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appointment of a guardian *of the property*, but only for the grant of a certificate of administration; and it is plain from the language of s. 2 of the Act that "until he shall have obtained such a certificate," which can only mean "until it has been issued," a guardian of the property cannot be said to have been "appointed," by which is presumably intended one with the powers which by the Act are intended to be vested in him.

The case, however, is different as regards an appointment of a guardian *of the person*. The Act provides, in terms, for such an appointment being made, and no certificate of appointment is contemplated by the Act. This is clear from s. 10 and s. 31, and is made still clearer by the contrast between the grant of certificate of administration and the appointment of a guardian of the person which is so marked in the language of ss. 21 and 23. It is true that the rules of the Court provide a form of certificate of guardianship of the person; but on the language of the Act itself, and that must determine the question, it is plain, we think, that the appointment of a guardian of the person is complete on the order of the Court being made so appointing the guardian. In the present case it is admitted there had been such an appointment. The Majority Act is, therefore, applicable in our opinion, except so far as its operation may be excluded by the provisions of s. 2.

[291] It has been contended for the defendant that to apply the Act to the present question would be to affect in the contemplation of sub-clause (*c*) of that section the "capacity" of the plaintiff, who had, it is said, by general Hindu law attained her majority in 1874, *i.e.*, before the Majority Act had come into force. But the term "capacity" obviously refers to the power to sue and contract, and cannot be deemed to apply to the "liability" on arriving at majority to have time run against the right to file a suit as prescribed by the Statute of Limitations. But even if it could be so understood, the law applicable would be the Limitation Act of 1871, by which the time of arriving at majority was eighteen (notwithstanding that by the general Hindu law minority ceased at sixteen), and, therefore, the plaintiff would not have arrived at majority until 1876, *i.e.*, after the passing of the Majority Act. Sub-clause (*c*) of s. 2 has, therefore, no application to the present case. We must, therefore, hold that the suit is not barred.

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CRIMINAL REVISION.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

QUEEN-EMPRESS *v.* IRAPPA.* [6th September, 1888.]

Bombay Land Revenue Code (Act V of 1879), ss. 125, 214 and 215—Boundary-marks—Jurisdiction of Magistrates—Rules 101 and 111, cl. 3 (a)—Survey settlement, meaning of.

The accused was charged before a Second Class Magistrate with digging earth within a space of two cubits of an earthern boundary-mark, in contravention of Rule 101 of the Rules made by Government under s. 214 (*g*) of the Bombay Land Revenue Code (Act V of 1879). The Magistrate convicted the accused under Rule 111, cl. 3 (*a*) and sentenced him to a fine of one rupee.

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Held, that the conviction and sentence were illegal. Section 125 of the Land Revenue Code does not give jurisdiction to any Magistrate to try a person accused of injuring a boundary-mark.

Held, also, that Rule 101 is not such a rule as can be legally made under s. 214 (*g*) of the Code (1). It is not a rule "for the administration of a survey settlement." Such a settlement is a settlement of the land revenue, [292] and relates only to such matters as are referred to in chap. VIII of the Code, and not to boundaries or boundary-marks, which are dealt with in chap. IX.

THE accused, who was occupant of Survey No. 28, dug earth within two cubits of two earthen boundary-marks lying to the east of the number. He was prosecuted for this act under Rules 101 and 111, cl, 3 (*a*) of the Rules made by Government under ss. 214 and 215 of the Bombay Land Revenue Code (Act V of 1879).

Rule 101 provides that "the digging of earth close around an earthen boundary-mark for the purpose of repairing it is prohibited. A space of two cubits in breadth all round each such mark is to be left untouched, so as to prevent injury to the mark from water lodging in the cavities from which earth is taken for the repairs(2).

Rule 111, cl. 3 (*a*) provides:—Whoever shall dig earth within a space of two cubits of any earthen boundary shall be punished with a fine which may extend to ten rupees"(3).

[293] The accused was convicted under these rules by Rav Saheb Shesho Krishna, Magistrate, Second Class of Belgaum, and sentenced to pay a fine of one rupee.

On an examination of the monthly criminal return the High Court, considering that the conviction and sentence were illegal, sent for the record and proceedings of the case.

Rav Saheb *V. N. Mandlik*, for the Crown.

There was no appearance for the accused.

JUDGMENT.

