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person invested with the powers of a Magistrate under the Code of Criminal Procedure." The Code of Criminal Procedure in force at the time when Bombay Act VIII of 1866 was passed, was Act XXV of 1861, and s. 16 of that Act provides that the words "the powers of a Magistrate" shall imply "the full powers of a Magistrate." It follows that a conviction under s. 11 of Bombay Act VIII of 1866 can only be had before a Magistrate, first class.

Order accordingly.

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[168] FULL BENCH—APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Acting Chief Justice, and Justices
 M. Melvill, Pinhey and F.D. Melvill.

BAI JAMNA AND ANOTHER, Applicants, v. BAI JADAV, Opponent.
 [1st December, 1879.]

Mamlatdar's Court—High Court—Jurisdiction—City—House—Regulation XVII of 1827, Ch VIII—Act XVI of 1838—Bombay Act V of 1864—Bombay Act VI of 1876.

The intention of Bombay Act III of 1876, as stated in the preamble, was not to abolish the old Mamlatdar's Courts and create new Courts under the same name, but was to bring into one consolidating and amending Act so much of the old law and such new law as appeared necessary for the continued regulation of the existing Courts. The High Court is, therefore, not deprived of the powers of superintendence and revision which it exercised over the Mamlatdar's Courts previously to the passing of that Act.

Per PINHEY and F. D. MELVILL, JJ.—Under Bombay Act III of 1876 the Court of a Mamlatdar has, for purposes of the Act, jurisdiction in a town or City situated within the ordinary limits of his taluka.

The word "premises" used in s. 4 of the Act includes "houses;" and the jurisdiction of the Mamlatdar's Court, consequently, extends over a house for purposes of the Act.

It being not denied that the city of Ahmedabad is within the limits of the Daskroi taluka, the jurisdiction of the Court of the Daskroi Mamlatdar extends over a house in the city of Ahmedabad.

[F., 5 B. 137; R., 7 B. 341 (345) (F.B.); 25 B. 318 (323) (F.B.); 31 B. 545=9 Bom. L.R. 1028; D., 13 B. 552.]

THIS was an application for the exercise of the High Court's extraordinary jurisdiction and for the reversal of the decree of the Daskroi Mamlatdar.

One Ranchhod Anopchand, an inhabitant of the city of Ahmedabad, died, leaving him surviving two widows, Bai Jadav and Bai Jamna, and his mother, Bai Suraj. Differences having arisen between the widows, Bai Jadav was expelled from the family residence. She, therefore, within six months of the event sued Bai Jamna and Bai Suraj in the Court of the Mamlatdar of Daskroi, at Ahmedabad, under Bombay Act III of 1876, and prayed to be restored to the joint possession of the house with the defendants. The Mamlatdar made a decree in her favour. Section 19 of the [169] Act forbids an appeal from an order passed by a Mamlatdar under the Act; the defendants, therefore, by their pleader, Mr. Nana-bhai Haridas, moved the High Court for a rule calling on the plaintiff to show cause why the decision of the Mamlatdar should not be set aside,

* Extraordinary Application No. 80 of 1879.

on the ground that his jurisdiction did not extend to a house in the city of Ahmedabad. The rule was granted, as prayed for, on the 10th of July 1879.

On the rule coming on for hearing before Kembal and F. D. Melvill, JJ., on the 6th of September 1879, a preliminary question arose whether since the passing of the "Mamlatdar's Court's Act, 1876" (Bombay No. III) the High Court has not been divested of the powers of supervision which it previously exercised over those Courts, and was referred for determination to a Full Bench composed of Sargent, C. J., M. Melvill, Pinhey and F. D. Melvill, JJ.

Nanabhai Haridas, Government Pleader, for the applicants.
Shantaram Narayan, for the opponent.

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JUDGMENT.

November 19, 1879. The judgment of the Full Bench was delivered by

M. MELVILL, J.—This case has been brought before a Full Bench, in order that it may be decided whether the effect of Bombay Act III of 1876 has been to divest the High Court of the powers of superintendence and revision which it exercised over the Mamlatdars' Courts previously to the passing of that Act.

The grounds on which the jurisdiction of this Court was founded are stated in *Mahadaji v. Sonu* (1). It seems to us that the question whether that jurisdiction has or has not been abolished, can only be answered by deciding whether the intention and effect of Bombay Act III of 1876 was to abolish the old Mamlatdars' Courts and create new Courts under the same name, or whether the Act merely provided for the continuance of the old Courts with more extensive powers. In the latter case we have no doubt that the jurisdiction of this Court continues; in the former it might perhaps be necessary to hold that that jurisdiction had ceased and determined.

