

be made within three years from the time "when the right to apply accrues." That article involves the further question, whether any application, by the purchaser, for the certificate of sale was necessary under s. 259 of Act VIII of 1859. That section does not say, in terms that the purchaser must apply, and does say that "after a sale of immoveable property shall have become absolute," *i.e.*, after it has been confirmed under s. 257, "the Court shall grant a certificate" to the purchaser. Act XVIII of 1869 rendered it [206] necessary that certificates of sale should be stamped; but the Governor-General in Council, by order of the 24th of October 1873—see *Bombay Government Gazette* of the 6th of November 1873—dispensed (as he lawfully might under s. 16 of the Act) with such duty, so that, at the date at which the plaintiff's right to a certificate of sale accrued, no stamp duty was necessary, and the purchaser need not present a stamped paper to the Court in order that the certificate of sale might be engrossed upon it. However, albeit that no stamped paper was then necessary, yet the invariable practice of our Civil Courts, so far as we know it, has been to wait for an application for a certificate of sale before they grant one to the purchaser. We think that this was a proper and the necessary practice, for the Court could not be reasonably expected and was not bound to seek out the purchaser in order to grant to him a certificate. Since the new stamp Act I of 1879 came into force, certificates of sale must be stamped as other ordinary conveyances are (*vide* sch. I, art. 16), and the purchaser, before he can get a certificate of sale, must present to the Court a properly stamped paper for it. And under s. 316 of the Civil Procedure Code, X of 1877, that certificate must bear the date of the confirmation of the sale.

We concur with the Subordinate Judge in thinking that the application in this case for the certificate of sale is barred by Act XV of 1877, sch. I, art. 178.

*Note.*—This case was followed in Civil Reference No. 1 of 1881 decided by Westropp, C, J. and Birdwood, J., on the 15th February 1881. See Printed Judgments for 1881, p. 39.

5 B. 206.

APPELLATE CIVIL.

*Before Sir Michael Roberts Westropp, Kt., Chief Justice, and  
Mr. Justice Birdwood.*

TUKARAM (*Plaintiff*) v. SATVAJI KHANDUJI (*Defendant*).<sup>\*</sup>  
[23rd March, 1881.]

*Application for certificate of sale—Limitation—Act XV of 1877, sch. II, art. 178—  
Civil Procedure Code (Act VIII of 1859), s. 264—Possession without certificate.*

Where an application for a certificate of sale was made five years and a half after the confirmation of the sale.

*Held* that it was barred by art. 178 of sch. II of Act XV of 1877.

[207] It was not incumbent on the Court, under the Civil Procedure Code (VIII of 1859), s. 264, to put a purchaser into possession until he had his certificate of sale.

*Quære*, whether a purchaser who without a certificate of sale has been put into possession, could be lawfully ejected because he has not such a certificate.

[N.F., 8 B. 377; R., 6 B. 139 (142); 7 B. 254; 12 B. 589 (594); 8 C. 367 = 10 C.L.R. 441.]

<sup>\*</sup> Civil Reference No. 10 of 1881.

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UNDER s. 617 of Act X of 1877 this case was referred for the decision of the High Court by Rao Saheb D. A. Dalvi, Joint Subordinate Judge of Ahmednagar. The following is his statement of the facts of the case :—

"This is an application, by the plaintiff, to obtain a certificate of sale which took place on the 7th June, 1875, and which was confirmed on the 9th July following. Certain fields situated at the village of Koledara, within the jurisdiction of the late Ahmednagar Small Cause Court, were attached and sold in execution of decree, No. 927 of 1869, passed by J. L. Warden, Esq., Judge of the said Court, on the 29th April, 1869, on a transfer of the said decree to the First Class Subordinate Judge's Court of Ahmednagar. The *darkhast* proceedings were disposed of on the 27th August, 1875. The plaintiff purchased the said fields in the auction sale in execution of the above decree, but omitted to apply for a certificate of sale till the date of his present petition, *viz.*, 22nd January, 1881. It is noteworthy that a period of more than five years and a half has clearly elapsed from the date of the confirmation of sale—9th July, 1875, when plaintiff's right to apply for such a certificate of sale accrued to him—up to date of his present application. It is also well to note here that all the proceedings have been taken under the old Civil Procedure Act (VIII of 1859). Now the question arises, is the plaintiff's application barred by the law of limitation?"

#### JUDGMENT.

WESTROPP, C.J.—The application for certificate of sale having been made five years and a half after the confirmation of the sale, is barred by art. 178 of sch II of Act XV of 1877. For the reasons for so holding, see the decision in the case of *Khaja Patthanji* (1).

It is not stated in the present case whether or not the applicant (the purchaser) has been put into possession. This Court [208] is not to be understood by its present decision as expressing any opinion whether or not a purchaser, who, without a certificate of sale, has been put into possession, could be lawfully ejected, because he has not such a certificate. It was not incumbent on the Court, under Act VIII of 1859, s. 264, to put a purchaser into possession until he had his certificate of sale (see the judgment in *Basapa v. Marya*(2)); but, if he has been put into possession, it has yet to be decided that he would not be entitled to retain it.

(1) 5 B. 202.

(2) 3 B. 433 (436).