

1—54." And at the conclusion of the judgment (p. 288) Lord Coleridge says: "It must not be supposed that in refusing to admit temptation to be an excuse for crime it is forgotten how terrible the temptation was; how awful the suffering; how hard in such trials to keep the judgment straight and the conduct pure. We are often compelled to set up standards we cannot reach ourselves, and to lay down rules which we could not ourselves satisfy. But a man has no right to declare temptation to be an excuse, though he might himself have yielded to it, nor allow compassion for the criminal to change or weaken in any manner the legal definition of the crime."

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During the terrible famine which occurred in the Madras Presidency and in portions of this one in 1877, numerous cases of murder came up for confirmation of the capital sentence, or on appeal before my colleagues and myself, where a woman had killed a child for the sake of its ornaments, which the prisoner had immediately pledged or sold to raise money to buy food to save herself from starvation. It was never suggested in any of such cases which came before me that the offence was less than that of murder. I think, therefore, that it cannot be too clearly pointed out that in the opinion of my two learned colleagues (Scott and Jardine, JJ.), and myself, the distinction referred to by the Magistrate, which, he says in his judgment, he finds taken in Sir Raymond West's minute in the Crawford case, "between accomplices who volunteer to assist in the receipt of illegal gratifications and those who assist under compulsion" is an unfounded distinction [147] and one which is directly contrary to the law in force in British India. I consequently agree with Mr. Justice Jardine in acquitting the two accused on the charges referred for my opinion, and I concur with Sir Barnes Peacock, C. J., when he says in his judgment in the case of *Elahi Buksh* (1), "if the Court are of opinion that the evidence could not, in any proper view of the case, support a conviction, it would be worse than useless to send the case back for a new trial."

Conviction and sentence reversed.

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Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Scott.

THE BOMBAY AND PERSIA STEAM NAVIGATION COMPANY,
LIMITED (*Original Defendants*), *Appellants v.* THE RUBATTINO
COMPANY, LIMITED (*Original Plaintiffs*), *Respondents.**
[22nd and 29th November, 1889.]

Contract—Contract to carry passengers in ship—Passengers infected with disease—Excuse for non-performance of contract—Implied term in Contract—Performance become illegal—Contract Act IX of 1872, s. 56—Penal Code (XLV of 1860), s. 269.

By a contract made with the plaintiffs the defendants agreed to carry from Bombay to Jeddah, in their steamer "Mobile," 500 pilgrims who were about to arrive in Bombay from Singapore in the plaintiffs' ship the "Stura." The defendants were to be paid at the rate of Rs. 26 *per* head, and the ship "Mobile"

* Suit No. 167 of 1888.
(1) 5 W. R. (Cr.) 80.

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was to receive the pilgrims on the 3rd May, 1888. The "Stura" arrived in Bombay on the 1st May with about 600 pilgrims on board, and on the 2nd May the plaintiffs gave notice to the defendants that 500 of them were ready to go on board the "Mobile" on the next day, in accordance with the contract. The defendants refused to receive the pilgrims on board the "Mobile", on the ground that they had come to Bombay in the "Stura" and that during the voyage of that ship to Bombay there had been an outbreak of small-pox on board; that the 500 pilgrims had been in close contact with those who had been suffering from the disease, and that on the 3rd May fresh cases were occurring among the pilgrims brought from Singapore. They pleaded that under these circumstances they were not bound to ship and carry the 500 pilgrims, contending (1) that it was an implied term in the contract that the 500 pilgrims should be free from small-pox or other dangerous disease, and (2) that the performance of the contract had under the circumstances become unlawful (s. 269 of the Penal Code and s. 56 of the Contract Act).

[148] *Held*, that the defendants were bound to carry out the contract. In the absence of proof, that a term providing that the pilgrims should be free from small-pox was to be implied by the usage of the pilgrim-carrying trade, there could be no reason for implying it. The possibility that some of the 500 pilgrims might have the germs of the disease in them owing to their exposure to infection, might make carrying them more expensive and onerous, but it was a contingency which from the very nature of the trade must have been known to the defendants, and if they wished to provide against it they should have done so by express terms.

Held, also, that the performance of the contract had not become unlawful. The risk of the disease was not greater than would necessarily be incurred in every crowded emigrant ship. But, even, if special precautions were desirable under the circumstances, it was for the defendants, who had entered into an absolute agreement, to have taken them.

[R., 22 P.R. 1902.]

APPEAL by the defendants from a decree of Bayley, J., awarding the plaintiffs damages for the defendants' breach of contract.

