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The Division Court has, at the request of the parties, expressed an opinion as to whether the building the club is not an injury to the reversion. No objection has been taken to this declaration, and we see no reason to differ from it, but it is to be remarked that it will not bind the reversioners, who have not been made parties to the suit.

As to costs, we think that as the suit has been rendered necessary by the wording of the will, the costs were properly thrown on the general estate. Costs of this appeal to come out of the same funds.

Attorneys for appellants:—Messrs. *Little, Smith, Nicholson and Bowen.*

Attorneys for defendant:—Messrs. *Nanu and Hormasji.*

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## ORIGINAL CIVIL.

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

MA'NEKLA'L MOTILA'L AND ANOTHER (PLAINTIFFS) *v.* THE MUNICIPAL COMMISSIONER FOR THE CITY OF BOMBAY (DEFENDANT).*

1895. *January* 25.

*Municipality—City of Bombay Municipal Act (Bombay Act III of* 1888), *Secs.* 298, 299, 301, 504, 527—*Land taken by the Municipality for street improvement—Compensation—Dispute as to amount of compensation—Limitation.*

In 1891 the Municipal authorities of Bombay gave notice to the plaintiffs under section 299 of Bombay Act III of 1888 that they required 23·30 square yards of the plaintiffs' land for street improvement. On the 14th December, 1891, the plaintiffs gave possession of the land to the Municipality, and on 27th January, 1892, claimed Rs. 60 per square yard as compensation. By letter dated 23rd February, 1892, the Municipal Commissioner (without prejudice) offered Rs. 50 per square yard as compensation and stated that on the plaintiffs producing the title-deeds and papers to establish their title the necessary documents in connection with the payment would be prepared. Nothing further took place in the matter until the 14th February, 1894, on which date the plaintiff wrote a letter to the Municipal Commissioner in which, without mentioning any sum, he requested the payment of the amount which might be due to him as compensation for his land taken by the Municipality. The Commissioner refused to pay the compensation, contending that the plaintiffs' claim was time-barred. The plaintiffs thereupon brought this suit claiming Rs. 1,165 (being at the rate of Rs. 50 per square yard) as compensation for the land taken up by the defendant or in the alternative for that sum as damages for the breach of contract to

* Small Cause Court Suit No. $\frac{256}{18761}$ of 1894.

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pay purchase money for the land. The defendant pleaded (1) that notice under section 527 of the Municipal Act III of 1888 was necessary before suit filed and (2) that the suit was barred by limitation. The Chief Judge of the Small Cause Court found for the defendant with costs and dismissed the suit contingent on the opinion of the High Court. On a case stated,

*Held* (1) that notice under section 527 of Bombay Act III of 1888 was not necessary, that section not being applicable to suits brought to enforce payment of compensation under section 301 of the Act;

(2) that the suit was not barred by limitation.

*Per* FARRAN, J.:—A suit against the Municipality of Bombay for compensation for land acquired by the Municipality under section 299 of Act III of 1888 is not an action of tort or *quasi*-tort, but a simple action for the price of land, which the terms of section 301 of the Act impose upon the Commissioner to pay. The obligation to pay that price is of the same nature (1) whether the owner assents to the valuation of the land placed upon it by the Commissioner, (2) whether the value is determined by the Chief Judge of the Small Cause Court, or (3) whether it is left undertermined. Section 527 does not apply to any of these three cases. In all of them the obligation to pay is imposed by section 301, and does not arise from the manner in which the amount of the price to be paid is arrived at.

2. Section 504 prescribes the only mode in which in case of dispute the value of the land can be determined. If the owner of land disputes the Commissioner's valuation he must apply to the Chief Judge of the Small Cause Court within a year. If he does not do so, the result is that he loses the power of effectually disputing the Commissioner's valuation, but does not lose his right to the amount of the valuation.

3. The owner of land has a remedy independent of the provision of section 504. The section only deals with cases where there is a dispute as to the value of the land, and leaves untouched those cases where there is no such dispute, but where the Commissioner for some reason declines to pay. In such cases the owner is left to his ordinary remedy, no special mode of procedure being prescribed. Cases in which there has been a dispute, but in which the owner abandons his claim to dispute the valuation of the Commissioner, fall within the latter category.

