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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

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and costs. The sentence passed upon the defendant for the criminal offence expired on the 22nd October, 1892. Applications for his release from imprisonment under the order for contempt were made in December, 1892, and 10th April, 1893, but were refused. Counsel now moved again for his release.

*Held*, that the defendant should be released from imprisonment. The right of the plaintiff to demand the promissory notes from him was merged in the money decree. The right to demand the notes was gone, and the order that he should deliver them up to the receiver had ceased to be operative. The commitment, in so far as it was intended to enforce obedience to the order of the 1st September, 1890, could no longer be continued on that ground. It was the decree now and not the order which constituted the measure of the obligation between the parties. That was a simple money decree, and it was contrary to the expressly declared will of the Legislature and to all modern principle and precedent to keep a defendant under commitment for contempt to compel him to pay a money decree. If the attachment order was regarded as a punishment for the defendant's offence in not having delivered up the notes, the punishment should be commensurate with the offence. Imprisonment under it could not be indefinite. By section 493 of the Code of Civil Procedure (Act XIV of 1882) the Legislature indicated that such imprisonment should not extend beyond six months. The defendant had, however, been in jail for more than twenty months. For the criminal offence he had suffered the punishment to which he was sentenced, and the Court would not be justified in indirectly adding to its duration.

APPLICATION by defendant for release from imprisonment for contempt.

This was an administration suit, and on the 1st September, 1890, the Court made an order appointing a receiver and restraining the defendant Gángji Akháí, who was the testator's executor, from dealing with the testator's estate, and ordering him to deliver over to the receiver certain Government promissory notes of the value of Rs. 45,000 mentioned in his inventory as belonging to the estate.

The defendant did not obey this order, and on the 16th March, 1891, a rule for his attachment for contempt was made absolute. This order was made in his absence, as he had then absconded from Bombay.

It was subsequently ascertained that Gángji Akháí had used the Government promissory notes in question for his own purposes, and an information was accordingly laid against him by the receiver charging him with criminal breach of trust. A warrant was issued for his arrest, under which he was apprehended and brought to Bombay, and on the 23rd April, 1891, he was

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convicted of the above offence and sentenced to eighteen months' rigorous 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 at the Criminal Sessions he was in jail both under his sentence and under the order for contempt.

On the 15th December, 1892, an application was made to the Court for his release, and refused. A second application was made on the 10th April, 1893, but was also refused.

Counsel now moved in accordance with notice of motion, dated 9th July, 1894, for the release and discharge of the defendant Gángjí Akháí from jail in which he was confined under the Court's order of 16th March, 1891.

In his affidavit the applicant stated (*inter alia*) as follows:—

“I have been in jail for contempt ever since the 8th October, 1892, on which day the sentence of eighteen months inflicted on me expired. I say that I have already severely suffered for what I have done, and repent for the same. I have no means whatever to repay to the estate what I have misappropriated, and for which I have been severely punished both criminally and civilly. I have lost in trade all that I had withdrawn from the estate, and have not in my possession any portion thereof, nor am I contumaciously keeping back any of the said property. My further detention in jail will do no good to the estate of the testator, but it will bring an end to my life. I am an old man fifty-six years of age. I have suffered heavily for my faults. I admit that I was wrong in applying the property of the estate to my own business, but I have been punished heavily for the same. I do not ask for any release from my liability to the estate, but only the discharge of my person from jail. I am willing to make every restitution in my power to the estate. If I am discharged I shall be able to do some business, and from the income or profits to make good the loss to the estate. I am in an extremely feeble state of health. About six weeks ago I lost my son, who was eighteen years of age, and this fresh calamity has considerably added to my already severe afflictions and has crushed me and my family. Owing to my incarceration in jail my family were left in destitute circumstances, but this condition is now rendered helpless owing to the death of my son.

“Under these circumstances I pray that this Court will have pity upon my unfortunate condition and order my discharge.”

*Scott* for the applicant:—He relied on the affidavits and referred to sections 492 and 499 of the Civil Procedure Code (Act XIV of 1882); the Debtors Act, 1869, sec. 4 (Stat. 32 and 33 Vic., c. 62); *In re Davies*<sup>(1)</sup>.

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*Lang* (Advocate General) and *Inverarity* for different parties to the suit opposed the application.

