FULL BENCH.

APPELLATE CIVIL.

Before Mr. Justice Candy, Mr. Justice Ranade, Mr. Justice Crowe and Mr. Justice Whitworth.

SOM GOPAL BHOGALE (ORIGINAL DEFENDANT), APPLICANT, *v.* VINAYAK BHIKAMBHAT AND ANOTHER (ORIGINAL PLAINTIFFS), OPPONENTS.*

1900. *December 3.*

Mámlatdár—Mámlatdárs' Courts Act (Bom. Act III of 1876), section 4—Natural water-course—Riparian proprietors—Obstruction to the flow of water—Injunction—Jurisdiction.

Held by the Full Bench (Whitworth, J., dissenting) that a Mámlatdár has, under the Mámlatdárs' Courts Act (Bom. Act III of 1876), jurisdiction to inquire into a case in which it is alleged that an upper riparian proprietor has unduly interfered with the flow of water in a natural water-course from which a lower riparian proprietor also takes water.(1)

APPLICATION under the extraordinary jurisdiction of the High Court (section 622 of the Civil Procedure Code, Act XIV of 1882) against the decision of Ráo Sáheb R. R. Malji, Mámlatdár of Málvan, in a possessory suit.

* Application No. 97 of 1900 under the extraordinary jurisdiction.

(1) Section 4 of the Mámlatdárs' Act (Bombay Act III of 1876) :—

"4. Every Mámlatdár shall preside over a Court, which shall be called a Mámlatdár's Court, and which shall have power within such territorial limits as may from time to time be fixed by the Governor in Council to give immediate possession of lands, premises, trees, crops, or fisheries, or of any profits of the same, or to restore the use of water from wells, tanks, canals, or water-courses, to any person who shall have been dispossessed or deprived thereof otherwise than by due course of law, or who shall have become entitled to the possession or restoration thereof by reason of the determination of any tenancy or other right of any other person in respect thereof.

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But no suit shall be entertained by a Mámlatdár's Court unless it be brought within six months from the date on which the cause of action arose.

Illustration IV.

A and B hold lands adjacent to a पाट (pát) or तास (kás) or similar artificial water-course which has hitherto been exclusively used by B. A draws water therefrom. B may sue in the Mámlatdár's Court at any time within six months from the date on which A commences to take the water, for an injunction to prevent A from so doing."

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The plaintiffs, riparian proprietors, brought a possessory suit against the defendant, who was an upper riparian proprietor, in the Court of the Mámlatdár of Málvan, and prayed for an injunction restraining the defendant from causing obstruction to the flow of water of a natural stream, the water of which was used by the plaintiffs for the purposes of drinking, cooking and irrigation.

The defendant pleaded *inter alia* that the plaintiffs had no right to the water of the stream.

The Mámlatdár having allowed the plaintiffs' claim, the defendant applied under the extraordinary jurisdiction of the High Court, contending that the Mámlatdár had no jurisdiction to grant the injunction sought for, and a *rule nisi* was issued calling on the plaintiffs to show cause why the order of the Mámlatdár should not be set aside.

H. C. Coyaji appeared for the applicant (defendant) in support of the rule.

Daji A. Khare appeared for the opponents (plaintiffs) to show cause.

The case was originally argued before the Division Bench composed of the Chief Justice and Whitworth, J., when the following judgment was delivered:—

JENKINS, C.J.:—In this case the Mámlatdár of Málvan granted the opponents an injunction restraining the present applicant from causing obstruction to the water which the opponents had been in the habit of taking from a natural water-course.

It is objected that the Mámlatdár had no jurisdiction to grant such an injunction.

The parties are riparian proprietors, and have been in the habit of taking water each by means of a dam across the water-course. The ground of complaint was that the applicant had recently altered his dam in such a way as to unduly diminish the flow of water to the opponents' dam.

The question at issue has been considered by different Divisions of this Court in the cases of *Babaji* v. *Babaji* [1] and *Narayan* v. *Keshav*,[2] and has been decided differently in the two cases.

