

*Regular Appeal No. 11 of 1868.*1869
March 2.

Govind Vinayak Gadre... .. Appellant.
The Collector of Ratnagiri... .. Respondent.

Survey Settlement—Enhancement of rent—Notice by Collector—Act (Bombay) I. of 1865, Sec. 42.

Sec. 42 of (Bombay) Act I. of 1865 (which prohibits an occupant from relinquishing his holding, unless he gives a written notice to the Collector on or before the 31st of March in each year) is not applicable only to the holders of land under a Survey Settlement, but by implication imposes on the Revenue Officers the obligation of giving the holder notice, when an increased assessment is about to be demanded from him, within a reasonable time before the latest date on which he can exercise his right of relinquishing his lands,

This was a Regular Appeal from the decision of Baron De H. Larpent, Joint Judge at Ratnagiri, in Original Suit No. 5 of 1868, throwing out the plaintiff's claim.

The facts sufficiently appear from the judgment of the Court.

On the 5th of February 1869, the Appeal was argued before TUCKER and WARREN, J.J.

Vishvanath Narayan Mandlik for the Appellant.

Dhirajlal Mathuradas (Government pleader) for the Respondent.

Cur. adv. vult.

March 2, 1869.—TUCKER, J. :—This suit was instituted by a plaintiff, who is a Dharekari holder of land under Government in the village of Shirol, Petha Khed, Taluka Chiplun, District Ratnagiri, to recover from the Collector of that District the sum of Rs. 29-2-4, which, he states, has been directed to be levied from him unlawfully by order of the defendant, as a first instalment of the revenue due by him for the year 1867-68, and part of which has been realized by distraint, and also to have it declared that for the year in question the plaintiff was only liable to the former rates of assessment.

The facts out of which the present dispute arose are for the most part admitted. The plaintiff was the holder of a

1869. "Dhara" estate under Government, the annual assessment of which, under the rates which formerly prevailed, amounted to Rs. 13-9-8. In the month of April 1867 it was announced to the Rayats of the plaintiff's village that new rates, which had been fixed by the Survey Settlement, would be introduced when approved of by Government, and the defendant proceeded to levy the assessment, according to the new rates, for the fiscal year 1867-68. In the plaintiff's case the annual assessment was increased from Rs. 13-9-2 to Rs. 41, and, on his refusing to pay, because the notice of enhancement had been made too late, the Collector directed that the first instalment, at the enhanced rate, with certain additional charges for interest and the expense of serving notices, should be levied from him, and realized a portion of the total sum so demanded by distraint.

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The plaintiff's contention is that, as under Act I. of 1865 he had no option of throwing up his lands if he objected to the new rates after the 31st March 1867, the notice in April 1867 was made too late to affect the assessment for the year 1867-68; and that, consequently, the demand of the Collector for the increased assessment in that year was unlawful.

The answer of the Collector is, that no time has been fixed by law for giving notice of the intention of Government to levy an increased assessment, and that, consequently, the announcement in 1867, that the new rates if approved of by Government would be levied, was sufficient; and that the plaintiff was bound to have paid those rates, or to have given up his land, neither of which acts were done by him; that the Collector's demand for the increased rates was lawful, and he had authority, on failure of payment, to levy the first instalment, with interest and expense of serving notices, as he had done.

The Joint Judge of Ratnagiri, who tried the original suit, held that as the plaintiff, at the commencement of the year 1867 was not holding under a Survey Settlement made under the Act, the section of the Act which required him to give notice of abandoning his lands prior to the 31st