In April, 1888, the plaintiffs booked pilgrims from Singapore to Jeddah *via* Bombay, with power to tranship at Bombay. The plaintiffs were prepared to carry the pilgrims as far as Bombay in their steamship "Stura" but they were unwilling to send that ship further than Bombay, and accordingly they contracted with the defendants that the defendants should convey from Bombay to Jeddah in their steamer "Mobile," which was to be ready on the 3rd May, 1888, at the rate of Rs. 26 each, 500 of the pilgrims whom the defendants might bring from Singapore in the "Stura".

The plaintiffs having made this agreement with defendants, arranged that the "Stura" with the pilgrims on board, should not arrive before the 1st May, 1888. The "Stura" accordingly left Singapore on the 16th April, 1888, and arrived in Bombay on the 1st May, 1888, with about 600 pilgrims on board. The plaintiffs thereupon wrote to the defendants, who replied admitting that they were bound to take the pilgrims on board the "Mobile" on the 3rd May, but requesting that they should not be sent for three or four days, in order that certain arrangements might be made on board the "Mobile" for their reception.

On the 2nd May the plaintiffs gave the defendants notice that the 500 pilgrims were ready to go on board the "Mobile" on the following day, as arranged, and requesting that the [149] necessary instructions for their reception should be given. On the 3rd the plaintiffs received the following letter from the agent of the defendants, refusing to receive the pilgrims on board, on the ground that they had been passengers to Bombay on board the "Stura" on which ship there had been during the voyage, an outbreak of small-pox:—

"Bombay, 3rd May 1888.

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"F. BOZZONI, Esquire,

"Agent, Navigazione Generale Italiana.

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"Dear Sir,—In reply to your letters of yesterday and to-day's date, I beg to state that the S. S. 'Mobile' is ready to receive on board 500 native pilgrims and to proceed without delay to Jeddah, but that the steamer cannot receive on board any passengers who either have small-pox upon them, or have recently been subjected to contagion, as is the case with all the native pilgrims brought by your steamer 'Stura' from Singapore and landed by you yesterday in Bombay, * * * * *

"I beg to suggest, as a means of avoiding the difficulty caused by the outbreak of small-pox on the 'Stura', that you should send on board the 'Mobile' 500 other pilgrims who have not been subjected to contagion, in which case we shall be happy to convey them to Jeddah in lieu of the 500 landed *ex* 'Stura' and at the contract rate.

"I beg to point out that you are in error in saying that the expenses of sheltering and feeding the pilgrims landed *ex* 'Stura' after the 3rd instant will have to be borne by my company. Under the circumstances which have occurred, my company are in no way responsible for the expenses.

"I may also say that I am surprised that you did not tell me that there was small-pox amongst the pilgrims of the 'Stura' when you came and saw me on the 2nd instant, and told me that you were going to land the pilgrims. Had you done so, I would have told you that they would not be received on board the 'Mobile'.

"Yours faithfully,
" (Signed) HAJEE RUSSAN,
"Acting Agent."

In reply the plaintiffs through their solicitors wrote as follows :—

Bombay, 4th May 1888.

"THE AGENT, THE BOMBAY AND PERSIA STEAM NAVIGATION COMPANY.

"Dear Sir,—Your letter of the 3rd instant to our client, Mr. Bozzoni, Agent to the Navigazione Generale Italiana, has been handed to us for reply.

"Under the contract between your company and our client's company, which was a joint venture to carry pilgrims from Singapore and Penang to Jeddah, your [150] company, is bound to carry 500 pilgrims *ex* S. S. 'Stura' to Jeddah and the question whether or not small-pox broke out on board the S. S. 'Stura' on her voyage to Bombay does not in the least affect the contract. The 500 pilgrims landed from the S. S. 'Stura' were examined by the Health Officer, and being passed healthy were allowed to land. They are now on shore ready to proceed to Jeddah, and even if they were suffering from the disease, (which we do not admit), your company would still by their contract be liable to carry them by the S. S. 'Mobile'.

"On the 2nd instant, even after you admittedly knew of the case of small-pox on board the S. S. 'Stura' you wrote that the S. S. 'Mobile' would be ready to receive pilgrims on the 3rd instant, and there is no reason whatever why you should not receive the 500 pilgrims on board the S. S. 'Mobile' and carry them to Jeddah; neither the Customs nor Medical authorities making any objection to the pilgrims going by the S. S. 'Mobile' as incorrectly stated by you in your letter of the 2nd instant, if your steamer is ready to sail.

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"We are instructed that the real reason why you decline to carry this pilgrims is because the market rate has gone up, and the rate for a pilgrim's passage is from Rs. 50 to Rs. 60 *per head*, and daily going up.

