

"I was of opinion that, if it were necessary to sue the Collector of Bombay in his capacity of Collector, the matter *primâ facie* concerned revenue, and that the court had no jurisdiction.

"I offered to amend the summons by striking out the words 'Collector of Bombay' from the designation of the defendant, and to proceed to hear the defence, so as to ascertain the nature of the acts complained of. Mr. Marriott stated that, as I had expressed an opinion that I had no jurisdiction to try the validity of any act done by the Collector in his official capacity, he would not ask for the amendment, if I would state a case for the opinion of the High Court.

"I agreed to do so, and subject to the opinion of the High Court on the following question:—Has the Court of Small Causes of Bombay jurisdiction to try *any* action brought against the Collector of Bombay for *any* acts done by him in his official capacity as such Collector? I dismissed the case for want of jurisdiction. Should the High Court be of opinion that I was wrong in so doing, the case ought to be restored to the file, and heard in due course."

The case came on for hearing before ARNOULD and WESTROPP, JJ., on the 7th of March 1867.

Marriott for the plaintiff.

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The Advocate General (*the Honorable L. H. Bayley*) and *Green* for the defendant.

The Court, being of opinion that the proposition contended for by the defendant could not be established in so wide and general a form, ordered the cause to be restored to the file of the Small Cause Court, and the same to be heard in due course.

The cause was accordingly restored to the file, and heard upon the merits, when a case was submitted for the opinion of the High Court by the same Acting First Judge.

CASE. "The plaintiff alleges that he is the owner of certain land situate at Dharávi, in the Mahim District of Bombay.

"The defendant at the time of the alleged trespass was Acting Collector of Bombay.

"The defendant pleaded—

I. That the defendant did the act complained of in his official capacity of Collector of Bombay, and is not by law answerable to the jurisdiction of this court.

II. That the alleged cause of action is a matter concerning revenue, and under Act IX. of 1850 the Court of Small Causes has no jurisdiction in the case.

III. That the acts complained of were done by the defendant as a judicial officer acting in the execution of his office.

IV. That the acts complained of were done by the defendant under a *bonâ fide* belief that in so doing he was acting in a matter concerning the revenue, or as a judicial officer in the execution of his office.

V. That the land in question was not at the time &c. the land of the plaintiff.

"The defendant admitted that he did, by his servants, enter on the land and forcibly stop the blasting operations being carried on by the plaintiff.

"On the evidence adduced before me, I find that there is a certain piece of land, of no great value, situate at Dharávi, which has never paid land-tax or quit-rent to Government,

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and which has never been assessed for land-tax or quit-rent payable to Government, and upon which some thirty or forty years ago there stood certain buildings used as oil-mills.

"These mills appear to have been the property of a certain Captain Mignon, who, it was stated in the course of the trial, but not proved, held some office under Government at that time.

"In 1836 Captain Mignon left Bombay, and from him, in some way not clearly or at all proved before me, this piece of land, with certain mills thereon, passed into the possession of one Thomas Cooke.

Letters of administration of the goods of Thomas Cooke, who was a British subject born in England, were, on the 27th of January 1847, granted to one F. H. Lausanne, and on the 1st of April 1847 the said Lausanne leased the land in question to the plaintiff for ten years, and on the 26th of July 1850 the said Lausanne sold the said lands absolutely to the plaintiff.

"The mills were, under some arrangement between the plaintiff and Lausanne, taken down about the date of the sale, and since that time there have been no permanent buildings on the land.

"In 1850 the plaintiff made application to the then Collector of Bombay, stating that the land was standing in the Collector's books in the name of Cooke, and applying to have it transferred to the name of the plaintiff.

"The plaintiff further had a *baṭṭáki* beaten at this time; but no such transfer was ever made in the Collector's books.

"I find that in the year 1859 or 1860 the plaintiff lived on the land in question for a period of three or four days during the Mahim fair, and in the early part of 1866 he again put up tents and lived there for three or four months, and that, during the latter period, the Government Surveyor of the Mahim District was aware of his living there, and did not prevent him. With these exceptions, I find that since the mills were taken down, in 1850, the land has not been

used by the plaintiff, by Government, or by any person for any permanent purpose.

