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Lastly, although the Rs. 10,000 fixed as the price of the property may have been somewhat favourable to the plaintiff, there is no reliable evidence which shows that it was so much below the real value as to cast doubt on the sale being a *bona fide* transaction between plaintiff and Chunilal.

Upon the whole of the evidence we see no reason to doubt that the sale to plaintiff was not a sham transaction, but a *bona fide* one in consideration of a debt still due and Rs. 3,400 in cash ; and although, having regard to the circumstance of its having been entered into on the eve of the failure of the firm, it may be regarded as one by which plaintiff obtained an unfair preference over the general body of the firm's creditors, there are no circumstances in the case which show that plaintiff in entering into it was a party to any scheme by Chunilal to delay the creditors, and we have already said that we do not think the sale can be impeached by the defendant, on the ground of undue preference, in this suit. We must, therefore, reverse the decree of the Court below, and direct that plaintiff be put into possession of the property in question. But, under the special circumstances of the case, we shall order that parties pay their own costs throughout.

Decree reversed.

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[442] APPELLATE CIVIL.

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

JANARDANRAV AND OTHERS (*Plaintiffs*) *v.* THE SECRETARY OF STATE FOR INDIA (*Defendant*).* [17th January, 1889.]

Jurisdiction—Act X of 1876, *s.* 4, *cls.* (*f*) *and* (*k*)*—Inam Commissioner, investigation of a claim by, under Act XI of* 1852 *and decision thereon—Government resolutions setting aside the Commissioner's decisions—Such resolutions an adjudication—Claim for interest on mesne profits awarded by Government resolution.*

In 1859 the plaintiffs' claim to hold a certain village as an *inam* village was investigated by the Inam Commissioner under Act XI of 1852 and rejected ; and the plaintiffs were dispossessed of the village. In 1861 Government confirmed the Commissioner's decision on appeal by the plaintiffs.

Ultimately, however, in 1882, Government passed a resolution reversing its former decision, and subsequently passed a further resolution allowing the plaintiffs' claim to the village, and ordering the same to be restored to them. In 1885 the village was restored to the plaintiffs, and the arrears of revenue since 1859 were paid back to them. The plaintiffs then claimed interest on the arrears, and being refused the same sued to recover it. The District Judge was of opinion that s. 4, cl. (*f*) (2) of Act X of 1876 barred the cognizance of the suit by the Civil Court, but referred that question, under s. 13 of the Act, to the High Court.

Held, that the Civil Court had jurisdiction to try the suit. The resolutions of Government amounted to a distinct adjudication by competent officers that the land was exempt from payment of revenue, and was sufficient to give the Civil Courts jurisdiction over the plaintiff's claim.

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* Civil Reference, No. 12 of 1888.

(2) Section 4.—"Subject to the exceptions hereinafter appearing, no Civil Court shall exercise jurisdiction as to any of the following matters :—

"Clause (*f*) : Claims against Government—to hold land wholly or partially free from payment of land revenue."

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Per BIRDWOOD, J. :—That the claim of the plaintiffs being to obtain all the advantage flowing from the favourble decision of Government in 1882, cl. (*f*) of s. 4 of Act X of 1876 apparently did not apply.

The words "competent officer" as used in proviso (*k*) (1) included the Governor in Council, who is one of the authorities upon whom judicial powers were conferred by Act XI of 1852.

[443] THIS was a reference by Dr. A. D. Pollen, District Judge of Belgaum, under s. 13 of Act X of 1876.

The plaintiffs having claimed to hold the village of Bedkihal here ditarily as their *inam* village, their claim was investigated in 1859 under Act XI of 1852 by the Inam Commissioner, who rejected it, and the plaintiffs were dispossessed.

On appeal by the plaintiffs the decision of the Inam Commissioner was also confirmed by the Governor in Council in 1861. The plaintiffs, however, continued to petition the Government to review and set aside its decision. At length by a resolution dated the 19th October, 1882, Government reversed its former decision, and held the plaintiffs entitled to the restoration of the village.

On the 3rd July, 1883, Government passed the following resolution:—

"Government concur with the Remembrancer for Legal Affairs and the local authorities in thinking that for the purposes of s. 4 of Bombay Act II of 1863 the village of Bedkihal should be held to be restored after formal enquiry."

In 1885 the plaintiffs were put into possession of the village, and were paid mesne profits for the years during which the plaintiffs had been out of possession.

The plaintiffs claimed interest on the mesne profits, and, having failed to get in from Government, filed the present suit to recover the same.

