1873.
August 28

[APPELLATE CIVIL JURISDICTION.]

Regular Appeal No. 42 *of* 1873.

PRALHA'D MA'HA'RUDRA .....*Appellant.*
A. C. WATT, LATE SENIOR ASSISTANT JUDGE OF POONA AT SHOLAPUR, and others ...*Respondents.*

Judge knowingly and maliciously issuing an illegal order while acting judicially—Jurisdiction—Malice—Cause of action against a Judge—Act XVIII. of 1850*—Limitation—Suit for damages for wrongful deprivation of property—Act. XIV. of* 1859, *Sec.* 1, *cls.* 2 *and* 16.

A plaint against a Judge, averring that the Judge, knowingly and maliciously, issued an illegal order to the plaintiff's injury, does not disclose a sufficient cause of action against the Judge. It must not only aver that the Judge had no jurisdiction, but also that he had no reasonable and probable cause for supposing that he had jurisdiction.

To a suit to recover damages caused by wrongful deprivation of property, the limitation of six years applies under Sec. 1, cl. 16, of Act. XIV. of 1859, and not of one year under cl. 2.

THIS was an appeal from the decision of E. Cordeaux, Assistant Judge, F. P., at Sholapur, rejecting the plaintiff's claim.

The plaintiff alleged that the first defendant, Mr. A. C. Watt, when Senior Assistant Judge, F. P., at Sholapur, knowingly and maliciously issued, on the 28th of September 1870, an illegal order, which the second defendant, the Názir of his Court, executed, though aware of the illegality of the order; and, moreover, in doing so, exceeded the limit prescribed by it, and deprived the plaintiff of all his property. He, therefore, sued them as well as the third defendant, at whose instance the order had been issued.

The defendants, *inter alia*, pleaded that the suit was barred by cl. 2, Sec. 1, of Act XIV. of 1859.

Mr. Cordeaux rejected the claim as barred on the following authorities: *Amirthhammál* v. *Ranganádha* (*a*); *Sheikh Ahmedoolla* v. *Hur Churn Pandah* (*b*); *Ramnath Roy Chowdhry* v.

(*a*) 3 Mad. H. C. Rep. 165. (*b*) 2 Cal. W. Rep. Civ. R. 235

Huro Chunder Roy Chowdhry (*c*); and *Kázee Nasseeutoollah* v. *Roop Sona Bebee* (*d*).

The appeal was heard by WEST and NA'NA'BHA'I HARIDA'S, JJ.

Sitárám Pandit and *Janárdhan Sakhárám Gádgil* for the appellant.

Dhirajlál Mathurádás, Government Pléader, for the first respondent. The other respondents did not appear.

Dhirajlál:—Admitting every allegation in the plaint to be true, it does not disclose a cause of action against the first respondent.

The facts admitted in the plaint are 1st, that Mr. Watt was a Judge, and 2nd, that he acted judicially. The plaint then alleges that he knowingly and maliciously issued an illegal order to the prejudice of the plaintiff. There is no allegation that there was no reasonable and probable cause for issuing that order. Even granting that the Judge was depraved enough to issue the order maliciously, there is no cause of action against him: *Girdharlál* v. *Jagannáth* (*e*), Broom's Legal Maxims, 5th Ed. pp. 85 to 87. In the case of *Hari Rávji* v *Janárdan Vásudevji*, Special Appeal No. 41 of 1873 (*f*), the plaint did allege want of good faith in the defendant, who was a Small Cause Court Judge; but the Court held that, as he had issued his order in his judicial capacity, in a matter in which he had jurisdiction, no action lay against him.

