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been collecting these rents for very many years without objection on the part of the Desái and his representatives. These, and the existence of the bond, are the facts before us. We think that if from them we were to draw the inference which we are asked to draw, we could only do so because we have read the terms of the bond. This would be indirectly admitting the provisions as to assessment in the bond in evidence. The inference, leaving the terms of the bond out of consideration, is not the necessary or only inference to be drawn from the established facts. The difficulty of drawing it is also enhanced by the death of the Desái in 1882 leaving minor sons. We must, therefore, hold that the plaintiff has not established that he has been paid "interest as such" on his bond within three years of the filing of his suit by the duly authorized agents of the defendants, and that his suit is, therefore, time-barred.

The result would be the same if the bond were treated as a mortgage of the *chavrat* lands—*Pichandi v. Kandasami*<sup>(1)</sup>. This is probably its true character. The *vahivat* of the assessment is assigned, and the plaintiff always treated himself as being in possession as a mortgagee.

The case is one of hardship, but the hardship has arisen from the neglect of Bába Náik to comply with the provision of a salutary law which we should be straining and not giving effect to if we allowed this appeal. It must, therefore, be dismissed, with costs.

*Appeal dismissed.*

(1) I. L. R., 7 Mad., 539.

## APPELLATE CIVIL.

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

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August 23.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL (ORIGINAL DEFENDANT), APPELLANT, v. VAKHATSANGJI MEGHRA'JJI (ORIGINAL PLAINTIFF), RESPONDENT.\*

*Treasure Trove Act (VI of 1878)—Right of a Talukdár in Gujardt to treasure trove—Rights of Government.*

A bag containing Rs. 248-2-0 and a gold ring was found buried in a field under circumstances which created suspicion of the commission of an offence. The District

\* Appeal, No. 5 of 1892.

Magistrate called for claimants to come forward under section 523 of the Code of Criminal Procedure (Act X of 1882). Thereupon the plaintiff put in his claim, alleging that, as Tálukdár and owner of the soil in which the property was found, he was entitled to the property. His claim was rejected, and an order was passed under section 524 of the Code placing the property at the disposal of Government. The Tálukdár then sued the Secretary of State for India in Council to recover the property in dispute. The Joint Judge awarded the claim.

*Held*, reversing the decree of the lower Court, that, in the absence of any evidence to prove the Tálukdár's right to treasure trove either by a grant or prescription, the property belonged to Government, the Indian Treasure Trove Act (VI of 1878) being inapplicable, as no notice was given by the finder, nor were any proceedings taken under it.

APPEAL from the decree of T. Hart-Davies, Joint Judge of Ahmedabad, in Suit No. 27 of 1890.

This was an action brought against the Secretary of State for India in Council under the following circumstances.

The plaintiff was the Tálukdár of the village of Kamlej in the Ahmedabad District. A bag containing Rs. 1,525, which was stolen property, was found buried under ground in that village. After this bag had been unearthed, another bag containing Rs. 248-2-0 and a gold ring was also found in the ground close by on the same occasion. This bag was found by a *pagi* in the plaintiff's service.

The police seized both bags, and produced them before the District Magistrate.

The Magistrate directed the first bag to be restored to the owner after the conviction of the thief.

As regards the second bag, the Magistrate called for claimants to come forward under section 523 of the Code of Criminal Procedure (Act X of 1882).

Thereupon the plaintiff laid claim to the property contained in the second bag, but his claim was disallowed, and an order was passed under section 524 of the Criminal Procedure Code, directing the property to be placed at the disposal of Government.

The plaintiff then filed the present suit against the Secretary of State for India in Council, alleging that as owner and Tálukdár of the village in which the property was found he was entitled to it.

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The defendant disputed the plaintiff's title, and contended that the District Magistrate had properly disposed of the property in question under section 524 of the Code of Criminal Procedure.

The Joint Judge awarded the plaintiff's claim.

Against this decision the defendant appealed to the High Court.

