1871.

DULLABH SHIVLA'L v. HOPE *et al.*

Mr. Dhirajlál Mathurádás, founded on Sec. 27 of Act XXIII. of 1861, that this suit being of the nature cognisable in a Court of Small Causes under Act XLII. of 1860, and the demand being under Rs. 500, no special appeal lies to this court.

We, however, permit the plaintiff to withdraw his special appeal without costs, and thus the special appeal must be considered as having never been presented; and, under Sec. 376 of Act VIII. of 1859, he may apply to the District Judge for a review of his decree, which, under all of the circumstances of the case, we think, notwithstanding the lapse of more than ninety days, ought to be granted, and that on such review the District Judge ought to affirm the decree of the Assistant Judge with costs.

Order accordingly.

Regular Appeal No. 13 *of* 1870.

Dec. 1.

SAKHA'RA'M VITHAL A'DHIKARI ....*Appellant.*
THE COLLECTOR OF RATNA'GIRI' *et al.* ......*Respondents.*

Sale of Land by Non-Judicial Order of Collector—Suit to recover Land so sold—Limitation—Act XIV. of 1859, *Sec.* I., *cl.* 3.

The "order" of a Collector or other officer of revenue, as the word is used in the latter portion of cl. 3 of Sec. I. of Act XIV. of 1859, means an order of the nature of a decree, or made by the Collector or other revenue officer in his judicial capacity.

Where a piece of land, embraced within the operations of the Revenue Survey, and subjected to a defined assessment, was put up for sale by the Collector in consequence of the occupant refusing to pay a fine to be allowed to continue in occupation of it, and was purchased by one of the defendants, and the occupant, asserting that he had been wrongly dispossessed, sued to set aside the sale, and to be declared entitled to recover the land and retain possession of it, on condition of paying the assessment as settled upon it by the revenue officers, but delayed bringing his suit until June 1869, the sale having taken place in January 1867:

It was held that, though more than one year had elapsed from the date of the sale, the suit was not barred under the provisions of cl. 3 of Sec. I. of Act XIV. of 1859.

THIS was an appeal from the decision of A. Lyon, Acting Judge at Ratnágirí, in Original Suit No. 63 of 1869.

1871.

SAKHA'RA'M V. A'DHIKARI v. COLLECTOR OF RATNA'GIRI' *et al.*

It was heard on the 2nd of September 1870 by LLOYD and KEMBALL, JJ.

Ráv Sáheb Vishvanáth Náráyaṇ Mánḍlik and *Gaṇpatráv Bháskar* for the appellant.

Dhirajlál Mathurádás (Government Pleader) for the Collector, and *Shántáram Náráyaṇ* for the other respondents.

After argument the case was referred to the Full Bench with the following observations, from which the facts of the case fully appear :—

LLOYD, J. :—In this case Sakhárám Viṭhal A'dhikari sued the Collector of Ratnágiri and three others to obtain possession of certain land, which he alleges is ancestral property, of which he has had possession for upwards of forty years, but which, in the month of January 1867, the Collector, with the approval of the Superintendent of the Revenue Survey, sold to the defendant Rámchandra, who subsequently made the property over to Samsuddín.

On the issue of limitation raised by the defendants, the Acting District Judge expressed his opinion "that the claim is not barred, as, looking to the construction of cl. 3, Sec. I. of Act. XIV. of 1859, I think the order of the Collector, as an executive officer, directing a sale of the property of another, is not such an order as is contemplated by that clause. Cl. 3 refers evidently to an order of a judicial nature made by a Collector sitting in a court of justice ;" but he threw out the claim, because the plaintiff failed to prove that he was the occupant of the land within the meaning of Sec. 3 of Reg. XVII. of 1827.

Against this decree Sakhárám Viṭhal has preferred an appeal, and I am of opinion that Mr. Lyon has disposed of the case too summarily, and not allowed sufficient time to the plaintiff to secure the attendance of his witnesses, as it appears, on reference to the papers on the record, that the summonses were not served till so late a date that it was hardly possible for the witnesses to attend at the District Court on the day on which the case was decided, and, there-

fore, I think the case should be remanded in order that the witnesses may be examined. But the *vakils* for the defendants are opposed to this, on the ground that the claim is barred under cl. 3, Sec. I. of the Limitation Act, which, they contend, has been wrongly interpreted by the District Judge; that the sale of the land having taken place in January 1867, and the plaint not having been filed until after the expiration of one year, namely, on the 12th of June 1869, the claim is inadmissible; and in support of their argument they refer to the decision passed in Miscellaneous Appeal No. 5 of 1870.

