

It was extremely improper for the Magistrate, in disposing of the case, to rely in any way on statements made to him out of Court. Section 244 of the Code of Criminal Procedure ought to have been more carefully followed. Any person aggrieved may now commence proceedings, if so advised, on a new complaint before another Magistrate.

Conviction and sentence reversed.

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ENCE.
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14 B. 573.

APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and
Mr. Justice Telang.*

JANARDHAN BHASKAR (*Original Plaintiff*), *Appellant v.*
THE SECRETARY OF STATE FOR INDIA IN COUNCIL (*Original
Defendant*), *Respondent*.* [10th March, 1890.]

*Jurisdiction—Abkari revenue—Pensions Act XXIII of 1871—Construction—Inamdar,
right of, to abkari revenue under grant from Peshwa.*

The Peshwa's Government granted in *inam* to the plaintiff's ancestor, by *sanad*, the villages of Golap and Randpar. The *sanad* granted "water, trees, grass, wood, quarries, mines, buried treasure, present and future cesses, and taxes and assessments." The plaintiff brought the present suit to recover from the defendant a part of the abkari revenue for 1884-85 and 1885-86. He contended that the revenue derived by the Government for tapping trees in the villages aforesaid was a tax within the contemplation of the grant.

Held, that the Court had no jurisdiction to entertain the suit, under the Pensions Act XXIII of 1871. The tax in question was a money tax, and as soon as it was imposed, the grant, if it entitled the *inamdar* to the tax, operated as a grant of the money to be derived from the tax, and was, therefore, within the spirit, if not the letter, of the Pensions Act, [374] the object of which was to reserve to the Government the determination of all questions affecting grants of money, the bestowal of which was an act of grace or State policy on the part of the ruling power.

APPEAL from a decision of G. C. Whitworth, District Judge of Ratnagiri.

The plaintiff, as the *inamdar* of the villages of Golap and Randpar, sued to recover from the defendant a part of the abkari revenue for the years 1884-85 and 1885-86. The plaintiff claimed to be entitled to it under the grant of the villages made to him by the Peshwa's Government. He alleged that he had received it for the years previous to the suit.

The grants relied upon by the plaintiff were in the following form:—

"To the ever opulent and highly respected Gosavis" (term of respect).
"Gopal Mahadev and Dinkar Mahadev, astrologers, whose lineage is Shandil, ritual Ashvalayan, inhabitants of mauje Golap, taraf Pavas, subhprant Rajapur.

"I, your servant Jagjivan Parashram Pratinidhi, make profound prostrations. The *Sur* year one thousand one hundred and fifty-two (1751—52 A.D). You have rendered service with a singleness of purpose in the dominion of the Maharaja, the King of Satara. The Maharaja, therefore, deeming it necessary that you and your descendants in succession should be

* Appeal, No. 85 of 1888.

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maintained, has removed the village of mauje Golap, taraf Pavas, subhprant Rajapur, from the hands of the former *mokasi*, and has now granted the whole of it to you and your sons and grandsons in lineal succession as *watan inam*, together with all cesses, including even the *mokasa* cess and the *habsipatti* and together with all the cesses and taxes, including even the present and future cesses and the *inam tijal* (cess), with the right over waters, trees, grass, wood, stones, mines and buried treasures, but excluding the *hakdars'* and the *inamdars'* dues; you are, therefore, to get the village aforesaid according to the ancient boundaries transferred to you, and your sons and grandsons in succession are to enjoy the income of the said village as mentioned above from year to year as *inam* and live in peace. Let this be known. The 1st moon of *Ravilaval*. The order is made in the presence of the king."

[575] The defendant pleaded limitation, and denied that the plaintiff was entitled to any abkari revenue.

Two issues were raised, *viz.*, (1) whether the suit was time-barred; (2) whether the plaintiff, as *inamdar*, was entitled to abkari revenue of the two villages.

The District Judge was of opinion that the suit was not time-barred, but held that the plaintiff, as *inamdar*, was not entitled to abkari revenue. He, therefore, dismissed the plaintiff's suit.

