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ought to have received them. We are quite certain that, issued, as they were, after he has made his decree, we ought not to receive them, nor ought we to suggest or facilitate any application to him for a review of his decree on documentary evidence that had no existence when he made it. We affirm that decree with costs.

*Decree affirmed.*

[ORIGINAL CIVIL JURISDICTION.]

*Suit No. 556 of 1873.*

*Appeal No. 266.*

July 3rd.

SORA'BJI DUNDAS .....	}	NASSARVA'NJI .....	} <i>Plaintiff and Appellant.</i>
THE JUSTICES OF THE PEACE FOR THE CITY OF BOMBAY.		}	} <i>Defendants and Respondents.</i>

*Bombay Act II. of 1865—Ejectment—Limitation—Acquisition of land for public purposes—Compensation—Mesne profits.*

Bombay Act II. of 1865, Section 240, does not apply to suits in the nature of an action of ejectment.

Acts relating to the acquisition of lands for public purposes must be construed strictly in favour of the subject.

The Court will not oblige the plaintiff in a suit in the nature of an action of ejectment to accept compensation.

*Quere*—Whether a claim to recover the mesne profits of land for which the plaintiff sues in ejectment comes within the provisions of Bombay Act II. of 1865, Section 240?

*Price v. Khilat Chandra Ghose* (5 Beng. L. R. Appx. 50) and the judgment of Phear, J., in *Poorno Chander Roy v. Balfour* (9 Calc. W. R. 535 Civ. Bul.) approved.

THIS was an appeal from the decision of Sargent, J., dismissing a suit brought to recover possession of certain land of which the plaintiff alleged that he had been deprived by the defendants in 1868, and to recover the mesne profits of the same land received by the defendants.

*Pigot and Purcell*, for the appellant, cited *Poorno Chunder Roy v. Balfour* (a), and *Price v. Khilut Chandra Ghose* (b). 1875.

*Scoble*, Advocate General, and *Lang*, for the respondents, cited *Lord Oakley v. The Kensington Canal Company* (c), *Whitehouse v. Felcoves* (d), *Lloyd v. Wigney* (e), *Hardwick v. Moss* (f), *Newton v. Ellis* (g), *Poulsum v. Thirst* (h), and *Wilson v. The Mayor, &c., of Halifax* (i).  
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The facts of the case are fully set forth in the following judgment of the Court—WESTROPP, C. J., and GREEN, J.—delivered by

WESTROPP, C.J.:—The first paragraph of the plaint states that this suit is brought to eject the defendants from certain land of the plaintiff, and to recover the rents and profits thereof received by the defendants to the use of the plaintiff. The second paragraph contains the description and boundaries of the plaintiff's land. The 3rd and subsequent paragraphs, down to the end of the 7th, trace the title of the plaintiff from one Jamsetji Boga Modi in the year 1798. The 8th para. alleges that the plaintiff was in possession of the land from 1858. The 9th para. states that a portion of the plaintiff's land consisted of an open yard, not built upon, situate between the plaintiff's house and Rampart Row, and about 80 square yards in extent. The 10th and 11th paras. contain the following averments:—"In the month of February 1868 the Municipal Commissioner for the City of Bombay by his servants and agents broke and entered the said yard of the plaintiff, and fixed certain boundary marks therein. The said Municipal Commissioner in the month of July 1868, by his servants and agents without the plaintiff's consent and against his will, took possession of all the said yard lying within the said boundary marks, and proceeded to build certain stalls or

(a) 9 Calc. W. R. 535 Civ. Rul.

(c) 5 B. and Ad. 138.

(e) 6 Bing. 489.

(g) 5 El. and Bl. 115.

(i) 3 L. R. 114 Exch.

(b) 5 Beng. L. R. Appx. 50.

(d) 10 C. B. N. S. 765.

(f) 7 H. and N. 136.

(h) 36 L. J. C. P. 225.

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shops thereon, and has kept the plaintiff out of the possession and enjoyment thereof, and has prevented the plaintiff, his family, and tenants, from having ingress and egress through the said yard to Rampart Row." The plaint then prays that the defendants may be ordered to quit and deliver up possession to the plaintiff of the piece of land containing 80 square yards, situate between the plaintiff's house and Rampart Row, and may be ordered to pay to the plaintiff the sum of Rs. 11,000 for mesne profits.

The defendants by their written statement submit that the suit, having been instituted more than three months after the accrual of the cause of action, is barred under the provisions of Bombay Act II. of 1865 and Bombay Act III. of 1872, or one of them. They further contend that the so-called yard never was in the possession of the plaintiff or any of his predecessors in title, but was a piece of vacant ground in the possession and occupation of Government.