CASE stated for the opinion of the High Court by C. W. Chitty, Chief Judge of the Bombay Court of Small Causes, under section 2 of Act XII of 1888 (Bombay Municipal Act Amendment Act).

In 1891 the plaintiffs, who were the owners of a certain house in Dádysett Agiáry Street in Bombay, desired to rebuild it. In the usual course they submitted a plan of the proposed new building to the municipal authorities, who approved of it, but gave notice under section 299 of the City of Bombay Municipal Act III of 1888 to the plaintiffs that the Municipality required 23·30

square yards of the land in front for the improvement of the street. On the 14th December, 1891, the plaintiffs gave possession of the required land to the Municipality.

On the 24th December, 1891, the Executive Engineer of the Municipality addressed the following letter to the plaintiffs :—

"I have the honour to request the favour of your producing the original title-deeds of your property at Agiáry Street for investigation, in order to prove your right to receive compensation for the piece of ground admeasuring 23·30 square yards taken up out of the said property by the Municipality."

On the 27th January, 1892, the plaintiffs through their solicitor wrote as follows in reply, claiming Rs. 60 per square yard :—

"As regards the rate of Rs. 25 per square yard, my client objects to receive it, and claims compensation at Rs. 60 per square yard. He says that no property can be purchased in this locality for less than the above rate as the value of the ground.

"You will, therefore, reconsider this matter, and make adequate compensation to my client."

On the 23rd February, 1892, the Executive Engineer sent the following letter to the plaintiffs :—

"*Bombay, 23rd February, 1892.*

"SIR,—With reference to your letter dated 27th January, I have the honour to state that the Municipal Commissioner on further consideration has been pleased to direct me to offer (without prejudice) the rate of Rs. 50 per square yard as compensation for the land. The necessary documents in connection with the payment will be prepared on your client producing in this office such deeds and papers as he may have to establish his title to the premises.

"I have, &c.,

"JAMES W. SMITH, M.I.C.E.,

"Acting Executive Engineer."

Nothing further took place until the 14th February, 1894, on which date the plaintiffs wrote a letter to the Municipal Commissioner, in which without accepting the above offer of Rs. 50 he requested payment of compensation for the land taken up by the Municipality. His letter was as follows :—

"*Bombay, 14th February 1894.*

"TO THE MUNICIPAL COMMISSIONER FOR THE CITY OF BOMBAY.

"SIR,—As directed by you, I have come from Khambát (Cambay) to receive the amount of compensation due by the Municipality to me with reference to the portion of land taken up by the Municipality for set-back purposes in front of my property

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(Ward No. 4150—4151, and street No. 17-19) at Dádysett's Agiáry Lane without the Fort of Bombay. May I request the favour of your directing the Executive Engineer to pay me in person the said amount without any further delay, as I have to go back to Cambay permanently, and oblige?

"(Signed) R. D. DESA'I,

"*for* MÁNEKLA'L MOTILA'L."

To this letter the Executive Engineer replied as follows on the 12th March, 1894:—

"In reply to your letter dated 14th February, 1894, to the address of the Municipal Commissioner, I have the honour to inform you that I regret the payment of the amount cannot now be made, as the claim is time-barred."

On the 30th March, 1894, the plaintiff through his solicitor sent the following letter to the Executive Engineer:—

"SIR,—Our client Mr. Máneklál Motilál has placed in our hands your letter to him, No. 17105 of 1893-94 of the 12th instant, with instructions to state in reply that our client is surprised at the Municipality pleading limitation against payment of compensation for land taken from him under set-back line. We have, therefore, to request you to let us know your authority for pleading limitation.

"We may say that the fact as to what amount should be paid to our client still remains undecided, inasmuch as although the Municipality acquired from him 23·30 square yards of land at Agiáry Street at Rs. 50 a square yard, our client was not and is not liable to the Municipality for ¾ the value of land under his gallery constructed by him in the lane adjoining his property; and as the area and value of the land in this lane is not fixed, our client could not and does not still know what amount is due to him.

"Under the above circumstances we submit you cannot plead limitation, and we request you to pay to our client what is, on making proper calculation, due to him."