[1] (1897) 23 Bom. 47. [2] (1898) 23 Bom. 506.

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We therefore refer for the decision of a Full Bench the question:—

Whether a Mámlatdár has, under Bombay Act III of 1876, jurisdiction to enquire into a case where it is alleged that an upper riparian proprietor has unduly interfered with the flow of water in a natural water-course from which a lower riparian proprietor also takes water?

The case being thus referred, it was argued before the Full Bench consisting of Candy, Ranade, Crowe and Whitworth, JJ.

Coyaji for the applicant (defendant):—The question is whether the word "water-course" in section 4 of the Mámlatdárs' Courts Act includes a natural water-course or whether it is limited only to an artificial water-course. We submit that it refers only to an artificial water-course. There are two decisions on the point, namely, *Babáji* v. *Babaji*(1) and *Narayan* v. *Keshav*.(2) We rely upon the section. It specifically mentions wells, tanks and canals. These are all artificial. Consequently the term "water-courses" in the section would naturally mean artificial water-courses. There are four illustrations given to the section, and the fourth illustration mentions an artificial water-course and not a natural water-course. This circumstance also supports our contention. Illustrations explain the meaning of a section. If the Legislature had intended that a Mámlatdár should have jurisdiction over a natural water-course, it would have made some provision to that effect and would not have inserted the expression "artificial water-course" in the illustration. A Mámlatdár cannot go into complicated questions of the rights of riparian owners. Such questions may involve inquiry, not only as to the quantity of water but also as to quality, such as pollution of water.

The question is really one of easement, and a Mámlatdár has no jurisdiction to decide such a question. Such an injunction cannot be granted without inquiry into difficult questions such as the reasonableness of the use and the quantity of water to which each riparian proprietor is entitled. The Mámlatdárs' Courts Act does not contemplate the determination of such questions.

(1) (1897) 23 Bom. 47. (2) (1898) 23 Bom. 506.

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D. A. Khare for the opponents (plaintiffs) to show cause:—The cases cited do not show that the water-course must be artificial. The water-courses mentioned in those cases were natural. The referring judgment of the Division Bench does not allude to the point of artificial water-course. The intention of the Legislature in enacting the Mámlatdárs' Courts Act would be defeated if natural water-courses were excluded from a Mámlatdár's jurisdiction. The fourth illustration to section 4 of the Act cannot limit the water-courses mentioned in the section to artificial water-courses. Illustrations to a section cannot be used to construe the section—*Koylash Chunder Ghose* v. *Sonatun*.[1] The construction which is sought to be put would restrict the operation of the Act. In *Balvantrao* v. *Sprott*,[2] which was decided under the Act, the dispute related to a natural water-course between riparian owners. Although questions like the present are beset with difficulties, still that circumstance alone cannot deprive a Mámlatdár of his jurisdiction and cannot defeat the intention of the Legislature. The questions as to the reasonableness of the use and the quantity of water to be taken by the riparian owners can be inquired into by a Mámlatdár. Such questions are to be determined by taking evidence which a Mámlatdár is perfectly competent to do.

Coyaji in reply:—A Mámlatdár has jurisdiction with respect to physical possession only. The dispute in *Balvantrao* v. *Sprott*[3] was between riparian owners on one side and the officers of Government on the other.

CANDY, J.:—The question at issue has been referred for the decision of a Full Bench, because it has been decided differently by two Divisions of this Court in *Babaji* v. *Babaji*[4] and *Narayan* v. *Keshav*.[5] The case has been argued before us as if the difference between the two decisions rested on the distinction between an artificial and a natural water-course, and the wording of the reference suggests such a distinction. But a perusal of the earlier of the above noted two judgments shows that such a distinction was not present to the minds of the Judges who

(1) (1881) 7 Cal. 132.
(2) (1899) 23 Bom. 761.
(3) (1899) 23 Bom. 761.
(4) (1897) 23 Bom. 47.
(5) (1898) 23 Bom. 506.

decided that case. The words "artificial" or "natural" water-course do not occur in the judgment.

