

of necessity have failed, as it did. Their having then made it unsuccessfully, and not having sued under section 283, Civil Procedure Code, does not now debar them from filing the present suit. The District Judge must find on the validity and binding nature on the plaintiffs of the widow's disposition of the property. We reverse the decree and remand the appeal for retrial on the merits. Costs to abide the result.

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Decree reversed and case sent back.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ránade.

NA'RA'YAN BALLAL PARADKAR (ORIGINAL PLAINTIFF), APPELLANT, v.
THE SECRETARY OF STATE FOR INDIA IN COUNCIL (ORIGINAL
DEFENDANT), RESPONDENT.*

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September 10.

*Revenue Jurisdiction Act (X of 1876), Secs. 3, 11—Civil Court's jurisdiction—
Forest Act (VII of 1878), Secs. 2, 16, 81—Forest officer—Revenue officer—
Land Revenue Code (Bombay Act V of 1879), Secs. 3, 203†—Forest officer
not a revenue officer—Appeal—Right of appeal—Construction.*

A forest officer is not a revenue officer within the definition in section 3 of the Land Revenue Code (Bombay Act V of 1879), and does not become one merely by being placed under a revenue officer for purposes of control.

Section 11 of Act X of 1876 only applies to an act or omission of a revenue officer, and only in cases where the law allows an appeal.

Act X of 1876 must be construed strictly. No right of appeal can be given except by express words.

APPEAL from the decision of T. Walker, District Judge of Thána in Suit No. 3 of 1893.

The plaintiff purchased at an auction sale the right of gathering myrabolams in the forests of all the talukas of the Kolába District and paid to the divisional forest officer one-fourth of the purchase-money and an additional amount as deposit. He then applied to the divisional forest officer several times for

* Appeal, No. 165 of 1894.

† Section 203 of the Land Revenue Code (Bombay Act V of 1879) provides as follows:—"In the absence of any express provision of this Act, or of any law for the time being in force to the contrary, an appeal shall lie from any decision or order passed by a revenue officer under this Act, or any other law for the time being in force, to that officer's immediate superior, whether such decision or order may itself have been passed on appeal from a subordinate officer's decision or order or not."

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permission to gather the fruit. No permission was, however, granted to him except as to three talukas, until the season for collecting the fruit had expired. On this the plaintiff wrote to that officer informing him that the contract had become null and void and asking a refund of the amount paid by him to Government. No reply was sent to this letter. Plaintiff thereupon filed this suit to recover the one-fourth of the purchase money, the amount of deposit, damages, and interest.

The District Judge recorded the following judgment:—

"Plaintiff's pleader urges (1) that the forest officer, whose act or negligence has caused this suit, is not a revenue officer, and (2) that no appeal against his order lay to anybody; consequently plaintiff was entitled at once to seek his legal remedy.

"It is well known that Government treat forest administration as a branch of land-revenue administration: see, e.g., the long notification published at page 909 of the *Government Gazette*, dated 8th September, 1892. As pointed out in that resolution, forest administration is subject to the control of the Commissioner of the Division, and the forest officers are made assistants to the Collector for forest purposes in each district. Under Chapter XIII of the Land Revenue Code an appeal, therefore, lay to one or other of these officers or to the Conservator of Forests, or to all three possibly. As plaintiff fails to show that he has appealed to any of them; I think he must be non-suited under section 11 of the Revenue Jurisdiction Act (X of 1876)."

He accordingly rejected the claim with costs.

Plaintiff thereupon appealed to the High Court.

Nārāyan Ganesh Chandāvarkar for the appellant:—The District Judge was wrong in holding that section 11 of the Act X of 1876 operated as a bar to the present suit. The application of that section to any given case turns on the right meaning of the term "revenue officer." A "forest officer" is not a "revenue officer." A great deal also depends on the question whether there is any right of appeal in this case. A forest officer has no right to hear an appeal. In the present case there is no right of appeal given to the party injured by a decision of the forest officer. The right of appeal must be expressly given and cannot be inferred—*Attorney General v. Sillem*⁽¹⁾. Section 16 of Act VII of 1878 provides for appeals only in certain cases. The only other law on the subject is the Land Revenue Code (Bombay Act V of 1879). Section 203 of that Code applies to orders passed (1) by revenue officers, (2) under the Land Revenue Code, or (3) other law. The revenue officer referred

(1) 10 H. L. Cases, 704 at p. 710.

to in that Code must be one appointed under the Code alone, and so an order passed by a forest officer does not fall under section 203. The Forest Act, which is an Act of the Imperial Legislature, cannot be modified by an Act of the Bombay Legislature.

