

[APPELLATE CIVIL JURISDICTION.]

*Special Appeal No. 206 of 1875.*1875.
Nov. 30.KRISHNA'JI RA'VJI GODBOLE (PLAINTIFF AND APPELLANT) *v.* RA'M-
CHANDRA SADA'SHIV (DEFENDANT AND RESPONDENT).*Kabuláyatdár Khot—Dhárekaris—Occupant—Bombay Act I. of 1865, Section 2, Cls. J, K, and L, and Section 48—Regulation XVII. of 1827, Section 3, Cl. 1, and Section 5, Cl. 2—Inferior and Superior Holder—Privity of Estate.*

Regulation XVII. of 1827, Section 5, enables the Government, and, therefore, the holder of the rights of Government, on failure of the superior holder to pay the land revenue, to realize it from the inferior holder.

The laws for realizing the land revenue establish a kind of privity of estate between the superior and inferior holders, by which the latter, taking the profits of the land, must satisfy the obligations of the former to Government, independently of, and even in opposition to, any agreement between the two contracting parties. The liability to pay, adheres to the occupation and enjoyment, and cannot be got rid of, except through its resignation by the sovereign or the sovereign's representatives.

Held, accordingly, that when the person who was the "occupant" of certain land within the meaning of the Bombay Survey Act failed to pay the revenue due thereon, the *Kabuláyatdár Khot* might recover the amount from that person's mortgagee in possession.

THIS was a special appeal from the decision of A. D. Pollen, Assistant Judge at Ratnágiri, in Appeal No. 322 of 1874, reversing the decree of Chintáman Sakhárám Chitnis, First Class Subordinate Judge at the same place, in original suit No. 425 of 1873.

The plaintiff, Khrishnáji, brought this suit as *Kabuláyatdár Khot* of the village of Kele Mazagám for the year 1871-72, and sought to recover the amount of Government assessment due for that year on some land cultivated by the defendant, Rámchandra. The land was the property of one Lakshmibái, who mortgaged it to the defendant under a writing dated the 12th November 1869. The land remained entered in the Government books in the name of the mortgagor, Lakshmibái. The defendant denied his liability to pay, on the ground that he did not cultivate the land. The Subordinate Judge raised two issues: (1) Did the defendant cultivate the land and receive the produce thereof in 1871-72? (2) If so, is the plaintiff entitled to recover? He found both the issue

affirmatively, and in favour of the plaintiff. In appeal the defendant contended that the land had not been entered in the Government books in his name, and that, therefore, he was not answerable for payment of the assessment. The Assistant Judge raised the same issues as those tried by the first Court, but found the second issue negatively, and, therefore, against the plaintiff, whose claim accordingly was thrown out. The following are his remarks on the second issue:—

“On the second point, however, I do not think that there is on the record any evidence to justify me in finding that the defendant is responsible for the assessment to the plaintiff. The plaintiff was *Kabuláyatdár Khot* for the year in suit, and as such he is entitled to demand from *Dhárékaris* the amount of assessment on their *dhárás*. The survey is now in force in the village. It appears that *Lakshmibái*, the defendant's mortgagor, is the owner of the *dhára* of which the *thikáns* (fields) in dispute are a part. She is the ‘occupant’, and the defendant can only be regarded as her tenant, according to the definition given in the Survey Act. The land is entered in her name, and she, therefore, is the person primarily responsible for the assessment. The agreement made by the defendant with her in the mortgage bond with regard to the payment of assessment appears to me to be binding only on the parties thereto. I do not see that there is any privity of contract between the defendant and the *Kabuláyatdár Khot*. * * * I, therefore, think that the plaintiff's claim must fail, as being against the wrong person.”

The special appeal was argued before WEST and NA'NA'BHA'I HARIDA'S, JJ.

The Honourable Ráw Sáheb V. N. Mandlik for the appellant.—The respondent has been found by both the lower courts to have cultivated the land in the year for which the amount of assessment is sought to be recovered. The land revenue is a paramount charge on the land, and the respondent, who was in the actual occupation of it, ought to be compelled to pay it.

