

## [APPELLATE CIVIL JURISDICTION.]

Before Sir M. R. Westropp, Knt., Chief Justice, and Mr. Justice  
Nánábhái Haridás.

1877.  
March 6.

GANGA'DHAR SHIVKARN (PLAINTIFF AND APPELLANT) v. THE COLLECTOR OF AHMEDNAGAR AND OTHERS (DEFENDANTS AND RESPONDENTS).\*

*Municipal Commissioner—Collector—District Magistrate—Acts done in public capacity—Act XXVI. of 1850—Act XIV. of 1869, Section 32—Bombay Act VI. of 1873, Section 86—Jurisdiction.*

Where the acts complained of by the plaintiff were committed by the Collector of a district, appointed Municipal Commissioner under Act XXVI. of 1850, Section 6, in his official capacity of District Magistrate, and before Bombay Act VI. of 1873 came into force,

*Held* that the Municipal Commissioner was an officer of Government within the meaning of Section 32 of Act XVI. of 1869, and ought to be sued in the Court of the District Judge and not in that of a Subordinate Judge.

*Quære.*—Whether a suit under Bombay Act VI. of 1873 must be commenced in the District Court.

THIS was a special appeal from the decision of A. Bosanquet, District Judge of Ahmednagar, reversing the decree of Purushotamráv Sidheshvar, 1st Class Subordinate Judge at the same place.

The suit was brought by the plaintiff Gangádhár against the Collector as President, and the Members of the Municipality of Ahmednagar, together with six other persons who had erected stalls by the orders of the Municipality on ground in front of the plaintiff's shop, for the removal of the stalls, and to recover damages sustained by the plaintiff by their erection. The plaint was filed in the Court of the 1st Class Subordinate Judge on the 4th December 1874. The orders which constituted the plaintiff's causes of action were given by the Municipality on the 4th and 14th May, and 5th June 1873. The Collector pleaded that the acts complained of were done by him in his official capacity as Collector and President of the Municipality, and that, therefore, the Subordinate Judge had no jurisdiction to entertain the suit under Section 32 of Act XIV. of 1869. The members of the Municipal Committee pleaded justification of the acts done, and absence of a notice from the plaintiff, as required by Section 86 of Bombay Act VI. of 1873, one month before date of the suit. The Subordinate Judge held that he had jurisdiction to try the suit, and

\* Special Appeal No. 321 of 1876.

that it was not barred by Section 86 of the Bombay Municipal Act. He, accordingly, passed a decision in favour of plaintiff for Rs. 339-13-6 on account of damages, and directed removal of the stalls complained of. In appeal, the District Judge held that, as the plaint was presented on the 4th of December 1874, Bombay Act VI. of 1873 applied to the case, and that the action was barred, as plaintiff gave no notice to the defendants as required by Section 86 of that Act.

The special appeal was argued only on the point of the jurisdiction of the Subordinate Judge to try the suit.

*Shivshankar Govindram* appeared for the appellant.

*The Honourable Rao Sáheb V. N. Mandlik*, Acting Government Pleader, appeared for the respondents.

WESTROFF, C.J.:—The acts alleged to have been committed by the respondents, and which are complained of by the special appellant as plaintiff, were so committed before Bombay Act VI. of 1873 came into force. The District Judge, therefore, was mistaken in supposing that its 86th Section is applicable to this suit. The enactment, which is applicable to it, is Act XXVI. of 1850, which does not contain any provision as to notice of action.

But the Government Pleader has renewed an objection to the jurisdiction of the Subordinate Judge, made in his Court, but not apparently repeated in the District Court. To that objection, founded on Section 32 of the Bombay Courts' Act XIV. of 1869, we must yield, inasmuch as we think that the Collector was, in his official capacity of District Magistrate, a member of the Municipality under the 6th Section of Act XXVI. of 1850, when the causes of action accrued; and, therefore, the reasoning in *Nursingráv v. Inarumanráv*<sup>(1)</sup> is applicable, and see also *Greaves v. Bhagwan Tulsi*.<sup>(2)</sup> Upon the possible question—whether a suit, under the new Bombay Act VI. of 1873, must be commenced in the District Court—we do not now give any opinion. It may, perhaps, be argued that Section 5 of that Act merges the individuality of the members of the new municipalities in the corporation thereby created, and empowered to sue and be sued in its corporate name. As we have already said, this suit must be regulated by Act XXVI. of 1850.

(1) I. L. R., 1 Bom. 318.

(2) 4 Bom. H. C. Rep. 93, A. C. J.

1877.

GANGA'DHAR  
SHIVKARN  
v.  
THE COL-  
LECTOR OF  
AHMED-  
NAGAR.

1877.

GANGA'DHAR  
SHIVKARN  
v.  
THE COL-  
LECTOR OF  
AHMED-  
NAGAR.

We reverse the decrees of the Courts below, and remand this cause to the Subordinate Judge in order that he may refer the plaintiff, pursuant to Section 32 of Act XIV. of 1869, to the District Judge, in whose Court the plaint must be presented. The District Judge should proceed in the cause in the ordinary way as upon the institution of a new suit, and should have regard to this judgment. The costs already incurred in the Subordinate Judge's and District Judge's Courts and in this special appeal must abide the final result of the cause.

*Decrees reversed.*

### [APPELLATE CRIMINAL JURISDICTION.]

*Before Mr. Justice Kemball and Mr. Justice Nanábhái Haridás.*

March 8.

*In re ANNAPURNA'BAI.\**

*The Code of Criminal Procedure (Act X. of 1872,) Chapter XXX.—Property alleged to be stolen—Its restoration—Order for its disposal by 2nd Class Magistrate—Reversal of the order by the Magistrate of the District—The effect of reversal.*

A was charged before the Police with theft of certain property. The Police considered that no theft had been committed, and reported the matter to a 2nd Class Magistrate, who, agreeing with the Police, ordered the property to be restored to A. On application by the complainant, the District Magistrate found that A had removed, though not dishonestly, the property from B, a deceased person; and ordered the property to be given by the Police to B's heirs. It was so given.

*Held* that the provisions of Chapter XXX. of the Code of Criminal Procedure do not apply to such a case. Sections 415, 416, and 417 contemplate proceedings preliminary to, and independent of, inquiry. Upon general principles, where there has been an inquiry, or a trial, and the accused person is discharged or acquitted by any Criminal Court, that Court is bound to restore that property into the possession of the person from whom it is taken, unless, as provided for by Section 418, such Court is of opinion that "any offence appears to have been committed" regarding it, then such order as appears right for the disposal of the property may be made.

The High Court cannot direct the restoration of the property already delivered by the Police under the illegal order of the District Magistrate.

THIS was a reference by W. Wedderburn, Session Judge of Tháná, under Section 296 of the Code of Criminal Procedure.

The circumstances of the case are as follows :—

\* Criminal Reference No. 10 of 1877.