The lower Court has not been able to indicate the proper authority to which appeals can lie.

Ráo Sáheb Várudev J. Kirtikar, Government Pleader, for the respondent:—This suit is in respect of *hardás* in a Government forest. Fruit of trees are "land" within the meaning of clause 1 of section 3 of the Revenue Jurisdiction Act, X of 1876. Money payable to Government in respect of that fruit is "land revenue" within the meaning of clause 2 of that section.

Forest administration is a branch of land-revenue administration; it is so treated by Government: see, for instance, *Bombay Government Gazette* of 8th September, 1892, page 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 Land Revenue Code also, and their proceedings are subject to appeal under section 203, Land Revenue Code. This section stands in the place of section 9 of the Revenue Jurisdiction Act, which is replaced by it. The present suit being in respect of moneys claimable for the fruit of Government trees vested in the contractor by the terms of the sale, and forest officers being employed in or about the business of the moneys so claimable, plaintiff ought to have first appealed from the decision of the forest officer, which is the basis of the present suit, and section 11 of the Revenue Jurisdiction Act is a bar.

JARDINE, J.:—The District Judge held this suit barred by section 11 of Act X of 1876. His reasons were that a resolution of the Governor of Bombay in Council, published in the *Government Gazette*, p. 909, and dated the 8th September, 1892, treats the administration of the forests as a branch of land-revenue administration, and places the former administration and its officers under the control of the revenue officers. Therefore he

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held as follows:—"Under Chapter 13 of the Land Revenue Code an appeal, therefore, lay to one or other of these officers (the Commissioner or the Collector) or to the Conservator of Forests, or to all three possibly." The language used by the District Judge shows that it was not made clear to him where the appeal lay, as he cannot say to which of the three officers it lies.

It is settled by a series of decisions that Act X of 1876 must be construed strictly. We must, therefore, see whether the suit is barred by that Act or any other Statute.

Section 11 only applies to an act or omission of a revenue officer, and to these only where the law allows appeal. "Revenue officer" is defined in section 3 as connoting a connection with "land revenue," which connotes the word "land," and "land" includes trees and fruit. We do not think this mere inclusion can be stretched so as to make a servant of Government in some different department altogether an officer of land revenue merely because, e.g., he sells for Government the produce of trees in a compound belonging to Government. The Forest Act VII of 1878 treats forest officers as a class, defined off from other officers. In section 16 it makes a clear distinction between them and officers of the Revenue Department; and if the price of forest produce were in itself "land revenue" there would be no occasion in section 81 to say that it may be recovered "as if it were an arrear of land revenue." See *Narayan v. Sakbaram*⁽¹⁾. By parity of reasoning, we hold that a forest officer is not a revenue officer within the definition in section 3 of the Land Revenue Code (Bombay Act V of 1879). The Government Pleader went out to argue that he was made such by being placed under a revenue officer for purposes of control. This involves the absurdity of holding that, if he had been put under the control of a judicial or military officer, he would become a judicial or military servant.

Turning to the second circumstance essential to create the bar under section 11 of Act X of 1876, we have to see if there was any appeal which the plaintiff had of right. No right of appeal can be given except by express words—*The Attorney General v.*

(1) I. L. R., 9 Bom., 462; I. L. R., 11 Bom., 522.

Sillem⁽¹⁾. Such appeals as the superior Legislature intended to give are so given in the Forest Act of 1878: and it is admitted that those provisions do not give any appeal to the plaintiff in regard to the matter now in suit. Even if we had held that the forest officer is a revenue officer under the Bombay Land Revenue Code, we would have serious doubts whether the general words used in section 203 thereof by the inferior Legislature were intended in any way to affect the complete legislation about forest officers of the superior Legislature. The Land Revenue Code is evidently intended to deal only with what is usually known as land revenue, and things that by law or custom have been dealt with by officers of that department. It has not been suggested that the acts or omissions of the forest officer, about which this suit is brought, were done in any matter to which that code relates.

The District Judge, therefore, was in error in declining jurisdiction.

The Court sets aside his decree, and remands the suit to the District Court for disposal: the respondent to pay the costs of this appeal.

Case remanded.

(1) 10 H. L. Cases, 704 at p. 710.

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