The District Judge being of opinion that the plaintiff's suit was barred under s. 4, cl. (*f*), of Act X of 1876, referred the following question, under s. 13 of that Act, to the High Court :—

"The only point on which there is any room for doubt, is whether the plaintiffs' claim comes under the proviso (*j*) to s. 4 of the said Act X of 1876. Can it be said that the plaintiffs held the village under an adjudication of a competent **[444]** Court prior to the date of such adjudication? I think not. I think that any claim to hold the village prior to adjudication must be regarded as a claim falling under s. 4, cl. (*f*). But as the question is open to argument, and as the court fee in this case is very heavy, I consent to refer the matter to the High Court under s. 13 of Act X of 1876."

Mahadev C. Apte, for the plaintiffs.—Civil Courts have jurisdiction to try the claim. The original enquiry into the plaintiff's claim was by the Commissioner under Act XI of 1852, and his decision amounted to an adjudication within proviso (*k*) of s. 4 of Act X of 1876. The decision of the Inam Commissioner was a decree—*Vasudev Pandit* v. *The Collector*

(1) " Provided that if any person claim to hold land wholly or partially exempt from payment of land revenue under

" (*k*) a judgment by a Court of law, or an adjudication duly passed by a competent officer under Bombay Reg. XVII of 1827, chap. X, or under Act No. XI of 1852, which declares the particular property in dispute to be exempt,

" such claim shall be cognizable in the Civil Courts."

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of Puna (1). From this decree the plaintiffs appealed to Government. In 1882, Government set aside their previous decisions, and allowed the plaintiffs' claim to hold the village free from assessment. The several resolutions of Government, therefore, amount to an adjudication on the matter. Clause (*f*) of s. 4 of Act X of 1876 does not apply to such a claim as the present. In collecting the revenue, Government was acting as a trespasser; for their own resolution of the 19th October, 1882, clearly establishes that the plaintiffs were all along the owners of the village. The plaintiffs are entitled to judgment.

Rav Saheb *Vishvanth Narayan Mandlik*, for the defendant.—The District Judge's opinion is correct. Civil Courts have no jurisdiction to try the claim under s. 4, c. (*f*) of Act X of 1876. Proviso (*k*) to the section does not apply to the present claim. The decision of the Inam Commissioner as an adjudication was final. Government is not a Court of law. Resolutions of Government are not adjudications, but executive orders. The Court is asked to interfere with the discretion of Government in its executive capacity, which no Civil Court has power to do. The language of s. 4 should be considered *pari passu* with the other parts of the Act, when it will be seen that such questions are excluded by the Act from the cognizance of the Civil Court. The opinion of the District Judge should be upheld.

JUDGMENT.

[445] SARGENT, C.J.—The plaintiffs' claim for interest on arrears of land revenue between 1859 and 1885 rests on the assumption that they were entitled to the land revenue itself which had been received by Government during that period as the lawful holder of the village. The adjudication of this suit would, therefore, necessitate a decision on a question, which by s. 4, sub-ss. (*f*) and (*k*) of Act X of 1876, is a "matter" not within the competency of a Civil Court, unless the claim be "under a judgment by a Court of law, or an adjudication duly passed by a competent officer under Bombay Reg. XVII of 1827, chap. X, or under Act XI of 1852, which declares the particular property in dispute to be exempt." It is contended for the plaintiffs that the resolution of Government of 19th October, 1882, was such an adjudication, and that the Civil Court can, therefore, take cognizance of the plaintiffs' claim as based upon that adjudication. It is not in dispute that the plaintiffs' claim to be *inamdars* of the village was investigated by the Inam Commissioner under Act XI of 1852 and rejected in 1859, and that decision was confirmed by the Governor in Council under the rules made in that Act in 1861. However, the plaintiffs continued to present petitions to the Government, which resulted in the Government passing a resolution on 19th October, 1882, to the following effect: "On full enquiry, and after careful consideration of all the facts mentioned and arguments adduced by the petitioners, His Excellency is of opinion that the previous decisions of Government adverse to the claim preferred by the petitioners must be reversed, and the village of Bedkihal restored to them. All the circumstances of the case have now for the first time been fully brought to the notice of Government, and an examination of those circumstances, and the perusal of the memorials submitted by the petitioners, of the previous proceedings, and of the able and lucid review of the whole case furnished by the Remembrancer for Legal Affairs, convince the Governor in Council that the