March 1867, did not apply to him; and so it would have been competent to him to throw up the lands prior to the time fixed in Sec. 6 of Reg. XVII. of 1827, *i. e.* the *mruusal* or the commencement of the ancient Revenue year (5th June); that the plaintiff had received notice in April 1867, that assessment at the new rates would be demanded from him, and, therefore, he could have thrown up the land if he had pleased, and was bound to have done so, if he wished to escape his liability for the new assessment; and that it was clear that he had never had any intention of relinquishing the lands held by him. The Joint Judge further considered that, though in the sub-division of the Ratnagiri Collectorate where the plaintiff's holding was situate, lands were ordinarily prepared for cultivation in the months of March, April and May, yet that the notice in April was sufficient, and that, though it was shown that in the adjacent sub-division of Bankot, where the new rates had been introduced in somewhat similar circumstances, a remission had been made, during the first year, of the sum by which the new rates exceeded the old ones, yet this was a matter within the discretion of the Revenue authorities, and the plaintiff could not demand the remission as a matter of right; that his remedy, if he was not satisfied with the decision of the Collector, was to have appealed to the supreme Revenue authorities and to Government, and it was not shown that he had done this. The Joint Judge, therefore, decided that the plaintiff had no cause of action against the Collector, and that the Collector was authorised by law to do what he had done. He consequently decreed for the defendant with costs.

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The arguments in appeal have been the same as were urged upon the consideration of the Lower Court.

On a careful consideration of the provisions of Reg. XVII of 1827, and Act I. of 1865, we have come to the conclusion that the Judge was in error in holding that Sec. 42 of the latter Act, which prohibits an occupant relinquishing his holding unless he gives a written notice to the Collector on or before the 31st of March in each year, was applicable

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only to the holders of land under a Survey Settlement. The Act is a sort of supplement to Reg. XVII. of 1827, and it is declared, by Sec. 51, that it is to be read and taken as part of Reg. XVII. of 1827. This last-named Section has now been repealed by Sec. 20 of (Bombay) Act IV. of 1868; but as this Act only came into operation on the 27th of January 1869, Sec. 51 of Act I. of 1865 was still in force, both when the plaintiff's cause of action arose, and when the suit was instituted and decided; and, consequently, the Regulation and Act, when applied to this case, have to be read together, as forming a single Regulation. It follows, then, that Sec. 42, cl. 1, which provides an earlier date for the relinquishment of occupancy than had been fixed by cl. 1, Sec. 6 of the old Regulation, is of general application, and is not limited to lands in which a new Survey Settlement has been introduced. It must be taken to have been substituted for cl. 1, Sec. 6 of Reg. XVII. of 1827; and, consequently, it changed the period for the surrender of all lands which came within the scope of the Regulation and its supplemental Act. Mr. Dhirajlal, the Government Pleader, has argued that the plaintiff might have relinquished his land at any time before the *Mrugsal*, or 5th June; but the Mamlatdar of taluka has frankly admitted in his deposition in the vernacular that he would not have accepted any resignation of land if made on the 1st April, or any later date, unless for special reasons he show necessity to refer the matter to the Settlement Officer for his decision. It appears to us, then, that, under the law as it stood, the plaintiff, at the time that it was notified to him that the new survey rates would be introduced when sanctioned by Government had lost the option of relinquishing his lands, and would have been liable, under Sec. 42, for the revenue of 1867-68, whether he had resigned his holding or not.

A very important question then arises: Were the Revenue authorities bound to give him notice that enhanced rates would be demanded from him prior to the date fixed as the latest on which he could throw up his lands and escape his liability for the annual assessment? The Act is silent on the

point and mentions no period within which a notice should be made that increased assessment will be hereafter demanded. We think, however, that when the Act declared that a Rayat was bound to pay the revenue of a particular year unless he should have previously relinquished his holding by a particular date, it by implication imposed on the Revenue Officer the obligation of giving the Rayat notice that an increased assessment would be demanded from him within some reasonable time prior to the latest date on which he could exercise his right of relinquishing his land. Sec. 31 only provides that the assessment under a revenue settlement shall be payable at such dates, and according to such instalments, as may from time to time be determined under the orders of the Governor in Council but we cannot suppose that the Legislature intended by this enactment to declare that the Governor in Council might fix arbitrarily the introduction of new rates at any date he pleased. Reading this Section in connection with cl. 1, of Sec. 42, the true interpretation would seem to be that the restriction placed upon the exercise by the Rayat of his right to surrender, and the declaration of the continuance of his liability for assessment, if his relinquishment was not notified by a particular date, imposed a corresponding obligation upon the Government to give him notice of enhancement within a period which would allow him to consider his position and leave him at liberty to exercise without obstacle or injury his right to resign the land. It would be most unjust to an occupant to hold that his assessment could be raised after he had lost his option of throwing up the land.