Sitárám and *Janárdhan, contra*:—In the plaint these three words occur, viz. 'maliciously,' 'illegally,' and 'knowingly,' which if liberally construed mean that Mr. Watt had no jurisdiction. But, supposing that the plaint does not aver want of jurisdiction, Mr. Watt did not act reasonably, carefully, and circumspectly, and was, therefore, liable: *Vináyak Divákar* v. *Bái Itchá* (*g*), *Víthobá Malhárí* v *Corfield* (*h*). It is not necessary to specifically aver want of jurisdiction. It is implied in the allegation in the plaint. With regard to the case against the other respondents, there is an averment in the

(*c*) 5 Idem 50.
(*d*) 7 Idem 499.
(*e*) Ante p. 182.
(*f*) See note at end of the case.
(*g*) 3 Bom. H. C. Rep. A. C. J. 36.
(*h*) Idem. Appx. 1.

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plaint that the second defendant exceeded the order given by the first defendant. So that there can be no doubt that against the second and the third defendants there is a cause of action; and the Assistant Judge below was wrong on the very authorities quoted by himself on the point of limitation. No injury is alleged in this case to any person or personal property, and, therefore, cl. 2, Sec. 1. of Act XIV. of 1859 has no application. Six years under clause 16 have been applied both at Calcutta and Madras.

WEST, J.:—On behalf of the first respondent in this case, the objection has been raised that the plaint discloses no cause of action as against him, and to this contention we are compelled to yield. The suit against the first defendant was expressly in his character of Assistant Judge of Sholapur. The act complained of was an order issued by him in that capacity. It was not alleged that it was one that he had no jurisdiction to issue. If the order had been one beyond his jurisdiction, it would still have been necessary to aver that there was no reasonable and probable cause for the Assistant Judge's supposing, after due inquiry, that he had jurisdiction to issue the order (Act XVIII. of 1850); but whether he had reasonable and probable cause or not, cannot be a material question where, by the absence of any allegation to the contrary, it is admitted that he had jurisdiction, and, in the exercise of it, did the act complained of.

It has been argued that as the plaint complains that the Assistant Judge "knowingly and maliciously issued illegal orders," a cause of action is sufficiently set forth in it. Illegal orders, it has been urged, when knowingly and spitefully made, constitute an excess of jurisdiction, since no one is invested with authority to pervert or abuse the law. The answer to this is, that although the law cannot, and does not, contemplate its perversion by its own ministers, yet jurisdiction is a capacity to command, which is not made in any way dependent upon the private motives or the conscientiousness of the officer invested with it. He may be actuated by the very worst feelings towards the person affected by his order, and yet keep strictly within his jurisdiction. And if

he does keep within his jurisdiction, it is a well established principle that he is not civilly responsible to the party who may, however justly, think he has been injured by the Judge's acts. A Judge, in fact, exercising the functions of adjudication and those immediately ancillary to it, represents the State. He is appointed by it, and, while acting within the province assigned to him, is responsible to the State alone for any abuse of the powers it has assigned to him. This accounts for what was insisted on as a strange anomaly, that a Judge should be criminally responsible at the same time that no suit for damages can be entertained against him. The State may prosecute and punish him for a gross dereliction of duty, at the same time that it will not allow him, so long as he sits as its representative, to be harassed by actions brought by disappointed suitors to whom, except mediately through it, he is under no legal obligation.

When to this consideration we add that of the infinite confusion and probable dead-lock which would arise from the legal possibility of every losing party, of whom there must be one in every suit, bringing an action against the Judge, and of the Judge in his turn, if unsuccessful, suing the other Judge who had pronounced against him, it is not at all surprising that a protection against such proceedings should have been recognized as necessary in every system of jurisprudence. The law in England and in India, tender as it is of the rights and privileges of individual subjects of Her Majesty, will not allow those rights to be protected in casual instances at the cost of undermining the authority of the tribunals on which the rights and the welfare of all depend. The cases cited before us, to support the opposite view, are really instances of the exercise of power without jurisdiction—physical power used in an unlicensed way quite beyond the scope of the magistrate's commission, while the decision of the Court of Exchequer in the case of *Scott* v. *Stansfield* (*i*), is an emphatic assertion of the correct doctrine based on a full examination of the subject. It has been followed by this Court in the recent case of *Hari Rávji* v.