The case came on for hearing before Sir Charles Sargent on the 17th August 1874, when five issues were raised; but the learned Judge, holding on the first of them, that the suit was barred, passed a decree in favour of the defendants with costs, without taking evidence or recording findings on the other issues.

Against that decree the plaintiff now appeals, and the arguments addressed to us have, of course, turned chiefly on the question of limitation. There can be no doubt that this suit is mainly in the nature of an action of ejectment, brought to recover possession of land, of which the plaintiff says he has been wrongfully dispossessed, and, as ancillary relief, seeks to recover the mesne profits received by the defendants from that land. The chief question is, whether the rule of limitation, contained in Bombay Act II. of 1865, Section 240, which was in force at the time of the seizure of the land by the Municipality (Section 287 of Bombay Act III. of 1872 is substantially identical with it), applies to suits in the nature of an action of ejectment, and for the decision of that question it has been necessary for us

to consider the whole Act. Section 240 is as follows:—"No writ or process shall be issued against or served upon the Justices of Peace for the city of Bombay, or any of them, or the Commissioner, or any of his officers, or any person acting under the direction of the Commissioner, *for anything done or intended to be done under the powers of this Act*, until the expiration of one month next after notice in writing shall have been delivered or left at the office of the Commissioner or at the place of abode of the intended defendant, stating with reasonable certainty the cause of such action, and the name and the place of abode of the intended plaintiff and of his attorney or agent in the cause; and upon the trial of any such action the plaintiff shall not be permitted to go into evidence of any cause of action, except such as is stated in the notice so delivered, and, unless such notice be proved, the Court shall find for the defendant; and every such action shall be commenced within three months next after the accrual of the cause of action and not afterwards; and if any person to whom such notice of action is given shall, before action brought, tender sufficient amends to the complainant, such complainant shall not recover in any such action when brought, and the defendant shall be entitled to be paid his costs as between attorney and client by the complainant; and if no such tender shall have been made, it shall be lawful for the defendant in such action, by leave of the Court where such action shall be pending, at any time before issue framed, to pay into Court such sum of money as he shall think fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into Court." Assuming, as we must, for the purposes of the present appeal that the plaintiff truly alleges the property to be his and to be wrongfully in the possession of the defendants, we have to decide whether the plaintiff is barred of his remedy because he has not given the notice or filed his suit within the time required by Section 240 of Bombay Act II. of 1865. Looking at the provisions of that section with respect to the tender of sufficient amends, and as to payment of money into Court, and also taking into consideration other sections of the Act, which we shall presently mention,

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we think that Section 240 is not applicable to such a suit as the present, brought for the purpose of recovering possession of immoveable property. An action of ejectment is not brought to recover damages (sufficient amends) for an act "done or intended to be done" under the powers of Bombay Act II. of 1865. The present is not, in so far as it seeks restoration of the land, a suit to recover monetary compensation for a wrongful act, but to recover possession of property alleged to be that of the plaintiff, and, therefore, does not appear to be an action of the class contemplated by Section 240.

Were we to hold that an action of ejectment is within the scope of Section 240 of Bombay Act II. of 1865, we should be ruling that, by mere seizure and wrongful possession for three months, immoveable property might be acquired by the Corporation. Sections 108 and 109 point out how the Corporation, if it desires to acquire the immoveable property of others, may lawfully do so. Section 108 runs as follows:—"The Commissioner may, with the sanction of the Justices, agree with the owners of any land for the absolute purchase thereof for the purpose of laying out and making new streets, or of widening, enlarging, or otherwise improving any of the public streets for any purpose whatever connected with the conservancy or general improvement of the city." And Section 109 says: "When there is any hindrance to the acquisition, by purchase, of any land or building required for the purposes of this Act, the Governor in Council, upon the application of the Commissioner, and after such inquiry as may be thought proper, may declare that the land or building is needed for a public purpose, and may order proceedings for obtaining possession of the same for Government, and for determining the compensation to be paid to the parties interested, according to any laws now or hereafter to be in force for the acquisition of land for public purposes. And the Governor in Council may vest such land or building in the Justices on their paying the compensation awarded." In the present case both parties agree that the land has been taken for a public purpose. It is not pretend-

ed that it has been purchased, and Section 109 provides that, where the Justices cannot agree with the owner of the land on the price to be paid for it, they can only proceed through Government. The Acts which enable Government to acquire land for public purposes ordain a special procedure, and it is not pretended that any such procedure has been resorted to in the present instance. One of the main objects of the notice required by Section 240 is to enable the Corporation to make compensation, and it is difficult to suppose that the Legislature intended to include a suit for the recovery of land within that section. There is nothing in that section to compel a person to accept compensation for land seized by the Corporation; nor is there in any statute, that we know of, any provision to the effect that, where wrongful possession is taken of land, the party suing to recover possession of his land should be compelled to accept compensation by money paid into Court. We are of opinion that this part of Bombay Act II. of 1865 only applies to those cases which are cases for compensation, and the Court never says, in a suit to recover possession of land, that it is a case for compensation. It must decide either that the plaintiff is entitled to have the land restored to him, or that he is not.