Ráo Sáheb Váśudev J. Kirtikar, Government Pleader, for the appellant:—The lower Court is wrong in holding that the present case is governed by the ruling in *Queen-Empress v. Tribhovan*<sup>(1)</sup>. That was a case under section 523 and not under 524 of the Code of Criminal Procedure (X of 1882). Peile's work on the Tálukdárs of Gujarát has no bearing on the question at issue. It does not touch the question of treasure trove. The question is one to be decided by common law. In England the Crown is the owner of property found under circumstances like the present. The Hindu law is also to the same effect. Hidden treasure goes to the sovereign—Manu, ch. 8, pl. 37—39; Yájnyavalkya in Mandlik's Vyavahár Mayukh, 204; Stoke's Hindu Law, 131; Sacred Books of the East, Vol. 14, ch. 3, sec. 13; Vishnu, sec. 3, pl. 55—63; Apastambha, pl. 43—45; *In re Uma Charan Banerji*<sup>(2)</sup>; *Ráni Kattama Natchiar v. Muhammad Mirá*<sup>(3)</sup>. These authorities show that the plaintiff has no right to the property in dispute merely because he is Tálukdár and owner of the soil in which the property was found buried. The Treasure Trove Act (VI of 1878) has no application to the present case, as no proceedings were taken under it, no notice under it was given by the finder, and the finder himself is not a party to this suit. Even if it applied, the Act creates a special tribunal to determine a claim of this kind, and the Civil Court would have no jurisdiction to entertain this suit—*Khando Náráyan v. Apáji Sadáshiv*<sup>(4)</sup>.

*Inverarity* (with him G. M. Tripáthi):—The sovereign is no doubt entitled to hidden treasure at common law. It is said that "treasure trove is when any money is found hid in the earth, but not lying upon the ground, and no man knows to whom

(1) I. L. R., 9 Bom., 131.

(2) 7 Mad. H. C. R., 150.

(3) 7 B. L. R., 3 Appx.

(4) I. L. R., 2 Bom., 370.

it belongs; then the property thereof belongs to the king or the lord of the manor by special grant or prescription ..... the law of England gives it to the king by his prerogative or some other claiming under him.”<sup>(1)</sup> But the common law rights of the Crown are vested in Tálukdárs: see Objects and Reasons for Bill No. 6 of 1885. They are proprietors of Crown rights by inheritance. Act VI of 1878 settles the rights of the finder as well as of the owner of the place in which the treasure is found. Both of them are entitled to divide it under section 10 of the Act. The common law rights of the sovereign no longer exist. Under section 20 of Act VI of 1878 the finder's share in treasure trove vests in the Crown if the finder does not give notice as required under section 4. And it is only after such notice is given by the finder that the Collector's jurisdiction to hold an inquiry arises. In the absence of such notice, the Civil Court can entertain a suit like the present. The suit is not barred by section 524 of the Code of Criminal Procedure. The order placing the property at the disposal of Government is not final. See also Káthiáwár Directory, Part II, page 927.

JARDINE, J. :—The facts are that after a person accused of theft had pointed out a place where he had concealed the stolen property, Rs. 1,525, by burying them in the ground, and after these rupees had been unearthed, another bag containing Rs. 248-2-0 and a golden ring was found in the ground close by and in the same pit at a greater depth on the same occasion. The property in this second bag is the subject of the present suit. In the absence of any contention to the contrary, we concur with the Joint Judge in holding that the District Magistrate, who called for claimants to come forward under section 523 of the Code of Criminal Procedure (X of 1882), had jurisdiction so to do, the property having been “found under circumstances which create suspicion of the commission of an offence.” The plaintiff, who is Tálukdár of Kámlej, and owner of the field where the property was found, put in a claim, which the District Magistrate disallowed. Under section 524 the Magistrate placed the property “at the disposal of Government,” which he could do where the following words

(1) See Jacob's Law Dictionary (10th Ed., 1782).

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of the section apply : " If no person within such period establishes his claim to such property, and if the person in whose possession such property was found is unable to show that it was legally acquired by him." The person who found the property is not a party to the present suit ; and his interest in it need not be considered.

The Tálukdár sued the Secretary of State for India in Council, alleging that as Tálukdár and owner of the soil wherein the property was found, he is entitled. The Joint Judge has awarded the claim.

