thought the same, and in such case there is no estoppel—*Gopee Lall* v. *Mussamut Sree Chundraolee Buhoojee*(1); *Vishnu* v. *Krishnan*(2); *Jhinguri Tewari* v. *Durga*(3). For these reasons, I would confirm the decree of the Agent for Sardárs with costs.

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Decree confirmed.

(1) 19 Calc. W. R., 12. (2) I. L. R., 7 Mad., 3.
(3) I. L. R., 7 All., 878.

APPELLATE CIVIL.

Before Mr. Justice Bayley, Acting Chief Justice, and Mr. Justice Fulton.

AHMEDBHOY HABIBBHOY (ORIGINAL DEFENDANT), APPELLANT, *v.* BA'LKRISHNA MUKUND AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

1894. *June* 14.

Vendor and purchaser—Landlord and tenant—Sale by landlord subject to rights of tenants—Notice to purchaser of such rights—Suit by tenants to enforce rights against purchaser—Civil Procedure Code (Act XIV of 1882), *Sec.* 30.

Section 30 of the Civil Procedure Code (Act XIV of 1882) authorizes some of the rayats of a village to sue the proprietor of it for themselves and the other rayats for a declaration of their general rights, and for an injunction restraining the proprietor from interfering with their enjoyment of those rights.

Phillips v. *Hudson*(1), *Smith* v. *Earl Brownlow*(2) and *Mayor of York* v. *Pilkington*(3) followed.

Hallows v. *Fernie*(4) referred to and distinguished.

In 1806 the East India Company granted a village to Ardeshir Dády, subject to the rayats' customary rights and privileges which were embodied in Regulation I of 1808, but the deed of conveyance was not passed until 1819, and it was then executed to the executors of Ardeshir, who had died in the meantime. This deed made no reference to rights and privileges of the rayats. In 1868 the defendant purchased the village from its legal owners. In 1889, plaintiffs sued defendant for themselves and on behalf of the other rayats of the village to enforce their rights. The defendant pleaded that as the deed of conveyance of 1819 made no mention of these rights, he was not bound by them.

Held, that as at the time of the conveyance of the village to the defendant, the lands were in the occupation of the rayats, the defendant ought to have made inquiry as to their rights. Having failed to do this he was bound by the rights of the tenants as much as if they had been specially mentioned in the conveyance to him.

* Second Appeal, No. 570 of 1892.

(1) L. R., 2 Ch., 243. (3) 1 Atk., 282.
(2) L. R., 9 Eq., 241. (4) L. R., 3 Ch., 467.

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Mancharji Sorábji v. *Kongseoo*(1) followed.

Held, also, that as there had been no denial of plaintiffs' rights until shortly before the suit, it was not barred by limitation.

SECOND appeal from the decision of R. S. Tipnis, Acting Assistant Judge of Thána, amending the decree of Ráo Sáheb D. W. Bhat, Second Class Subordinate Judge.

The village of Malád in the Salsette Táluka of the Thána District was granted to one Ardeshir Dády by the East India Company, the original owner of the village, in exchange for other property situated in the Fort of Bombay conveyed by him to the East India Company. Before possession of the village was given, the rayats were consulted about their wishes in this respect, and the Pátils, Mhátárás and rayats submitted certain stipulations with regard to their customary rights and privileges, and consented to the proposed transfer subject to those stipulations.

In 1806 Ardeshir Dády was put in possession of the village on the express condition of his maintaining the several Curumbis in the enjoyment of their respective pieces of land, and of his preserving the rights and privileges of the rayats in accordance with the above-mentioned stipulations. These stipulations have been embodied in Regulation I of 1808.

There being some dispute with respect to the price of the land sold by Ardeshir to the East India Company, the deed of conveyance was not executed until 1819, when it was executed by the said Company to Kharshetji Ardeshir and Jahángir Ardeshir, &c., as executors of the will of the said Ardeshir, he having died in 1810. In this deed no reference was made to the stipulations made by the rayats when they agreed to become the tenants of Ardeshir.

In 1868 defendant purchased the said village from its then legal owners.

The defendant having interfered with the enjoyment of the said rights by some of the rayats, plaintiffs instituted the present suit in 1889, for themselves and on behalf of Pátils, Mhátárás, Curumbis and rayats of the said village, under section 30 of the Civil Procedure Code (Act XIV of 1882), praying for a declaration

(1) 6 Bom. H. C. Rep., 59.

of their rights and privileges, and for a permanent injunction restraining the defendant from interfering with their exercise and enjoyment of the said rights and privileges.

