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of all the previous orders for execution passed on the several *darkhasts* presented by the plaintiff, is in accordance with the provisions of the law as stated in s. 224, cl. (c), of the Civil Procedure Code. I have, therefore, thought it proper to make the following reference on a question of practice to the Honourable the High Court in its function of supervision of all the inferior Courts.

“The point for decision is :—

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“What is meant by the words ‘a copy of any order for the execution of the decree’ as used in s. 224, cl. (c), of the Civil Procedure Code? Whether copies of all the orders [373] passed in previous executions of a decree are, according to the wording of this clause, to be forwarded to the Court to which the decree may be sent for execution?”

“My finding on the point is, that the ‘order’ referred to in the above-mentioned clause means an order that is to be executed, and not an order that has already been executed.”

There was no appearance for either party.

OPINION.

PER CURIAM :—The words “a copy of any order for the execution of the decree” in s. 224, cl. (c), of the Civil Procedure Code (Act XIV of 1882), mean a copy of any subsisting order.

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APPELLATE CIVIL.

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

VINAYAK MORESHWAR (*Original Plaintiff*), *Appellant v. BABA SHABUDIN AND OTHERS (Original Defendants), Respondents.**
[15th November, 1888.]

Lease containing words of inheritance not inalienable—Construction—Landlord and tenant—Khoti Act (Bom.) I of 1880, s. 9.

“The *khots* of the village of A. in 1854 leased certain land to B. by a lease which declared that “you (B.) are to enjoy, you and your sons, grandsons, from generation to generation.” The rent fixed by the lease was eleven maunds and six and a half *pails* of *bhat* per year. B. having died, his widow in 1878 transferred the lease to the plaintiff, who entered into possession and offered to pay to the defendants, who were *khots* of the village and the successors of the grantors of the lease in 1854, the annual rent fixed by the lease. The defendant refused to accept it, and contended that the plaintiff was liable to pay the rent paid by other occupying tenants in the village. The plaintiff thereupon sued to have it declared that he was entitled under the lease to hold the lands permanently at the rent thereby fixed.

Held by the High Court, that he was entitled to the declaration. The lease was one to hold in perpetuity at the fixed rent, but there were no words making the lease inalienable. There was no evidence of any custom of the village; nor anything in the Khoti Act I (Bombay) of 1880 which could be construed as a declaration of the existing custom of *khoti* villages when the Act was passed.

THIS was a second appeal from a decision of R. Courtenay, Assistant Judge of Ratnagiri.

* Second Appeal, No. 529 of 1886.

The lands, which were the subject-matter of this suit, were situated in the village of Antravli, in the Ratnagiri district. [374] The defendants were the *khots* of the village. In 1854 the defendants' predecessors let the lands in question to Balambhat at a rent of eleven maunds and six and a half *pails* of *bhat* (paddy) per year. The lease set forth (*inter alia*) that "you (Balambhat) are to enjoy, you and your sons, grandsons, from generation to generation." The consideration for the lease was the putting up an embankment to the lands.

Balambhat died, and in 1878 his widow Ramabai transferred the said lease to the plaintiff and forthwith put him in possession of the lands. The defendants refused to accept the rent fixed by the lease, and contended that he was liable to pay the rent paid by the other occupancy tenants in the village. The plaintiff, therefore, brought the present suit to have it declared that he was entitled to hold the lands permanently at the rent fixed by the lease.

The Subordinate Judge, who tried the suit, found that the plaintiff was not a permanent tenant of the lands in question, and refused to make the declaration prayed for. He was of opinion that "under s. 9 of the Khoti (Bombay) Act I of 1880 (1) the occupancy right of Balambhat's family was merely heritable, and was not otherwise transferable." He, therefore, made "a qualified declaration that the plaintiff was entitled to hold the lands at a fixed rent of eleven maunds 6½ *pails* of *bhat* per year."

The plaintiff appealed to the Assistant Judge. He held that the plaintiff was entitled only to a declaration of his right to hold merely as a yearly tenant at the same rent as was paid by occupancy tenants in the village.

The plaintiff preferred a second appeal to the High Court.

