

The risk of the disease spreading to the other pilgrims on the ship could not have been greater than is necessarily incurred on every crowded emigrant ship. As to this, the evidence of Dr. Sidney Smith, who has had large experience as a health officer, is very important. He stated that, except in the case of a pilgrim actually suffering from small-pox, or where pilgrims might have jostled against another who had the disease, in which case he said he might order a short detention, no objection is taken to any pilgrim's going on board, nor any enquiry made where he may come from. And even if it were thought prudent, under the circumstances of this case, that the defendants should take special precaution by having additional medical aid and means of segregation, it was for the defendants, who had entered into an absolute agreement, to have taken them.

[157] Lastly, the defendants have made no attempt to show that the carrying out the contract would have been in contravention of any law, or regulation having the force of law, or that these 500 pilgrims would not have been allowed by the authorities to go on board the "Mobile" on 3rd May for the purpose of being carried to Jeddah. We agree, therefore, with the Judge of the Division Court, that the defendants were not prevented from fulfilling their contract by its being illegal for them to do so. (The Court after discussing the amount of damages confirmed the decree with costs).

Attorneys for the appellants (defendants):—Messrs. *Winter, Burder and Bayley*.

Attorneys for the respondents (plaintiffs):—Messrs. *Payne, Gilbert and Sayani*.

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APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Candy.

SHANKAR RAMLAL DIKSHIT (*Original Plaintiff*), Applicant v.
MARTANDRAO BHAI TIPNIS (*Original Defendant*), Opponent.*
[27th June, 1889.]

Mamlatdars' Act (Bombay Act III of 1876), s. 17—Decree for possession—Execution—Obstruction to execution—Power to use force in enforcing the decree.

When a Mamlatdar passes a decree for possession, it is his duty, under s. 17 of Bombay Act III of 1876 (1), not merely to issue orders to the village officers to execute the decree, but also to see that effect is really given to his decision. For this purpose he may use force, if necessary, to eject the person against whom the decree is passed.

[R., 2 S.L.R. 22.]

* Application under Extraordinary Jurisdiction No. 114 of 1888.

(1) Section 17. If the Mamlatdar's decision be for awarding possession or restoring a use, he shall issue an order to the village-officers to give effect thereto.

If it be for granting an injunction, he shall cause the same to be prepared in the form of sch. C, and shall deliver or tender the same then and there to the defendant, if he be present, and if he be not present, shall send it to the village-officers to be served upon him.

When the Mamlatdar awards costs, such costs, together with the costs of execution, shall be recovered from the party in person, and in the event of non-payment, by the attachment and sale of his property.

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APPEL-
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14 B. 157.

THIS was an application under s. 622 of the Code of Civil Procedure (Act XIV of 1882).

[158] The applicant obtained a decree in the Mamlatdar's Court, awarding him possession of a certain house. The village officers proceeded to execute the decree under s. 17 of the Bombay Mamlatdars' Act (III of 1876), but the defendant obstructed them and prevented them from giving effect to the decree. The plaintiff thereupon applied to the Mamlatdar to have the obstruction removed. His application was rejected, and he was referred to a regular suit in a Civil Court, the Mamlatdar being of opinion that he had no power to remove the obstruction. Hence the present application to the High Court under its extraordinary jurisdiction.

A rule *nisi* was issued, calling upon the defendant to show cause why the Mamlatdar should not be directed to enforce his own decree.

The defendant appeared in person to show cause.

Manekshah Jahangirshah, contra :—The Mamlatdar has an implied authority, under s. 17 of Bombay Act III of 1876, to give effect to his own decree. Every Court has an inherent jurisdiction to carry out its own orders—Maxwell on Statutes, (2nd ed.), p. 433.

JUDGMENT.