On the other hand, the plaintiff's *vakils* uphold the view taken by the Acting Judge on the question of limitation, and allege that as the sale did not take place under Sec. 5 or Sec. 7 of Reg. XVII. of 1827, the only law under which the Collector has power to dispose of land, the order of the Collector was an arbitrary and illegal one, wholly opposed to Sec. 36 of Act I. of 1865, Bombay; and that as the words "order of a Collector," in cl. 3, Sec. I. of the Limitation Act, must be construed with reference to the whole section, they should be held to refer to a judicial order, and, therefore, the limit of one year will not apply to this case. It appears to me that we should interpret such a provision of the law very strictly against the party setting it up in bar, and that it cannot have been the intention of the Legislature to curtail the limit provided for the recovery of immoveable property by cl. 12, Sec. I. of the said Act in cases of this kind, when the order of the Collector is apparently one which he had no authority to issue; and I am myself inclined to coincide with the opinion of the Acting Judge. As, however, the question is one of some difficulty and of considerable importance, and there is a decision by two of my learned colleagues, which is deserving of the greatest respect, against my view, I think it desirable to make a reference to a Full Bench.

KEMBALL, J.:—I also am of opinion that it is advisable the question involved should be referred to a Full Bench. It is true that I was one of the Judges who gave the deci-

1871.

SAKHA'RA'M V. A'DHIKARI v. COLLECTOR OF RATNA'GIRI' *et al.*

sion, in Miscellaneous Appeal No. 5 of 1870 on Friday the 29th of July last, referred to by my brother Lloyd, but I did so doubtingly; and the point of limitation against the decision of the lower court, which held that the term of one year was applicable, was very imperfectly argued before us.

The case was, accordingly, on the 3rd of July 1871, argued before a Full Bench, consisting of WESTROPP, C.J., MELVILL, KEMBALL, and WEST, JJ.*

Cur. adv. vult.

WESTROPP, C.J. :—The facts of the case out of which the present reference has arisen, are set forth in such detail in the previous proceedings, that a very brief recapitulation of these will suffice for the purposes of this judgment. A portion of land, apparently a *khár*—exposed, unless protected by artificial means, to inundations of the sea—situated within the operations of the Revenue Survey in the Ratnágirí District, and subjected to a defined assessment, was put up to sale by the Collector, and purchased by the third respondent. The appellant, asserting a wrongful dispossession of himself, sued, on his right as an occupant of the land before the Survey, to recover and retain possession of it, on condition only of paying the rent or assessment imposed upon it by the revenue officers of the Government. But this suit was not brought until June 1869, the sale having taken place in January 1867, and it is objected for the respondents that, more than a year having thus elapsed from the date of the Collector's order, the claim was barred by cl. 3, Sec. I. of Act XIV. of 1859. The question we have to determine is whether this is so or not.

Cl. 3 of Sec. I. of Act XIV. of 1859 provides for four classes of cases in which suits may be brought to set aside sales of land or other property :—

(1) Sales under decrees of Civil Courts;

* NOTE.—The judgment in this case was prepared by Mr. Justice West, but he having retired from the Bench on the return of Mr. Justice Lloyd from England before there was an opportunity of delivering it, it was, as above stated, delivered by Westropp, C. J., on behalf of himself and the other members of the Court.—ED.

(2) Sales for arrears of Government revenue or other demands recoverable in like manner;

(3) Sales of *paṭni tálukás* for current arrears of rent;

(4) "To suits to set aside the sale of any property, moveable or immoveable, sold in pursuance of any decree or order of a Collector or other officer of revenue, the period of one year from the date at which such sale was confirmed, or would otherwise have become final and conclusive if no such suit had been brought."

Within any one of the first three of these classes the present case cannot reasonably be brought. The Collector's order was not made in any judicial capacity. The sale was not one made for arrears of Government revenue; it has not been contended that any such arrears, or other sums recoverable in the same manner as such arrears, were due. There was, no doubt, a "demand" made by the Collector—a demand of a fine or payment for the lease or occupancy of the land—but this was not a demand of the nature of a debt recoverable like an arrear of land revenue. It was merely one of the terms of a proposed bargain, which the plaintiff might accept or refuse at his option. With *paṭni tálukás* we have nothing to do on this side of India; and the question is thus reduced to one of the proper construction of the fourth branch of cl. 3.