[170] It must be admitted that, in portions of Bombay Act III of 1876, the phraseology employed is such as to afford some ground for the argument that the Legislature intended to make a clean sweep of the existing Mamlatdars' Courts and of all laws relating to them, and to call into existence and provide a constitution for an entirely new description of Courts. But this supposition is not in accordance with the preamble of the Act, which sets forth that the object was "to consolidate and amend the law relating to the powers and procedure of Mamlatdars' Courts," or, in other words, to bring into one consolidating and amending Act so much of the old law and such new law as appeared necessary for the continued regulation of the existing Courts. The phraseology of the Act seems to be borrowed from that of the Bombay Civil Courts' Act (No. XIV of 1869); and there is no more reason to suppose that it was the intention to substitute new Courts for the old Mamlatdars' Courts than that it was the object of the latter Act to abolish the Zilla Courts and the Courts of Principal Sadar Amins and Munsifs, and to create new Courts in their place. The intention of both Acts was to consolidate and amend, not to destroy and rebuild.

If we had more doubt than we have on this question, it would be removed by the consideration of the very great improbability that the Legislature, in giving largely increased powers to the Mamlatdars' Courts,

(1) 9 B.H.C.R. 249.

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would at the same time have exempted them from all supervision and control.

The case will be returned to the Division Bench, with an intimation that, in the opinion of this Bench, it has jurisdiction to deal with it.

The case having been returned to the Division Bench, the rule granted on the 10th of July 1879 came on for hearing before Pinhey and F. D. Melvill, JJ., on the 1st of December 1879; and Mr. Shantaram Narain, for the opponent Bai Suraj, was called on to show cause why the decision of the Mamlatdar should not be set down, on the ground that he had no jurisdiction within the city of Ahmedabad and none over a house wherever situated.

Shaniaram Narain, for the plaintiff.—The case involves two points for determination: 1st, whether the Mamlatar's Court has jurisdiction over a house; and, 2nd, whether, if it has, the [171] jurisdiction extends to the city of Ahmedabad, in which the house, the subject of litigation, is situated. The enactments which bear on these points are Regulation XVII of 1827, ch. viii; Reg. VI of 1830; Act XVI of 1838; Bombay Act V of 1864; and Bombay Act III of 1876, under which the present suit was filed. Clause 1 of s. 31 of the Reg. of 1827 gives the Collector cognizance of all claims for the possession of lands and land tenures. The word 'lands' includes all which stands on 'lands,'—that is to say, farm-houses and dwelling-houses. The jurisdiction of the Collector extended over the whole zilla, and of course included cities and towns. The chapter makes no mention of the Mamlatdar, who is introduced for the first time in this connection by Reg. VI of 1830, s. 1 of which empowered the Collector to transfer such suits to the Mamlatdar when the subject-matter in litigation did not exceed Rs. 500. Then came Act XVI of 1838, which introduced the word "premises" for the first time in conjunction with lands. Clause 1, s. 1 of the Act, modified the Regulation of 1827, and investing the Adalat or Civil Courts with jurisdiction as to tenures and *vatans* empowered the Revenue Courts to give immediate possession of "lands, premises, trees, &c." This shows that the jurisdiction of the Revenue Courts, extended over houses, which both in legal and ordinary phraseology are included in premises. [PINHEY, J., referred to *Ex parte Nagova kom Jakangavda* (1).] This case supports my contention. The context shows that the immoveable property mentioned in the case was a house: *Baji Dev v. Sadashiv Bhaishanker* (2). In Bombay Act V of 1864 we have the regular Mamlatdar's Courts *eo nomine*. Doubts were entertained, under the older Act, as to whether the Mamlatdars possessed original but merely derivative jurisdiction in virtue of a reference by the Collector; and to remove those doubts Act V was passed. Lastly, came the Act of 1876. It created no new jurisdiction, but repealing the previous enactments continued to the Mamlatdars the jurisdiction which the Revenue Courts had exercised over since 1838. The wording of s. 4 of this Act is pertinent to the question at issue, for it contemplates the fixing of territorial limits from [172] time to time by the Governor in Council. It is not pretended that the Governor in Council has excluded towns and cities from the cognizance of the Mamlatdars' Courts.

Nanabhai Haridas, Government Pleader, in support of the rule.—The lands mentioned in Reg. XVII of 1827 mean cultivable lands. It has

(1) 3 B.H.C.R. A.C.J. 108.

