

ORIGINAL CIVIL.

Before Sir Charles Sargent, Kt., Justice.

BRITO AND ANOTHER, PLAINTIFFS, v. THE SECRETARY OF STATE
FOR INDIA IN COUNCIL, DEFENDANT.*

1881
August 13.

Salt (Bombay) Act VII of 1873—Act XVIII of 1877—Duty paid under former Act—Effect of new Act by which duty increased coming into operation before removal of salt—Increased duty paid under protest—Suit to recover excess—Set-off—Excise duty—Customs.

Prior to the 28th December, 1877, the excise duty on salt manufactured in Bombay was Rs. 1-13-0 per maund, and the Act which regulated the importation and transport of salt in the Presidency of Bombay was the Bombay Salt Act VII of 1873. The plaintiffs, who were salt merchants, were desirous of exporting salt from the salt-works at Uran and Panvel, and accordingly, under the provisions of Act VII of 1873, made four several applications in writing to the Assistant Collector of Salt Revenue for the necessary permits on the following dates, viz., 27th November, 1877; 17th December, 1877; 17th December, 1877; and 24th December, 1877. Each application stated the amount of salt which it was proposed to export, and at the time of sending in such applications the duty payable in respect of the amount of salt therein mentioned was paid. Receipts for the duty so paid were given to the plaintiffs, and all four applications were duly registered before the 28th December, 1877. The salt comprised in the first three applications amounted, in all, to maunds 20,972; and the whole of this quantity, with the exception of maunds 2,748, had been removed by the plaintiffs before the 28th December, 1877; but at that date no part of the salt which was the subject-matter of the last application (24th December, 1877) and which consisted of maunds 10,483, had yet been removed. On the 28th December, 1877, Act XVIII of 1877 came into force, by which Act the excise duty on salt manufactured in Bombay was raised from Rs. 1-13-0 to Rs. 2-8-0 per maund, and on that day the sarkarkun refused to allow the plaintiffs to remove the balance of the first three lots (viz., 2,748 maunds) or the last lot of maunds 10,483, unless an additional duty, at the rate of eleven annas per maund, was paid in respect thereof, alleging that the same was leviable under Act XVIII of 1877. The plaintiffs paid under protest the additional duty demanded, amounting to Rs. 9,096-5-0, and exported the salt to British Malabar, having previously obtained certificates from the Collector that excise duty, at the full rate of Rs. 2-8-0 per maund, had been paid upon the said salt. On production of these certificates at the ports of British Malabar, the salt was admitted free of customs duty. The plaintiffs subsequently brought this suit to recover the said sum of Rs. 9,096-5-0 together with a sum of Rs. 1,000 damages alleged to have been sustained by reason of the delay in removing the salt caused by the conduct of the sarkarkun. The plaintiffs contended that having paid the duty in respect of the salt comprised in the four applications, and the said duty having been received by the Collector before Act XVIII came into force, they were not liable to pay any further duty, and that Act XVIII of 1877 did not apply to the said salt. The

* Suit No. 606 of 1878.

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defendant contended that the additional duty was rightly levied on the salt, and further claimed to set-off against the plaintiffs' claims the sum of Rs. 9,056-5-0 which the plaintiffs would have been obliged to pay in importing the salt into British Malabar if they had not already paid it to the authorities in Bombay, but from payment of which they had been exempted on production of the certificates above mentioned.

Held that on the 28th December, 1877, the plaintiffs had acquired the right to remove the salt, whenever they might think proper, by simply complying with the usual forms required by Act VII of 1873, and that Act XVIII of 1877 did not operate retrospectively so as to destroy that right [and to impose on the plaintiffs a heavier burden as a condition of their removing the salt.

Held, also, however, that as the salt was allowed to pass free into British Malabar on the strength of its having already paid the duty of Rs. 2-8-0 per maund at Bombay, the sum of Rs. 9,096-5-0 must be deemed to have been appropriated by the plaintiffs to the payment of the customs duty payable on the importation of the salt into the ports of British Malabar, and was, therefore, no longer recoverable from the defendant. The plaintiffs, by applying to the Collector of Customs at Bombay for certificates that the duty had been paid, by presenting them at the Malabar ports, and claiming, in virtue of such certificates, that the salt should be admitted free of customs duty, virtually appropriated the Rs. 9,096-5-0 excess of excise duty (which remained in the hands of the customs authorities as money had and received to the use of the plaintiffs) to the payment of the enhanced customs duties at such ports.

