house without his consent, it must be deemed to arise at his house. In this view of the cause of action, it arose, in the present case, at Borsad, and the Subordinate Judge had, therefore, jurisdiction. We must, therefore, reverse the decree, and send back the case to the lower Court of Appeal for disposal on the merits.

Decree reversed and case sent back.

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[319] APPELLATE CIVIL.

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

DE SOUZA DEVINO (*Original Plaintiff*), *Appellant v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL (*Original Defendant*), *Respondent.** [20th April, 1893.]

Service inam land—Suit for a declaration of title to trees thereon and for damages—Jurisdiction of Civil Courts—Section 4†, Clause (a) of the Bombay Revenue Jurisdiction Act (Bombay Act X of 1876)—Hereditary Offices Act (Bombay Act III of 1874)—Hereditary office—Hereditary officer—Officiator.

Section 4, cl. (*a*) of the Bombay Revenue Jurisdiction Act (Bombay Act X of 1876) is not intended to apply only to the property appropriated to the payment of the officiating member of a vatandar family, the expression used being "hereditary officer" and not the person performing the duties of the "hereditary office" to which by the Hereditary Office Act (Bombay Act III of 1874) the distinct denomination of "Officiator" is given.

The plaintiff complained that he was prevented from cutting the trees growing on land situate in the village of Tungarli, belonging to certain persons who had sold the trees to him. He claimed damages and an injunction restraining the Collector from interfering with him. The defendant pleaded that the trees did not belong to the plaintiff's vendors, being on service inam land. The lower Court dismissed the plaintiff's claim, holding that the land, on which the trees were growing, was service inam land, and that the plaintiff's vendors had no title to them. On appeal, the High Court, on the evidence, upheld the lower Court's decision that the land was inam service land, but held that it did not necessarily [320] follow that the trees upon it were the property of Government and not of the vatandars. The latter might be the owners of the trees subject to a condition. The case was, therefore, remanded to the District Court for a finding on an issue as to whether the holders of service inam lands had a title to the trees on the lands, and if so, whether they had the right to cut down trees without the permission of the Collector. On this finding the District Judge found in the affirmative. The case then came again before the High Court, when a preliminary objection was taken that under s. 4 of Act X of 1876 the Court had no jurisdiction.

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* Appeal No. 45 of 1891.

† Section 4, cl. (*a*) of the Bombay Revenue Jurisdiction Act :—

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

(*a*) Claims against Government relating to any property appertaining to the office of any hereditary officer appointed or recognized under Bombay Act No. III of 1874 or any other law for the time being in force, or of any other village officer or servant, or

Claims to perform the duties of any such officer or servant, or in respect of any injury caused by exclusion from such office or service, or

Suits to set aside or avoid any order under the same Act or any other law relating to the same subject for the time being in force passed by Government or any other officer duly authorized in that behalf, or

Claims against Government relating to lands held under treaty, or to lands granted or held as saranjam, or on other political tenure, or to lands declared by Government or any other officer duly authorized in that behalf to be held for service.

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Held, that it having been decided that the land in question was service inam land, the Court under s. 4. cl. (*a*) of Bombay Act X of 1876, ceased to have jurisdiction over the plaintiff's claim against Government in respect of the trees growing thereon, as such claims related to property appertaining to the office of a village officer.

FIRST appeal from the decision of T. Hart-Davies, Acting Assistant Judge of Poona.

Certain forest land (Survey No. 45) situate at the village of Tungarli, in the Poona District, belonged to one Sakharam bin Kondaji and his brothers, who were the vatandar patels of the village. In June, 1889, the plaintiff bought the trees standing in this land, and was proceeding to cut them down, when he was stopped by an order of the Forest Department dated 20th September, 1889. The Collector of Poona seized the wood that was cut and sold it, crediting the proceeds to Government. The plaintiff thereupon instituted this suit in the District Court of Poona, praying for damages and for an injunction restraining the Collector from preventing him cutting down the trees.

The defendant pleaded that the land was service vatan land, that the vatandars had no right to the trees growing upon it, and that the plaintiff was, therefore, not entitled to damages. The lower Court dismissed the plaintiff's claim, holding that the land was service inam land, and that the possession of land of that description did not, in the absence of an express stipulation in the *sanad*, include proprietary right in the trees growing upon it.

The plaintiff appealed.

Jardine (with *Shivram V. Bhandarkar*), for the appellant.

Rao Saheb *Vasudev Jagannath Kirtikar*, Government Pleader, for the respondent.

[321] 22*nd April*, 1892. SARGENT, C.J.—The plaintiff complains that he was prevented by order of the Collector of Poona from cutting the trees on certain land in the village of Tungarli belonging to Sakharam bin Kondaji and others, who had sold the trees to him, and from removing so much timber as he had already cut before the issue of the Collector's order. He sues for damages and for an injunction restraining the Collector from prohibiting him to cut the trees.