(2) 5 B.H.C.R. A.C.J. 158.

been repeatedly held that that regulation does not apply to lands in cities. The High Court having ruled that the Survey Act (Bombay) No. I of 1865, which, as provided in s. 51, is to be read as a part of the regulation, did not apply to towns and cities, the Bombay Legislature enacted Act IV of 1876, and declared it to be applicable to them. It is, therefore, clear that no provision of that regulation should be applied to cities, not to any lands or houses within the limits of cities. The result of holding that lands in cities included houses, would be to empower the Government to assess houses. The enactments which form the Regulation of 1827 make no change in the extent of jurisdiction conferred by it. The word 'premises' in the Act of 1838 and the subsequent Act is simply explanatory of the word 'lands,' and should be regarded as superfluous. And, moreover, 'lands' does not mean "all lands," but such as are within the ordinary territorial jurisdiction of the Mamlatdar. The Governor in Council has not made any order extending the operation of Bombay Act III of 1876 to towns and cities; and, so long as that is the case, towns and cities must continue to remain exempted from the Mamlatdar's jurisdiction. Lastly, Mamlatdar's decree in a city would be futile, for there are no village officers to execute it. Section 17 requires that Mamlatdars' decrees should be executed by village officers. [PINHEY, J.—Poona has village officers, although Ahmedabad and Surat may not have.]

PINHEY, J.—The plaintiff, Bai Jadav, and the first defendant, Bai Jamna, are the widows of Ranchhod Anopchand, and the second defendant, Bai Suraj, is their mother-in-law.

On the ground that she had been wrongfully turned out of her late husband's house by the defendants, plaintiff brought a suit under Bombay Act III of 1876, in the Court of the Mamlatdar [173] at Ahmedabad, claiming to be immediately restored to joint possession, of the house with the defendants. The Mamlatdar, holding the facts contained in the plaint established, awarded the claim.

The defendants have applied to this Court, in the exercise of its extraordinary jurisdiction, to set aside the order of the Mamlatdar, on the ground that it was made without jurisdiction, and on the 10th July 1879 a rule *nisi* was granted by Kembal and F. D. Melvil, JJ., to show cause "why the order of the Mamlatdar should not be reversed, on the ground that he had no jurisdiction within the limits of the city of Ahmedabad."

The rule has now been argued before us, and the contention of the applicants, which we have to consider, is two-fold, *viz.*, 1st, that a Mamlatdar's Court has no jurisdiction, under Bombay Act III of 1876, in respect of a house; and 2nd, that, under that Act, a Mamlatdar's Court has no jurisdiction in a town or city. The arguments have been somewhat lengthy and we have been asked to consider the history and constitution of the Revenue Courts from the time at which the regulations of 1827 became law up to the present time; but it is not necessary to consider these arguments in detail, because Bombay Act III of 1876 repeals all existing laws applicable to suits cognizable by the Revenue Courts, and in s. 4 declares what are the powers of Mamlatdars' Courts.

The Revenue Courts were first constituted by Reg. XVII of 1827, and to them was given exclusive jurisdiction in cases relating to land and its rent and produce. This jurisdiction was at first exercised by the Collector only, but it was afterwards extended, subject to certain limitations, to the Mamlatdars. If the Mamlatdars Courts now had jurisdiction only over the same subject-matter as was given to the Collector in

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1827, we should have found it difficult to hold that the jurisdiction over "land and its rent and produce" given by Reg. XVII of 1827 extended over an ordinary dwelling-house in the city of Ahmedabad.

But the jurisdiction of the Revenue Courts was greatly modified by Act XVI of 1838. It was restricted in one direction, and [174] considerably extended in another. It was restricted in respect of tenures, ordinary land suits and *vatans*, and suits regarding these were declared cognizable by the Civil Courts. It was extended in respect of claims arising out of recent dispossession, and suits for immediate possession, by parties dispossessed within six months (not only of land, as under the previous law, but) of land and premises were declared cognizable by the Revenue Courts, and the same term "land and premises" is used in Bombay Act V of 1864 which gave Mamlatdars' Courts, *eo nomine* jurisdiction to entertain and dispose of this class of cases. It is again used in Bombay Act III of 1876, the Act under which the present case was disposed of.