On the 9th April, 1894, the Executive Engineer wrote as follows to the plaintiff's solicitors:—

"*Bombay, 9th April, 1894.*

"GENTLEMEN,—With reference to your letter dated 30th March, 1894, on behalf of Mr. Máneklál Motilál, I have the honour to state that I am advised that under section 504 of the Municipal Act the claim is time-barred, possession of the land having been taken on the 14th December, 1891, on which date the compensation became payable.

"2. I may add that until the party pays the municipal fees due for the gallery, and obtains a permit for it, the projection is not lawful, and the Municipal Commissioner has a right to call upon the party to remove it.

"I have, &c., &c.,

"M. C. MURZBÁN,

"Executive Engineer."

On the 18th July, 1894, the plaintiffs filed this suit in the Court of Small Causes claiming Rs. 1,165 as compensation for the land, being at the rate of Rs. 50 per square yard. The Chief Judge held that the claim was barred under section 527(1) of the city of Bombay Municipal Act (III of 1888), and dismissed the suit contingent on the opinion of the High Court on a case stated by him at the request of the plaintiff.

The judgment of the Chief Judge was as follows :—

"This is a suit brought by the plaintiff to recover from the defendant a sum of Rs. 1,165 as compensation for the land of the plaintiffs taken up by the Municipal Commissioner for street improvement, and, in the alternative, for the same sum as damages for the breach of contract on the part of the defendant to pay the purchase-money for the said land.

In this case there is no dispute as to facts. The land in question (some 23·30 square yards) was taken possession of by the Municipal Commissioner on the 14th December, 1891. The Municipal Commissioner at first offered compensation at

(1) Section 527, Bombay Act III of 1888 :—

"527 (1). No suit shall be instituted against the Corporation or against the Commissioner, or a Deputy Commissioner, or against any municipal officer or servant in respect of any act done in pursuance or execution or intended execution of this Act or in respect of any alleged neglect or default in the execution of this Act :

(*a*) until the expiration of one month next after notice in writing has been in the case of the Corporation, left at the chief municipal office, and, in the case of the Commissioner or of a Deputy Municipal Commissioner or of a municipal officer or servant, delivered to him or left at his office or place of abode, stating with reasonable particularity the cause of action and the name and place of abode of the intending plaintiff and of his attorney or agent, if any, for the purposes of such suit ; nor

(*b*) unless it is commenced within six months next after the accrual of the cause of action.

(2). At the trial of any such suit :

(*c*) the plaintiff shall not be permitted to go into evidence of any cause of action except such as is set forth in the notice delivered or left by him as aforesaid ;

(*d*) the claim, if it be for damages, shall be dismissed if tender of sufficient amends shall have been made before the suit was instituted, or, if, after the institution of the suit, a sufficient sum of money is paid into Court with costs.

(3). Where the defendant in any such suit is a municipal officer or servant, payment of the sum or of any part of any sum payable by him in or in consequence of the suit, whether in respect of costs, charges, expenses compensation for damages, or otherwise, may be made, with the sanction of the Standing Committee, from the municipal fund.

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the rate of Rs. 25 per square yard. The plaintiffs wanted Rs. 60. On the 23rd February, 1892, the Municipal Commissioner increased his offer to Rs. 50 (without prejudice). This letter remained unanswered for two years, when, on 14th February, 1894, the plaintiffs without directly accepting that offer asked the defendant to pay them the compensation due. They were then told that their claim was time-barred.

The only defences raised in this case were, (i) that notice under section 527 of the City of Bombay Municipal Act, 1888, was necessary before suit filed, and (ii) that the suit is barred by limitation. In this case the plaintiffs stand in a somewhat better position than the plaintiff in the recent Suit No. 18029 of 1894 so far as regards the lapse of time, inasmuch as they bring their suit within three years.

Before proceeding to the questions under section 527, I may deal with the case as one for damages for breach of contract. As such, in my opinion, it cannot be maintained, as there was never any contract between the plaintiff and defendant for sale and purchase at Rs. 50 or any given price. It is argued that the offer of Rs. 50 of the defendant, dated 12th February, 1892, remained open till the letter of the plaintiffs of 14th February, 1894. I am of opinion that the proposal was revoked by lapse of time (see Indian Contract Act, section 6, clause 2). It could hardly be said that two years was a reasonable time for which it should remain open for acceptance. But further than this, the letter of 14th February, 1894, is, in my opinion, no acceptance, and as the letter of 12th March, 1894, must amount to a withdrawal of the offer, it follows that there was no contract.