The defendant replies that the trees in question are not the property of the plaintiff's vendors, as they are on service inam land, the vendors being the holders of the patelki vatan of Tungarli, and that the amount of damages claimed is excessive.

The Assistant Judge has found that the plaintiff's vendors held the land, on which the trees were growing, as service inam, and that they had no title to the trees; and he has, therefore, rejected the claim.

The plaintiff's vendors are admittedly the patels of Tungarli; and the questions for consideration in this appeal are, *first*, whether they held the land in question as ordinary survey occupants, in which case their right to the trees would be undoubted, or whether the land forms part of their service inam land; and, *secondly*, if it forms a part of a service inam, whether the patels were owners of the trees sold to the plaintiffs and had the right to sell them without the Collector's permission.

The land is described in the documentary evidence, consisting of extracts from revenue records, as "No. 103" and as measuring 15 acres. This description does not correspond with that in the plaint; but it was not contended before us that the records produced in the case do not relate to the land in question. In those records, the land is entered as inam

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land, in respect of which a quit-rent of Rs. 2, equal in amount to the assessment, was leviable. The land is *varkas* land, on which no assessment was imposed till 1859-60. The patels had, apparently, used the land for the purpose of obtaining loppings of trees therefrom to burn as *rab* on the rice fields in their vatan land. Occasionally, they cultivated parts of this forest land; and when they did so, they paid a one-third share of the crop to the Government and retained [322] the remainder themselves. The share paid to the Government was credited in the Government accounts as *judi* or quit-rent, and the two-thirds retained by the patels were held to form part of the emoluments of the vatan. (See Exs. Nos. 11 and 13 in appeal.) In 1859 60, an assessment seems for the first time to have been placed on the land. On the 10th July, 1860, the Superintendent of Revenue Survey made an order, which, we were informed, was applicable to this land and other similar lands, in which he intimated to the Collector that an assessment had been imposed on them, and that one-third of the assessment should be levied and two-thirds given credit for, whether the lands were actually cultivated or not. He added: "If those people do not agree to this proposal, you should, without paying any heed to their claims, take steps to levy the whole of the assessment settled on the aforesaid numbers." The Collector ordered the Mamlatdar to act upon this order. It would appear that, when this order was made, the *varkas* land of the patels of Tungarli was regarded by the Revenue authorities as appurtenant to their vatan; and it was subsequently entered in the revenue books as forming a part of the vatan. The mere circumstance that a full assessment was levied on it would not, apparently, of itself alter the nature of the tenure. Whatever sum was paid by the patels in respect of this land, was credited as *judi*, and the land seems always to have been treated as service inam. In a petition, Ex. 43, which Kondaji Patel made in 1863, for permission to cut 20 cart-loads of fuel on the land, he described it as inam land standing in his name as 'Patel Pasodi.' In a similar petition, No. 44, made in 1865, he describes the land as bearing an assessment of Rs. 2 and continued in his *vahivat* as inam granted to him as inam Patel Pasodi. Against these admissions by the father of one of the plaintiff's vendors, and the evidence supplied by the Collector's books, there is no evidence to show that the patels held the land as survey occupants and not as part of their service inam lands. We must, therefore, uphold the Assistant Judge's decision that the land is inam service land.

By a Resolution No. 9578 of the 19th December, 1889, (Ex. No. 79) the Government sanctioned the proposals of the [323] Commissioners of Divisions for conferring rights to forests on the holders of certain service inams. This Resolution, however, if applicable to the patelki vatan in Tungarli, had not been issued when the trees in dispute were sold and cut down. But it cannot be safely inferred from the issue of this Resolution in 1889 that the vatandars, to whom it was applicable, had, previously, no rights to trees on their vatan lands. They are not the holders of a succession of life estates. The whole family of vatandars owns the vatan; and the holders of land are presumably the owners of the trees on the land. It may be argued that, as the vatan was granted as remuneration for service, the holders at any time are bound to keep the estate unimpaired as a source of remuneration to the officiating vatandars and to pass it on unimpaired to each successive generation of vatandars. But it does not follow that trees which may not be recklessly felled by the vatandars are the property of Government and not of the vatandars. They may be the owners of the trees subject to a condition. In the present case, no evidence

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has been pointed out to us as to the precise rights of vatandars in respect of trees on their service lands anterior to the issue of the Government Resolution of the 19th December, 1889. We think that enquiry should have been particularly directed to this point. As the evidence on the record is far too meagre to enable us to arrive at a satisfactory decision regarding it, we refer the following issue to the District Court for trial:—

Whether, before the issue of Government Resolution No. 9578 of the 19th December, 1889, the holders of service inam lands had a title to the trees on their lands; and, if so, whether they had the right to cut down trees without the permission of the Collector?

Both parties to be at liberty to adduce evidence on this point. The Court to certify its finding within three months.