The Joint Judge held that the decision in *Queen-Empress v. Tribhovan*<sup>(1)</sup> is authority for holding that this suit will lie. He omitted to notice that the decision relates to section 523, and not to an order properly made under section 524. As section 524 allowed an appeal, it is doubtful whether the law contemplates a remedy by suit. In the unreported case of *Sheikh Gholám Abid*, cited in Prinsep's Code of Criminal Procedure, 7th Edition, under section 89, the words in that section " shall be at the disposal of the Government " were held by the High Court at Fort William to confer an absolute right on the Government. In *The Government of Bengal v. Meer Surwar Ján*<sup>(2)</sup>, it was held that the property of an absconding criminal placed at the disposal of the Government could only be restored by the Government and not by the High Court. In *Bukhooree Singh v. The Government*<sup>(3)</sup>, it was held that no suit would lie for such property against the Government or the purchaser. These cases have not been cited at the hearing, and we refrain from deciding the point, as we can dispose of the plaintiff's claim on its merits.

The Indian Treasure Trove Act (VI of 1878) is irrelevant to the present matter, as no notice was given under it by the finder, nor any proceedings taken. Mr. Inverarity has, however, argued for the plaintiff that it contains legislative recognition of the right of the owner of the soil to share with the finder of the treasure trove. Section 6 contemplates persons having rights as owners of the place where the property is found. But

(1) I. L. R., 9 Bom., 131.

(2) 18 Cal. W. R., 33 Cr. R.

(3) 8 Cal. W. R., 207.

there is no declaration of substantive law that the owner of the soil is entitled to treasure trove; although, as stated by the Honourable Sir Edward Bayley at the meeting of the Viceroy's Council on the 13th February, 1878, when the Bill was passed, "as a matter of fact such right was very largely asserted by persons who were owners of the soil, and the assertion of vague and antagonistic rights had given rise to many disputes, and had also frequently led to the concealment of property found." See *Uma Charan's case*<sup>(1)</sup> and *Ráni Kattama v. Muhammad Mira*<sup>(2)</sup> which interpret local regulations unfavourably to the owner of the soil.

It is the common ground of the plaintiff and defendant that at Hindu law, hidden treasure goes, under limitations about Bráhmíns and others, which need not be here considered, to the sovereign, as protector of the people and lord of the soil, as is said in Manu, ch. 8, pl. 37 to 39. See, too, the Vyavahára Mayukha, ch. 7, sec. 8 to 10, on the king's rights in waifs, strays and treasure trove; also West and Bühler, 833. The learned Government Pleader has also drawn the Court's attention to similar rules in Gautama, Vasishta, Vishnu and Apastambha. The plaintiff claims that, as Tálukdár and absolute owner of the soil, he enjoys the franchise of treasure trove as a seignorial appendage to his high territorial lordship. In England, as Coke tells us, treasure trove doth belong to the king or to some lord or other by the king's grant or prescription. The plaintiff claims by right acquired before the village of Kámlej became part of British India. The Joint Judge affirms his right in the following passage of his judgment:—"There is no doubt, looking to the consensus of authorities, and as every revenue officer who has served in Gujarát is aware, that a Tálukdár is the absolute *owner* of the land. He is not, like an inámdár, an alienee merely of Government revenue. I may quote Sir J. Peile's report (*passim*) on this subject and the statement of objects and reasons to Act VI of 1888 where this fact is enunciated. So, as actual and absolute owner of the land, the Tálukdár is owner of property found in it in the same way as the Káthiáwár States (*vide* statement of objects and reasons quoted above)." With respect to the above remarks we have to

(1) 7 B. L. R., 3 Appx.

(2) Mad. H. C. R., 150.

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notice that Sir James Peile does not, in the papers referred to, make any mention of treasure trove or any franchises belonging to the Tálukdárs of Gujarát. He appears to be engaged in discussing the more familiar question of the right to land revenue. He says the Tálukdárs are not grantees. "Over their landed estates," he says, "they exercise the proprietary right of the Crown by inheritance, just as the Native Chiefs and their kinsmen do in Káthiáwár. The Government revenue paid by Tálukdárs was originally a tribute, and the rights of Government are limited to that payment. Government is not the owner of any of the land in these estates, waste or other." These statements may well be true, as matter of history. The plaintiff may to some extent be a lord of regalia; but there is no evidence that he owns all the rights of the Crown which in England flow from the prerogative of the sovereign as universal occupant. They do not touch the present claim to treasure trove which we think must be based on documents or instances of the exercise of the right by the plaintiff, or by neighbouring Tálukdárs, to prove a grant or prescription. Of such evidence there is none on the record; and we have not been moved to remand the suit in order to enable evidence to be given.

We, therefore, reverse the decree and dismiss the suit, with all costs on the plaintiff.

*Decree reversed.*