I now proceed to consider the case under section 527. First, as to limitation, I am of opinion that this section must be held to apply to cases like the present. There is certainly nothing in the section itself to exclude it. Indeed the words "suit in respect of any act done in pursuance or execution or intended execution of this Act, or in respect of any alleged neglect or default in the execution of this Act" would seem directly to include it. This is a suit for compensation for land taken up under the Act (section 299) and for default in payment of such compensation (section 301). This point has been before the learned Second Judge in Suit No. 16139 of 1894 and before him and myself in the Full Court, and I am fortified by his judgment in that suit. I think that the six months allowed by section 527 must be taken to be the period of limitation applicable to this case. It is admitted that if that be so, the suit is barred, and so I must hold it.

As to the notice, there again it appears to me that section 527 must apply. It has been argued that section 527 was only intended to apply to cases of torts and *quasi*-torts. If that be so, it is difficult to account for the wording of sub-section (*d*), which clearly contemplates other actions than those for damages. In the case in 12 Bom. H. C. R., cited by the plaintiffs, the word compensation seems wide enough to include such cases as the present. The intention of the Legislature in requiring notice is to enable persons acting under the Act to tender reasonable compensation, and there seems no reason why it should not apply to cases like the present. I must hold that no notice having been given, the suit is not maintainable. The suit is dismissed and defendant's professional costs Rs. 51 certified. My judgment will be contingent on the opinion of the High Court on a case to be stated at the request of the plaintiffs' counsel.

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The following was the statement of the case by the Chief Judge:—

"This was a suit brought by the plaintiffs to recover from the defendant a sum of Rs. 1,165 as compensation for land of the plaintiffs taken up by the defendant, the Municipal Commissioner, for street improvement, and in the alternative for the same sum as damages for the breach of contract on the part of the defendant to pay the purchase-money for the said land.

"2. In this case the only defences raised were (1) that notice under section 527 of the City of Bombay Municipal Act of 1888 was necessary before suit filed, and (2) that the suit was barred by limitation. On both these points I found for the defendant, and the suit was accordingly dismissed, and the defendant's professional costs Rs. 51 certified.

"3. The facts of the case (which were not in dispute) are fully set out in my judgment, as are also the reasons for my decision.

"4. At the request of the plaintiffs' counsel I made my judgment contingent on the opinion of their Lordships. The only questions to be submitted are:—

"(i) Whether in this case notice under section 527 of the City of Bombay Municipal Act, 1888, was necessary before suit filed?

"(ii) Whether this suit is barred by limitation?

to be re- The plaintiffs have deposited in Court Rs. 51 professional Cause Co[illegible]d Rs. 50 to meet the costs of reference."

tion becam[illegible]

*T* for plaintiffs:—The plaintiffs' land was taken under

The facts 99 of the Bombay Municipal Act, III of 1888, and com-

the Commis was payable to them under section 301 of that Act. This

1892, had n[illegible]on is imperative, and the plaintiffs' right under it is clear.

was come to[illegible]7 does not apply to a claim of this kind. It refers

of the Comm[illegible]tort or *quasi* tort—*Sorábji N. Dundás* v. *The Justices*

It was con[illegible]*for the City of Bombay* [1]; *Price* v. *Khilat Chandra*

cumstances al[illegible]*borno Chunder Roy* v. *Balfour* [3]; *Ranchhod Varaj-*

by section 5[illegible]*Municipality of Dákor* [4]; *Chunder Sikhur* v. *Obhoy*

section shows

(1) [illegible]. Rep., 250 (O. C. J.).
(2) [illegible] App., 50.
(3) 9 Cal. W. R., 535.
(4) I. L. R., 8 Bom., 421.

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*Churn* (1); *Municipal Committee of Morádábád* v. *Chatri Singh* (2); *Nágusha* v. *Municipality of Sholápur* (3). That section [illegible] tions municipal officers and servants, and it is clear that they could not be liable to pay compensation for land taken by the Commissioner, although they might be made liable for illegal acts. Sub-clause (*d*) also shows the scope of the section. [illegible] referred to Bombay Act II of 1865, section 40, Bombay Act [illegible] of 1873, section 287, and Bombay Act VI of 1873, section 50.