Section 4 of Bombay Act III of 1876 runs thus:—

"4. Every Mamlatdar shall preside over a Court, which shall be called a Mamlatdar's Court, and which shall have power, within such territorial limits as may from time to time be fixed by the Governor in Council, to give immediate possession of lands, premises, trees, crops, or fisheries, or of any profits of the same, or to restore the use of water from wells, tanks, canals or watercourses to any person who shall have been dispossessed or deprived thereof other than by due course of law, or who shall have become entitled to the possession or restoration thereof by reason of the determination of any tenancy, or other right of any other person in respect thereof."

It seems impossible to resist the conclusion that the word "premises," as used above, includes houses. It does so both in legal and ordinary language. This, too, is the interpretation that must have been put upon it by previous judicial decisions under Act XVI of 1838 and Bombay Act V of 1864, or those decisions would be meaningless. In *Ex parte Nagova kom Jakangavda* (1), which was a suit to recover possession of certain immoveable property of which the plaintiff had been unlawfully dispossessed within a period of six months in accordance with s. 15 of Act XIV of 1859, it was held by Couch, C.J., and Newton and Warden, JJ., that the Civil and Revenue Courts [175] have concurrent jurisdiction to hear and decide such suits. The contention of the defendant in that case was that by Bombay Act V of 1864 the suit was cognizable by the Mamlatdar's Court, and not in the Court of the Munsif. It is true that the property which formed the subject-matter of that suit is not described as a house or houses. Nor, on the other hand, is it described as a field or fields, or as land or lands. It is described as "certain immoveable property." It seems, however, at least improbable that so vague and yet so comprehensive a term would have been used if the plaintiff had only been dispossessed of a field or fields; and the context further confirms the presumption that the property in that suit comprised immoveable property of more than one kind, *viz.*, both houses and lands. In order to make this point quite certain, I directed the record of the case to be sent for; but I am told by the officer of the Court that unfortunately it has been destroyed.

In the next case, however, to which I shall refer, there is no room for entertaining the slightest doubt as to the interpretation which a Division

Bench of this Court put upon the words "land and premises." I refer to *Baji Dev v. Sadashiv Bhaishankar* (1). In that case "the Mamlatdar of Amod, in the Surat District, having ordered that immediate possession of certain property should be given to the applicant, under Bombay Act V of 1864, carried out the decision by deputing a person forcibly to break open the door of the house in dispute." The legality of the Mamlatdar's procedure having been referred for the consideration of the High Court, the Court (Newton and Tucker, JJ.) ruled:—"The Court is of opinion that a Court authorized, under Bombay Act V of 1864, to give immediate possession of lands and premises, has the power to direct the breaking open of a door of a house, when it may be necessary for the purpose of giving effect to its order." It is impossible to believe that the Court when making this order entertained any doubt as to the jurisdiction of the Mamlatdar's Court in what are called possessory suits over houses as well as lands. It appears, therefore, that the words "lands, premises, &c." used in s. 4 of Bombay Act III of [176] 1876 (included, as they do, houses) conferred no new jurisdiction on the Mamlatdars' Courts, but merely continued a jurisdiction which was conferred on, and had been exercised by, the Revenue Courts ever since 1838. And as this jurisdiction had been judicially recognized in reported decisions of this Court, it seems certain that, unless the Legislature intended that Mamlatdars' Courts should not exercise this jurisdiction in future, it would not have re-enacted in Bombay Act III of 1876 the identical words, under which it had been previously exercised. I, therefore, hold that a Mamlatdar's Court has jurisdiction, under Bombay Act III of 1876, in respect of a house.

As to the second point, *viz.*, whether a Mamlatdar's Court has jurisdiction, under Bombay Act III of 1876, in a town or city, I am of opinion that we should determine that he has such jurisdiction.

By s. 4 of this Act a Mamlatdar's Court has jurisdiction "within such territorial limits as may from time to time be fixed by the Governor in Council." A Mamlatdar's Court ordinarily has jurisdiction over the taluka in which the Mamlatdar holds his office, and the revenues of which it is his duty to collect. It is not necessary, for the purposes of this judgment, to say anything as to the jurisdiction of persons other than the Mamlatdar of a taluka, who may be specially authorized by the Governor in Council to exercise the powers of a Mamlatdar under the Act by cl. I of s. 3. The jurisdiction of the Mamlatdar's Court then extending over the whole taluka, of which the Mamlatdar is Mamlatdar, will operate in every town or city in his taluka, unless this jurisdiction is restricted or taken away by some other provision of the Act, or unless it can be shown otherwise that this jurisdiction was not intended to operate in a town or city. Now, there is nothing in the Act itself which restricts the jurisdiction or takes it away in cities and towns. The argument which the Government Pleader addressed to us, based on s. 17 of the Act, seems hardly worth consideration. He contended that as s. 17 directs that if the Mamlatdar's decision awards possession, he shall issue an order to the village officers to give effect thereto; and as there are no village officers in towns and cities; it [177] could not be intended that the Mamlatdar's Courts should have jurisdiction in towns or cities. But, even if it were correct to say that there are no village officers in towns or cities, the direction as to execution of orders,

(1) 5 B.H.C.R.A.C.J. 168.