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petitioners have established their claim to the restoration to them of the village in question. The necessary steps to carry out this order should be taken by the Collector, Belgaum." On 16th May, 1883, the Commissioner of the Southern Division wrote to Government to enquire whether [446] the restoration of the village should be considered as having been made after formal enquiry. The Government consulted the Legal Remembrancer on the above point, and his opinion was in the following terms :—" The Remembrancer for Legal Affairs has the honour to report that as Government Resolution No. 7284 of the 19th October, 1882, reversed an order which was passed before Bombay Act II of 1863 became law, and instead of disallowing allowed the memorialists' claim to hold their village of Bedkihal hereditarily in perpetuity under the Rules of Act XI of 1852, it is, in his opinion, reasonable that for the purpose of s. 4, Bombay Act II of 1863 the village should be held already *formally adjudicated* to be continued hereditarily." The Government on the 3rd July, 1883, passed the following Resolution:—" Government concur with the Remembrancer for Legal Affairs and the local authorities in thinking that for the purposes of s. 4 of Bombay Act II of 1863 the village of Bedkihal should be held to be restored after formal enquiry." We think that these resolutions amount to a distinct adjudication by competent officers that the land was exempt from payment of revenue when plaintiffs' title was examined by the Inam Commissioner in 1859.

It is, therefore, sufficient, in our opinion, to give the Civil Courts jurisdiction over the present claim. This is the only question referred to us, and we must be understood as expressing no opinion on the merits.

BIRDWOOD, J.—In making this reference, the District Judge expresses the opinion that the plaint discloses no cause of action against the Government cognizable by a Civil Court; that the suit is barred by s. 4, cl. (*f*) of Act X of 1876; and that even if there were no express prohibition, the claim would be inadmissible on general principles.

The District Judge makes the reference, however, under s. 13 of Act X of 1876, because there is room for doubting whether the plaintiffs' claim does not come under proviso (*j*) to s. 4 of the Act. He quotes proviso (*j*) in the order of reference; but intends apparently to refer to proviso (*k*); for the question which he thinks open to argument is not whether the [447] suit involves a claim to hold land exempt from the payment of land-revenue under a written grant such as is contemplated in proviso (*j*), but whether, during the greater part of the period in respect of which the plaintiffs claim interest on mesne profits, they can be said to have held their village under such an adjudication as is contemplated in proviso (*k*), the adjudication relied on by them having been made towards the close of that period. It is his doubt on this point which appears to the Judge to justify the reference.

In dealing with it we are not concerned with the questions whether the plaint discloses a cause of action against the Government, or whether the claim is inadmissible on general principles. The only question we can decide is whether the Judge is precluded by Act X of 1876 from taking cognizance of the case.

It seems to me doubtful whether the prohibition contained in cl. (*f*) of s. 4 of the Act can be applied to the case; for though the adjudication of the plaintiffs' claim would involve a consideration of their right to hold their village exempt from the payment of the land revenue from the year 1859 to the year 1885, yet it can scarcely be said that they are now

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making any claim against Government so to hold their village; for their right so to hold it was fully recognized by the Government in 1882. The restoration of the village of which they had been dispossessed in 1859, in execution of the Inam Commissioner's decree, was ordered in 1882. The village was restored to their possession in 1885, and mesne profits for the period of dispossession were paid by the Government to the plaintiffs, whose right, therefore, to hold the land free from assessment from 1859 to 1885 is no longer in dispute; and the only claim that the plaintiffs now wish to assert in the Civil Court is not a claim to hold land rent free, but a claim to obtain all the advantage flowing from the favourable decision of Government in their case. They seek now to recover interest on annual mesne profits withheld from them for the periods for which such profits were withheld. To such a claim cl. (*f*) of s. 4 was not apparently intended to apply.

[448] But, assuming that cl. (*f*) is applicable to the claim, then I have little hesitation in holding that proviso (*k*) also applies to it, and makes the suit cognizable by a Civil Court. The decision of Government contained in Resolution No. 7284 of the 19th October, 1882, is the adjudication relied on by the plaintiffs. It reverses the previous decisions of Government adverse to the plaintiffs' claim to the restoration of their village. The previous decisions referred to were made under Act XI of 1852. As to this, there is apparently no dispute. And in Government Resolution No. 4971 of the 3rd July, 1883, the Government itself seems to regard its decision of the 19th October, 1882, as made under that Act. Indeed, there is no other law to which we have been referred, under which the judicial orders of the Inam Commissioner and the judicial orders of the Government rejecting the plaintiffs' appeal against his orders, could apparently have been reversed. Those judicial decisions were binding on the Government in its executive capacity: see *Vasudev Pandit* v. *The Collector of Puna* (1), and could only be set aside by equally formal decisions by way of review. The order of Government rejecting the plaintiff's appeal was final under rule 2 of sch. A of the Act. Still, under rule II of sch. B, the Government was empowered to relax the former rule in favour of the claimants. It must be held to have relaxed the rule in 1882, and then to have admitted a review of its former decision. The Resolution No. 7284 of the 19th October, 1882, must, therefore, be regarded as an "adjudication," within the meaning of proviso (*k*) to s. 4 of Act X of 1876, "duly passed by a competent officer..... under Act XI of 1852," declaring the property in dispute to be exempted from the payment of land revenue. The words "competent officer," as used in the proviso, must be held to include the Governor-in-Council, who is one of the authorities upon whom judicial powers are conferred by the Act.

