

## APPELLATE CIVIL.

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

1894.  
January 25.

BA' LKRISHNA VAMANAJI GAVANKAR (ORIGINAL PLAINTIFF), APPELLANT, v. JASHA FARSI SHIREL AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.\*

*Landlord and tenant—Ejectment—Notice to quit—Agricultural land—Tenancy-at-will—Yearly tenancy—Rent not payable until the end of the year—Construction—Land Revenue Code (Bom. Act V of 1879), Sec. 84, †*

Where, in the case of an agricultural land, the tenant entered into an agreement with the landlord that he would pay the amount of the annual rent every year as long as the landlord would keep the *wádi* (oart) with him, and would give back the same when the landlord would demand it,

*Held* that the contract between the parties took the case out of section 84 of the Land Revenue Code (Bombay Act V of 1879), and that as the rent would not be payable until the end of the year, the landlord might put an end to the tenancy and demand the land at the end of any year without giving any previous notice of any particular period, but he could not demand immediate possession in the middle of a year.

APPEAL under the Letters Patent from the order of Fulton, J., dismissing, under section 551 (1) of the Civil Procedure Code (Act XIV of 1882), second appeal No. 655 of 1893 from the decision of Ráo Bahádur Lálshankar Umiáshankar, Joint First Class Subordinate Judge with Appellate Powers at Thána.

Ejectment. The plaintiff sued to recover possession of certain land from the first defendant. The other defendants were subsequently made parties.

All the defendants pleaded that they had no knowledge of the plaintiff's title, and that they had received no notice to quit.

\* Appeal No. 31 of 1893 under the Letters Patent.

† Section 84 of the Land Revenue Code (Bombay Act V of 1879) :—

84. An annual tenancy shall, in the absence of proof to the contrary, be presumed to run from the end of one cultivating season to the end of the next. The cultivating season may be presumed to end on the 31st March.

An annual tenancy shall require for its termination a notice given in writing by the landlord to the tenant, or by the tenant to the landlord, at least three months before the end of the year of tenancy, at the end of which it is intimated that the tenancy is to cease. Such notice may be in the form of Schedule E or to the like effect.

The following is the translation of the material portion of the rent-note relied on by the plaintiff:—

“ I pass an agreement in writing as follows :—*Wádi* (oart) Wadbhat and *wádi* (oart) Bilbhat (situate at) tarf Agar Bassein together with the trees standing thereon and land I have taken in my possession from you on an agreement to pay *hásil* (annual rent), and I have been cultivating them from before. I have agreed to pay the Government assessment on the said *wádis* (oarts) and to pay you rupees 16, in letters sixteen, of the Company's currency on account of the *hásil* (annual rent) for one year. Accordingly I shall pay you the amount of the *hásil* (annual rent) every year as long as you shall keep the said *wádis* (oarts) with me, and will give back the same when you may demand the same. I have no claim to the *wádis* (oarts). The *ádis* (oarts) are in my possession.”

The Subordinate Judge passed a decree for the plaintiff, holding that no notice to quit was necessary, as the defendants had denied the plaintiff's title.

On appeal by the defendants the Judge reversed the decree, holding that a notice to quit was necessary, and that the service of notice to quit had not been proved.

The plaintiff preferred a second appeal, No. 655 of 1893, which was dismissed under section 551 (1) of the Civil Procedure Code (Act XIV of 1882).

The plaintiff thereupon preferred an appeal under the Letters Patent.

*Ganesh Krishna Deshamukh* for the appellant (plaintiff).

SARGENT, C.J. :—The question for determination in this case is, whether the agreement created a tenancy-at-will or a yearly tenancy. The agreement provides for a yearly rent being paid, and the question is, whether the words which follow show a clear intention that the landlord might give a notice to quit within the year.

In *Khuda Balkhsh v. Sheo Din* <sup>(1)</sup>, where the agreement was held to create a tenancy-at-will, the language of the agreement showed, as Mahmood, J., points out, an intention that the landlord might turn out his tenant at any time on giving fifteen days' notice. Moreover, the land was not let for agricultural purposes, but was only a piece of land on which the tenant was to live and tether his cattle. In *Jivráj v. Atmarám* <sup>(2)</sup> the lease was of a house on

(1) I. L. R., 8 All., 405 at p. 408.

(2) I. L. R., 14 Bom., 319.

1894.

BALKRISHNA  
VAMANAJI  
GAVANKAR  
v.  
JASHA FARSI  
SHIREL.

1894.

BALKRISHNA  
VAMANAJI  
GAVANKAR  
v.  
JASHA FARSI  
SHIREL.

which an annual rent was reserved, but the tenant agreed "to vacate when asked to do so by the landlord."

In the present case the land is found by the District Court to be agricultural land, and very clear language should, we think, be required to show an intention that the landlord should be able to turn his tenant out at any moment during the year. The tenant says: "I shall pay you the amount of the annual rent every year as long as you shall keep the said *widi* with me, and will give back the same when you may demand the same." As the rent would not be payable until the end of the year, this language would seem to imply that the landlord might put an end to the tenancy and demand the land at the end of any year and without giving previous notice of any particular period. The contract between the parties would take the case out of section 84 of Bombay Act V of 1879. Here the suit demands immediate possession in the middle of the current year. We must, therefore, dismiss the appeal.

*Appeal dismissed.*

## ORIGINAL CIVIL.

*Before Mr. Justice Farran.*

THE ADVOCATE GENERAL OF BOMBAY, PLAINTIFF, v. GANGJI  
AKHAI, DEFENDANT.\*

*Contempt of Court—Punishment by imprisonment—Practice.*

On 1st September, 1890, in an administration suit in which Gangji Akhai as executor of a will was defendant, a receiver was appointed, and Gangji Akhai was ordered to deliver to the receiver certain Government promissory notes of the value of Rs. 45,000 belonging to the estate, which was the subject-matter of the suit. He did not obey the order and absconded from Bombay, and on 16th March, 1891, in his absence, a rule for his attachment for contempt was made absolute. It was afterwards ascertained that he had used the notes for his own purposes. A warrant was issued for his arrest, and he was apprehended, and on 23rd April, 1891, he was convicted of criminal breach of trust and sentenced to eighteen months' imprisonment. Previously to his trial (*viz.*, on the 9th April, 1891) he had been committed to jail for contempt of the order of September, 1890, so that after his conviction he was in jail both under his sentence and under the order for contempt. On the 4th October, 1892, the Court passed a money decree in the administration suit against the defendant for Rs. 80,000

\* Suit No. 212 of 1889.

1894.

July 26.