"In the latter part of the year 1866 the plaintiff commenced blasting or quarrying operations on the land, having previously obtained the usual license from the Commissioner of Police.

"In September 1866 a clerk in the office of the Collector of Bombay verbally reported to the Collector that quarrying operations were being carried on on this land.

"Acting on this report, and, to use the words of the Acting Collector, having satisfied himself that the land was the property of Government,—but without communicating with the plaintiff,—the Acting Collector, on or before the 26th of October 1867, gave orders to have the operations on the land, then being carried on by the plaintiff, stopped: his object being, as he stated before me, and as I find on the evidence, '*to preserve the land for Government* as land from which *revenue* may in future be collected.'

"On the 26th of October 1866 the defendant's servants, by his order, went on the land and compelled the plaintiff's servants to cease the blasting, and removed certain tools then being used by the plaintiff's servants.

"The plaintiff applied for the tools, and, the defendant replied that the tools would be returned on application to the receiver of land revenue at Mahim.

"Thereupon the plaintiff instituted the present suit.

"On the evidence before me, it appeared that the ground claimed by the plaintiff consists entirely of rocky ground, unfit for any agricultural purpose; that it could only be used for quarrying or building on; that it contains about 9,034 square yards, and that its value is less than Rs. 1,000. It also appears on evidence that, prior to the building of the mills on the land, there stood upon a portion of it (not, however, the portion on which the defendant entered) what one of the witnesses described as a Government barrack, and which would appear to have been used as a Customs *cháuki*.

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"The defendant in his examination gave the following evidence, which, so far as it relates to matters of fact, and not matters of law or opinion, I find as part of this case :—

"He stated that his duties as Collector are to collect the land revenue, and look after all the vacant ground, the property of Government, in the island of Bombay. The latter right has always been exercised by his predecessor. All vacant ground in Bombay belongs to Government. When the Collector finds persons in occupation of land which he believes to be the property of Government, he generally sends for the persons so in occupation, and, if he satisfies himself that they have no title, ejects them.

"In the present case he did not send for the plaintiff, nor had he any interview with him, until after he was ejected.

"A plan made in 1829, and used in the Collector's office, was put in; but from that it did not satisfactorily appear that in 1829 the land in question was Government land.

"On this evidence the defendant required me, in case I should find for the plaintiff, to state a case for the opinion of the High Court on the following questions :—

I. Whether or not the guardianship, management, and preservation from encroachment, of the landed property of the Crown in the island of Bombay, vested in the Collector of Bombay, are a part of his duties and functions.

II. Whether acts done by the Collector in the exercise, or *bonâ fide* intended exercise, of such guardianship, management, and preservation, are acts done by him in his official capacity.

III. Whether or not the acts complained of in this suit,—or some, and which, of them,—having been done or ordered to be done by the Collector in the *bonâ fide* intention of preserving from encroachment the landed property of the Crown in the Island of Bombay, are matters concerning the revenue within Sec. 25 of Act IX. of 1850, so as to exclude the jurisdiction of the Small Cause Court.

IV. Whether or not the plaintiff in this suit had such possession of the piece of ground in question as enabled him to maintain this suit in respect of the acts complained of, or any, and which, of them.

"Subject to the opinion of the High Court on any or all of the above questions, I find for the plaintiff: damages Rs. 101."

Reg. XIX. of 1827, Ch. I., Sec. 2:—"The Collector and his Assistants and Native Officers shall, with respect to acts done by them in their official capacities, be amenable by Civil prosecution, to the jurisdiction of the Revenue Judge hereinafter constituted."

Act VII. of 1836, Sec. 1:—"It is hereby enacted that the legality of acts done and levies made under Regulations III. and IV. of 1817, and VII. of 1818, and IV. of 1821, and XIX., XX., and XXI. of 1827, and XV. of 1828, and XX. of 1830, and II. and XIII. of 1831, and I. and X. of 1833, of the Bombay Code, shall not be questioned in any court of law whatever."