[375] *Manekshah Jehangirshah*, for the appellant:—The Khoti Act (Bom.) I of 1880 is not to be applied to the case. It has no retrospective effect. The claim is to be decided upon the construction of the lease itself. In the absence of express prohibitory words in the lease it should not be held inalienable. Balambhat had acquired under it an absolute right which he could transfer. The plaintiff has acquired by the transfer a right to hold the lands at the fixed rent permanently. The words of inheritance in the lease conferred an absolute estate on Balambhat, including the power of alienation—*Krishnarav v. Rangrav* (2).

Vasudev Gopal Bhandarkar, for the defendants:—The Khoti Act was properly applied. All that the plaintiff acquired under the transfer was a right to hold the lands like other tenants of the village. The rent did not remain fixed. Under the lease of 1854 a personal benefit was given to Balambhat which did not pass to the plaintiff, who was a stranger.

JUDGMENT.

SARGENT, C. J.—Section 9 of the Khoti Act (Bombay) I of 1880 is plainly not retrospective in its terms as the Subordinate Judge appears

(1) Section 9—"The rights of khots, dharekaris and quasi-dharekaris shall be heritable and transferable.

"Occupancy-tenants' rights shall be heritable, but shall not be otherwise transferable, unless in any case the tenant proves that such right of transfer has been exercised in respect of the land in his occupancy, independently of the consent of the khot, at some time within the period of thirty years next previous to the commencement of the revenue year 1865-66, or unless, in the case of an occupancy right conferred by the khot under s. II, the khot grants such right of transfer of the same."

(2) 4 B.H.C.R. A.C. J. 1.

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to have thought. The question whether the lease, which had been granted to Balambhat in 1854, and transferred to plaintiff in 1878 was transferable as against the defendants, must depend upon the language of the lease itself and the custom of *khoti* villages. The Assistant Judge relies entirely on the former as showing that the tenant's interest was inalienable; but the words "you are to enjoy, you and your sons, grandsons, from generation to generation" do not of themselves have that effect, as was ruled by the Privy Council in *Raja Nursing Deb v. Roy Koylasnath* (1). The only conclusion to be drawn from them is that the tenant was to hold in perpetuity at a fixed rent, in consideration of his making the embankment. The defendants have not raised an issue as to the custom of the village, or given any evidence of such custom; and we do not find anything in the Act of 1880 which can be construed as a declaration of the existing custom of *khoti* villages when the Act was passed. The question can, therefore, only be decided in favour of the defendants [376] on one or other of the grounds on which the Courts below proceeded; and as each of those grounds, in our opinion, fails to establish the inalienability of the lease, the plaintiff is entitled to the declaration prayed.

We must, therefore, under these circumstances, reverse the decree of the Assistant Judge, and declare that plaintiff is entitled to hold the lands at a permanent fixed rent of eleven maunds and $6\frac{1}{2}$ *pailis* of *bhat*. Costs on defendants throughout.

Decree reversed.

13 B. 376.

CRIMINAL REVISION.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

DHANIA v. F. L. CLIFFORD.* [19th November, 1888.]

Further inquiry—Criminal Procedure Code (Act X of 1882), s. 437—Wrongful confinement—Wrongful restraint—Indian Penal Code (Act XLV of 1860), ss. 339, 340—Malice.

Malice is not an essential ingredient in the offence of 'wrongful confinement' as defined by s. 340 of the Indian Penal Code (Act XLV of 1860). The offence is complete when a person is wrongfully restrained in such a manner as to be prevented from proceeding beyond certain circumscribing limits. And a person is wrongfully restrained when he is voluntarily obstructed so as to be prevented from proceeding in any direction in which he has a right to proceed.

The accused as abkari inspector visited a toddy shop where the complainant and one Dhanjibhai were employed as agents for the sale of toddy. Having reason to suspect that an offence under the Abkari Act (Bombay Act V of 1878) had been committed, the accused made an inquiry, in the course of which the complainant made certain statements implicating his fellow servant. The accused thereupon resolved to prosecute Dhanjibhai and make the complainant a witness in the case. In order to prevent him being tutored, the accused ordered his sepoy to bring the complainant to his camp, and there detained him during the night, and on the following morning sent him in charge of a sepoy to a Magistrate's Court, where the complainant repeated the statements made by him before the accused. He was then allowed to go away. The accused prosecuted Dhanjibhai, and in the course of his trial admitted in his deposition that he had ordered his sepoy to bring the complainant to his camp, and had detained him there

* Criminal Review, No. 407 of 1888.

(1) 9 M.I.A. 55.