This, again, for the purposes of the present case, resolves itself into a question of the proper extension, that is, the extension intended by the Legislature of the words "or order" following the word "decree." The word "order," being more general and comprehensive in its import, must undoubtedly, when it follows two or more words of a more confined and specific meaning, as for instance in Secs. 19, 20, and 21 of the Act under consideration, be construed as relating to the same class of subjects as the preceding words. The enumeration shows clearly to what class the mind of the Legislature was directed, and it is not to be supposed, without some express indication, that it was suddenly diverted to a different class. Here, as there is but a single

1871.

SAKHA'RA'M V. A'DHIKARI *v.* COLLECTOR OF RATNA'GIRI' *et al.*

term of more specific meaning preceding the more general word, the construction based on their immediate association is somewhat weaker, but still the law of congruity, which usually governs thought and expression, must be taken to have exercised its influence, unless there be something to show that this was not so. When a rule is laid down with reference to a decree or order, the impression naturally is of an "order" proceeding from the same, or at least a similar source, and of the same general character, and the distinction between administrative and judicial commands is so well recognised that an abrupt transition from the one species to the other would, we might expect, in all ordinary cases be clearly indicated. That the word "order," therefore, taken in its broadest sense, would include a class of cases bearing little or no resemblance to decrees, is not a sufficient reason for giving to it in this case so wide an extension. "A thing which is within the letter of a statute is not within the statute, unless it be within the intention of the makers" (Bac. Abr. VII., 458*); and that intention can be gathered more certainly by attention to the specific words than to those of more general import, which are commonly employed to prevent cases not strictly comprehended within the more precise terms, though within the purpose of the Legislature, escaping from the operation of the new law (*a*).

These considerations point very strongly, as it seems to us, to the limitation of the sense of the word "order" in this place to that of an order of a judicial nature. If, indeed, such orders proceeding from a Collector were unknown to the law or of extremely rare occurrence, there might be some difficulty in adopting this interpretation, but this is by no means the case. Even under the Bombay Code, the Collector at the time when Act XIV. of 1869 became law was invested with judicial functions of an important character, which subsisted until the passing of Bombay Act II. of 1866, if in some respects they do not

* Tit. Statute I. 5.

(*a*) *Hawkins* v. *Gathercole*, 6 De Gex, M., & G. 1; *Cope* v. *Doherty*, 2 De Gex & J. 623, 624, per *Turner*, L. J.

1871.

SAKHA'RA'M V. A'DHIKARI v. COLLECTOR OF RATNA'GIRI' *et al.*

subsist at this moment. But the Limitation Act provided rules for the whole of British India; and in Bengal, as is well known, the Revenue Courts, presided over by the Collector and his Assistants, exercise an extensive and important jurisdiction. In such cases as those to which Secs. 86 and 110 of Act X. of 1859 relate, we find an appropriate and sufficient scope for the operation of the words "decree or order of a Collector or other officer of revenue," such as to give them full and due effect without any sudden and forced transfer of thought from one sphere of the Collector's duty to another entirely different.

If, from the particular branch of cl. 3 which we have been considering, we pass to a consideration of the whole clause, we find the view we have taken corroborated. Each branch of the clause contemplates a deliberate proceeding taken upon due notice to the person affected, and with an opportunity to him to take steps to avert the evil of an unauthorised sale before it is consummated. In the case of sales under a decree of a Civil Court this is too plain to require any exposition. In the case of revenue defaulters, or of debtors to Government standing in the same position, ample provisions for notice and for opportunity to prevent needless injury are made in the laws authorising distraint and sale, whether we look to those, such as Act XI. of 1859, intended to operate in Bengal, or under the Bombay Code, to those contained in Reg. XVII. of 1827, Sec. XII., cl. 6, and kindred enactments. So also in the case of sales of *patni tálukás*, as may be gathered from Bengal Reg. VIII. of 1819, Secs. 3 and 18, and the other enactments bearing on this subject. Now this being evidently the general principle of the clause that a deliberate and public proceeding of a judicial, or at least of a *quasi*-judicial character, shall be held a justification for refusing further inquiry after the lapse of so short a period as a year, we cannot reasonably suppose that a case was intended to be included in which, as in the one before us, there may have been none of those preliminary proceedings (*b*) which afford a *primâ facie* safeguard against

(*b*) *Vide* per *Coleridge*, J., in *Cooper* v. *Harding*, 7 Q. B. 941.

