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Statute of Limitations of that year made the time run from the date of demand. By the present Act of 1877 it is made by art. 59 to run from the date of the loan, and a new art. 60 has been introduced applicable to suits to recover money deposited under an agreement that it shall be payable on demand, in which case the time runs from demand being made. But whatever may be the cases to which this article is intended to apply, it is at any rate not applicable where the transaction is regarded by the law as a loan, and which, as we have seen, is the case in the ordinary banking dealings between a native *savkar* and his customers.

But it was said that the circumstances under which the money in question was placed with the defendant were of such a nature as to distinguish it from an ordinary banking transaction, and to give it the character of a deposit as contemplated by s. 60. The circumstances relied on are: (1) That there was an understanding between plaintiffs and defendant that it would not be drawn out until a favourable opportunity presented itself; (2) that interest was agreed to be paid; (3) that the plaintiffs should come annually to settle the account; (4) that it was [343] understood it would be drawn out in one sum. None of these circumstances, however, supposing them to be proved, distinguish it from the ordinary dealings between native bankers and their customers which have been held to create the relationship of borrower and lender. We are unable, therefore, to distinguish this case from the ordinary relationship between a banker and his constituent, and are, therefore, of opinion that art. 59 was properly applied.

But it was said that the entry of interest in the defendant's books, made as it was alleged in the presence of the plaintiffs, amounted to a payment, which by s. 20 postponed the date from which time would run to within three years previous to the filing of the suit. *Spargo's Case*(1) was relied on; but that only decides that if the circumstances would support a plea of payment they are such as to satisfy the section. Here there were no demands on both sides to set off against one another, and nothing took place which could be regarded as equivalent to payment of interest. We must, therefore, confirm the decree with costs.

Decree confirmed.

13 B. 343=13 Ind. Jur. 394.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice and Mr. Justice Nanabhai Haridas.

BHAU BALAPA (*Original Plaintiff*), *Appellant v. NANA AND OTHERS* (*Original Defendants*), *Respondents*.*

[11th October, 1888.]

Civil Procedure Code (Act XIV of 1882), s. 424—Notice—Collector joined a party in respect of minor's property administered by him to protect minor's title—Act III (Bom.) of 1874, s. 10, effect of certificate under.

The plaintiff sued, as purchaser at a court sale of the interest of defendant No. 1, to redeem and recover possession of the land in dispute, alleging that it had been mortgaged by defendant No. 1 to defendant No. 2. Defendant No. 1 denied the mortgage, and that he had any title to the land, which he said belonged to

* Appeal, No. 40 of 1886.

(1) 8 Ch. Ap. 407.

R. and formed a part of R.'s *deshmulhi vatan*. R. having died, leaving a minor widow, sued as defendant No. 4 in the suit, the estate was administered by the Collector. On the application of the minor's personal guardians, the Collector was joined as a party. The Collector [344] contended on the minor's behalf that the suit having been brought without notice to him as required by s. 424 of the Civil Procedure Code (I) (Act XIV of 1882), it was not maintainable. The Collector had also certified to the Court, under s. 10 of the Vatan Act III of 1874, that the land formed part of a *vatan*. The District Judge was of opinion that notice was necessary. He, therefore, rejected the plaintiff's claim, and ordered the sale to be set aside. On appeal by the plaintiff to the High Court,

Held, that notice under s. 424 of the Civil Procedure Code (Act XIV of 1882) was not necessary. The Collector was made a party, not in respect of any alleged illegal act by him, but on the application of the minor's personal guardians, in order to protect the minor's title as set up by the first defendant.

Held, also, following *Shankar v. Babaji* (2) that the Judge ought not to have acted on the certificate by setting the sale aside. Sections 9 and 10 of the Vatan Act III of 1874 were not applicable to the case, as the first defendant, whose interest was purchased by the plaintiff, was not a *vatanidar*.

[F., 14 B. 395 (403); R. 35 B. 42=12 Bom. L.R. 825 (829)=7 Ind. Cas. 993.]

THIS was an appeal from a decision of W. H. Crowe, District Judge of Satara.

The lands in dispute formed part of a *deshmulhi* service *vatan* belonging to one Ramchandray. It appeared that Ramchandray had made it over to Nana, (defendant No. 1), for services to be rendered by him. A decree having been passed against Nana, his right, title, and interest in the said land were sold in execution and the plaintiff became the purchaser.

The plaintiff as purchaser of the interest of Nana, (defendant No. 1), now sued for redemption and possession of the land, alleging that it had been mortgaged with possession by Nana, (defendant No. 1), to the second defendant.

Nana, (defendant No. 1), denied that he had mortgaged the land or had any title to it. He alleged that it belonged to Ramchandray. He contended (*inter alia*) that the suit could not proceed [345] without notice to the Collector under s. 424 of the Civil Procedure Code (Act XIV of 1882) and that he was wrongly sued.

The second defendant (the alleged mortgagee) did not appear, nor did the third defendant who was the widow of Ramchandray.

The fourth defendant was a minor widow of Ramchandray. She appeared by the manager of her estate, the Collector of Satara, who was made a party on the application of the minor's personal guardians, and contended that the suit could not proceed without notice, as provided by s. 424 of the Civil Procedure Code (Act XIV of 1882).

The District Judge was of opinion that notice to the Collector was necessary, and that the Collector having certified to this Court, under s. 10 of Bombay Act III of 1874, that the land in dispute formed part of a *vatan*, he was bound to set aside plaintiff's purchase. He accordingly rejected the plaintiff's claim, and ordered the sale to be set aside.