The judgment of the Court (BIRDWOOD and PARSONS, JJ.) was as follows:—"The accused has been convicted of digging earth within a space of two cubits of an earthen boundery-mark, and sentenced to a fine of Re. 1. The digging of earth close around an earthen boundary-mark

(1) "Section 214.—The Governor in Council may from time to time vary or rescind rules or orders not inconsistent with this Act;

"(*a*) determining the qualifications to be required of all members of establishments appointed under s. 21;

"(*b*) regulating the power of fining, reducing, suspending and dismissing revenue officers under s. 32;

"(*c*) prescribing the purposes to which land liable to the payment of land revenue may be appropriated under s. 48;

"(*d*) regulating the system and manner of assessing land to the land-revenue under ss. 52 and 100;

"(*e*) for the disposal of forfeited occupancies or alienated holdings under s. 56;

"(*f*) fixing the maximum amount of fine leviable under s. 61 when land which has been unauthorizedly occupied is appropriated to any non-agricultural purpose;

"(*g*) for the administration of any survey settlement;

"(*h*) prescribing the mode, form and manner in which appeals under chap. XIII of this Act shall be drawn up and presented;

"(*i*) generally for the guidance of all persons in matters connected with the enforcement of this Act, or in cases not expressly provided for therein.

"Rules or orders made under any of the above cls. (*c*), (*d*), (*e*), (*f*) or (*i*) may be made either generally or in any particular instance."

(2) *Vide Bom. Govt. Gazette*, Part I, p. 809, for 1881.

(3) *Vide Bom. Govt. Gazette*, Part I, p. 811 for 1881.

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for the purpose of repairing it is prohibited by Rule 101 of the Rules made by Government under s. 214 (*g*) of the Land Revenue Code of 1879. That rule further provides that a space of two cubits in breadth all round each such mark is to be left untouched so as to prevent injury to the mark from water lodging in the cavities from which the earth is taken for the repairs. For the breach of this rule a penalty is provided by cl. 3(*a*) of Rule 111 of the rules made under s. 215 of the Code. It is under this last section that the accused has been convicted. We are of opinion that the conviction and sentence are illegal, as Rule 101 is not such a rule as can legally be made under s. 214 (*g*) of the Code. It is not a rule "for the administration of a survey settlement." Such a settlement is a settlement of the land revenue, and relates only to such matters as are referred to in chap. VIII of the Code. Boundaries and boundary-marks are dealt with in chap. IX, and penalties for injuring boundary-marks are specially provided by s. 125 of the Code, which gives no jurisdiction to Magistrates. We, therefore, reverse the conviction and sentence, and direct that the fine, if paid, be restored.

Conviction and sentence reversed.

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[294] APPELLATE CIVIL.

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

BHUTIA DHONDU (*Original Plaintiff*), *Appellant v.* AMBO AND OTHERS (*Original Defendants*), *Respondents.** [10th September, 1888.]

Landlord and tenant—Tenant remaining in occupation after passing a rajinama*—Land Revenue Code (Act V of* 1879), *s. 74—Effect of the* rajinama*—Construction—Practice—Ejectment suit by owner of* "inter esse termini."

The first and second defendants were sub-tenants of the third defendant, who had certain land which was part of the *inam* village of D. In 1883 the third defendant executed a *rajinama* in the following terms which he gave to the receiver who had been appointed by the Court to manage the village:—"Up to the present time my father and I have been cultivating the land, but the land belongs to the *inamdar*. I have no title over it, and the *inamdar* can give it for cultivation to any one he pleases." Shortly after the date of this *rajinama* the *inamdar* gave the land to the plaintiff, who now sued to obtain it from the defendants, who had remained in possession.

Held, that the plaintiff was entitled to the land. The *rajinama* operated as a relinquishment of the tenancy by defendant No. 3 under s. 74 of Bombay Act V of 1879.

Held, also, that the plaintiff was entitled to sue in ejectment, although he had not been put in possession of the land.

[R., 4 Bom.L.R. 801 (806).]

SUIT in ejectment.

The plaintiff filed this suit in 1885 to obtain possession of certain land which formed part of the *inam* village of Dongoste. He alleged that it had been given to him by the *inamdar* in 1883-84, and that the defendants were in wrongful possession.

The land in question had been held by Pos Patil (defendant No. 3), after the death of his father. A receiver had been appointed by the

* Second Appeal, No. 43 of 1887.