It is further to be noticed that in Acts of limitation care is always taken to provide for the cases of persons beyond the seas, or under disability, such as minority, coverture, and lunacy; but in Section 240 there is no such provision. We cannot believe that the Legislature intended that a minor, for instance, whose land had been seized by the Corporation, and who, by reason of his minority, was unable to sue for the recovery of it within the period specified in Section 240, should be deprived of all remedy.

Moreover, Acts relating to the acquisition of lands for public purposes must always be construed most strictly in favour of the subject (see 1 Boulois Rep. 565; 9 Bom. H. C. Rep. 190, 191; 15 Q. B. 1045, 1046). The mode of acquisition, being distinctly laid down in Sections 108 and 109,

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must be followed; and we should require very clear words to that effect in a section so arbitrary as Section 240 before we could hold that it was intended to include a suit in the nature of an action of ejectment; that is, that the Justices should be liable to suit only for three months in cases in which everyone else is liable for twelve years. We do not think that simple seizure and the lapse of three months was intended by the local Legislature to be a mode in which the Bombay Municipality may acquire lands; such a provision would be monstrous. We are also of opinion that Section 243, which provides for the apportionment of compensation by the Court of Petty Sessions, is not applicable to a case of the acquisition of lands for public purposes.

We refrain from expressing any opinion as to whether the claim to recover the mesne profits of the land can be sustained; or whether such an action comes within the provisions of Section 240, and is, consequently, barred in the present case. We think the question had better be left to be determined at the new trial, if the facts, as then established, render its determination necessary.

We are glad to perceive that the view taken of Section 87 of Bengal Act III. of 1864 by the High Court of Calcutta in the case of *Price v. Khilat Chandra Ghose (j)* supports our construction of Section 240 of Bombay Act II. of 1865. Phear, J., also, in the case of *Poorno Chunder Roy v. Bal-four (k)* seemed to lean to the same opinion as that expressed by Loch and Hobhouse, JJ., in the case in 5 Beng. L. R.

The cases cited by the learned Advocate General as to the scope of the words "intended to be done" in Section 240 of Bombay Act II. of 1865 are not material, unless it can be shown that Section 240 embraces actions to recover possession of lands, and this, as we have already stated, it does not.

We are, therefore, of opinion that the decree appealed against must be reversed, and the case be remanded for a

(j) 5 Beng. L. R. Appx. 50.

(k) 9 Calc. W. R. 535 Civ. Rul.

re-trial on the merits. If the plaintiff succeed ultimately in recovering the land, he must have his costs of this appeal from the defendants. If he do not so succeed, the costs of this appeal must be costs in the cause.

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*Order accordingly.*

[ORIGINAL CIVIL JURISDICTION.]

*Suit No. 760 of 1873.*

*Appeal No. 278.*

IBRA'HIM BIN MAHA'SIN .....	<i>Plaintiff.</i>	September 10.
ABDUR RAHIMA'N BIN ALLI.....	<i>Defendant.</i>	
HENRY GAMBLE, Official Assignee .....	<i>Appellant.</i>	
ABDUR RAHIMA'N BIN ALLI .....	<i>Respondent.</i>	

*Civil Procedure Code, Sections 106 and 119—Abatement—Notice—  
Dismissal of suit—Limitation.*

Section 106 of the Civil Procedure Code means that a suit abates by the insolvency of the plaintiff, but that the defendant shall not plead the abatement without giving the Official Assignee an opportunity of prosecuting the suit. Where, therefore, the plaintiff after the institution of a suit became insolvent, and the defendant thereupon obtained an order that the Official Assignee should give security for the costs of the defendant within fourteen days, and should be made a party to the suit within one month, and that, in default of such security, the suit should be set down for dismissal within eight days after the expiration of the time so limited,

*Held* that such order was irregular.

*Held*, also, that the Official Assignee, having notice of the order, was not entitled to further notice of the setting down of the suit for dismissal, he not having given the security required, and that the giving of such security was a condition precedent to his being made a party to the suit.

Where the suit was dismissed in accordance with the terms of the order mentioned above, and the Official Assignee did not apply, within thirty days of the passing of the order of dismissal, either to the Court making the order or to the Appellate Court, for its reversal,