(1) Section 424.—"No suit shall be instituted against the said Secretary of State in Council, or against a public officer in respect of an act purporting to be done by him in his official capacity, until the expiration of two months next after notice in writing has been, in the case of the Secretary of State in Council, delivered to, or left at the office of, a Secretary to the Local Government or the Collector of the District, and, in the case of a public officer, delivered to him or left at his office, stating the cause of action and the name and place of abode of the intending plaintiff and the relief which he claims; and the plaint must contain a statement that such notice has been so delivered or left."

(2) 12 B. 550.

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The following is a portion of his judgment:—

" * * * It is contended on behalf of the Collector that the suit cannot proceed as the plaintiff has omitted to serve him with the notice required under s. 424 of the Civil Procedure Code (Act XIV of 1882). For the plaintiff it is urged that that section runs 'in respect of an act purporting to be done by him in his official capacity'; that no act of the Collector is complained of; that his connection with the suit is a mere formal one; and that Government will be neither a gainer nor a loser, however the suit is decided. This argument, in my opinion, will not hold water. The suit is brought to recover certain property from the minor. That minor is represented by the administrator of his estate, the Collector. The Collector is contesting the claim in the minor's behalf; otherwise there is no cause of action * * * * *"

" But there are other grounds why this suit cannot be allowed to proceed. The Collector has certified to this Court under s. 10 of Act III of 1874 (Bom.) that the land which plaintiff seeks to recover is part of a *vatan* and is inalienable. This certificate of the Collector under s. 10 of the Act is decisive of the [346] character of the property, and the Court is bound to set aside the sale, or order of sale, or transfer thereof * * *"

The plaintiff appealed to the High Court.

Vishnu Krishna Bhatvadekar, for the plainiiff:—The lower Court was wrong in holding that notice to the Collector was necessary. Section 424 of the Civil Procedure Code (Act XIV of 1882) requires a notice to be given only where the Collector is sued for a wrongful act done in his official capacity: see *Shahebzadee Shahunshah Begum v. Fergusson* (1); also *Chunder Sikhur v. Obhoy Churn* (2). The Collector here was joined to protect the minor's interest, and was merely a private individual. If we had asked the Court to join him, the notice might be necessary. Where the Collector was a guardian *ad litem* of the minor, notice under s. 424 of the Code was held unnecessary: see *Anantharaman v. Ramasami* (3). As regards the certificate of the Collector, s. 10 of Act III of 1874 was misapplied. Defendant No. 1 was not a *vatandar*. Section 10 did not apply—*Shankar v. Babaji* (4).

Rav Saheb V. N. *McAlister*, Government Pleader, *contra*:—A Collector appointed under Act XX of 1864 to administer the estate of a minor is a public officer and entitled to a notice under s. 424 of the Civil Procedure Code. Cites *Narsingrav v. Lakshmanrav* (5); *The Collector of Bijnor v. Munuvar* (6).

JUDGMENT.

SARGENT, C. J.—We think that the Judge was wrong in holding that notice should have been given to the Collector as contemplated by s. 424 of the Code of Civil Procedure. That the Collector is a public officer when acting under a certificate granted to him by Act XX of 1864, is virtually settled by authority. In *Narsingrav v. Lakshmanrav* (5) it was held that the Collector, who has been appointed to take charge of the estate of a minor under Act XX of 1864, is appointed in his capacity as Collector, and is, therefore, an officer of Government within the meaning of Act XIV of 1869, s. 32. In *The Collector of Bijnor v. Munuvar* (6) a Full Bench of the Allahabad High [347] Court

(1) 7 C. 499.

(4) 12 B. 550.

(2) 6 C. 8.

(5) 1 B. 318.

(3) 11 M. 317.

(6) 3 A. 20.

held that a Collector appointed to act under s. 204 of the Bengal Act XIX of 1873 as the agent of the Court of Wards is a public officer within the meaning of ss. 2 and 424 of Act X of 1877, (which are substantially the same as the corresponding sections of the Code of Civil Procedure of 1882), and is consequently entitled to notice before an action is brought against him for an act done in that capacity.

But the question still remains, whether the Collector is sued in respect of an act done by him in his official capacity. In *Anantharaman v. Ramasami* (1) the Collector, who was guardian of the infant defendant by the Court of Wards, was sued on a promissory note for which the minor's estate was liable: he was held to be not entitled to notice. Again, in *Shahbazadee Shahunshah Begum v. Fergusson* (2) the official trustee was held not entitled to notice when it was sought by the plaintiff to compel him to hand over the funds to a person claiming to be a *cestui que trust*. These cases proceed on the ground, and we think rightly, that there must be a distinct act by the Collector which is complained of to entitle him to notice as contemplated by s. 424. We may remark that in the case already referred to (*The Collector of Bijnor v. Munuwar* (3)), the Collector had illegally seized some property. Here the Collector was made a party, not in respect of any alleged illegal act by him, but on the application of the minor's personal guardians, in order to protect the minor's title as set up by the first defendant, and no notice was, therefore, in our opinion, required by the section.

Passing to the second ground on which the Judge held that the plaintiff should be dismissed, *viz.*, that the Collector had certified to the Court under s. 10 of Act III of 1874 (Bom.), that the land in question was part of a *vatan*, and therefore, inalienable, it was held in *Shankar v. Babaji* (4) that ss. 9 and 10 must be read with the earlier sections, and are not applicable where the alienation or the decree sought to be set aside is by or against a person other than a *vatandar*. Here the first defendant, whose interest was purchased by the plaintiff, is [348] admittedly not a *vatandar*; the Judge ought not, therefore, in our opinion to have acted on the certificate by setting aside the sale to plaintiff.

We must, therefore, reverse the decree of the Court below, and send the case back for disposal. Costs of this appeal to depend on the result.

Decree reversed.

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(1) 11 M. 317.

(2) 7 C. 499.

(3) 3 A. 20.

(4) 12 B. 550.