*Macpherson* for defendant:—The suit is barred either under section 504(4) of the Act or under section 527. We contend that section 504 applies, and the plaintiff's claim was barred at the end of one year. It is plain there was a dispute as to the amount of compensation, and this section provides for such cases and limits the period of limitation. There are only two possible classes of cases. First, where there is no dispute, *i.e.* where the parties have agreed as to the amount of compensation; second, where there is a dispute. In the first case, (*i.e.* where there has been an agreement) the parties would be on the usual footing and the ordinary law of limitation would apply, and the suit might be brought in any civil Court. But in the latter case (where there is no agreement and where the parties have not come to terms [illegible] there is a dispute,) this section gives exclusive jurisdiction to the Small Cause Court and prescribes a period of limitation of one year.

If, however, the Court holds that section 504 does not [illegible] this case, we submit that the suit is barred by section [illegible] suit which case the period of limitation is only six months. It has is clearly one in respect of taking the land, or (2) to [illegible] and *quasi*- in paying compensation. In either of these cases [illegible] (*d*), which

(1) I. L. R., 6 Cal. 8. (2) I. L. R., 1 All., 269. (3) I. L. R., [illegible] 12 Bom. [illegible] to include [illegible] notice is to [illegible] and there [illegible] hold that [illegible] missed and [illegible] contingent on [illegible] the plaintiffs' [illegible]

(4) Section 504, Bombay Act III of 1888:—

If, in any case not falling under section 491, any person is required by any regulation or by-law framed under this Act, to pay any expenses or compensation, the amount to be so paid and, if necessary, the apportionment thereof, shall, in case of dispute, be determined, except as is otherwise provided by sections 514 and 515, by the Chief Judge of the Small Cause Court, on application made to him for this purpose at any time within one year from the date when the compensation first became claimable.

applies. Reference was made to *Foat* v. *The Mayor, &c., of Margate*(1); *Midland Railway Co.* v. *Withington Local Board*(2).

*Russell* in reply:—Section 504 does not apply here, for there has been no dispute.

SARGENT, C. J.:—The facts of the case which have led to this reference are set out in the judgment of the Chief Judge of the Small Cause Court. The two questions submitted to us are:—

1. Whether in this case notice under section 527 of the Municipal Act of 1888 was necessary before suit filed?

2. Whether the suit is barred?

It will be convenient to deal first with the second question.

The suit in question presents the claim of the plaintiff in a double aspect—1st, as a claim for compensation which the Commissioner is directed by section 301 to pay to the owner of land taken up under sections 298, 299; and, 2nd, for damages for breach of an alleged contract to purchase the land.

The Judge of the Small Cause Court has found that there was no such contract of purchase. The question, therefore, submitted to us has only to be answered with reference to the first branch of claim, *viz.*, for compensation.

Where the parties are not agreed as to the amount of compensation to be paid as directed by section 301, or, in other words, where the amount is "in dispute," section 504 provides the course to be followed, *viz.* by application to the Chief Judge of the Small Cause Court within one year from the date when such compensation became claimable.

The facts as stated by the Judge show that the last offer of the Commissioner of Rs. 50 per square yard on the 23rd February, 1892, had not been accepted, and that no agreement of any sort was come to between the parties within a year from the date of the Commissioner's taking possession of the plaintiff's land.

It was contended for the Commissioner that under these circumstances all claim to compensation under section 301 was barred by section 504. I cannot doubt that the language of that section shows that the course provided by it in the event of the

(1) 11 Q. B. D., 299. (2) *Idem.*, 788.

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amount of compensation being in dispute is the only one open to the owner of the land taken,—in other words, that when there is such dispute it is in substitution for the ordinary right of action in the civil Court to recover compensation as directed to be paid by section 301, and, therefore, after the expiration of a year if the owner has not been paid, his only course is to agree to the Commissioner's terms.