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in the first para. of s. 17, would not be sufficient to take away the jurisdiction given by s. 4. As a matter of fact, however, it is incorrect to say that there are no village officers in towns or cities. There is nothing on the record of this case from which we can ascertain whether there are village officers in the city of Ahmedabad; but there are certainly village officers (patels and kulkarnis) in Poona, the largest city in this Presidency, and in innumerable other towns. It is not, therefore, a sound argument to contend that a Mamlatdar's Court cannot have jurisdiction over towns and cities, because there are no village officers to give effect to the Mamlatdars' orders under s. 17.

Another argument, however, on this point was addressed to us. It was contended that, although towns and cities are not expressly exempted from the jurisdiction of the Mamlatdars' Courts by the provision of Bombay Act III of 1876, it could not have been intended to give these Courts jurisdiction in towns and cities, because by repeated decisions of this Court it has been ruled that the revenue officers, the Collectors and Mamlatdars, who presided over the Revenue Courts before the passing of Bombay Act III of 1876, had no jurisdiction over towns and cities under Reg. XVII of 1827 and Bombay Act I of 1865 (an Act to provide for the survey, demarcation, assessment, and administration of lands held under Government in the districts belonging to the Bombay Presidency, and for the registration of the rights and interests of the occupants of the same) until it was conferred by Bombay Act IV of 1868.

The answer to this argument is that the jurisdiction of Mamlatdars' Courts in summary possessory suits does not rest and never rested on the provisions of Reg. XVII of 1827 and Bombay Act I of 1865, but on Act XVI of 1838, and not one of the decisions cited on this point touches the jurisdiction exercised under Act XVI of 1838. It is unnecessary to quote these decisions separately. They are all to one purport, *viz.*, that, under [178] the provision of Reg. XVII of 1827 and Bombay Act I of 1865, the revenue officers could not tax or assess to the Government revenue lands and houses in towns and cities until they were given that power by Bombay Act IV of 1868. A Mamlatdar is a revenue officer, and he is Judge of a Civil Court for certain purposes. Under another name, that is, as a Magistrate, he presides over a Criminal Court. But his powers as a revenue officer and his jurisdiction as Judge of the Mamlatdar's Court are as distinct from each other as each is from the jurisdiction which he exercises as a Magistrate. Under Reg. XVII of 1827, powers were given to revenue officers as such, and a jurisdiction was given to the Collector in cases relating to land and its rent and produce. A limited jurisdiction in similar cases was given to Mamlatdars by a later regulation. The powers and duties of revenue officers as such, including Mamlatdars, continue under Reg. XVII of 1827; but the jurisdiction in respect of cases relating to land and its rent and produce, was taken away from them, and a new jurisdiction in possessory suits was given to Revenue Courts by Act XVI of 1838. That jurisdiction is continued to Mamlatdars' Courts by Bombay Act III of 1876; but neither in that Act, nor in Act XVI of 1838, is there any provision which can be interpreted as limiting the jurisdiction of the Mamlatdars' Courts in towns and cities; nor do any of the decisions which have been cited to us, show that this Court has ever held that the jurisdiction of the Revenue Courts did not extend over towns and cities before Bombay Act III of 1876 became law.

The Mamlatdar at Ahmedabad is the Mamlatdar of the Daskroi Taluka in which Ahmedabad is situated and as it has not been shown

that the Governor in Council has excluded Ahmedabad or any other town or city in his taluka from his jurisdiction, we must hold that he has jurisdiction at Ahmedabad and, therefore, jurisdiction to entertain the plaint in this suit and to make the order which he has made.

The rule *nisi*, granted on the 10th July last, must be discharged with costs on applicants.

[179] MELVILL, J.—I concur in the opinion arrived at by Mr. Justice Pinhey, for the following reasons:—

The points that arise in the case are, whether a Mamlatdar's Court has jurisdiction in regard to a house, and whether it has jurisdiction in a town.

