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drawn therefrom that defendant was only a tenant on sufferance. The word 'permissive,' used in that judgment appears to us only to be used to distinguish such possession from adverse possession, and it had reference chiefly to the question of limitation. The point about notice was not touched upon in that case. In the present case, plaintiff stated that the defendant had orally agreed to vacate on demand, but there was no evidence given on this point. There was no disclaimer of plaintiff's ownership prior to the institution of the suit, and the denial in the written statement had not the effect of dispensing with the obligation of giving reasonable notice. The appellant's suit was, therefore, rightly rejected by the lower Court of appeal, though the ground assigned by it for dismissing the claim was plainly untenable.

We accordingly dismiss the appeal and confirm the decree with costs on appellant.

*Decree confirmed.*

## APPELLATE CIVIL.

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

1895.  
September 2.

HARIBHAI GANDABHAI (ORIGINAL PLAINTIFF), APPELLANT, v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL (ORIGINAL DEFENDANT), RESPONDENT.\*

*Bombay Revenue Jurisdiction Act (X of 1876), Secs. 3 and 11—Bar of jurisdiction—Forest officer not a revenue officer—Forest Act (VII of 1878), Sec. 81.*

The bar of jurisdiction contained in section 11(1) of Act X of 1876 does not apply to cases in which a Collector moves under section 81 of Act VII of 1878 to recover, at the request of a forest officer, the price of cut timber sold by the latter under section 81 of Act VII of 1878.

APPEAL from the decision of T. Hamilton, District Judge of Surat, in Suit No. 1 of 1893.

One Gulábkhán Ahmadkhán purchased certain wood cut in the Government forest of Nawápura in Khándesh, but as he

\* Appeal, No. 169 of 1894.

(1) Section 11, Bombay Revenue Jurisdiction Act (X of 1876)—

No Civil Court shall entertain any suit against Government on account of any act or omission of any revenue officer unless the plaintiff first proves that, previously to bringing his suit, he has presented all such appeals allowed by the law for the time being in force as, within the period of limitation allowed for bringing such suit, it was possible to present."

failed to pay the money for it, the timber was resold by auction. The Mámlatdár of Chikhli called upon the plaintiff, as surety of Gulábkhán, to pay the deficiency, Rs. 1,368-1-6, arising out of the re-sale, and intimated to him that in default of payment his property would be attached.

Plaintiff thereupon brought this suit against the Secretary of State for India in Council for a declaration that he was not liable to pay the amount of deficiency as demanded by the Mámlatdár and also for a perpetual injunction restraining the defendant from recovering the said amount.

Among other defences it was pleaded that under section 11 of the Bombay Revenue Jurisdiction Act (X of 1876) the suit could not lie, unless and until the plaintiff had exhausted his remedy by appealing to the revenue authorities from the Mámlatdár's order.

The District Judge dismissed the suit on the following grounds:—

“Admittedly plaintiff has not made any appeal to the revenue authorities against the Mámlatdár's order. His pleader, who has filed a written statement of his argument, contends that no appeal lies, as the money demanded was an item of forest revenue, not of land revenue, and was, therefore, to be levied under section 81 of the Forest Act, and that the Act provides for no appeal against orders passed under that section.

“But the act of the Mámlatdár of Chikhli was the act of a revenue officer, whether it was legal or illegal and whether the arrear was one of forest revenue or of land revenue, and consequently the suit is barred by section 11 of Act X of 1876 until plaintiff has exhausted the appeals provided by the Land Revenue Code against the acts of revenue officers.”

Against this order of dismissal plaintiff appealed to the High Court.

*Chimanlál Harilál Setalvad* for the appellant:—The plaintiff's claim in this suit is not against the Collector, who is merely a ministerial officer in this respect, but against the forest officer who moved him to take steps against the plaintiff. The Mámlatdár, who was the forest officer concerned, is not a “revenue officer” as defined in section 3 of Act X of 1876 or in the Land Revenue Code. The sum sought to be recovered as the price of timber is not “land revenue” within the meaning of the said Acts.