They prayed for the following declarations :—

(1) That they are permanent tenants or sutidárs of Malád.

(2) That the khot is not entitled to receive as assessment more than two-thirds of the measure of the land in faras at the rate of Rs. 20 per muda of rice.

(3) That the khot should remit the assessment in times of scarcity.

(4) That the khot should not force them to take his permission before cutting, threshing or taking home the rice.

(5) That the khot should allow them to sell, mortgage, inherit or otherwise alienate their suti lands, without imposing additional conditions upon the transferee at the time of change of name in the revenue records.

(6) That they are entitled to pay in instalments like Government rayats, and that the khot is not entitled to attach their crops at his own instance.

(7) That the khot is not entitled to levy any assessment on the grass and varkas lands, whether they grow grass only or any other crop is grown on them.

(8) That they are entitled to the free enjoyment of the produce of their grass and varkas lands, including trees, &c.

(9) That they are entitled to the free enjoyment of all ordinary wood and non-productive palms from the Sarkári lands for their building purposes.

(10) That they are entitled to the free enjoyment of fuel, bambus, karvis and common wood for making agricultural implements, and mango and other trees at the time of marriages.

(11) That they are entitled to the complete ownership and enjoyment of their fazendári trees, whether on their own lands or Sarkári lands.

(12) That they are entitled to the use of gurcháran land as mentioned in the plaint.

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(13) That the Pátils, Mhátárás and Devasthán̈s should receive their haks and other rights from the khot without interruption.

(14) That they are entitled to the free use of the water and flowers from the tanks on the Sarkári land.

(15) That they are entitled to the free use of materials for *ráb*, thorns and inferior sort of palm leaves for making fences and enclosures.

(16) That they are entitled to pay no rent for the houses and *vádas* existing on the Sarkári land.

Defendant replied that he was not aware that the village was given to his predecessor-in-title on the aforesaid conditions; that as no reference was made to them in the deed of conveyance of 1819, he was not bound by them; that plaintiffs could not sue on behalf of all the people of Malád; and that as the jungle did not belong to the villagers, but to him, he had a right to levy fees on firewood.

The Joint Subordinate Judge of Thána held (*inter alia*) that, under section 30 of the Code of Civil Procedure, the suit was maintainable only with respect to the general rights of all the rayats of the village; that defendant, by his purchase, became the sole proprietor of the village, subject to the rights and privileges of the rayats, he being clothed with the rights which Ardeshir had obtained in the village; that defendant was not entitled to demand security for the payment of assessment on suti lands before allowing the crops to be reaped; that the rayats were entitled to the free enjoyment of the forest-wood from the jungle, bamboos and implements of husbandry and of flowers from the Sarkári tanks, but not of all ordinary building-wood and non-productive palms from the Sarkári land for their own private and domestic use, nor to the free use of materials for *ráb*, thorns for making hedges, and the inferior sort of palm leaves for making roofs from the Sarkári land; and that no cause of action had arisen for the plaintiffs' claim with respect to remission from the khots in times of necessity, the varkas lands attached to private holdings of suti lands and the houses and *vádás* existing on the Sarkári land. The Subordinate Judge, therefore, made the following order:—

"I order that the defendant is not entitled to demand security for the payment of assessment on suti lands from the rayat before allowing him the crops to be reaped; that plaintiffs are entitled to the free enjoyment of firewood, bambus and implements of husbandry from the jungle; that they should make an application to the khot to take the above things from the jungle, and that the latter should grant them the necessary written permission according to his discretion; and that the rayats are entitled to the free enjoyment of flowers from the Sarkári tanks for their own domestic use. I enjoin the defendant that he should not prevent the rayats from exercising the above rights, and that he should not demand security for the payment of assessment from the suti tenants. The rest of the plaintiffs' claim is rejected. . . . ."

