

The only question was as to the construction of the lease. Both the lower Courts held that such a lease was a permanent one. The District Judge was of opinion that the lease should be construed most in favour of the lessee. He considered that the improvements made by the lessee showed that the parties intended to treat the lease as a permanent lease.

*Vinayak Mahadev Pandit*, for the appellant.—The lease has been misconstrued. It is admitted that the lease gave to the lessee the power of holding the land as long as he pleases. Leases of this kind have been held to terminate at the death of the lessee: *Vithalrav v. Pirdngavda* (1), *Gopalrav v. Bhavanrav* (2), *Suleman v. Asmad* (3).

*Ghanasham Nilkanth Nadkarni*, for the respondents.—The language of the lease unambiguously gives to the lessee the power of holding at his pleasure. Under this power the lessee has made improvements and acted to the lessor's knowledge, as if it was the intention of both parties not to deprive the representatives of the lessee of the benefits which the lessee himself enjoyed. It would be a great hardship to construe the lease to the lessee's disadvantage, for when it was executed, the land was evidently of little value to the lessor.

#### JUDGMENT.

M. MELVILL, J.—It has been repeatedly held that leases of this description are determined by the death of the lessee. In addition to the decisions in special appeal No. 312 of 1871 and the cases there cited we may refer to the rulings in Special Appeal 373 of 1873 and Special Appeal 112 of 1877. The decrees of the Courts below must be reversed, and the claim awarded, with costs on defendants throughout.

*Decree reversed.*

4 B. 426.

#### [426] APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice (Officiating), and Mr. Justice M. Melvill.*

JAGJIVAN JAVERDAS, (*Applicant*) v. ISMAIL ALLI KHAN AND THE COLLECTOR OF KOLABA, (*Opponents*)\* [9th February, 1880.]

*Bombay Act III of 1874, s. 10—Vatan—Removal of attachment—Collector's certificate.*

The applicant held a decree, dated the 28th June, 1861, against Ismail Alli Khan and another for Rs. 3,956-13-7, of which he had already recovered Rs. 2,742-4-5. On the 24th December, 1866, he applied to the Court of the Subordinate Judge at Pen for the attachment of the proceeds of a certain *vatan*, belonging to the judgment-debtors, in satisfaction of the balance, Rs. 1,214-9-2, due to him under his decree. On the 7th February, 1868, the Court attached the proceeds by a prohibitory order to the Mamlatdar of Pen. While this attachment was pending the Collector, on the 13th December 1878, sent a certificate to the Court, and informed it that the proceeds of the *vatan* were not liable to attachment under ss. 10 and 13 of Bombay Act III of 1874. The certificate referred to the profits of the *vatan* which had accrued due before the passing of the Act, and also to those which had been subsequently assigned by the

\* Application No. 81 of 1879 under Extraordinary Jurisdiction.

(1) S.A. No. 312 of 1871; decided by M. Melvill and Kemball, JJ., on 22nd September 1871, unreported.

(2) S.A. 373 of 1873. See Printed Judgments for 1874, p. 279.

(3) S.A. 112 of 1877. See Printed Judgments for 1877, p. 177.

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Collector as remuneration of the officiator. The Court, on receiving it, removed the attachment, and dismissed the application on the 11th January, 1879. The order was affirmed in appeal. On an application to the High Court under its extraordinary jurisdiction.

*Held*, that the Collector was authorized by the first part of s. 10 of the Vatan-dars' Act, to inform the Court by his certificate that a portion of the profits attached, had been assigned by him as remuneration to the officiator, and that the Court was bound, on receiving it, to remove the pending attachment.

*Held*, also, that the arrears due at the date of the Act, and which had not been assigned, fell within the latter part of the section.

The High Court, accordingly, dismissed the application with costs.

THIS was an application, under the Court's extraordinary jurisdiction, against the order of W. M. Coghlan, District Judge of Thana, affirming the order of the Second Class Subordinate Judge of Pen.

The applicant Jagjivan held a decree, dated the 28th June, 1861, against the opponent Ismail Ali Khan and another for Rs. 3,956-13-7, of which he had already recovered Rs. 2,742-4-5. On the 21st December 1866, he applied to the Court of the Subordinate Judge at Pen for the attachment of the proceeds of a certain *vatan*, belonging to the judgment debtors, in satisfaction of the [427] balance, Rs. 1,214-9-2, due to him under his decree. On the 7th February, 1868, the Court attached the proceeds by a prohibitory order to the Mamlatdar of Pen. While this attachment was pending, Mr. George Waddington, Collector of Kolaba, on the 13th December, 1878, sent a certificate to the Court, and informed it, that the proceeds of the *vatan* were not liable to attachment under ss. 10 and 13 of Bombay Act No. III of 1874. The certificate stated that the profits of the *vatan*, accumulated from 1864-65 to 1873-74, had amounted to Rs. 1,583-3-7; that from 1874-75 their amount was annually settled at Rs. 169-15-11, of which Rs. 168 were assigned as yearly remuneration to the officiator, and that the Court should remove its attachment, as the profits of the *vatan* could not be paid under the Act, to any person other than the vatandar or officiator. The Court, on receiving the certificate, removed the attachment and dismissed the judgment-creditor's application on the 11th January 1879.