On the above issue the District Judge (W. H. Crowe) found in the affirmative, but in his remarks he observed that the issue as framed was general, and did not confine itself to the land in dispute; he, therefore, found in the affirmative with respect to the land in dispute as well as with respect to all service inam lands.

[324] Against the finding of the Judge the respondent (defendant) presented objections, which are not material for the purpose of this report.

Rao Saheb *Vasudev Jagannath Kirtikar*, Government Pleader, for the respondent (defendant).—We raise a preliminary objection with respect to jurisdiction. On the former occasion the Court found that the land in dispute was service inam land. Under the Bombay Revenue Jurisdiction Act (Bombay Act X of 1876), s. 3, the term "land" includes trees standing thereon; therefore the appellant's claim to the trees means claim to the land which is service inam. But the Civil Courts have no jurisdiction to entertain a claim with respect to such lands, and, that being so, the appellant's claim to the trees cannot be entertained—s. 4 of the Act.

[SARGENT, C.J.—Why was not this point taken on the last occasion?]

There were no instructions on the last occasion to urge the point. The objection is fatal to the appellant's claim.

Macpherson (with *Shivram V. Bhandarkar*), for the appellant (plaintiff).—The question to be considered is whether the claim relates to land at all. In order to oust the jurisdiction of the Civil Courts under the Revenue Jurisdiction Act the land must be declared to be service inam by the Government under s. 4. There is nothing, in the present case, to show that the Government has made any such declaration. What the Government did, was that the revenue of the land was credited as *judi*, and nothing more. But the crediting of the revenue as *judi* is quite a different thing from a declaration. It was impliedly argued that, as the Government credited the revenue as *judi* the act of the Government should be considered to be a declaration. But that cannot be done. The declaration by the Government must be strictly proved, and no amount of book-keeping will alter the character of the land.

[SARGENT, C.J.—Though there is no formal declaration by the Government, still the Government having all along treated the land as service inam, the conduct of the Government may amount to a declaration.]

[325] We submit that under s. 4 of the Act there must be an actual declaration by the Government, and without such declaration anything done by the Government cannot operate to our prejudice. A vatan cannot be brought into existence by a village kulkarni, who is merely a

village accountant, or by entries made in the revenue records. The present vatan is a new one, and s. 22 of the Vatandars Act (Bombay III of 1876) applies to it. Under that section the Government is authorized to create a vatan, and when the Government has exercised that authority, then under the Revenue Jurisdiction Act (X of 1876) the Government should by itself or by an officer duly authorized declare that a vatan has been so created. The Government may create a vatan; but, unless it is declared to be a vatan, it does not become a vatan as such.

We further contend that s. 4 of the Revenue Jurisdiction Act has no application to the present case, because it relates to the property of a hereditary officer, that is, the property which the officiating vatandar is to enjoy on account of the service rendered by him.

On the point of jurisdiction we contend that there are no materials before the Court to allow the plea; we, therefore, submit that the appeal should be decided on the merits.

(The case was then argued on the merits.)

JUDGMENT.

SARGENT, C.J.—In this case the Court, having found that the land in question was service inam land, sent down an issue for determination as to whether, before the issue of Government Resolution No. 9578 of 19th December, 1889, the holders of service inam lands had a title to the trees on their lands, and, if so, whether they had the right to cut down trees without the permission of the Collector. The District Judge has found this issue in the affirmative on two grounds, the first of which is applicable to the particular lands as being, in his opinion, "unalienated" land within the contemplation of s. 40 of the Revenue Code, V of 1879, and the second applies to all service inam lands.

A preliminary objection, however, has now been taken by Rao Saheb Vasudev Jagannath Kirtikar, for the defendant, that the [326] Civil Courts have no jurisdiction to try the question which is the subject of the issue sent down, as being a "matter" within the contemplation of s. 4, cl. (*a*) of Act X of 1876. It was said, that this Court having decided that the land was service inam land, and not survey occupancy land as the plaintiff contended, it ceased to have jurisdiction over the plaintiff's claim against Government in respect of the trees, as such a claim would be "relating to property appertaining to the office of a village officer." We think that this is the necessary result of the above section. The plaintiff's claim, having regard to our finding and to the definition of 'land' as contained in the Act, undoubtedly "relates to property appertaining to the office of a hereditary officer." But it was said indeed that cl. (*a*) was only intended to apply to property appropriated to the payment of the officiating member of the family. The expression used, however, is "hereditary officer" and not the persons performing the duties of the "hereditary office" to which by the Hereditary office Act, III of 1874, the distinct denomination is given of "officiator," and by which we should expect him to have been referred to in s. 4, cl. (*a*) of the Act of 1876, had the intention been, as appellant contends it was, to confine the term "property" to his remuneration.

We feel, therefore, constrained to hold that the Court by deciding the land was service inam land ceased to have jurisdiction over the plaintiff's claim, and we must, therefore, reject the claim on that account with costs.

Decree confirmed.