On appeal by defendant, the Assistant Judge of Thána found (*inter alia*) that there was no objection to the entertainment of the suit by the plaintiffs for themselves and other interested rayats so far as it claimed an interest alleged to be common to the rayats of the whole village; that defendant was not entitled to demand security for the payment of assessment on suti lands before allowing the crops to be reaped; that the rayats were entitled to the free enjoyment of all forest common timber and unproductive brab-trees belonging to defendant for house-building, but that they should apply to defendant for permission to take them, and defendant should grant it having regard to the needs of the applicants and the exigencies of forest reservation; that the rayats were entitled to free enjoyment of firewood from the forest, bamboos, *purye, bundi, tatties, beleca kurgyia,* implements of husbandry, but that they should apply to defendant for permission, and defendant should grant it having regard to the circumstances mentioned above; that the rayats were entitled to the free enjoyment of flowers from the village tanks; and that Pátels, Mhátárás and Curumbis or rayats, as described in Regulation I of 1808, were entitled to the declarations, and that plaintiffs were of that class. He, therefore, amended the decree of the Subordinate Judge by declaring that the reliefs granted applied to the class of persons known as Pátels, Mhátárás and Curumbis or rayats of Malád described in Regulation I of 1808, and that plaintiffs belonged to this class, and by adding the words "*purye, bundi, tatties, beleca kurgyia*" before "and" after "bamboos" in the sentence commencing from "that plaintiffs are entitled to the free enjoyment of firewood, &c." The Assistant Judge further added to the decree as follows:—

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"The rayats are entitled to the free enjoyment of all common forest timber and unproductive brab-trees belonging to defendant for house-building, but that they should apply to defendant, the proprietor of the village, for permission to take them, and that the said proprietor should grant them that permission, using his own discretion in the matter soundly and reasonably, having regard to the needs of the applicants and the exigencies of the forest reservation; and the discretion should similarly be exercised in the matter of granting permission to cut firewood, bamboos, &c., allowed by the decree."

He further directed that an injunction should be issued against defendant forbidding him from interfering with the rights of rayats declared by the decree, and he confirmed the decree of the Subordinate Judge in other respects.

From this decision defendant preferred this second appeal to the High Court.

Scott (with *N. G. Chandávarkar*) for the appellant (defendant).

Shámráo Vithal for the respondents (plaintiffs).

The judgment of the Court was orally delivered by

BAYLEY, C. J. (ACTING) :—This appeal cannot succeed. The suit was brought in 1889 by five persons for themselves and on behalf of others resident in the village of Malád in the Sálsette Táluka for a declaration of their rights and privileges and for an injunction. The right of the plaintiffs to sue appears to be quite clear. It is found by the appellate Court that the village was granted in 1806 to Ardeshir Dády in exchange for other property situated in the Fort of Bombay conveyed by him to the East India Company. Before possession of the village was given, the rayats were consulted. They sent in a petition setting out certain articles to which the Government of Bombay agreed. The Collector by a letter dated 5th June, 1806, put Ardeshir Dády in possession. This shows that the consent of the villagers and rayats was considered by the East India Company to be necessary before the village could be transferred to Ardeshir Dády. On 24th February, 1808, certain rules were passed by the Governor in Council. Regulation I of 1799 had provided for the passing of Regulations, and Regulations were from time to time passed by the Governor in Council. See Morley's Digest (Introduction), Volume I, pages 76 and 77. The most recent reference to such Regulations is in the Lecture on the Laws and Administration of

Justice in India delivered before the University of Cambridge by Sir John Strachey, G.C.S.I., in 1884, and reproduced by him in his work "India," page 143 (1888).

Two cases relating to property in the Sálsette Táluka are in point:—*Dádibhái Jahángirji* v. *Rámji bin Bháu*[1]; *The Collector of Thána* v. *Dádábhái Bomanji*[2]. The Government, the vendors in the first of those cases, it was held, could not affect the rights of their tenants. It would have been a fraud if they had attempted to do so. Here, it would have been little else than a fraud if Government had attempted to convey the village irrespective of the rights and behind the backs of the rayats.

Ardeshir Dády got his conveyance subject to these rights, and he accepted subject to them. In the conveyance of 1819 there is, it is admitted, no mention of the rights of the rayats. It is a conveyance of the village and its lands then in the occupation of the villagers and rayats. A purchaser ought to inquire into the rights of the tenants on the property, and if he fails to do so he takes subject to such rights as the tenants may have—*Mancharji Sorábji* v. *Kongseoo*[3]. That was a decision of Sir Richard Couch, C. J., on the Original Side of this Court, and he cited many cases in Courts of Equity in England where the rule just stated had been applied. He also referred to a decision of the Privy Council in 1853, *Barnhart* v. *Greenshields*[4], where their Lordships said (p. 32): "With respect to the effect of possession merely, we take the law to be, that if there be a tenant in possession of land, a purchaser is bound by all the equities which the tenant could enforce against the vendor, and that the equity of the tenant extends not only to interests connected with his tenancy, as in *Taylor* v. *Stibbert*[5], but also to interests under collateral agreements, as in *Daniels* v. *Davison*[6], *Allen* v. *Anthony*[7], the principle being the same in both classes of cases: namely, that the possession of the tenant is notice that he has some interest in the land, and that a purchaser having notice of that fact is bound, according to the ordinary rule, either to