Mr. *Nanabhai*, who appeared in support of the rule *nisi*, which had been granted, has traced the course of legislation in regard to these Courts and the Revenue Courts which preceded them from Regulation XVII of 1827. He has cited cases to show that Bombay Act I of 1865 (which by one of its sections was to be read as part of Reg. XVII) did not at first apply to towns, and he has argued that, consequently, no provision of that regulation could apply to towns; that all subsequent legislation in regard to these Courts is qualified by that regulation, and does not go beyond its scope; that, therefore, the jurisdiction of the Courts only extends to the lands which could come under Reg. XVII of 1827 and Bombay Act I of 1865 (as at first passed and before it was extended to towns); and, consequently, that all towns and all houses are excluded from that jurisdiction.

The weakness of, at any rate, part of this argument becomes apparent from a consideration of Act XVI of 1838. By Reg. XVII, ch. viii, the Collector was invested with jurisdiction in all claims for possession of land, all disputes regarding tenure of land and its rent, and questions regarding the use of water, tanks and water-courses and roads to fields. By Act XVI of 1838 it was enacted that all suits in regard to tenures, &c., and all suits in which the right to possession of land was claimed, should be brought in the Civil Courts. But it was further provided that the Revenue Courts should have jurisdiction to give immediate possession of all lands, premises, &c., and this jurisdiction has been continued to all subsequent Acts. Now, I cannot see how it can be argued that this was only a reservation of part of the jurisdiction which had been conferred on the Revenue Courts by the regulation. It was a new and distinct jurisdiction, for there was no provision formerly for the giving of immediate possession, and it was an extended jurisdiction. [180] because it extended over premises as well as lands. And if this Act is not qualified or restricted by the regulation, then there is nothing to show that the jurisdiction does not extend over towns, even supposing that the jurisdiction conferred by the regulation did not extend far. Those cases quoted by Mr. *Nanabhai* do not touch the point at issue, for they only decide that, under Bombay Act I of 1865, the Collectors had no power to assess building sites in towns. The question of jurisdiction under Act XVI of 1838, and the subsequent Acts could not arise in those cases, which, therefore, cannot apply.

Nor can it be legitimately argued that the word 'premises' means nothing more than lands, and may, therefore, be struck out. Effect must be given to that word, and there is nothing to show that it was not intended to be used in the ordinary sense so as to include houses. And this view

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is apparently borne out by one case, which has been quoted, *Baji Dev v. Sadashiv Bhaisankar* (1) and which shows that this Court has recognized the jurisdiction of Mamlatdars' Courts in regard to houses.

It has been argued, however, on the other side, that, even supposing any doubt could have existed in regard to towns under Acts prior to Act III of 1876, that Act settles the matter definitely, inasmuch as the jurisdiction of the Courts is to extend over such territorial limits as may from time to time be fixed by the Governor in Council, and those territorial limits, as a matter of fact, correspond with the limits of the jurisdiction of the Mamlatdar *qua* Mamlatdar or Revenue Officer,—that is with his taluka. It is not denied that this is the case, and, if so, I do not see how it can be argued that the towns which are situated in a taluka are exempt from the jurisdiction of the Court, unless they have been specially excluded from it. Some reference has also been made, in the course of argument, to cases in which towns are not included in the jurisdiction of the Mamlatdar in whose taluka they are situated. If there are such towns, they probably would not come within the jurisdiction of the Court of the Mamlatdar of the taluka; but on this point it is not necessary to pass any decision in the present case, for the [181] argument cannot affect the general view of the case, and certainly cannot apply to the town of Ahmedabad, which, it is not denied, is within the Daskroi Taluka.

The only other argument which it seems necessary to notice is that Bombay Act III of 1876 cannot be meant to apply to towns, because the order passed by the Courts is, by s. 17, to be carried out by the village officers, and such officers do not exist in towns. Whether it is a fact that those officers do not exist in all towns, cannot now be decided; but it is admittedly a mere supposition in regard to Ahmedabad, and the argument does not, in my opinion, really affect the point at issue. It may be a question to be decided by Government whether, supposing that there is not the requisite machinery in any particular town for working the Act, that town should be excluded from the jurisdiction of the Mamlatdar's Court; but it cannot affect the jurisdiction which is, I believe, conferred on the Courts generally in the territorial limits which have been assigned to them.

I therefore hold that in the present case the Mamlatdar's Court had jurisdiction in regard to the house in question. The rule, consequently, must be discharged with costs.

Rule discharged with costs.