

Regular Appeal No. 37 of 1871.

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Nov. 8.

PREMESHANKAR RAGHUNA'THJI.....*Appellant.*
THE GOVERNMENT OF BOMBAY*Respondent.*

Service Lands—Jurisdiction—Civil Courts—Resumption of Service Lands—Act (Bombay) VII. of 1863—Local Legislature, Powers of—Regulation of Mofussil Courts.

Cl. 4 of Sec. 11. of Bombay Act VII. of 1863 (an Act for the summary settlement of claims to exemption from the payment of Government land revenue) enacts that no suit or action between Government and the holders of * * * any lands held for service in regard to the tenure of such lands shall be entertained in any Court of Civil Judicature. *Held* that the phrase lands "held for service" means lands declared by Government under Sec. 32 (d) of the Act to be so held, though the plaintiff may deny that the lands in respect of which he sues are service lands.

The laying down of general rules by Government as to the resumption of service lands, under Art. 3, Cl. 3, of Sec. 11. of the Act, is not a condition precedent to their protection from suits and actions in respect of such lands.

The Governor of Bombay in Council has power to pass Acts limiting or regulating the jurisdiction of the Courts in the Mofussil established by the local Legislature, and such Acts are not void because their indirect effect may be to increase or diminish the occasions for the exercise of the appellate jurisdiction of the High Court.

The policy of Government as shown in its course of legislation of recent years with reference to judicial institutions, as compared with its policy at the time when the Elphinstone Code was passed, reviewed.

THIS was a regular appeal from the decision of W. H. Newnham, Acting District Judge of Súrat, in Original Suit No. 22 of 1870.

The plaintiff, Premshankar, sued to recover Rs. 7-15-6, which sum, he alleged, had been wrongfully levied by the Collector of Súrat on a certain piece of land in the occupation of the plaintiff.

The defendant answered that the land had been held for service, which was no longer required (that of keeping a school), and, therefore, that assessment had been levied upon the land, and that, under Bombay Act VII. of 1863, it rested with the Government, and not with the Civil Courts, to decide whether the land was service land or not.

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The Acting District Judge, who tried the original suit, being of opinion that, under Bombay Act VII. of 1863, he had no jurisdiction in the matter, dismissed the claim.

The appeal was argued before WESTROPP, C. J., and WEST, J., on the 6th of September 1871.

Anstey (with him *Nánábhái Haridás* and *Chunilál Mánik-lál*), for the appellant:—The judgment of the learned Judge against which we appeal rests on a supposed relation between Sec. 32 (d) of Bombay Act VII. of 1863 and Sec. II., Cl. 3, Art. 3, of the same Act. He has, I contend, mistaken the intent of the Act, which was not intended to take away the jurisdiction of the Civil Courts, but to make the determination of Government, with respect to lands actually held for service, the basis upon which the judgment of the Civil Court should be rested. Here the lands in respect of which we sue are not service lands.

If the view of the Judge as to the construction of this Act be a correct one, then I say that a local Legislature had no power thus to limit the action of the Civil Courts, and that the Act is inoperative: *Dr. Bonham's Case* (a), *Podger's Case* (b), *Lord Cromwell's Case* (c). [WESTROPP, C. J., referred to the remarks in 1 Kent's Comm., 10th ed., pp. 502, 503, upon *Dr. Bonham's Case*.]

The Bombay local Legislature could not pass this law, as it affects the jurisdiction of the High Court on its Appellate Side, which can withdraw suits from the Mofussil Court, and to which in most cases there is a right of appeal. In *Reg. v. Reay* (d) it was held that the creation of a concurrent criminal jurisdiction over European subjects affected the jurisdiction of the High Court, and that the Act, so far as it had that effect, was void. The Act (VII. of 1863) does not give the Government absolute power to deal with service *ináms*: *Government of Bombay v. Dámodhar Parmánandás* (e), where it was held that the Government has no power to resume

(a) 8 Rep. 107 a. (b) 9 Rep. 106 b. (c) 4 Rep. 12 b.

(d) 7 Bom. H. C. Rep., Cr. Ca. 77.

(e) 5 Bom. H. C. Rep., A.C.J. 202.

majmudári watans by dispensing with the performance of services in respect of them if the holders are willing to perform such services.

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The Government have laid down no general rules under Sec. II., Cl. 3, Art. 3, of the Act, and Sec. 32 (d) of the Act does not debar the Judge from deciding such suits as the present until such rules are laid down. The framing of such rules is a condition precedent to the exemption of Government from civil action in respect of service lands.

Down to 28 & 29 Vict., c. 63, no Colonial Legislature had authority to pass laws interfering with or repugnant to the Statute or Common Law of England. The delegation of power to legislate, without an express enactment empowering interference with Acts of Parliament, does not extend to anything that would derogate from an Act of Parliament.

