1869
Sept. 15.

Special Appeal No. 295 of 1869.

Govind Purshotam Kolatkar ... ... *Appellant.*
The Sub-Collector and Deputy Conservator of Forests of Colaba. ... ... *Respondents.*

Timber trees—Title of occupier to trees growing upon his land—Bombay Act I. of 1862, Sec. 40.

The occupier of land who does not come under Sec 40 of the Bombay Survey and Settlement Act 1865 has not, in the absence of agreement, any proprietory right to the trees growing on his land.

This was a Special Appeal from the decision of A. Bosanquet, Acting District Judge of Thana, in Appeal suit No. 90 of 1868, confirming the decree of A. Lyon, Assistant Judge, in Original Suit No. 9 of 1867.

The plaintiff in the original suit brought this action to have his right of property established in several teak and other trees in four fields (Survey Nos. 51, 57, 61, 62), which he held under assessment from Government in the village of Bellowlee. On the 18th of January 1867 the plaintiff received an order from the defendants forbidding him to cut the trees.

The defendants answered that the plaintiff had no right of property in the trees claimed, as the trees, teakwood and blackwood, being timber trees, were the property of Government. The plaintiff alleged that he held the land on which the said trees grew from the time of Mr. Dunlop's proclamation, and that the lands were within the limits on which it extended.

The proclamation ran, when translated, as follows :—

Proclamation of the Honourable Company Bahadur, by J. A. Dunlop Esq., Collector of and Magistrate Zillah Southern Concan.

It is hereby proclaimed, for the information of all, that it has been the practice hitherto for the Government to claim all teak, sisur, and other timber trees within the limits of the zillah, even when growing on private lands, on which account people where discouraged from preserving and rearing these timber trees on their lands The Government having heard this, and bearing in mind that all people will be much benefited by the rearing and cultivation of teak, sisur, and other trees in the country, hereby proclaim, for the information of all, that, exclusive of the Government forest in the Sawera taluka and Malvan taluka, whoever may have teak and

other trees growing on their land outside these limits will be exempted from all claims on the part of Government. Those who are the owners of trees, or who will hereafter raise them on their private land, will be allowed to dispose of them according to their pleasure. No obstruction will be caused on the part of Government.

Dated 1st March 1824.

1869

Govind Purshotam Kolatkar v. The Sub Collector and Deputy Conservator of Forests of Colaba.

The Assistant Judge found that the plaintiff had no right of property in the trees. The allegation of long enjoyment as owner of the land and the trees he held not established by the evidence adduced, which only went to show that the plaintiff has paid assessment since 1852-53. As continuous enjoyment for more than twenty years was not established, the Assistant Judge held that the plaintiff could not take the benefit of the proclamation issued by Mr. Dunlop, nor could he claim the benefit of Rule 10 of the Survey Joint Rules.

The plaintiff appealed from this decree to the District Court. The District Judge held that there was no satisfactory evidence "that plaintiff had any right of occupancy in these lands before 1852; and this being the case, that the Assistant Judge was right in ruling that the plaintiff could not take the benefit of Mr. Dunlop's proclamation." He accordingly confirmed the Assistant Judge's decree.

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

Shantaram Narayan for the appellant:—The presumption of ownership in the trees is in favour of the holder of the land in which the trees grow. The lands have been held by the plaintiff ever since 1852, and even earlier, on condition of paying the survey assessment. By Sec. 40 of Act I. of 1865 it is enacted that "permission to occupy land shall in all future settlements include the concession of the right of Government to all the trees growing on that land, which are not then specially reserved." The plaintiff is admittedly an occupant or holder of the land under Government, and has thus, under Sec. 40 of Act I. of 1865, an absolute right to the trees growing on his land, unless, indeed, there was any special reservation on this head, which has not been shown. On the contrary, this land formed part of the lands in Southern Concan, to which District Mr. Dunlop's procla-

1869

Govind Purshotam Kolatkar v. The Sub-Collector and Deputy Conservator of Forests of Colaba

mation applies. By the proclamation Government expressly abandoned all their right to the teakwood and other timber trees growing on private lands not included in the limits of the forests reserved. That proclamation was intended to encourage the cultivation of timber trees, which had been much neglected before on account of this right of interference on the part of Government. There had thus in this case been a complete waiver of any right to the teak and timber trees growing on these lands on the part of Government, and now, by express legislation, occupant rights in land include a right to the trees. The Lower Courts drew an unwarranted inference from the fact that the plaintiff appears to have paid the assessment on the land only since 1852. In 1852 the survey operations commenced in this part of the country. Before that year much waste land, attached to lands under cultivation, was enjoyed by the cultivating tenants without being entered in the assessment books. All such lands were assessed for the first time in 1852, and hence the reason of the entries in the receipt-book commencing with that year. No presumption against prior possession can be reasonably drawn from the absence of such entries, a mistake which has misled both the Lower Courts.

Dhirajlal Mathuradas for the respondents:—The finding of the Lower Courts that possession dates from 1852 downwards is a finding on facts, and cannot be controverted. Sec. 40 of Act 1. of 1865 applies to unoccupied assessed lands which are taken up for the first time; in which case the concession of the trees will be deemed to be included in all *future* settlements. The section, therefore, cannot apply to the present case. The new Survey Act in Sec. 3 confirms all the previous settlements. Government does not part with its right to the ownership of the lands when it lets them to the ryots to cultivate for one or more years. The occupant ryot has no proprietory interest in the land. The survey joint rules expressly require that the holding must exceed twenty years to confer a right to the trees. The proclamation of 1824 also does not protect the present plaintiff, as both the Courts below have held.

1869

Govind Purshotam Kolatkar v. The Sub-Collector and Deputy Conservator of Forests of Colaba

COUCH, C.J.:—This is a case between landlord and tenant. There is nothing to show that the tenancy confers any other right than that of occupying and cultivating the land for thirty years, as guaranteed by the settlement. Were it otherwise, the tenant might cut down the timber trees in one year, and throw up the land the next year, for nothing prevents his doing so. The thirty years' term restricts the power of the Government to alter the assessment, but in no way enforces a continued occupation of the land upon the tenant while the term lasts. The trees are timber trees growing on Government land, and the proprietory right to the trees is derived from the property in the land.

MELVILL, J. concurred.

Decree affirmed with costs.

Regular Appeal No. 9 of 1868.

Vaman Janardan Joshi ... ...*Appellant.*

The Collector of Thana and The Conservator of Forests. ... ...*Respondents.*

Sanad—*Construction*—Inamdars, *right to cut timber*—*Prescriptive title.*

Sept. 30.

In construing grants by former governments, the rule of English law as to the construction of grants to a subject by the Crown is the correct rule to be applied by the Courts in India.

Where a *sanad* contained only the words "the village of Manavali has been conferred on you as *inam*, to be enjoyed by you, your son, and grandson. The government dues of the village, viz., the *koolbab koolkanoo* (*i. e.*, all taxes, and assessments), present taxes, and future taxes, together with the house-tax, but exclusive of *haks* due to *hakdars*, shall continue to be debited from year to year, from the year next succeeding."

It was *held* that the plaintiff's *sanad* did not operate as an alienation of the *soil* of the villages, or confer on him a proprietory title in it, and therefore gave the plaintiff no right to the timber growing upon the soil.

The holder of such a *sanad* having only a right in the revenues and none in the soil of the village, cannot, by thirty years user, become the proprietor of the timber.

This was an Appeal from the decision of Arthur Bosanquet, Judge of the District of Thana, in Suit No. 8 of 1867.

The facts of the case are briefly these.