(*i*) L. R. 3 Exch. 220.

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Janárdan Vásudev, and similar principles are involved in the judgment delivered by the Chief Justice in the case of *Girdharlál* v. *Jagannáth* (*j*).

As the plaint, therefore, alleged no act on the part of the Assistant Judge, by which he transgressed his jurisdiction, it was immaterial that it ascribed evil and unworthy motives to him. If, as has been suggested, the plaintiff really meant to say, that the Assistant Judge had acted without jurisdiction, and without reasonable grounds for supposing that he had jurisdiction, he should have said it. As he failed to do so, we follow the judgment last cited in pronouncing the plaint manifestly defective, and such as ought not to have been received by the Court of first instance. On this ground we affirm the decision of the Court below, so far as the first respondent is concerned. Costs on appellant.

The question between the other respondents and the appellant, is whether the suit was barred by limitation or not. The Assistant Judge has held that it was, and this conclusion he has supported by an intelligent argument; but the cases he cites show clearly that the authorities are against the view he has taken. No decision of this Court has been cited as to whether cl. 2 of Sec. 1 of Act XIV. of 1859 applies or not to a suit like the present one; but the mere absence of a decision almost necessarily implies the recognition here by the legal profession of what must be regarded as the settled doctrine of the High Courts at Calcutta and Madras. The case is one of simple obscurity of expression in an enactment; and in such a case we think it right to abide by the solution arrived at by the highest authorities, unless we can see clearly that it is wrong. We

NOTE.—The plaintiff, Hari Rávji, sued Janárdan, the Judge of the Small Cause Court at Puna, for damages, arising from his want of good faith in granting his sanction to a third party to prosecute the plaintiff for the offence of having obtained execution of his *entire* decree against the third party, withholding from the knowledge of the Judge that part of such decree had been satisfied. Hari Rávji was acquitted on the ground that he was not aware of the payment. This act of the Judge was held by MELVILL and WEST, JJ., to be done by him while acting in his judicial capacity, and that, therefore, he was not liable to an action in respect of such an act (*Scott* v. *Stansfield*, L.R. 3 Exch. 220).—ED.

(*j*) Ante p. 182.

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are far from seeing this in the present instance, and we, accordingly, reverse the decree of the Assistant Judge as between the appellant and the second and third respondents, and remand the cause for retrial on the merits and a new decree. Costs to follow the final decision, in so far as the parties exclusive of the first respondent are concerned.

Decree accordingly.

[APPELLATE CIVIL JURISDICTION.]

Special Appeal No. 84 *of* 1873.

July 16.

BHIKA'JI APA'JI, son and heir of the deceased defendant ..... *Appellant.*

JAGANNA'TH VITHAL .....*Plaintiff and Respondent.*

Suit by reversioner—Limitation—Act XIV. of 1859, *Sec.* 1, *cl.* 16.

A suit for a declaratory decree must be brought by the nearest reversioner, but there is no objection to a suit by a more distant reversioner when the prior rights of the nearer reversioner or reversioners have been waived.

A suit by a reversioner during a widow's lifetime, to declare a conveyance made by her to be void, must be brought within six years from the date of conveyance, Act XIV. of 1859, Sec. 1, cl. 16.

THIS was a special appeal from the decision of E. T. Candy, Extra Assistant Judge of Ratnagiri, reversing the decree of the Subordinate Judge of Dápoli.

The facts, in so far as they are material, are briefly as follow:—

Ramábái, a Hindu widow, owned a piece of land. She mortgaged it to the defendant with possession, and then transferred her equity of redemption to the plaintiff. The plaintiff, thereupon, sued the defendant for redemption, but was met on the grounds that Ramábái had sold the land to the defendant, and that she had no right to alienate it to the plaintiff. The plaintiff, therefore, now sues as a reversionary heir for a decree declaring the sale by Ramábái to the defendant invalid. The defendant, *inter alia*, contend-