1871.

SAKHA'RA'M V. A'DHIKARI v. COLLECTOR OF RATNA'GIRI et al.

wrong to an owner of property. Taken where it stands in the clause, the branch of it which we are especially considering seems not intended to apply to orders of the administrative kind issued at the mere discretion or caprice of a revenue officer. The general operation of a Limitation Act is to withdraw from suitors and creditors rights, which they previously possessed, of prosecuting their claims at their convenience. There is no abstract injustice to any one in these rights, but for the sake of public convenience, and to prevent the possibility of false claims founded on the loss of evidence by which they might be rebutted, it has been found expedient to impose limits of time upon their exercise. But when a limitation of a common right is imposed, we must be careful not to make the restriction narrower than was intended by the Legislature. When the previously existing law, or right, has not been clearly abrogated, it must be taken as still subsisting. Applying this principle to the case before us, we must not carry the restriction further than will satisfy the obvious intention; the construction asked for by the respondents wonld in our view exceed that intention, and cannot be admitted. It is true that in the case of *Kṛishṇáji Vishvanáth Joshi* v. *Mukund Chimanshet* (c) the late learned Chief Justice of this court adopted a rule of construction different from that which we have laid down. There, in a suit by the purchaser at an earlier sale in execution against a purchaser at a later sale, who had dispossessed him, the learned Chief Justice held that the suit was one to set aside a sale, and, guided by the supposed analogy of Secs. 246 and 247 of the Code of Civil Procedure, he determined that the claim was barred by the clause we are now considering. But the suit was not directly one to set aside a sale, though it might aim at a similar result, and the inclusion, within the operation of the clause, of a case not clearly comprehended in its terms, was on further consideration found unsustainable. In the subequent case of *Lálchand Ambáidás* v. *Sakhárám valad Chandrábhái* (d) Sir Richard Couch says: " Cl. 3 of Sec. I. of Act XIV. of 1859 is in terms applicable only to suits to set aside the sale, and the concluding words

(c) 2 Bom. H. C. Rep. 19. (d) 5 Bom. H. C. Rep., A. C. J. 139.

1871.
SAKHA'RA'M v. A'DHIKARI v. COLLECTOR OF RATNA'GIRI' *et al.*

appear to show that it should be construed strictly; [they] are inapplicable to a suit where the dispossession is the cause of action." These cases are useful as an illustration of the principle that an Act diminishing a common right cannot safely be given, by judicial construction, an operation going beyond the plain intention of the Legislature. Before the latter of them had been decided, Sir Barnes Peacock, delivering the judgment of a Full Bench, had already adopted the principle of a strict construction in the case of *Partaub Chunder Chowdhry* v. *Brojo Lall Shaha and others* (e), and in another case at page 256 of the same volume. The case of *J. Poulson* v. *Modhoosoodun Paul Chowdhry*, reported at p. 101 of the Full Bench Rulings of the High Court of Bengal (f), presents some features very similar to that now before us. There the question being whether the mention of "rents of any buildings or lands" in cl. 8, Sec. I. of Act XIV. of 1859, superseded or not the express provisions as to rent-suits in Act X. of 1859, Norman, Acting Chief Justice, says, "the word 'lands' in clause 8 may have a sufficient meaning given to it by treating it as a term subordinate to houses, that is, as applying to houses and lands appurtenant thereto as distinguished from lands, forest rights, fisheries, and the like, in the sense in which the word is used in Sec. 23 of Act X. of 1859.". The mere mention of "lands" was held not necessarily to include within the scope of the enactment all the cases which the term itself might etymologically comprise when there were indications that the purpose of the Legislature did not really extend so far.

It appears to us, then, equally on principle and on authority, that the suit in this case is not barred by the operation of cl. 3, Sec. I. of Act XIV. of 1859. The appeal will be remitted for disposal to the Division Court with this expression of our opinion.

1st December 1871. The case coming on before the Division Bench again, it was remanded for re-trial with reference to their judgment dated the 2nd of September 1870.

Decree reversed and case remanded.

(e) 7 Calc. W. Rep., Civ. R. 253. (f) S. C. 2 Calc. W. Rep., Act X., Rul. 21.