THE plaintiffs were salt merchants, carrying on business in Bombay.

Prior to the 28th December, 1877, the Act which regulated the manufacture, storage, possession and transport of salt in the Presidency of Bombay was the Bombay Salt Act (VII of 1873). Until the said 28th December, 1877, it was the practice in the office of the Collector of Salt Revenue in Bombay to require merchants who were desirous of exporting salt from the Bombay Presidency, to apply to the Assistant Collector of Salt Revenue in the following form :—“ Please permit me to export salt, as per margin, to * * * on payment of the full excise duty.” In the margin was stated the number of maunds which it was proposed to export. When making such an application the merchant paid the amount of excise duty payable in respect of the quantity of salt mentioned in his application, and received a receipt with an endorsement signed by the Assistant Collector, and addressed to the sarkarkun of the place where the salt was lying, requiring him to permit the removal of the salt on which such duty had been paid.

In accordance with the usual practice, the plaintiffs made four several applications, in the above stated form, for the removal of salt belonging to them, which was then lying at Panvel and Uran. The applications were made on the following dates, viz., 27th November, 1877; 17th December, 1877; 17th December, 1877; and the 24th December, 1877; and at the time of such applications the respective amounts of duty payable in respect of salt therein mentioned was duly paid. Receipts for the duty so paid were given to the plaintiffs by the Collector of Salt Revenue, and all four applications were duly registered at the office of the sarkarkun before the 28th December, 1877:

The salt comprised in the first three applications amounted, in all, to maunds 20,972. The whole of this quantity, except maunds 2,748, had been removed by the plaintiffs before the 28th December, 1877; but at that date no part of the salt, which was the subject-matter of the last application (24th December, 1877,) and which consisted of maunds 10,483, had yet been removed. The plaintiffs complained that they had made arrangements for the removal of the balance of the three first lots (2,748 maunds) and of the last lot of maunds 10,483; but on the 28th December, 1877, the sarkarkun refused to allow any of the said salt to be removed, unless an additional duty, at the rate of eleven annas per maund, was paid in respect thereof, alleging that the same was leviable under Act XVIII of 1877, which came into force on the 28th December, 1877.

The plaintiffs ultimately paid under protest the additional duty demanded, amounting to Rs. 9,096-5-0, and filed this suit to recover such payment together with a sum of Rs. 1,000 damages, alleged to have been sustained by reason of, the delay in removing the said salt caused by the conduct of the sarkarkun. The plaintiffs contended that, having paid the duty in respect of the salt comprised in the four applications and the same having been received by the Collector before Act XVIII of 1877 came into force, they were not liable to pay any further duty, and that the Act XVIII of 1877 did not apply to the said salt.

In his written statement the defendant alleged that no application, under section 26 of Bombay Act VII. of 1873, for a permit

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for the removal of the salt on which the increased duty had been levied, was made by the plaintiffs before Act XVIII of 1877 came into force on the 28th December, 1877. By that Act the excise duty on salt manufactured in the Presidency of Bombay was raised from Rs.1-13 per maund to Rs.2-8 per maund.

In the following paragraphs of his written statement the defendant sought to establish a set-off against the plaintiffs' claim :—

6. "The defendant further says that the plaintiffs' said applications were for leave to export the said salt to British Malabar within the Presidency of Madras, and that the plaintiffs, for the purposes of such export, obtained from the authorities at the ports of export, on the 30th day of January and 9th and 16th days of February, 1878, five certificates that excise duty at the full rate of rupees two and annas eight per maund had been paid by the plaintiffs on the said balance of such salt.

7. "The plaintiffs thereafter imported the said balance of salt by sea into British Malabar. At the time of such import a customs duty of rupees two and annas eight per maund was, under and by virtue of the provisions of the said Act XVIII of 1877, leviable on all salt imported by sea into British Malabar or any other port of British India.

8. "The plaintiffs were, however, allowed to import their said salt into British Malabar without payment of any customs duty whatever thereon, on production of the said certificates, showing that an excise duty of rupees two and annas eight per maund had been paid thereon. The plaintiffs were allowed such exemption from customs duty under and by virtue of the notification of the Government of India dated the 5th of August, 1875.

9. "If the plaintiffs had paid excise duty on the said salt at the rate of rupee one and annas thirteen only per maund, they would have had to pay a further duty thereon at the rate of eleven annas per maund at the port of import to make up the full customs duty of rupees two and annas eight per maund.