The following is a portion of his judgment:—

"The *sanads* in question were given by the Peshwa's Government, and grant the village with 'water, trees, grass, wood, quarries, mines, buried treasures, present and future cesses, and taxes and assessments.' But reading the grant in the light of the judgment in *Ravji Narayan Mandlik v. Dadaji Bapuji Desai* (1) it still seems to me to leave unaffected the right of Government to tax liquor. Whatever was granted, was something arising out of the estate, and it cannot be accurately said that the tax on liquor arises out of it. The property in the trees and their juice is quite a distinct thing from the tax. The imposition of the tax may or may not affect the value of the trees according as it affects the demand for toddy; but the tax itself is no part of the property. The liquor tax does not appear to me, for the purpose of the question at issue, to hold a different position to an income tax or a license tax. * * * * Besides, the Abkari Act (Bom.) V of 1878 has given to the Local Government the right of levying the revenue now in suit, irrespectively of any previous rights the plaintiff may have had."

The plaintiff appealed to the High Court.

Daji Abaji Khare, for the appellant.—The words of the *sanads* are very wide and include every thing belonging to the villages. The word "taxes" in the *sanad* includes abkari revenue. Government has hitherto paid the plaintiff, and it cannot now dispute his claim.

Shantaram Narayan, (Government Pleader), for the respondent.—The plaintiff is not entitled to the abkari revenue. The levy of the abkari tax is for the benefit of Government, and not [576] for the owner of the trees. The *sanad* in question gives only the soil of the villages, and not the taxes. The evident intention of the Abkari Act (Bom.) V of 1878 is that Government is to collect the tax and retain it for the purposes of the State. An *inamdar* has no right to collect such a tax, much

less has he a claim to it. The Pensions Act XXIII of 1871 bars such a suit.—*Parbhudrs Rayaji v. Motiram Kalyandas* (1). Government is not estopped from denying the plaintiff's right for the acts of its agents.

Daji Abaji Khare, in reply.—The objection under the Pensions Act cannot now be taken for the first time.

JUDGMENT.

SARGENT, C. J.—This is a suit by the *inamdar* of the villages of Golap and Randpar to recover from Government the abkari revenue of those villages. He relies on a grant by the Peshwa's Government of the villages with "water, trees, grass, wood, quarries, mines, buried treasures, present and future cesses, and taxes and assessments." It is contended that the revenue derived by Government from the licenses granted for tapping trees in the villages is a tax within the contemplation of the grant.

As we think the case falls under the Pensions Act XXIII of 1871, and the Court is, therefore, ousted of its jurisdiction, we express no opinion on that question. It is true that the grant is not, in terms, one of a sum of money, and that taxes might not necessarily have been paid in money in the days of the Peshwa; but the tax in question is a money tax, and as soon as it was imposed, the grant, if it entitled the *inamdar* to the tax, operated as a grant of the money to be derived from the Government Treasury, and was, therefore, within the spirit, if not the precise letter, of the Pensions Act, the object of which, as stated in the Legislative Council in introducing the Bill, and which is referred to by Mr. Justice Melvill in *Parbhudas Rayaji v. Motiram Kalyandas* (2), was to reserve to the Government the determination of all questions affecting grants of money, the bestowal of which was an act of grace or State policy on the part of the ruling power.

We must, therefore, confirm the decree of the Court below for the above reasons with costs.

Decree confirmed.

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[577] APPELLATE CIVIL.

Before Mr. Justice Scott and Mr. Justice Telang.

ONKAR RAMSHET MARWADI (*Original Plaintiff*), *Appellant v. THE FIRM KNOWN AS GOVARDHAN PARSHOTAMDAS AND OTHERS, (Original Defendants), Respondents.** [14th March, 1890.]

Mortgage as distinguished from a charge—Limitation Act (XV of 1877), art. 147, sch. II—Suit to enforce mortgage lien by sale of mortgage property—Construction.

A bond contained the following stipulation as regards the liabilities of the sureties:—"In respect of this we have given to you, in writing, as a *nazar gahan* (i.e., sight mortgage), the fields which belong to ourselves, and which we ourselves are enjoying..... If we do not pay according to contract, you may sell the said fields through the Court and recover the amount. If any balance remains, we will pay it off personally or by means of our other property."

* Second Appeal No. 293 of 1888.

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