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The provisions as to appeal under the Bombay Land Revenue Code are inapplicable to the present case—*Naráyan v. Sakháram*<sup>(1)</sup> and *Naráyan v. Sakháram*<sup>(2)</sup>.

Ráo Sáheb Vásudev J. Kirtikar, Government Pleader, for the respondent :—This suit is, on plaintiff's own showing, in respect of an order issued by the Mámlatdár calling on him to pay the deficiency arising out of a re-sale of certain timber which had been purchased by him at a public auction. Plaintiff's liability was determined by forest officers under the Forest Act; and forest officers being revenue officers, section II of Act X of 1876 would bar the claim. Forest administration is a branch of land-revenue administration; it is so treated by Government; see *Bombay Government Gazette* of 8th September, 1892, p. 909, containing rules under the Forest Act VII of 1878, which under section 77 of that Act have the force of law. Forest officers are Assistant Collectors and subject to the control of the Revenue Commissioner. They are, therefore, revenue officers under the Bombay Land Revenue Code also, and their proceedings are subject to appeal under section 203 of that Code. This section stands in the place of section 9 of the Bombay Revenue Jurisdiction Act (X of 1876) which is repealed by it. The present suit being in respect of moneys claimable for timber belonging to Government forest, and the forest officers being employed to recover the moneys so claimable, plaintiff ought to have first appealed from the decision of the forest officer. Section 11 of the Act is, therefore, a bar to the present suit.

Again, the immediate cause of action is the Mámlatdár's order; and the Mámlatdár is undoubtedly a revenue officer acting under the Land Revenue Code. In this view of the case, also, section 11 would bar the present suit.

JARDINE, J.:—What the forest officer sold was cut timber, which is not "land" as that term is defined in section 3 of Act X of 1876. Nor is the price thereof "land revenue," nor the officer who sold the timber a "revenue officer" within the definitions. The forest officer wishing to collect the price from the plaintiff moved the Collector to recover it, as section 81 of Act

(1) I. L. R., 9 Bom., 462.

(2) I. L. R., 11 Bom., 519, at page 522.

VII. of 1878 allows this as if the debt "were an arrear of land revenue." In the opinion of the District Judge, the effect of section 81 designating the revenue officers as those who may collect debts due for timber, is to bring in the bar of jurisdiction contained in section 11 of Act X of 1876. We are of opinion, in the absence of authority and looking at the object of Act X of 1876 to hold the contrary, as the officer who uses the machinery by which Government revenue is collected is for the purposes of the Forest Act only like a *persona designata*: if the machinery designated had been regulated by the Code of Civil or Criminal Procedure, the Judge or Magistrate or Police officer would not have come under the bar of section 11; and there is no reason for placing a Collector or his subordinate the Mámlatdár in a different position. This view is supported by Birdwood J.'s remarks in *Náráyan v. Sakhárám*<sup>(1)</sup> and by West J.'s comparison of the Collector to a bailiff or agent in the case of the same name, *Náráyan v. Sakhárám*<sup>(2)</sup>. The fact that the officer passing an order is a Mámlatdár does not necessarily bar the jurisdiction of a Civil Court—*Ganesh v. Mehta Vyankatrám*<sup>(3)</sup>. The Court, therefore, reverses the decree of the District Judge and remands the suit to his Court for trial. Costs of this appeal on respondent.

*Case remanded.*

(1) I. L. R., 9 Bom., 462.

(2) I. L. R., 11 Bom., 522.

(3) I. L. R., 8 Bom., 188.

## ORIGINAL CIVIL.

*Before Mr. Justice Candy.*

RA'MPA'RTA'B SAMRATHRA'I AND ANOTHER PLAINTIFFS, v. FOOLIBA'I AND GOOLIBA'I, DEFENDANTS.\*

1896.

March 13, 14.

*Practice—Jurisdiction—Cause of action arising out of jurisdiction—Addition of a defendant residing out of jurisdiction in a suit brought against other defendant under clause 12 of Letters Patent, 1865—Fresh leave to sue such new defendant necessary—Hindu law—Minor—Liability of minor for debt—Ancestral trade carried for benefit of minor by the minor's natural guardian—Minor bound by the acts of the guardian.*

\* Suit No. 76 of 1892.

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