Jagjivan appealed to the District Judge of Thana, who rejected the appeal.

Jagjivan thereon applied to the High Court under its extraordinary jurisdiction.

Rao Saheb V. N. Mandlik, for the applicant.—The proceeds of the *vatan* were attached long before the passing of the Vatan-dars' Act. The attachment, therefore, was good, at least for the amount which had accrued due before the Act came into force. It cannot have a retrospective effect.

Nanabhai Haridas (Government Pleader), for the Collector.—The object of the Vatan-dars' Act is to protect the rights of hereditary vatandars, and to secure the continuance of the *vatan*s in their families or in those of recognized officiators. The profits of the *vatan* are in no case to pass out of their possession or ownership. It is competent to the Collector, under s. 10, to ask for the removal of an attachment on the proceeds of the *vatan*, whether they accrued due before the date of the Act or subsequently, or whether they are assigned or not. Under that section he can ask even to set aside a sale or to cancel a decree. The learned pleader cited *Mahadaji Bhikaj v. Rajaram Vithal* (Miss. S. A. 17 of 1876); *Martand Visaji v. Rajaram Vithal* (Mis

[428] S. A. 22 of 1876), both decided by Westropp, C. J., and Melvill, J., on the 19th December, 1877. He also referred to *Gopal Hanmant Gumiste v. Sakharam Govind* (Mis. S. A. No. 7 of 1877).

G. N. Nadkarni appeared for the opponent.

The following is the judgment of the Court:—

### JUDGMENT.

SARGENT, C. J.—The Collector's certificate refers both to the profits of the *vatan* which had accrued due before the passing of the Act, and also to those which have been subsequently assigned by him as the remuneration of the officiator. As to the latter, there can be no doubt that, as, in virtue of the pending attachment of 1866, they might pass into the beneficial possession of the attaching creditor, the Collector was authorized by the first part of s. 10 of the *Vatandars' Act* to inform the Court by his certificate that such portion of the profits had been assigned, and that the Court was bound, on receiving such certificate, to cancel the pending attachment, in so far as it might affect the portion so assigned. As to the arrears due at the date of the Act, and which have not been assigned, they fall under the latter part of the section, where it is true that the words "may have passed" are not to be found; but we think the section must be read as if they had been, as it can scarcely be supposed that it was intended that the Collector should pay over the profits to the attaching creditor one day and apply the next day to the Court for an order to have them restored, as he would be entitled to do as soon as they had passed into the "beneficial possession" of the attaching creditor. The decisions in *Miscellaneous Appeals No. 17 of 1876* and *No. 22 of 1876*, both decided on 19th December, 1877, are apparently in conformity with this view. We must, therefore, discharge the rule with costs.

*Rule discharged.*

NOTE.—The decision in this case was followed in Applications Nos. 91 and 93 of 1879 under Extraordinary Jurisdiction, both decided by Westropp, C. J., and F. D. Melvill, J., on the 23rd February, 1880. In both of them the attachment placed on the *vatans* was removed by the Court on the receipt of the Collector's certificate, granted under s. 10 of the *Vatandars' Act*, although the decrees sought to be executed were against the *vatans* as mortgaged property.

4 B. 429.

### [429] APPELLATE CIVIL.

*Before Sir Michael Roberts Westropp, Kt., Chief Justice, and Mr. Justice F. D. Melvill.*

MANIKLAL VENILAL (*Judgment-creditor*), v. LAKHA AND MANSING, (*Judgment-debtors*); AND DAYABHAI PREMCHAND, (*Judgment-creditors*) v. MANSING (*Judgment-debtor*)\*

[17th February, 1880.]

*Civil Procedure Code (Act X of 1877), s. 266, cl. (c), and explanation (a), and s. 295—Attachment and sale of building materials—Rateable distribution of proceeds of sale.*

By cl. (c) of s. 266 of the *Civil Procedure Code (X of 1877)* an ordinary judgment-creditor is precluded from attaching or selling the materials of a house or other building belonging to his judgment-debtor, but by explanation (a) of the same section, this prohibition does not extend to a creditor whose decree is for

\* Civil Reference, No. 31 of 1879.