"Our client has determined himself to send the S. S. 'Stura' to Jeddah with pilgrims, and he is able to get Rs. 50 at least *per head* for the passage of each pilgrim. We now call upon you at once to receive the 500 pilgrims *ex S. S. 'Stura'* on board the S. S. 'Mobile' and carry them to Jeddah in terms of the contract, and in case of your not agreeing to do so, our client will send the pilgrims by the S. S. 'Stura' that being the only other steamer going to Jeddah at present, and will charge your company the difference between the rate contracted for by you, *viz.*, Rs. 26 *per head*, and the market rate now procurable, *viz.*, Rs. 50 *per head*, and our client will hold your company liable for all damages his company may sustain by the breach of contract.

"As the matter admits of no delay, if our client does not hear by to-night that you agree to carry the pilgrims by the S. S. 'Mobile,' our client will at 12 o'clock to-morrow arrange to carry the 500 pilgrims by the S.S. 'Stura' to Jeddah.

"Yours truly,

"(Signed) PAYNE, GILBERT AND SAVANI."

The plaintiffs were obliged to send on the 500 pilgrims from Bombay to Jeddah in their own vessel, and they now filed this suit to recover damages for the defendants' breach of contract.

The following paragraph was a portion of the plaint:—

"6. The plaintiffs say that the defendants' company was not justified in refusing to convey the said pilgrims. The taking of the pilgrims from Singapore to Jeddah was, as it were, a joint venture, and the plaintiffs would not have entered into the same but for the agreement with the defendants' company that they should convey the said pilgrims from Bombay in their said S. S. 'Mobile.' The plaintiffs submit that even had there been danger of small-pox, the defendants' company would not have been justified in their refusal to convey, but as a matter of fact the plaintiffs say that there was no such danger. The Health authorities [151] in Bombay examined the pilgrims *ex S. S. 'Stura,'* and neither they nor the Customs authorities raised any objection to their proceeding in the S.S. 'Mobile' or afterwards in the S.S. 'Stura.' and during the voyage to Jeddah of the S.S. 'Stura' there was not a single case of small-pox on board."

The main defence raised by the defendants was that they were not bound to take on board the "Mobile" passengers who had been recently exposed to contagion of small-pox. The following is the material paragraph of the written statement:—

"3. Without prejudice to the contentions aforesaid, the defendants say that the 500 pilgrims that they were required to ship and carry by the plaintiffs, formed a portion of a large number of pilgrims brought by the plaintiffs' from Singapore in the S. S. 'Stura,' and that among the whole number of such pilgrims several cases of small-pox had been raging and some of which resulted in the death of the pilgrims attacked, and the said 500 pilgrims had been in close contact with the pilgrims attacked, so as to have been likely to catch the contagion, and the defendants say that at the very time that the defendants were being required to ship the said 500 pilgrims fresh cases were breaking out among the pilgrims brought from

Singapore by the S.S. 'Stura', and the defendants submit that under the circumstances aforesaid they were not bound to ship and carry the said 500 pilgrims as alleged."

The case was tried by Bayley, J., who gave judgment for the plaintiffs, awarding them Rs. 6,187-8-0 as damages.

The following passages are extracted from his judgment :—

(After stating the facts His Lordship proceeded :—)

It was contended on behalf of the defendants that it was implied in the contract sued, and which was made in Bombay between the plaintiffs and the defendants through their respective agents, that the 500 pilgrims should be reasonably fit to be carried, and that if the defendants had carried out their contract, they would have made themselves liable to s. 269 of the Indian Penal Code (Act XLV of 1860).

That section enacts that "whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months or with fine or with both."

Now what are the facts in the present case?

Dr. C. Monks was the acting Health Officer of the Port of Bombay in May last. He was not examined at the hearing, which commenced on the 29th November last and ended on the 6th December, as he was absent on special leave for four months from the 5th September 1888 : nor had he been examined *de bene esse* before his departure, nor on commission. In his letter No. 916 dated 7th May, [152] 1888, to the Executive Health Officer, Bombay Municipality, a copy of which in the pilgrim's file from the office of the Commissioner of Police was put in evidence by the defendants, he says :—

"With reference to the accompanying copy of correspondence forwarded for your information, I have the honour to state that the pilgrims referred to are Malays who arrived here by the S.S. 'Stura' from Singapore on the 1st instant. I inspected persons on board the vessel immediately after her arrival here, and found seven cases of small-pox among the pilgrims who numbered 634 souls. These seven cases were sent at once to the Jamsetji Jijibhoy Hospital, and on the following day the healthy were allowed to land after such of them as did not present distinct signs of previous vaccination or small-pox had been vaccinated. The total number vaccinated was 333, comprising 240 men, 47 women, 14 boys, 4 girls and 3 infants among the pilgrims and 25 of the crew."