34 & 35 Vict., c. 34, s. 3, enables the local Legislature to repeal or to amend its Acts confirmed by the Government of India.

He cited 33 & 34 Vict., c. 3; 32 & 33 Vict., c. 98; 3 & 4 Wm. IV., c. 85, ss. 81-86; 24 & 25 Vict., c. 104, ss. 11, 13, and 31; Forsyth's C. L., pp. 32, 33.

Mayhew (with him *Dhirajlál Mathurdás*, Government Pleader), for the Collector :—There would be no sense in the power given in Sec. 32 (d) of the Summary Settlement Act unless it be exclusive. Sec. II., cl. 4, completely protects the Government. The local Council had full power to legislate for Gujarát, its people and courts, by 24 & 25 Vict., c. 67, s. 42. The High Court Act had not then been passed.

Anstey, in reply :—The plaintiff denies that he is the holder of any service land. Cl. 4, Sec. II., applies to such a holder only.

Cur. adv. vult.

November 8th. The judgment of the court was delivered by

WEST, J. :—The judgment of the Court below in this case rests, as correctly stated by Mr. Anstey, on the relation

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between Sec. 32 (d) and Sec. II., Cl. 3, Art. 3, of Bombay Act VII. of 1863. By the former it is provided that "Government shall be competent to determine any question that may arise in giving effect to this Act as to whether or not any lands are lands held for service." The latter says that "Lands held for service shall be resumable or continuable under such general rules as Government may think proper from time to time to lay down." The form of the action here implies that Government has in fact determined the lands in suit to be service lands, and has, on that ground, resumed them, that is, made them liable to assessment in the ordinary way. Cl. 4 of Sec. II. says that "no suit or action between Government and the holders of any lands held for service, in regard to the tenure of such lands, shall be entertained in any Court of Civil Judicature," and on this the District Judge has relied in declining to exercise jurisdiction. It has been urged on us that the Act has not in fact any such effect as this, but that it merely binds the Judge to adopt the ruling of Government as to the nature of the holding as the ground of his decision. This would not, perhaps, practically lead to results very different from those which flow from the view taken by the District Judge. The resumption, under a power expressly given, of lands authoritatively declared to be service lands, and therefore resumable at the will of the Government, could not form a valid ground of action. But then, if we have rightly apprehended Mr. Anstey's learned argument, it is contended that the enactment of such provisions as these, and the exemption of Government from suits on account of service lands resumed by it, are beyond the competence of the local Legislature. In support of these views he has cited a great number of authorities, through which it will not, we think, be necessary to follow him in detail. It is enough, in our opinion, to say that they afford no effective support to the conclusion that the local Legislature is debarred, by the mere circumstance of its dependence, from making laws for the regulation of the Mofussil Courts subsisting, not by any charter from the Crown, but by the creation and protection of the local Government itself.

A dependent Government can make laws for all purposes, consistent with the laws of the dominant country applicable to the dependency. It was solely in the exercise of such a power as this that the Zillá Courts were constituted by the Regulations of the Elphinstone Code—courts which have been recognised and substantially continued by Act XIV. of 1869. That Act is one passed by the Governor General in Council, but Bombay Act VII. of 1863 was passed while the District Courts subsisted under their original constitution alone. The powers of the Governor in Council, at present, for legislative purposes, are defined by Stat. 24 & 25 Vict., c. 67, s. 42. He may “make laws and regulations for the peace and good government of (this) Presidency, and for that purpose repeal and amend any laws and regulations made prior to the coming into operation of this Act by any authority in India so far as they affect (this) Presidency.” In the next section there follows a specification of certain subjects on which the Governor in Council is not to legislate, but amongst these no mention occurs of the jurisdiction of the Mofussil Courts. It cannot be said that the regulation of the Civil Courts and their powers is not an element of the “peace and good government of this Presidency;” and when the local Government found it consistent with its policy to limit the powers of the Civil Courts in the case of service lands, it was quite within its competence to make such modifications of the laws previously in force as were necessary for that purpose. It was pressed on us, indeed, that the High Court could withdraw to itself civil suits instituted in the Mofussil Courts if it saw fit; that an appeal to it lies in all cases tried originally by a District Judge; and that thus the Act of the Bombay Legislature (putting the District Judge’s interpretation on its clauses) goes directly to deprive the High Court of a jurisdiction conferred on it by the Statute and Letters Patent constituting the court: and in one sense there is some force in this argument. The Act, no doubt, removes the possibility of some contingencies arising, on the happening of which this court might exercise its powers on the Original Side or in hearing the appeal. But we do not think that this operation of the Act can reasonably be

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held to "affect the provisions" of the Statute constituting the High Court in the sense intended by the Legislature. Every ordinary law passed by the Governor in Council, if it is to be effectual, must be made so by some sanction. That sanction must be enforced by the courts subject to the appellate and superintending authority of the High Court. Thus the passing of such a law necessarily adds to the jurisdiction of this court in the sense of the number of subjects to which its judicial authority may possibly be extended. Conversely, every repealing Act diminishes its jurisdiction in a similar sense. Are the Acts therefore void? Such a conclusion, completely paralysing the local Legislature, would obviously defeat, not promote, the purposes of the Imperial Parliament. The provisions of the statute must plainly receive a more liberal construction—one liberal enough to admit of the local Legislature extending or restricting the powers of the courts, its own creatures, even though the possible occasions for the exercise of this court's jurisdiction may thus indirectly be increased or diminished in number.