(1) 11 Bom. H. C. Rep., 162.
(2) I. L. R., 1 Bom., 352.
(3) 6 Bom. H. C. Rep., 59.
(4) 9 Moo. P. C. C., 18.
(5) 2 Ves. Jun., 437.
(6) 16 Ves., 249.
(7) 1 Mer., 282.

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inquire what that interest is, or to give effect to it, whatever it may be." The present appellant purchased in 1868 apparently without any inquiry at all. It is not suggested that he investigated the title, and he is bound by the rights of the tenants just as if they were specially mentioned in the conveyance to him. Government and Ardeshir Dády's descendants recognized these rights.

It is said, however, that the rights are barred by limitation, by acquiescence, and by a change of custom. There is no force in any of those contentions. The ground of limitation fails, because there does not appear to be a denial of plaintiffs' rights until quite recently. There was no acquiescence by the villagers in any claim made by the appellant, save that he insisted on his written permission being obtained in lieu of a mere verbal one, allowing the rayats to take away firewood and bambus, &c., from the forests, nor is there any proof of any change of custom.

The next question is, whether the suit can be brought in its present form? It is a suit brought under the provisions of section 30 of the Civil Procedure Code (Act XIV of 1882). The appellant's counsel relied on *Hallows* v. *Fernie*[1]. That was a very different case from the present. It was a suit on an alleged fraudulent representation, whereby the plaintiffs were induced to become shareholders of a company. We will refer to two cases which were not cited by counsel in the argument before us. In *Phillips* v. *Hudson*[2], Lord Chelmsford, L. C., held that a bill can be maintained by one copy-holder on behalf of himself and other copy-holders, being numerous, against the lord of the manor to have their rights of common ascertained and for an injunction. This was decided in 1867. And in *Smith* v. *Earl Brownlow*[3] decided in 1870, it was held that the bill was not objectionable. At page 256, Lord Romilly, M. R., says: The defendant "contends that the plaintiff cannot properly sue on behalf of himself and the free-holders and copy-holders of the manor, and that this constitutes a misjoinder; but I am of opinion that this objection fails, and that, though their rights of common might not be exactly co-extensive, yet, as the plaintiff is proved,

(1) L. R., 3 Ch., 467. (2) L. R., 2 Ch., 243.
(3) L. R., 9 Eq., 241.

and, indeed admitted, to be a copy-holder as well as a free-holder of the manor, and, indeed, of both divisions of it, he is entitled to sue on behalf of all. This also appears to me to be established both by authority and by the constant practice of this Court in like cases, and also in cases where a right of fishing comes in question, as in the case of the *Mayor of York* v. *Pilkington*(1)."

Lastly, it is said that the Assistant Judge made an alteration in the form of the decree. It appears to the Court that that alteration is rather in favour of the proprietor, the appellant. What has been given by the appellate Judge is in accordance with the clauses of the agreement made in 1806, as evidenced by Exhibits 56, 57, 58, 60 and 61. The appeal must be dismissed, with costs.

Appeal dismissed.

(1) 1 Atk., 282.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ránade.

RANGUBA'I (ORIGINAL OPPONENT), APPELLANT, *v.* ABA'JI (ORIGINAL APPLICANT), RESPONDENT.*

1894. *June* 16.

Regulation VIII of 1827—*Succession Certificate Act* (*VII of* 1889), *Secs.* 19 *and* 28—*Certificate of heirship*—*Order refusing certificate of heirship appealable*—*Appeal.*

An appeal lies from an order refusing to grant a certificate of heirship under Regulation VIII of 1827, by virtue of section 19 of the Succession Certificate Act (VII of 1889).

APPEAL from an order of H. L. Harvey, Assistant Judge of Sátára, in Miscellaneous Application No. 4 of 1893.

One Abáji Váman Bendre applied under Regulation VIII of 1827 for a certificate of heirship to the estate of Váman Abáji Bendre, deceased, alleging that he was the adopted son of the deceased.

This application was opposed by Rangubái, the widow of the deceased, on the grounds (1) that the applicant's adoption was

* Appeal, No. 10 of 1894.