* * * * *

There is an Act of the Bombay Legislative Council passed in 1867, "an Act for the better sanitary regulation of the city of Bombay" (Bombay Act VI of 1867), which after reciting the expediency of taking measures to check the spread of infectious diseases dangerous to life in the city of Bombay, and especially with reference to vessels arriving at or being within the limits of the Port of Bombay, gives power to the Government to establish sanitarium and to appoint Health Officer of the Port. By s. 6 the master of a vessel is bound to give notice to the Health Officer of the Port of any person suffering on board from any infectious disease dangerous to life, and by s. 8 the master may be required by the Health Officer to remove such person or any other person who shows premonitory symptoms of such disease to a sanitarium or other place on shore, where proper

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lodging and accommodation are available, and by s. 9 power is given to the Health Officer to direct that all or any part of the vessel be forthwith fumigated or otherwise cleansed for sanitary purposes.

Mr. Bozzoni, the agent in Bombay of the plaintiffs' company and also the Italian Consul, who gave his evidence in English with a thorough knowledge of our idiom, and who was not in the least shaken in cross-examination or contradicted by any witness, called on behalf of the defendants, said that on the arrival of the "Stura" on the 1st May, Dr. Monks, the acting Health Officer of the Port, a member of the Indian Medical Service, and of whom Dr. Manser said that he believed he was competent to perform his duties, told him the pilgrims might be landed the same evening. That when on board the "Stura" with Dr. Monks on that day he told the latter that these pilgrims had to go on board the "Mobile", upon which Dr. Monks said: "If the 'Mobile' is in the stream you may send them on board, or you may send them on shore if you like." Dr. Monks said he was going to have these people vaccinated, and he ordered the ship to be disinfected before entering Prince's Dock. He told Mr. Bozzoni he could land or ship them as he liked, and that they were as free as any body in Bombay. Mr. Bozzoni said that, not having sufficient boats, only about 300 were landed that evening and the remainder the following morning, all being lodged at a house at Mody Bay Bandar.

[153] In the letter of the 4th May (incorrectly dated the 4th April) from plaintiffs' solicitors to defendants' agent, it is stated that neither the Customs or Medical authorities made any objection to the pilgrims going on board the "Mobile". No evidence was given to contradict that. From the fact that the Medical authorities did not detain the pilgrims in the house at Mody Bay, or prevent their going about the town, it is evident that they had no fear of their spreading the disease in crowded thorough-fares of the native town.

Mr. Bozzoni said that he was on board the "Stura" on the 12th May before she sailed; that Dr. Monks, the Health Officer, came and inspected all the passengers, and no objection was taken to the ship starting with their pilgrims on board, who were passed by Dr. Monks and by the plaintiffs' company doctor, Dorabji Hormasji, a Licentiate of Medicine and Surgery of the Bombay University, educated at the Grant Medical College, and who was authorized to act as doctor to pilgrim-ships by the Surgeon-General at Bombay, from whom he had obtained a license on the 2nd July, 1887, under The Native Passengers-Ships Act VIII of 1876 of the Government of India.

Dr. Dorabji Hormasji was called on behalf of the plaintiffs, and said that he was on board the "Stura" early on the morning of the 12th May, and examined all the pilgrims before they were allowed to enter the ship whilst he was standing at the footway of the gangway. That Dr. Monks and the Custom House people examined them as well as himself, and that no objection was taken to any of the pilgrims going. That they were all counted, 810 in number—men, women, boys, girls and infants.

The possibility of small-pox breaking out among these Malay pilgrims on their voyage to Bomby was, at the time of making the contract sued upon, not improbable, and it seems not unreasonable to hold that the parties must be taken to have contracted with reference to it; and if the

defendants wished the contract to be a conditional one, as they now seek to have it construed, they should, when they made it, have protected themselves accordingly.

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The contract, as evidenced by the letters, was an absolute one which the defendants chose to enter into, and they must either perform it, or pay the damages occasioned by their breach of it.

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* * * * *

Next, the contract between the plaintiffs and the defendants had not become "impossible," (Indian Contract Act IX of 1872, s. 56). The defendants might have performed their part of it without, as it now appears, exposing their master and crew to any serious risk of infection, nor had it become "unlawful" (s. 56). The Health authorities in Bombay had no objection to the pilgrims going on board, and when they were examined on the morning of the 12th May, as they went on board, the "Stura" in the Prince's Dock, neither Dr. Monks nor the Custom House authorities nor Dr. Dorabji Hormasji took any objection to any of them going. Such being the opinion of these persons, the contention on behalf of the defendants, that they had carried out their part of the contract they [154] would have made themselves liable to the provisions of s. 269 of the Indian Penal Code (Act XLV of 1860), seems to me to be untenable.