It was contended for the Commissioner that in that case the plaintiff's cause of action, would be for a breach of contract and not the right to compensation given by section 301. That is, in my opinion, a mistaken view of the jural relation between the parties. The obligation to pay compensation for the land based on its value, which the Act imposes on the Commissioner by section 301 would still be in force, although proceedings under section 504 might be barred, and if the plaintiff accepts the value placed on the property by the Commissioner, he is entitled to enforce payment of it, assuming of course that he can establish his title as owner. I think that the correspondence between the parties, which begins with plaintiff's letter of 14th February, 1894, shows that the plaintiff has accepted the value offered by the Commissioner by his letter of 23rd February, 1892. That valuation was never withdrawn or revoked. In the above view of the relation of the parties, clause (2) of section 6 of the Contract Act (IX of 1872) has no application and the correspondence shows that the Commissioner's only objection to pay the compensation claimed was that the claim to any compensation was barred. It was not contended that the suit was barred by the general law of limitation, and the second question must be answered in the negative.

As to section 527, whatever may be the suits to which it is applicable, I do not think it could have been intended to apply to a suit arising out of section 301. It is plain it could not apply to proceedings under section 504, as they can be brought within a year from the time when compensation became claimable, and that being so, it must, I think, be inferred that section 527 was not intended to apply in the present case, as both the compensation became claimable and the cause of action accrued

(according to the above view of the present suit) under section 301 of the Act, *i.e.*, from the time the lands were taken possession of by the Commissioner.

FARRAN, J.:—I agree in the answers given by the Chief Justice, but I have also prepared a judgment expressing my reasons.

This is a suit for the value of land acquired by the Municipal Commissioner under the provisions of sections 298 and 299 of the Municipal Act. The more cumbrous phrase, "compensation for the value of the land" adopted in section 301, is, I think, only used to suit the convenience of the draftsman. The land has been rightfully acquired by the Commissioner. The plaintiff makes no complaint on that head. He merely asks to be paid the price of the land as ascertained upon the basis of its value which the Act directs that the Commissioner shall pay him.

The first question submitted to us is, whether such a claim is barred under section 527 after the lapse of six months from the time when the land is acquired, (at which time, I apprehend, the plaintiff's cause of action accrued) and whether notice of action must under that section be given to the Commissioner. It has been settled law that the provisions of the English Statute analogous to and, in my mind undistinguishable from the terms of the section with which we are dealing, do not apply to claims arising out of contracts or *quasi* contracts, but do apply to claims arising out of torts or *quasi* torts done under colour of, or in carrying out the provisions of the Statute; *Midland Railway Company* v. *Withington Local Board* (1). But the Courts disregarding the form of the action inquire into the nature of the transaction out of which the claim arises. If we ask whether this action arises out of a tort, injury, or *quasi* delict, the answer must, I think, unhesitatingly be in the negative. It is a simple action for the price of land, which the terms of section 301 impose upon the Commissioner the obligation to pay. The obligation to pay that price is of the same nature whether (1) the owner assents to the valuation of the land placed upon it by the Commissioner, (2) whether the value is

(1) 11 Q. B. D., 789.

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determined by the Chief Judge of the Small Cause Court, or (3) whether it is left undetermined. It is admitted that in the former two cases the section does not apply. I am quite unable to distinguish the third case in principle from them. In all three cases the obligation to pay is imposed by the terms of section 301, and does not arise from the manner in which the amount of the price to be paid is arrived at. When goods are purchased to be paid for at the market rate, the obligation to pay for them arises from the contract of purchase, not from the ascertainment of the market rate. When land is acquired to be paid for at its value, the obligation to pay arises from the acquisition of the land in accordance with the provisions of the Act, and not, it appears to me, from the ascertainment of its value by agreement or otherwise. It is quite clear to my mind that the framers of the Act did not intend the short period of limitation of six months to apply to this case. It would appear unreasonable that they should do so. Section 504 gives the owner twelve months to apply to the Chief Judge to determine the value of the land in case of dispute, but if section 527 applies to the claim, it is barred after six months. It cannot be that the value is to be ascertained after the claim is barred. In my opinion, section 527 does not apply at all. Some difficulty in adopting this view arises from the wording of sub-clause (*d*) to the section, but the relief is that damages may be sought in respect of a delict or wrong or *quasi* wrong committed, as, *e. g.*, a declaration or mandatory injunction, or possibly such relief as was asked for in *Nagusha* v. *Municipality of Sholápur*[1], and damages are sought in cases of breach of contract to which the section admittedly does not apply. I answer the first question, therefore, in the negative.