10. "The defendant will, if necessary, claim to set off against the claim of the plaintiffs in this suit the sum of Rs. 9,096 and annas five, being the amount of the customs duty which the plaintiffs would have had to pay upon the said salt at the port of import if

they had paid an excise duty thereon at the rate of rupee one and annas thirteen only per maund."

At the hearing, counsel for the plaintiffs admitted that they could not prove damages beyond the sum of Rs. 50.

Inverarity and *Jardine* for plaintiffs.

Marriott (Advocate General) and *Lang* for defendant.

The following Acts and authorities were cited in the argument:—Act XXIV of 1869; Government (Bombay) Notification of 12th August, 1874; Bombay Act VII of 1873; Indian Tariff Act XVI of 1875, Sch. A, art. 49; General Clauses Act I of 1868, sec. 6; *In re Ratansi Kalianji* (1); Notification of Governor General in Council, 5th August, 1875; *Dullabh Shivalal v. T. C. Hope* (2).

SARGENT, J.—The plaintiffs, who are merchants dealing in salt, seek to recover from the Secretary of State the sum of Rs. 9,096-5-0 and interest at 9 per cent. *per annum* from 16th January, 1878, under the following circumstances. By Act XXIV of 1869 an excise duty of Rs. 1-13-0 per maund was imposed on salt manufactured in the Presidency of Bombay. The Bombay Salt Act VII of 1873 regulates the manufacture, storage, possession and transport of salt in the Presidency of Bombay with a view to the better protection of the salt revenue. Sections 25 to 30 of that Act, both inclusive, provide especially for the mode of obtaining a permit for the removal of salt from salt works in Bombay; but the actual practice adopted by the salt authorities, as stated by the plaintiffs and not denied on behalf of the defendant, would appear to be somewhat different, at least in form. In accordance with that practice, the plaintiff applied to the Assistant Collector of Salt Revenue in the form set out in (exhibit A) in this suit, on 27th November, 17th December and 24th December, respectively, in the year 1877 for permission to remove salt from the salt works at Uran and Panvel for exportation, and having paid the duty then leviable, had received from the Assistant Collector the usual receipts for the same. These receipts had been duly lodged, according to the practice,

(1) I. L. R. 2 Bom. 148.

(2) 3 Bom. H. C. Rep. 213, A. C. J.

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in the office of the sarkarkun at Uran, and the authority to allow the salt to be removed had also been duly notified to the same officer not later than the 26th December. On the 28th December, however, 2,748 maunds comprised in the three earlier applications as well as 10,483 maunds, the subject of the latest application made on the 24th December, still remained to be removed, and it was admitted by counsel for the plaintiffs that no formal application for the removal of this salt was made to, and received by, the sarkarkun as contemplated by section 26 of the Bombay Act VII of 1873 until after the 28th December. On that day the Act XVIII of 1877 came into force, by the sixth section of which the excise duty on salt manufactured in Bombay was raised to Rs. 2-8-0 per maund. The formal application to the sarkarkun to be allowed to remove the above salt was subsequently made by the plaintiffs, when they were informed that they must pay the higher duty,—no formal application for removal, as contemplated by the Act, having been made before. The plaintiffs ultimately on the 16th January, 1878, paid to the salt authorities, under protest, the difference between the higher and lower duty, amounting to Rs. 9,026-5-0, on 16th January, 1878.

Now, when Act XVIII of 1877 became law on the 28th December, the excise duty of Rs. 1-13-0 had been already paid on the salt in question; and although such duty may, according to the practice of the department, have been credited only to the account of the taluka and not of the revenue, the plaintiffs had acquired the right to remove the salt, whenever they might think proper, by simply complying with the usual forms required by Act VII of 1873; and it would be contrary alike to principle and authority to construe Act XVIII of 1877 as operating retrospectively so as to destroy that right and to impose a heavier burden on the plaintiffs as a condition of their removing the salt. Indeed, I do not think that the Advocate General ventured to dispute that the increased excise duty had been improperly levied from the plaintiff by the salt authorities.