The contract on the part of the defendants being lawful as well as possible, they were bound to perform it.

The defendants appealed.

Latham (Advocate-General) and *Lung*, for the appellants.

Starling and *Jardine*, for the respondents.

JUDGMENT.

SARGENT, C. J.—The plaintiffs in this suit sued the defendants for damages for breach of their agreement to convey from Bombay to Jeddah by their steamer "Mobile," which was to be ready on the 3rd May, 1888, at the rate of 26 Rs. each, 500 pilgrims whom the plaintiffs might bring from Singapore by their steamer "Stura." The defendants by their written statement pleaded that the 500 pilgrims whom they were required to ship and carry by the plaintiffs formed a portion of a larger number of pilgrims brought by the plaintiffs from Singapore in the "Stura," and that amongst such whole number of pilgrims there had been several cases of small-pox, some of which had proved fatal, and that the said 500 pilgrims had been in close contact with the pilgrims attacked so as to have been likely to catch the contagion, and that fresh cases were breaking out amongst the pilgrims brought from Singapore at the time when they were required to ship the 500 pilgrims. They submitted that under these circumstances they were not bound to ship and carry the said 500 pilgrims.

As the agreement to ship and carry the 500 pilgrims to Jeddah was absolute in its terms, the above defence to the action can only succeed on one of two grounds: either (1) that it was an implied term in the contract that there should be no cases of small-pox on the ship from which the 500 pilgrims were to be transferred to the "Mobile;" or (2) that the performance of the contract by the defendants had, under the circumstances, become illegal.

In the absence of proof that such a term was to be implied by the usage of the pilgrim-carrying trade there can be no reason for implying it.

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The possibility that some of the 500 pilgrims [155] might have the germs of the disease in them owing to their exposure to the infection might make the carrying them to Jeddah more expensive and onerous; but it was clearly a contingency which, from the very nature of the trade, must have been known to the defendants, and if they wished to provide against it they should have done so by express terms.

But it is said that the defendants' company were relieved from their obligation by s. 56 of the Contract Act IX of 1872, on the ground that they had taken the 500 pilgrims on board the "Mobile" on the 3rd May, and carried them to Aden, they would have committed an offence under s. 269 of the Indian Penal Code (Act XLV of 1860), which provides that "whoever unlawfully and negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment." It will be convenient to consider how Government authorities deal with cases of this description. The Government rules for medical inspection of vessels, (which, as appears from Resolution of Government of India, 27th May, 1879, are regarded as executive orders of Government), and for quarantine made under Acts of 1870 show that small-pox is not considered by the Medical authorities as a disease which renders it necessary for passengers and crew of a vessel on which there have been cases to undergo quarantine. From these rules it also appears that, after medical inspection of the vessel, the passengers and crew are allowed to land, subject only to the precaution of vaccinating them before being taken "if they appear to require such protection and are willing to accept it." It is plain, therefore, that the Government authorities do not consider it necessary, in order to prevent the spread of infection to segregate passengers arriving by a vessel on which there have been cases of small-pox, but, on the contrary, as shown by the evidence in the case, allow the passengers to land at once and mix with the inhabitants without any restraint on their movements. The evidence shows that this was the course taken with the pilgrims by the "Stura," who were allowed to land and spread all over Bombay.

[156] But it was said that although there might be no risk of spreading infection by landing the pilgrims, there would have been considerable risk of its spreading through the pilgrims and crew on the defendants' steamer "Mobile" had they been received on board on the 3rd May and carried to Aden. As to this, Dr. Manser's and Dr. Sidney Smith's evidence is doubtless to the effect that although the risk of the disease developing would have been the same on land or on board the "Mobile," the risk of its extending, had it broken out, to the pilgrims and crew on the "Mobile" would have been greater than of its spreading on land, owing to the superior facilities on land for segregating the sick and the necessary crowding on board a pilgrim ship; but here the 500 pilgrims, or such of them as had not been recently vaccinated, had been vaccinated before leaving the ship, as shown by the evidence of Dr. Monks, the Health Officer; and although vaccination could not, in the opinion of Dr. Manser, be relied on to prevent the disease from developing if the germs were already in the person so vaccinated, it would greatly lessen the severity of the attack.

Under these circumstances could it be said that it would have been a negligent act on the part of the defendants to have taken these pilgrims who had come to Bombay for the express purpose of going to Jeddah on board the "Mobile" and to have carried them to their destination.

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.