Act IX. of 1850, Sec. 25:—"All suits where the debt or damage claimed, or value of the property in dispute, is not more than Rs. 500, may be brought in the Court of Small Causes. * * * * Provided always that the Court shall not have jurisdiction in any matter concerning the revenue * * * * or concerning any act ordered or done by any Judge or Judicial Officer in the execution of his office."

28th Feb. The case was this day argued before COUCH, C.J., and WESTROPP, J.

Pigot and *Marriott*, for the plaintiff:—Act VII. of 1836, Sec. 1, was retrospective only in its operation, and is now obsolete. There seems to have been some irregularity about the passing of the Regulations noted in the Act, which was accordingly passed to legalise acts done and levies made under these informal Regulations. This is evident from the fact that some of these Regulations had been repealed at the time of the passing of the Act. Then as to Reg. XIX. of 1827, Sec. 2, it has already been decided, in the former stage of this

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suit, that the Revenue Court has not exclusive jurisdiction over the Collector for *all* acts done in his official capacity. The real question, however, is whether the act of the defendant is a matter concerning the revenue within the meaning of Sec. 25 of the Small Cause Court Act. A similar proviso was contained in the Charter of the Supreme Court. The provisos must be read in connection with Reg. XIX. of 1827. By that Regulation the duties of the Collector are prescribed, and in respect of acts done in the execution of these duties he is thereby rendered amenable to the Revenue Court. The preservation of Crown lands from encroachment is not one of his duties so prescribed, and in respect of that branch of his duties he does not, therefore, come within the jurisdiction of that court. Since the decision in *Spooner* v. *Hurkissondas* (*a*), it cannot be contended that that fact alone gives the Supreme Court, or the Small Cause Court, jurisdiction, but where the matter is ambiguous, it is a reason for reading the proviso in such a way as not to deprive the subject of his remedy. How can the act here complained of be said to concern the revenue? The land in question is not assessed. True it is that revenue *may* in future be collected in respect of it; but that is too vague a possibility to render the act of the Collector an act concerning revenue. *Graham* v. *Peat* (*b*), and *Asher* v. *Whitlock* (*c*), show that the possession of the plaintiff in this case was sufficient to entitle him to maintain trespass against a wrong-doer.

The Advocate General (*the Honorable L. H. Bayley*) and *Green*, for the defendant:—There is certainly some difficulty about Sec. 1 of Act VII. of 1836. The Act contains no recital, but the reasonable construction of it is that it refers to future, not past, transactions. The Act is commented on by *Perry*, J., in *Ramchund* v. *Glass* (*d*).

[WESTROPP, J.:—May it not be that this Act was passed to give immunity to Government officers for what they had done, and that it was not intended to apply to future acts?

(*a*) Perry's Or. Ca., p. 385, S. C.; 4 Moo. Ind. App. 353.
(*b*) 1 East 246. (*c*) L. Rep. 1 Q. B., p. 1.
(*d*) Perry's Or. Ca., p. 365.

That would be better than accusing the Legislature of negligence or mistake. Besides, the expressions of the learned Judge in the case referred to seem to point to the fact that there had been irregularities or mistakes by Government officers.]

The main question is, whether this act of the Collector was an act concerning revenue, under Sec. 25. It is a fallacy to suppose that because there is at present no revenue derived from this land, the assertion of the right of Government to it cannot concern the revenue. The duty of preserving such land is not, it is true, specifically imposed upon the Collector by Reg. XIX.; but as a matter of fact the present Collector and his predecessors have exercised this function, and a Collector by usage may have duties which were not imposed upon him by Reg. XIX., and such duties may concern the revenue. In the exercise of his duties, having taken possession of this land, he may sell it for the benefit of the revenue. The disposing of waste lands in this way is treated as a branch of the revenue in Sec. 7 of Reg. XVII. of 1827.

[COUCH, C.J.: That rather refers to a disposal of land by way of letting.]

The words of the section are the widest that could be used; if the Legislature wished to restrict the meaning of the proviso, they would have said "in the collection of the revenue."

Then as to the possession of the plaintiff. In considering this point, the fact that all waste land in Bombay belongs to the Crown, which is always in possession, must be taken into account. There has been no continuous ownership of the plaintiff, the acts relied upon by him, such as putting up tents for a few days, being of a most ambiguous nature. The presumption, therefore, is that these lands are the property of the Crown. They also referred to *Doe d. E. I. Company* v. *Hirabai* (*e*), and Amended Letters Patent, High Court, Cl. 12.