JARDINE, J. :—The question we have to decide is whether when a Mamlatdar has awarded possession under Bombay Act III of 1876 and issued an order to the village officers under s. 17 to give effect to his decree, his duty is completed, or whether, as in this case, the mere obstruction of the village officers by the losing party is to be accepted as a sufficient reason for not enforcing process. I think not. The principle taken from the civil law is thus stated in Maxwell on Stat., (2nd ed.), 433. "Where an Act confers a jurisdiction, it impliedly grants, also, the power of doing all such acts, or employing such means, as are essentially necessary to its execution." In *Ex parte Martin* (1) it was said by Pollock, B. : "Where jurisdiction is given by statute the means of carrying it out must also be provided." So in *Bellamy v. Hoyle* (2) *per* Bramwell, B., "as incident to the constitution of all Courts, there is a power of enforcing their judgments and process." "Otherwise this absurd result would follow that [159] a valid order would exist, and yet the Court have no power to enforce it." In carrying out the order, force may be used by the Mamlatdar—*Baji Dev v. Sadashiv Bhaishankar* (3). The village officers are, in my opinion, acting in disobedience of the Mamlatdar's order "to give effect" to his decree if they refrain from all action on the mere objection of the losing party. They are bound to give effect to the order, and if necessary to use force in so doing. If the village establishment is insufficient, they should apply to the Mamlatdar, whose duty it would be to represent to the higher officers of the Government any necessity which might exist for the employment of any force not available on the spot to carry out the decree of the Court.

For these reasons we set aside the Mamlatdar's order of the 12th May, 1888, and direct him to give proper directions to the village officers, in accordance with this judgment, in order that they may give effect to the Mamlatdar's decree awarding the plaintiff possession of the house.

CANDY, J.—I concur. Section 17 of Bombay Act III of 1876 provides that if the Mamlatdar's decision be for awarding possession, he shall

(1) L. R. 4 Q. B. D. 215.

(3) 5 B H. C. R. A. C. J. 158.

(2) L. R. 10 Ex. 220 (229).

issue an order to the village officers to give effect thereto. And s. 18 (1) provides that the party to whom the Mamlatdar shall give immediate possession shall continue in possession until ousted by a decree or order of a civil Court. But if the party, against whom the Mamlatdar's order is passed, can be allowed to successfully resist the effect of that order, then the Mamlatdar's decision may be merely a *brutum fulmen*. It must be presumed that, when the law provides that the Mamlatdar [160] shall issue an order to the village officers to give effect to his decision, the law implies that power is given to the Mamlatdar, to see that effect is really given to his decision.

It has already been ruled by this Court (*Baji Dev v. Sadashiv Bhaishankar* (2) that a Mamlatdar granting immediate possession under the Mamlatdars' Courts Act (then V of 1864) has the power to direct the breaking open of a door of a house when it may be necessary for the purpose of giving effect to his order. In the same way and for the same purpose he may use force to eject the person against whom the order has been passed and to give effect to his decision.

Order reversed.

14 B. 160.

APPELLATE CRIMINAL.

Before Mr. Justice Scott and Mr. Justice Jardine.

*In re JOB SOLOMON.** [20th July, 1889.]

Criminal Procedure Code (Act X of 1882), ss. 452, 408, 404—Appeal—Right of appeal to the High Court by a person other than a European British subject jointly tried with such subject—Hyderabad—Jurisdiction of High Court of Bombay over European British subjects at Hyderabad.

A person, not being a European British subject, who is tried before a District Magistrate jointly with a European British subject, cannot claim, under s. 452 of the Code of Criminal Procedure (Act X of 1882), the right of appeal to the High Court which is exclusively reserved to such European British subject.

[D., L.B.R. (1893—1900) 516 (518).]

THIS was an appeal from the conviction and sentence passed by L. S. Newmarch, acting Cantonment Magistrate and District Magistrate of Secunderabad.

The accused Job Solomon was charged along with one Clive Durant with defamation in respect of certain matter printed and published in the

* Criminal Appeal, No. 152 of 1889.

(1) Section 18. The party to whom the Mamlatdar shall give immediate possession, or restore a use, or in whose favour an injunction has been granted, shall continue in possession or use until ousted by a decree or order of a civil Court :

Provided that nothing in this section shall prevent the party against whom the Mamlatdar's decision is passed from recovering by a suit in the civil Court mesne profits for the time he may be kept out of possession of any property, or out of enjoyment of any use.

Provided further that in any subsequent suit or other proceeding in the ordinary civil Courts between the same parties, or other persons claiming under them, the Mamlatdar's decision respecting the possession of any property, or the enjoyment of any use, shall not be held to be conclusive.

(2) 5 B. H. C. R. A. C. J. 158.

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