It was admitted, however, by counsel for the plaintiff that the salt in question had been subsequently imported into Madras ports under the authority of the certificates. The customs import duty at the above ports had been raised, by section 4 of Act

XVIII of 1877, from Rs. 1-13-0 as fixed by art. 49 of the Indian Tariff Act of 1875 to Rs. 2-8-0 per maund, and it was admitted by Mr. Macpherson for the plaintiffs that the salt in question was allowed to pass free on the strength of its having already paid the duty of Rs. 2-8-0 per maund at Bombay, as stated in the above certificates. Under these circumstances it was contended for the Secretary of State that the Rs. 9,096-5-0 which had been paid to the salt authorities in respect of the duty at Rs. 2-8-0 per maund must be held to have been already appropriated by the plaintiffs to the payment of the customs duty payable on the importation of the salt into the Madras ports, and was, therefore, no longer recoverable from the defendant. I think this construction must prevail. The customs duty on the salt in question was not levied on importation into the ports of Madras on its being shown by a proper certificate issued by the Collector of Customs at the port of Bombay that the excise duty had been duly paid on its removal. That being so, the plaintiffs, by applying to the Collector of Customs at Bombay for such a certificate, by presenting it at the Madras ports, and claiming on the strength of it that the salt should be admitted free of customs duty, virtually appropriated the Rs. 9,096-5-0 excess of excise duty which remained in the hands of the customs authorities as money had and received to the use of the plaintiffs to the payment of the enhanced customs duty at such ports. As to interest on the Rs. 9,096-5-0, it may be that the appropriation of the Rs. 9,096-5-0 was not complete until the plaintiffs made use of the certificates at the ports of import; but interest does not run at law on money had and received, and no notice was given to the Government in the interval, such as is required by Act XXXII of 1839, to enable the plaintiff to recover interest as damages. I think, however, that there is no sufficient reason for doubting the plaintiff's statement that he incurred a loss of Rs. 50 by his having to compensate native craft which had come to Uran by his directions to bring away the salt in question, and was afterwards obliged to leave without cargo. This claim was asserted very early in the correspondence between his solicitors and the Government authorities, and the smallness of the sum claimed is in favour of the *bona fides* of the plaintiffs.

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1881 Judgment must pass for the plaintiffs for Rs. 50. Parties
 to pay their own costs.
 BRITO v. Attorneys for the plaintiffs.—Messrs. *Craigie, Lynch and Owen.*
 THE SECRETARY OF STATE Attorneys for the defendant.—Messrs. *Hearn, Cleveland and*
 FOR INDIA IN COUNCIL. *Little.*

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Before Sir M. R. Westropp, Kt., Chief Justice

Justice Melvill.

August 6.

MAYABHAI PREMBHAI (ORIGINAL DEFENDANT), vs. TRIBHUVANDAS JAGJIVANDAS, BY HIS ASSIGNEE, MOTILAL TRIBHUVANDAS (ORIGINAL PLAINTIFF), RESPONDENT.*

Decree—Execution—Limitation Act XV of 1877, Schedule II, Clause 180—Civil Procedure Code Act X of 1877, Section 230.

The plaintiffs obtained a decree of the High Court of Bombay against the defendant on 22nd February, 1867. The defendant, after the passing of the decree against him, resided in Ahmedabad. In July, plaintiff assigned his decree to L., who in 1876 assigned it to M. From time to time M. obtained orders for the execution of the said decree, but was always unable to proceed to execution. The last order for execution made by the High Court was on the 4th February, 1879. In April, 1879, the decree was transmitted to the Court at Ahmedabad for execution, and that Court in September, 1879, issued a warrant of arrest against the defendant against the order for which the defendant appealed. The said order was confirmed by the High Court on 10th February, 1880. In April, 1881, the defendant was in Bombay, and M., the decree-holder, obtained a summons calling on defendant to show cause why the decree should not be executed against him. On 3rd May the summons was made absolute. The defendant appealed, and contended that the application for execution was barred by limitation under section 230 of the Civil Procedure Code (Act X of 1877) which was to be read with clause 180 of Schedule II of Limitation Act XV of 1877.

Held, that the application was not barred. Clause 180 of the second Schedule of the Limitation Act XV of 1877 was intended to be independent of section 230 of the Civil Procedure Code, and not to be in any way controlled by it. Section 230 does not apply to decrees made by the High Court.

APPEAL from an order made in chamber by Bayley, J., on 3rd May, 1881, making absolute the summons calling on defendant to show cause why the decree dated 23rd February, 1867, should not be executed against him.

In this suit the plaintiff Tribhuvandas Jagjivandas had obtained a decree against the defendant on 22nd February, 1867, for Rs. 15,582-8-0 and costs.

* Suit No. 605 of 1866.