Pigot, in reply, was not called upon.

COUCH, C.J. (After stating the facts, as they appear upon the case submitted), continued:—Under these circumstances

(*e*) Perry's Or. Ca., p. 480.

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the Judge has reserved for our opinion four questions. The first is, whether or not the guardianship, management, and preservation from encroachment, of the landed property of the Crown in the Island of Bombay, are vested in the Collector of Bombay, as a part of his duties and functions. Now that is a question of fact, or it may be a mixed question of law and fact, which ought to have been found by the Judge; but, without any finding, it has been submitted to us, and it would seem as a matter of fact, that the preserving from encroachment of the landed property of the Crown in Bombay is one of the proper functions of the Collector. But that question is not a material one; nor is the second, which is, whether or not acts done by the Collector in the exercise, or *bonâ fide* intended exercise, of such guardianship, management, and preservation, are acts done by him in his official capacity? I should say that these are acts done by him in his official capacity, his duties being such as are described. The material question is the third, namely:—Whether or not the acts complained of in this suit having been done, or ordered to be done, by the Collector, in the *bonâ fide* intention of preserving from encroachment the landed property of the Crown, are a matter concerning revenue, within the meaning of Sec. 25 of Act IX. of 1850. We cannot say that an act done by the Collector with the intention of preserving the landed property of the Crown from encroachment is a matter concerning revenue. It may be that, at some future time, revenue may be claimable for this land, but I think the words "matters concerning revenue" must be construed to mean something less vague than that indicated by the Collector, when he says that he "entered upon the land with a view to secure it for the Crown, as land from which revenue may hereafter be collected."

If we were to hold that this act concerned the revenue, I do not see where we could stop; any act done by the Collector would, as concerning revenue, be withdrawn from the jurisdiction of the Small Cause Court. This question must, I think, be answered in the negative. Then the next question is, whether or not the plaintiff in this suit had such possession of the piece of ground in question as enabled

him to maintain this suit in respect of the acts complained of. We must consider this question according to its literal meaning,—not whether the Government had such a title as would justify it in turning out the plaintiff. If it had been the intention of the Judge to ask such a question, he ought to have put it in a different form. Answering, then, the question as submitted to us, I am clearly of opinion that the plaintiff had in him such a possession as would entitle him to treat the defendant as a wrong-doer, unless the defendant could show a better title. The acts of possession on the part of the plaintiff are much stronger than was assumed by Mr. Green in the course of his argument. We must look back to what has occurred in respect of these lands since 1847, and, doing so, it appears to me that, considering the state of things in Bombay, and the loose way in which land is held, this is a strong case of possession, instead of a weak one. These are the two material questions necessary for us to decide, and I answer both in favour of the plaintiff. The judgment of the Small Cause Court must, therefore, stand, and the defendant must pay the costs of these proceedings.

WESTROPP, J.:—I completely concur in the opinion expressed by the Chief Justice. The two first questions are questions of fact, rather than of law, and might, if material, be answered, I think, in the affirmative. To me, however, they seem to be immaterial. The third question was, in substance, whether the acts complained of in this suit having been done, or ordered to be done, by the Collector, in the *bonâ fide* intention of preserving from encroachment the landed property of the Crown in the Island of Bombay, are matters concerning the revenue, within Sec. 25 of Act IX. of 1850, so as to exclude the jurisdiction of the Court of Small Causes. The fourth question was, whether the plaintiff had such possession of the piece of ground in dispute as enabled him to maintain this suit in respect of the act of which he complained. Both of these questions are material, and ought, I think, to be answered in favour of the plaintiff. There is not any sufficient ground for contending that this was a matter concerning the revenue, which the Small Cause Court was precluded from entertaining. A prohibition similar to that in the Small Cause Court Act was also contained in the

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Charter of the Supreme Court, and yet Government itself brought an action, in the year 1843, in the Supreme Court, to recover land situated at Colábá from persons alleged to be squatters: *Doe d. E. I. Company* v. *Hirabai* (*ubi suprà*). That action was sustainable on the ground only that it was not "a matter concerning the revenue under the management of the Governor and Council of Bombay." Not being an information by the Advocate General, or other principal law officer of the Company, it could not have received any support from Secs. 100 and 111 of Stat. 53 Geo. III., c. 155. The East India Company by bringing that action, clearly admitted the jurisdiction of the court, and on behalf of the defendant no attempt was made to deny it. The plaintiffs succeeded.