Vishnu Ghanashám for the respondent.—Under Bombay Act I. of 1865, Section 2, Cl. j, the only person recognized by Government with reference to the payment of assessment is the “occu-

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part", whose name is entered as such in the Government books. The defendant is not such occupant, and, therefore, not answerable for payment of assessment, though he has been held to have occupied and cultivated the land during the year in dispute.

[WEST, J.—By Section 48 of the Survey Act I. of 1865 the land revenue is to be collected according to the provisions of Regulation XVII. of 1827, and Section 5, Cl. 2, of that Regulation provides that the revenue, if not discharged by the superior holder, may be realized from the inferior holder, who in this case is the defendant.]

The defendant is not the inferior holder within the meaning of that clause. He is a tenant holding under the occupant, Lakshimbái, as defined by Bombay Act I. of 1865, Section 2, Cl. 1. The preceding Cl. 2 defines a "superior holder" to be the person having the highest right under Government to hold land or to engage with Government for the land revenue due on account of any village or estate. Now the person who in the present instance has engaged with Government for the payment of such land revenue, is the plaintiff, and, therefore, he is the "superior holder", intervening between the Government and the occupant, Lakshimbái, who consequently is the inferior holder.

[WEST, J.—This interpretation is opposed to Regulation XVII. of 1827, Section 3, Cl. 1.]

WEST, J.—The Assistant Judge has held the mortgagee in possession in this case not responsible for the land revenue of the fields held by him under the mortgage. The plaintiff, as *Kabulá-yatdár Khot*, is recognized by the Assistant Judge as "entitled to demand from *Dhárékaris* the amount of assessment on their *dhára*"; but Lakshimbái, the mortgagor, being owner of the *dhára* in question, and, therefore, occupant according to the Bombay Survey Act I. of 1865, the Assistant Judge has held that she, and she alone, is responsible for the assessment. That she is responsible for it, is true; but it does not follow that she is solely responsible, and Regulation XVII. of 1827, Section 5, enables the Government, and, therefore, the holder of the rights of Government, on failure of the superior holder to pay the revenue, to realize it from the inferior holder, a position which, in the sense of the Regulation, is held in this case by the mortgagee.

It is obvious that, if the occupant only could be made answerable for the rent or revenue due to the Government, it would only be necessary to effect a mortgage in order to defraud the State of its dues. This would be entirely opposed to the purposes of the laws for realizing the land revenue; and, in order to obviate any such result, these laws establish a kind of privity of estate between the superior and inferior holder, by which the latter, taking the profits of the land, must satisfy the obligations of the former to Government independently of, and even in opposition to, any agreement between the two contracting parties. The liability adheres to the occupation and enjoyment, and cannot be got rid of, except through its resignation by the sovereign or the sovereign's representatives.

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We must, therefore, reverse the Assistant Judge's decree, and restore that of the Subordinate Judge with costs throughout on the respondent.

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Miscellaneous Special Appeal No. 26 of 1875.

BA'KRISHNA BHALCHANDRA (ORIGINAL PLAINTIFF AND APPLICANT
SPECIAL APPELLANT) v. GOPAL RAGHUNATH (ORIGINAL
DEFENDANT AND OPPONENT, SPECIAL RESPONDENT).

Dec 15.

Hindu Law—Decree—Interest—Rule of 'dāmdapat' not applicable to amounts due on decrees.

The rule of Hindu Law, which limits the amount recoverable at one time by way of interest to the amount of the principal, does not apply to an amount recoverable in execution of the decree of a Civil Court.

THIS was a special appeal against the order of R. F. Mactier, confirming an order of the Subordinate Judge of Karád.

On the 6th of July 1861 the plaintiff, Bálkrishna, obtained a decree against the defendant for Rs. 440-5-6, and interest till the whole sum was paid up. On the 14th of February 1871 he presented an application for the recovery of the balance due on this