That being so, the mere circumstance that the plaintiffs claim interest on mesne profits for a period anterior to the order of 1882 does not take the case out of the proviso; for when the review was admitted, the whole question between the plaintiffs **[449]** and the Government was re-opened; and the order made in 1882 necessarily related back to the time when the plaintiffs were dispossessed in 1859; and that is the view the Government itself has taken, inasmuch as it has paid mesne profits to the plaintiffs from 1859. It cannot be said that the plaintiffs' present claim for interest is made irrespectively of the rights conferred on

(1) 10 B.H.C.R. 471.

them by the resolution of 1882. Their claim for interest for the period from 1859 to 1885 is really based on the adjudication of 1882. They could not have brought the present suit at all if that resolution had not been made in their favour. They seek an advantage necessarily arising, as they assert, out of that resolution; and their claim must, therefore, be held to be based on the resolution, and to be covered by proviso (*k*) to s. 4 of Act X of 1876.

I concur, therefore, with the learned Chief Justice in holding that the Judge must be directed to proceed with the case.

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13 B. 449 (F.B.).

APPELLATE CIVIL—FULL BENCH.

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

DEVACHAND AND ANOTHER (*Original Defendants*), *Appellants v.* HIRACHAND KAMARAJ (*Original Plaintiff*), *Respondent.**

[17th January, 1889.]

Stamp Act (*I of* 1879), *s.* 34, *Proviso III—Admission of documents in evidence—Unstamped promissory note—Admitted as a bond on payment of stamp duty and penalty—Subsequent rejection too late—Order of remand—Civil Procedure Code* (*Act XIV of* 1882), *s.* 578.

The plaintiff sued to recover the amount due on three *khatas*. The defendant objected that the *khatas* were not duly stamped. The Subordinate Judge held that the instruments were bonds, and as such admitted them in evidence on payment of the proper stamp duty and penalty under s. 34, proviso I, of the Stamp Act (I of 1879). At a subsequent stage of the same suit, his successor in office was of opinion that the *khatas* in question were promissory notes; that as such they could be stamped only at the date of their execution, and that they had been illegally admitted in evidence under s. 34, proviso I. He accordingly dismissed the suit. On appeal the District Judge agreed with the Subordinate Judge that the instruments sued on were promissory notes, but held that, after they had once been admitted in evidence on payment of **[450]** the stamp duty and penalty, the question of their admissibility could not be subsequently raised in the suit, under proviso III to s. 34 of the Stamp Act (I of 1879). He, therefore, reversed the decree of the Subordinate Judge, and remanded the case for trial on the merits. Against this order of remand, defendants appealed to the High Court.

Held, that the promissory notes having been once admitted in evidence could not afterwards be rejected, on the ground of their not being duly stamped.

Held, also, that under s. 578 of the Code of Civil Procedure (Act XIV of 1882) the High Court could not interfere with the order of remand, as it was not an order which affected the merits of the case, or the jurisdiction of the Court.

[F., 18 B. 737 (738); 8 M.L.J. 66 (68); U.B.R. 1897—1901, 559 (560).]

APPEAL, under s. 15 of the amended Letters Patent, against the decision of a Divisional Bench (Birdwood and Parsons, JJ.) dated the 24th July, 1888, affirming the order of remand passed by Dr. A. D. Pollen, District Judge of Belgaum, in Appeal No. 121 of 1887 of the District File.

The plaintiff sued to recover the sum of Rs. 653-7 due on three *khatas* signed by the defendants' deceased brother Motiram as manager of the family. The *khatas* were marked as Exs. 3, 4 and 5 in the case. Ex. 3 ran as follows:—

"Metha Jethiram Sobhagchand, 2nd May 1882.

* Appeal No. 13 of 1888 under the Letters Patent.