In 1854 A'lu Páru, who had been convicted of felony, died at the Straits Settlements, while undergoing his sentence of transportation for life. On his conviction his immoveable property had been seized by Government. In 1856 an action of ejectment (*f*) was brought in the Supreme Court by his heirs against the East India Company, to recover different portions of that property. His estates consisted of four kinds:—(1) Lands of which A'lu Páru was *fazendár*; (2) houses built on ground belonging to other *fazendárs*; (3) houses and lands for which a small ground-rent was payable to the Company, the houses standing on, and the land being, *so-called* Company's ground; (4) leaseholds for terms of years. Counsel (of whom I was one) for the lessors of the plaintiff, contended that the three first kinds of immoveable estate were of a freehold nature, and that, accordingly, the forfeiture to the Crown was only for the life of A'lu Páru, the felony of which he had been convicted being neither high treason, petit treason, nor murder (Stat. 54 Geo. III., c. 145, A.D. 1814). They relied on the Charter of the Supreme Court (dated 1823) as directing that criminal justice should be administered in the same manner and form, or as nearly as the condition and circumstances of the place and persons will admit, as criminal courts administer it in England. Mr. William Howard, then Acting Advocate General, a gentlemen of great ability and twenty years' experience in the Supreme Court of Bombay, admitted the jurisdiction of the court to entertain the suit, and did not, on behalf of

(*f*) *Doe d. Rahimbhai Alubhai and others* v. *The East India Company*.

the Company or of the Crown, deny the right of the lessors of the plaintiff to recover the two first kinds of property, but objected that (as was the fact) there was not then before the court any sufficient evidence to show the nature of the third kind. The Court gave a verdict for the lessors of the plaintiff for the two first kinds, as being estates held in perpetuity, and in the nature of freehold, but allowed Mr Howard's objection to the third kind, at the same time stating that it did so without prejudice to the question as to the right of the lessors of the plaintiff to recover the third kind, if on further proof it should turn out to be of the nature stated on their behalf. Subsequently, when they were prepared with evidence to show that it had been held from time immemorial by the persons under whom A'lu Páru derived title—they paying a small ground-rent or quit-rent to the East India Company—and had notified their intention to bring in the Supreme Court a fresh action of ejectment for the third kind of lands and houses, the East India Company, by the advice of their law officers, restored that part of the property to the lessors of the plaintiff, and retained the leasehold property only.

The Recorder's Court of Bombay was, like the Supreme Court, prohibited from entertaining suits relating to the revenue under the management of the Governor and Council; and yet in 1805, when an action of trespass relating to land alleged to be the property of the Company was brought in that court before Sir James Mackintosh, by *Shaik Abdul Amlity* against *Nasarvánji Cáwasji* nominally, but in which the East India Company were the real defendants, and were represented by Mr. Thriepland, Advocate General, he did not dispute the jurisdiction of the court.* The nominal defendant was one of those to whom, in consequence of the extension of the esplanade, and in lieu of his land in that

* NOTE.—By Bombay Reg. III. of 1799, the Civil Judge for Salsette, Caranjá, Elephanta, and Hog Islands was (Sec. 2) created Revenue Judge for the Island of Bombay. Sec. 7 gave him cognisance of "all suits respecting the rents and revenues due to the East India Company from the Island of Bombay, or the adjacent dependencies of Old Woman's, Colábá, Cross, and Butcher's Islands." Sec. 16 forbade him "*to receive or entertain any suit, under any pretence whatever, relating to any house, land, tenement, or hereditament, or a dispute regarding the boundary of lands, houses, tenements, or hereditaments situated within the Town and Island of Bombay,*" *&c.* This shows that such suits were considered as within the jurisdiction of the Recorder's Court, which had been created in the preceding year (1798), and not included in the prohibition in its Charter as to suits relating to revenue.

