

meantime against an occupant, not only on the ground of their individual rights being in suspense—in *custodiâ legis* in a particular sense—but because they could not act or sue, and thus came within the rule *contra non valentem agere non currit præscriptio*. From 1871 onwards the plaintiffs could act, and they commenced the present suit within the term of limitation computed from that time. We must reverse the decree of the District Court, and restore the decree of the Subordinate Judge, with costs in all the Courts.

*Decree reversed.*

## REVISIONAL CRIMINAL.

*Before Mr. Justice West and Mr. Justice Nánábhái Haridás.*

QUEEN EMPRESS *v.* SHIVRA'M AND OTHERS.\*

July 10.

*Removal of earth from gavhan (Government land)—Rule III of Clause 1, Item (d) of Rules framed under Section 214 of the Land Revenue Code Act V (Bom.) of 1879—Magistrate of the Second Class—Magistrate of the First Class, jurisdiction of, to try offence under Rule III—General Clauses (Bom.) Act X of 1866, Sec. 1, Cl. 7.*

The offence committed in contravention of Rule III, clause 1, item (d)† of the Rules framed under section 214 of the Land Revenue Code (Bom. Act V of 1879) is exclusively triable by a Magistrate of the First Class. Accordingly a conviction and sentence by a Second Class Magistrate were set aside by the High Court.

THIS was a review from the monthly return submitted by the District Magistrate of Khándesh.

The accused were charged before the Second Class Magistrate of Sháháda with having removed earth from Government land without due authority, thereby committing an offence under Rule III, clause 1, item (d) of the Rules framed under section 214 of the Land Revenue Code (Bombay) Act V of 1879, and convicted. From this conviction an appeal was preferred to the First Class

\* Criminal Review, No. 120 of 1884.

† Rule III, Clause 1, Item (d).—Whoever without due authority shall dig or remove, or attempt to dig or remove, any earth, stone, kankar, sand or muram, or any other material from land belonging to Government shall be punished with imprisonment of either description, which may extend to one month, or with fine which may extend to five hundred rupees.

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Magistrate with appellate powers, who upheld the conviction. In the monthly return submitted to the High Court the District Magistrate of Khándesh remarked that the conviction and sentence should have been annulled, as the Second Class Magistrate of Sháháda, he was opinion, had no jurisdiction to try an offence falling under Rule III of the Rules framed under section 214 of the Land Revenue Code.

The reasons given by the District Magistrate for his opinion were as follows:—

“The offence, of which the accused were convicted, was one of digging and removing earth without permission required under Rule III, clause 1, item (d) of the Rules under section 214 of the Land Revenue Code. All the offences enumerated in Rule III are triable by a ‘Magistrate’, which means—according to the General Clauses (Bombay) Act X of 1866, sec. 1, cl. 7—a ‘Magistrate exercising full powers of a Magistrate under the Code of Criminal Procedure.’ The Second Class Magistrate of Sháháda had, therefore, in my opinion no jurisdiction to try the offence; and as an appeal was made to the Magistrate with the appellate powers he should have set aside the proceedings of the convicting Magistrate, as they were void under section 530, cl. p. of the Criminal Procedure Code Act X of 1882. The view I have taken of the law in this matter seems to be in accord with the Legal Remembrancer’s opinion as expressed in Government Resolution 1729, dated 5th March 1884<sup>(1)</sup>.”

WEST, J.—We set aside the conviction and sentence for the reasons given by the District Magistrate of Khándesh.

(1) The Legal Remembrancer’s opinion referred to is as follows:—“On referring to the second paragraph of section 215 of the Land Revenue Code \* \* \* \* \* my opinion is that the word ‘Magistrate’ in this place must be interpreted with reference to the definition in the General Clauses Act. . . .”