FARRAN, J.:—My thanks are due to Mr. Scott for his temperate and concise argument in this matter. It is an application on the part of the defendant Gángji Akháí to be released from custody. The suit was an administration suit to administer an estate which was in the hands of Gángji Akháí as executor of the testator, and in it on the 1st September, 1890, an order was made appointing a receiver and restraining Gángji Akháí from further intermeddling with the estate. This order directed that Gángji Akháí should (*inter alia*) deliver to the receiver the Government promissory notes mentioned in his inventory, which were of the nominal value of Rs. 45,000. My recollection of the circumstances under which that order was made is that Gángji Akháí endeavoured to show that Nenbái and not he had the notes in question in her possession, and did not suggest that the notes had been then parted with. I was convinced, upon the affidavits, that Gángji Akháí had the notes and not the lady. He did not deliver the notes to the receiver, and on the 16th March, 1891, I made absolute a rule that a writ of attachment should issue against him, he not obeying the order in that particular. Gángji Akháí did not appear on that occasion though he had been personally served with the rule *nisi*, and the rule was made absolute in his absence.

The ground for making the order was that Gángji Akháí was contumaciously refusing to obey the order to hand over the notes. This order issued in the usual form, and I am not prepared to say that it issued in a wrong form, or that the imprisonment under it should have been directed for a particular period. Where the act of contempt is done, and cannot be undone, I agree that the more modern and probably the more correct course is to direct the imprisonment to continue for a definite period only—*In re Davies*<sup>(1)</sup>. But where the object of the confinement is to enforce compliance with an order in the future, I think that it might frequently defeat the purpose of the order to limit it to a definite period. In many cases the liti-

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gant in contempt might elect to undergo the term of imprisonment in preference to obeying the order. The defendant, when the commitment is for the purpose of enforcing an order in the future, on obeying the order would be entitled to his discharge at once, or rather would obtain it as of course, subject to any order as to costs which the Judge might think fit to make.

After this order was made, the receiver discovered that Gángji Akháí had between June and December, 1889, deposited Government promissory notes for Rs. 45,000—no doubt the notes in question—with the Bank of Bombay to secure advances made to him; and that the Bank had sold them in June, 1890, to liquidate the debt. Had Gángji Akháí stated that fact when the receiver order was made in September, 1890, that order would have been couched in different terms. But his statement would have rendered him liable to a criminal prosecution. To avoid this he endeavoured to shift the possession of the notes on Nenbái, and did not even suggest that they were no longer available. The Court was, therefore, led by his false and misleading affidavits to make the order in the form which it assumed.

Before the contempt order was made absolute, Gángji Akháí had absconded. The receiver on learning what Gángji Akháí had done with the notes laid an information under which he was arrested and brought to Bombay; and on or about the 23rd of April, 1891, he was convicted of criminal breach of trust of the notes in question, and sentenced to eighteen months' rigorous imprisonment. On the 9th of the same month he had been committed to jail for contempt of the Court's order of the 16th March, 1891. He was, therefore, in jail under his sentence and the commitment order at the same time. Previous to this, on the 15th January, 1891, the suit had been referred to the Commissioner to take the accounts of the administration of the estate of the testator from the defendant Gángji Akháí, the order for the receiver so far as it related to Gángji Akháí being continued.

The Commissioner made his report, which was not excepted to, and was confirmed by the Court. It found the sum of Rs. 80,000 due to the estate from Gángji Akháí, and in pursuance of its terms the Court on the 4th October, 1892, passed

a decree against Gángji Akháí in favour of the plaintiff for that sum and costs. It did not decree, as in fact under the circumstances it could not, the specific return of the Rs. 45,000 Government promissory notes, but was a simple money decree for Rs. 80,000. Under it the receiver's appointment was continued. The sentence passed on Gángji Akháí expired on the 23rd October, 1892.

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On the 15th December, 1892, Gángji Akháí by counsel moved before Starling, J., for his release. His affidavit expressed contrition for his conduct, and stated that with certain exceptions he had no property. This application was refused apparently on the ground that the Court was not satisfied that Gángji was not concealing property, part of the proceeds of the Government promissory notes for Rs. 45,000, or that it was satisfied that he was concealing such property. A similar application made before the same learned Judge on the 10th August, 1893, upon the same grounds shared the same fate. The ground upon which I conclude that the learned Judge proceeded, was that Gángji Akháí had not under these circumstances sufficiently purged his contempt.

On Monday last, counsel for Gángji Akháí again before me applied for his release. I took time to consider the application, as it was opposed by the Advocate General as well as by Nembai's counsel, and because I considered it to be a case of grave importance upon which another Judge had already expressed his opinion in a sense contrary to my own.