The Joint Judge has found that, in the District out of which this suit has arisen, the time for the preparation of land for cultivation ordinarily commences in March, and it would be obviously inequitable to delay till April to inform an occupant, like the plaintiff, that he would be liable to increased rates. He would then have commenced upon the preparation of his lands, and have made his arrangements with his sub-tenants, on the supposition that the old rates would be continued, and would not be in a position either

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to relinquish his holding, or to prevent the burden of the increase of assessment falling entirely upon himself. We think that we are bound to put an equitable construction on the Act, and that, under the view we have expressed, the notice of the increased assessment was, in the case of the plaintiff, made too late to admit of its being lawfully levied within the year 1867-68.

It would seem that in the adjacent sub-division of Bankot, where the new rates were introduced under somewhat similar circumstances, though the notice of enhancement was promulgated at a still later date, remission was made, in the first year, of the difference between the old and new rates; and we think it is much to be regretted that similar consideration did not induce the Collector to extend a similar measure of equity to the plaintiff. The principle which should have governed both cases was the same, though the hardship is more glaringly apparent in the instance in which remissions were granted than in the present case.

It has been strenuously argued before us that the plaintiff, if injured by the act of the Collector in ordering the levy of the new rates from him, should have appealed to the superior Revenue authorities and to Government before he had recourse to the Civil Courts, and that, as he had not done this, his suit should not have been entertained. We are of opinion that it was competent to the plaintiff under Sec. 9 of Reg. XVII. of 1827, if aggrieved by the Collector's decision directing him to pay increased assessment, to file an action in the Civil Courts, whether he applied for redress in Government or not. It was not the act of the Survey Officer fixing the new rates of assessment, subject to the sanction of Government of which the plaintiff complained as the Joint Judge appears to have considered. It was the act of the Collector, in directing the levy of the new rates from the plaintiff during the fiscal year 1867-68, to which the plaintiff objected; and the law we have cited was expressly given him the remedy to which he has had recourse. We are of opinion that the decree of the Joint Judge must be

reversed, and we declare that the order for the levy of the new rates from the plaintiff, in the fiscal year 1867-68 was illegal, as well as the distraint made under that order, and we award to the plaintiff the sum of Rs. 29-2-4, being the amount claimed in the plaint, with interest at 9 per cent, per annum from the date when the additional assessment was levied or paid, till the date of repayment. We also direct that the defendant pay all the costs which may have been incurred by the plaintiff in this Court, and in the Court below.

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Decree reversed with costs.

Referred Case.

Lachiram Jayasangji...	<i>Plaintiff.</i>
Ramji bin Shivji.	<i>Defendant.</i>

April 27.

Stamp—Promissory note for payment of grain—Act X. of 1862, Schedule A.

An instrument, the form of a promissory note for grain, should be stamped under Art. I. of Schedule A. of Act X. of 1862, with a stamp of the value of one rupee.

Case stated for the opinion of the High Court by Janardhan, Vasudevji, Judge of the Court of Small Causes at Puna, under Sec. 22 of Act XI. of 1865.

"In this suit the plaintiff sues the defendant for the recovery of five-and-a-quarter mans of *nagli* and three mans of *bhat*, or their value, Rs. 24-12-0, on a promissory note dated the 5th of August 1865.

"The note is for one-and-three-quarter mans of *nagli* and four-and-a-half mans of *bhat*, and is written on a stamp of two annas.

"The defendant, amongst other pleas, pleads insufficiency of stamp for the promissory note.

"The question for consideration, therefore, is under what article of schedule A annexed to Act X. of 1862 will a promissory note for grain come.

"A note of this description will not come under either the 10th or the 12th article of that schedule, as both those