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quarter, an allotment of ground on the flats (*forás* ground) was made by the Collector, in the supposition that the space assigned belonged of right to the Company, though in the occupation of the plaintiff. The plaintiff, though he had a long possession (thirty years), failed. Sir James Mackintosh gave a verdict for the defendant, *i.e.*, in favour of the title of the Company, but made such remarks on the hardship of the case as deterred the Government from further disturbing the *forásdárs*. The history of the *forás* land question, and the final settlement of it, in the main in favour of the *forásdárs*, will be found in Mr. LeMessurier's Report, Bombay Government Records No. III., New Series, and Act VI. of 1851.

It seems clear from these authorities that the fact, that the right of Government to enter upon, retain, or interfere with lands may be in dispute, does not of itself render the matter one concerning revenue (*g*). The lands in the present case have not been assessed, and no revenue has been demanded, or sought to be recovered, in respect of them. The mere possibility that Government might, at some future period, be entitled to revenue out of them, is too remote to render the suit one concerning revenue (*h*). This case is not, I think, governed by *Spooner* v. *Juddow* (*i*).

As to the fourth question, I have no difficulty in answering it in the affirmative. It is clear that the plaintiff had such a possession as entitled him to maintain this action against the Collector, for attempting to disturb him in that possession. We have not been asked whether the Government had a title to these lands. Had this been a case between subject and subject, and not a case between a subject and the Crown, the evidence, so far as stated by the First Judge of the Small Cause Court, would lead to the supposition that the plaintiff not only had sufficient possession to maintain this action, but had also acquired a title, under Act XIV. of 1859, by adverse possession. He seems to have obtained a lease for ten years from the administrator of Thomas Cooke,

(*g*) *See* also *Doe d. Peearcemoney* v. *Bissonath Bonnerjee*, Bignell R. 1.; Morton R. 379; 1 Morley Dig., p. 380, pl. 159.

(*h*) See *Vencata Rungay Pillay* v. *The East India Company*, 1 Strange's Notes of Cases at Madras, p. 174.

(*i*) 4 Moo. Ind. App. 353; S. C. as *Spooner* v. *Hurkissondas Hurjovindas*, Perry's Or. Ca. 373, 385.

in 1847, and an absolute conveyance from the same person in 1850, and to have personally occupied the land since on two or three occasions, and, in fact, to have been the only person who was in possession since 1847. For some years previously to 1847, these lands seem to have had oil-mills upon them, which mills belonged to Captain Mignon, and from him, who left Bombay in 1836, the mills and land passed into the possession of Thomas Cooke. Previously to the existence of the mills, it would appear that there was a *cháuki* or barrack upon the lands; but there is no satisfactory evidence that Government ever was in possession of the land, or how the *cháuki* or barrack was occupied, or whether any rent was paid for it.

It is quite unnecessary for me to give any opinion as to whether the Limitation Act binds the Crown, and I offer none; but assuming that it does not, I nevertheless hold that the plaintiff had a possession amply sufficient to warrant him in maintaining his present suit against a wrong-doer. It has not been found in the case that Government had a title to the land, nor has that question been submitted to us. Looking to the length of the plaintiff's possession, and especially to the fact that his claim to the land was notified in the Collector's office so far back as the year 1850, I think that if the Collector thought, as I have no doubt he *bonâ fide* did think, that the land belonged to Government, he ought to have adopted a different proceeding, and instituted a regular suit to assert the title of the Crown. As to whether Government has such a title or not, I do not offer any opinion. The doctrine laid down in *Doe d. E. I. Co.* v. *Hirabai*, as to the right of Government to waste land, I do not impugn. It may be perfectly correct, but it is not applicable to this case as it is now presented to us. I, therefore, agree in thinking that the judgment of the Small Cause Court must be affirmed, and with costs.

Judgment affirmed.

Attorneys for the plaintiff: *C. E. and F. Stanger Leathes.*

Attorney for the defendant: *R. V. Hearn* (Government Solicitor).