Upon the facts which I have stated I consider that Gángji Akháí is entitled to his release. The right of the plaintiff to demand the promissory notes from Gángji Akháí is now merged in the money decree. The right to demand the notes is gone, and the order, therefore, that Gángji Akháí do deliver the notes to the receiver has ceased to be operative. The commitment in so far as it was intended to enforce obedience to the order of 1st September, 1890, can no longer be continued on that ground. Even if the order to deliver the notes could be treated as an order to replace the proceeds or value of the notes with the

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estate—and I do not think that it can be so treated—still it is the decree now, and not the order, which constitutes the measure of the obligation between the parties. That is a simple money decree, and it appears to me to be contrary to the expressly declared will of the Legislature and to all modern principle and precedent to keep a defendant under commitment for contempt to compel him to pay a money decree. It does not, I think, alter the case that the Court is led to infer that the defendant has concealed property in his possession. Neither by torture nor by dread of perpetual imprisonment, which is torture, ought the Court to enforce its decree. The modes in which a decree can be enforced are pointed out in the Civil Procedure Code, and this is not one of them.

If the attachment order is regarded as a punishment for the offence of the defendant Gángji Akháí in not having delivered up the Government promissory notes or (to read the order in a very extended sense) their value, the punishment should be commensurate with the offence. Imprisonment under it cannot be indefinite—*In re Davies*<sup>(1)</sup>. The Civil Procedure Code (XIV of 1882), section 493, is an indication by the Legislature of the length to which such imprisonment should extend, *viz.* six months. Here Gángji Akháí has been in jail under the commitment order for more than twenty months. His offence, however, in this particular case really consisted in his criminal breach of trust. For that he has suffered the punishment to which he was sentenced. I should not be justified in indirectly adding to its duration.

I have not entered upon a consideration of the question which determined Mr. Justice Starling in refusing to release the applicant—the question whether or not Gángji Akháí is concealing property. Upon such a question all Courts are necessarily liable to error. If I had the power to continue the imprisonment because I consider that the applicant is concealing property, which I have held that I have not, I should hesitate to exercise it in the face of the inference to be drawn from the want of the effect of the imprisonment already undergone by the applicant in inducing him directly or indirectly to produce the concealed property—an imprisonment which the orders already

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made in this matter must have led the applicant to fear might be perpetual.

There must be for these reasons an order for the release of the applicant.

*Application granted.*

Attorneys for plaintiff:—Messrs. *Máneklál and Dámodar.*

Attorneys for the defendant:—Messrs. *Crawford, Burder & Co., and Messrs. Tyebji and Dayabhai.*

### ORIGINAL CIVIL.

*Before Mr. Justice Bayley (Acting Chief Justice) and Mr. Justice Farran.*

BA'LA'RA'M HARICHAND AND OTHERS, PLAINTIFFS, *v.* THE SOUTHERN MARHATTA RAILWAY COMPANY, LIMITED, DEFENDANTS.\*

*Railway Company—Liability for loss of goods—Railways Act, IX of 1890, Sec. 75.*

(1) The words "loss, destruction or deterioration" in section 75(1) of the Indian Railways Act, IX of 1890, include loss caused by the criminal misappropriation of the parcel by a servant of the railway administration in charge thereof.

\* Suit No. 4019 of 1894.

(1) Section 75 of the Indian Railways Act, IX of 1890:—

"75. (1) When any articles mentioned in the second schedule are contained in any parcel or package delivered to a railway administration for carriage by railway, and the value of such articles in the parcel or package exceeds one hundred rupees, the railway administration shall not be responsible for the loss, destruction or deterioration of the parcel or package, unless the person sending or delivering the parcel or package to the administration caused its value and contents to be declared or declared them at the time of the delivery of the parcel or package for carriage by railway, and, if so required by the administration, paid or engaged to pay a percentage on the value so declared by way of compensation for increased risk.

"(2) When any parcel or package of which the value has been declared under subsection (1) has been lost or destroyed or has deteriorated, the compensation recoverable in respect of such loss, destruction or deterioration shall not exceed the value so declared, and the burden of proving the value so declared to have been the true value shall, notwithstanding anything in the declaration, lie on the person claiming the compensation.

"(3) A railway administration may make it a condition of carrying a parcel declared to contain any article mentioned in the second schedule that a railway servant authorised in this behalf has been satisfied, by examination or otherwise, that the parcel actually contains the article declared to be therein."

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