Section 504 prescribes the mode, and, in my opinion, the only mode, in which, in case of dispute, the value of the land can be determined. The imperative words used in the section, I think, almost compel that conclusion, and the consideration that the policy of the Legislature has long been to have the value of land taken up for a public purpose determined by a specially con-

(1) I. L. R., 18 Bom., 19.

stituted tribunal (see Bombay Act III of 1872, section 289, and Act X of 1870 *passim*) establishes its correctness. If the owner of land disputes the Commissioner's valuation (which usually assumes the form of an offer and often, as in this case, of an amended offer) he must make an application to the Chief Judge within a year. If he does not do so, the result, in my opinion, is that he loses the power of effectually disputing the Commissioner's valuation, but does not lose his right to the amount of that valuation. The section does not enact that his non-application shall have the latter result, and it appears rather an unreasonable, and certainly not a necessary, implication to draw from its provisions that it shall, especially as these provisions are conversant only with the determination of the quantum of value. There is nothing, in my opinion, in the provisions of section 504 which deprives the owner of land, who does not apply under it to have his compensation determined, of his right to compensation, if independently of its provisions he has a right to receive it; nor is there, in the section, anything to relieve the Commissioner in such case from his obligation to pay the value of the land.

That the owner has a remedy independent of the provisions of section 504 is, I think, clear. The section only deals with cases where there is a dispute as to the value of the land, and leaves untouched those cases where there is no such dispute, but where the Commissioner from default as to the title of the owner or for some other reason, as in this case, or arbitrarily declines to pay. In such cases the owner is left to his ordinary remedy, no special mode of procedure being prescribed. Cases in which there has been a dispute, but in which the owner abandons his claim to dispute the valuation of the Commissioner, fall, it appears to me, within the latter category. It would be absurd for the owner to apply to the Chief Judge to determine the amount of compensation saying, "I disputed the valuation of the Commissioner, but I do so no longer. Determine the amount." There would be nothing left for the Court to determine. That would not be making an application to the Court in case of dispute as to the amount, but in a case where there was no dispute. Such, I think, is the present case, and the plaintiff has properly resorted to the ordi-

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nary jurisdiction of the Court. As to limitation, the case falls, I think, under the general law, and is admittedly not barred by its provisions. I agree, therefore, that the second question also should be answered in the negative.

Attorneys for plaintiff:—Messrs. *Mulji and Raghavji.*

Attorneys for defendant:—Messrs. *Crawford, Burder & Co.*

## APPELLATE CIVIL.

*Before Mr. Justice Jardine and Mr. Justice Ránade.*

1894. *June* 18.

HARI KRISHNA JOSHI (ORIGINAL DEFENDANT), APPELLANT, *v.* SHANKAR VITHAL (ORIGINAL PLAINTIFF), RESPONDENT.*

*Easement—Trees—Trees overhanging neighbour's land—Nuisance—Easement Act (V of 1882).*

Plaintiff sued for an injunction restraining the defendant from allowing the branches of a tree belonging to him to overhang plaintiff's land, and for an order directing him to cut off such branches.

Defendant pleaded that the branches of his tree had projected over plaintiff's land for forty years, and he contended that he had, therefore, acquired a prescriptive right of the nature of an easement over plaintiff's land.

*Held*, that the plaintiff was entitled to cut away the branches which overhung his land, though they had done so for more than forty years.

SECOND appeal from the decision of Ráo Bahádur Káshináth B. Maráthe, Subordinate Judge First Class A. P., at Ratnágiri in Appeal No. 445 of 1891.

The plaintiff sued for an injunction restraining the defendant from allowing the branches of his *cashew* tree to overhang the plaintiff's ground, and for an order directing him to cut off such branches.

Plaintiff alleged that the branches of the trees overhung a part of his land measuring about 22 cubits by 15, and that, in consequence of the shadow cast by the branches, his cocoanut trees died.

Defendant pleaded that the branches had overhung the plaintiff's ground for more than forty years.

The Court of first instance dismissed the plaintiff's suit, holding that the right claimed by the defendant was an easement

* Second Appeal, No. 760 of 1892.