What then is the proper—that is, the intended—effect of the provision in cl. 4 of Sec. II. which we have cited? *Prima facie* it is unquestionably a direct and complete bar to the exercise of jurisdiction by the Civil Courts in such a case as the present. It was indeed, in the last stage of the argument before us, contended that the clause applies only to holders of service lands; that the plaintiff here denies that his land is subject to provide for service at all; and that, therefore, the clause can have no application to him. But the phrase lands "held for service" plainly means, not lands so described in the plaint, but declared to be so by Government under the powers conferred by Sec. 32 (d). The plaintiff is the holder of such land; and the clause says that his suit shall not be entertained. The literal sense, however, of an apparently peremptory direction such as this, is not unfrequently modified by its place in the law, by the context, by the scope and purpose of the law itself, and by its relation to the general course of legislation. We, therefore, took time to consider how far, if at all, on duly weighing these circumstances in the

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present case, we might be justified in moderating the literal rigour of a somewhat arbitrary rule. Art. 3 of Cl. 3 says that service lands shall be "resumable under 'general rules,'" and, provision being thus made for some degree of regularity in the determination of claims; we should have been inclined, had the words we have just quoted stood unqualified in the clause, to read the two provisions of it and of Cl. 4 together, and to hold that Government was in these cases protected against a civil action only when it had in fact laid down some general rules and conformed to them. But the general rules "are such as Government may think proper from time to time to lay down." Words so loose as these cannot, we think, be fairly construed as imperative; they seem meant to leave everything to the discretion of Government, or at most to be merely directory. But at any rate they are not so clearly imperative as to deprive the absolutely imperative words in Cl. 4 of their natural effect. When we find it prescribed without qualification that "no suit or action" shall be entertained as to the tenure of service lands, we cannot think that jurisdiction is restored by a mere direction in another clause, that Government is to follow general rules such as it "may think proper from time to time to lay down."

The general tenour of the Act is opposed to any construction by which the power of final disposal, in the cases for which it is intended to provide, reserved to the Governor in Council, should be made subject to revision by the Civil Courts. A trace of the older system may be found in the appeal, given by Sec. 19, to the District Court against a decision of a Collector on a case submitted to regular investigation. But even this is to be taken with Sec. 14, which throws the proof of title in such cases exclusively on the assertor of his right, while Sec. 28 provides carefully against any disturbance or investigation by the Civil Courts of summary settlement once approved by the Government. The course of legislation on similar subjects in recent times shows a greater and greater contraction of the spirit of liberality, and of confidence in its judicial institutions, which

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animated the Government in framing the Elphinstone Code of 1827. The merits or demerits of this policy we do not intend to discuss, but we must note the fact as throwing light on the probable intentions of the Legislature in passing Bombay Act VII. of 1863. Thus viewing the subject, we do not think it improbable that the Government intended to withdraw the whole class of cases to which our attention has now been directed from the cognisance of the tribunals to which it was content to leave the adjudication of its subjects' mutual rights and duties where its own interests were not concerned. Neither the general purpose of the Act, therefore, nor the circumstances under which it was passed, seem to enable us to give to the words we have had to construe any other than their literal interpretation.

We must, therefore, confirm the decree of the District Judge, but, looking to all the circumstances, without costs.

Decree confirmed.

Dec. 8.

Regular Appeal No. 36 of 1871.

BINDA'CHARI *Appellant.*
I. DRACUP, Magistrate F. P., Dhárwar... *Respondent.*

Preliminary Proceedings—Vakil's Right to appear for Complainant—Crim. Proc. Code, Sec. 180.

At an inquiry held by a Magistrate under Sec. 180 of the Criminal Procedure Code for the purpose of ascertaining the truth or falsehood of a complaint, the complainant has no right to be represented by a *vakil*, who, therefore, cannot sue the Magistrate for damages for not allowing him to appear for the complainant upon such an inquiry.

THIS was an appeal from the decision of Baron De H. Larpent, Acting Judge of the District of Dhárwár, in Original Suit No. 15 of 1869.

The plaintiff, who was a *vakil* in the Dhárwár District, sued to recover damages incurred by him in consequence of the defendant having, in his capacity of a Full Power Magistrate in the same district, refused to accept a *vakálatnáma* presented in the defendant's court by the plaintiff on behalf of his client, one Samnúji, who had charged one Dhuláji and another