Confining ourselves to the words of the Act, and having regard to the well-known objects of the Act, there is no apparent reason why the word "water-course" in section 4 of Bombay Act III of 1876 should not be interpreted in its widest sense and include a natural water-course. The obviously main object, in investing Mámlatdárs with summary powers in dispute regarding possession, was to prevent agriculturists being illegally deprived of, or obstructed in, possession of their fields, and being thus driven into litigation in the ordinary Civil Courts, while their opponents reaped the benefits of their wrong-doing, and became defendants in possession challenging their plaintiffs to prove their title. So the Mámlatdárs were invested with summary powers *to maintain existing possession*. The only question for their consideration is "wahiwat" (the cases are known as "wahiwat cases" all over the country side), and they have nothing to do with title, or common law, or statutory law. In each case the question for decision is simply one of fact, actual possession within a certain period, and dispossession or obstruction to that possession otherwise than by due course of law. But in Bombay Act V of 1864 there was no mention of disputes regarding the use of water from wells, water-courses, &c., whereas a protracted dispute about the use of water at a critical period of the year might prevent a field from being cultivated at all, and a whole season's crop might be lost. Hence "the use of water from wells, tanks, canals or water-courses" was inserted in section 4 of Bombay Act III of 1876, and put on the same footing as possession of lands, &c. In every dispute about water the Mámlatdár's jurisdiction is still narrowed to the question of fact, *viz.* plaintiff's possession of the use claimed and defendant's deprivation of or obstruction to that use otherwise than by due course of law.

Having regard, then, to the manifest intention of the Act, there is no reason why the use of water from a water-course should be confined to water from an artificial water-course. The existing "wahiwat" may be to take, by turns or otherwise, the water of an old masonry water-course (as *e.g.* in the Násik District) or of a streamlet (as in the Ratnágiri District) or of an ordinary "pát" such as is common throughout the Presidency.

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Where is the difference in the fact of the "wahiwat"? The existing "use" may be for both A and B to erect dams across a streamlet in the hot weather, B's dam being constructed with a sluice of a certain size so that a supply of water reaches A's dam. This is the kind of "use" which was maintained in *Rakhma* v. *Tulaji*.[1] If that use is proved it is manifestly the intention of the Act that the Mámlatdár should maintain it, or enjoin against its disturbance. The illustrations to section 4 of the Act do not compel us to restrict the word "water-course" to an artificial water-course. Illustration III runs—"A allows B the use of water from his well or from his water-course &c." Illustration IV runs—"A and B hold lands adjacent to a *pát* or *káns* or similar artificial water-course, which has hitherto been exclusively used by B. A draws water therefrom &c." It would be an undue straining of the rules of interpretation to say that, because this latter illustration refers in terms to an artificial water-course, therefore the Mámlatdár's jurisdiction is confined to cases in which the question before him is as to the fact of a claimed use of water from an artificial water-course. There is no trace in the Act or elsewhere that the intention of the Legislature was that it was only a particular kind of "wahiwat" which the Mámlatdár was to regulate. The words are as broad as they can possibly be, and it would be defeating the object of the Legislature, and intensifying the evil which the Act was meant to remedy, if we say that though A may prove before the Mámlatdár that he has hitherto enjoyed the use claimed and that the sudden deprivation by B of that use will prevent him (A) from cultivating his field, yet A is shut out from his remedy under the Mámlatdárs' Act, because the use is of water from a *natural* water-course.

If the above proposition is correct, it follows that the Mámlatdár is not concerned with any Law of Easements or of Riparian Proprietors. His decision must be confined to fact: did plaintiff enjoy the use claimed? has it been disturbed? In *Fatmabibi* v. *Bhandari Pema*[2] there is a decision which at first sight seems to contradict the proposition above set out. But it is clear that this is not so, when the authority on which that

(1) (1894) 19 Bom. 675.

(2) P. J. for 1896. p. 592.

decision rests is examined. The report of *Fatmabibi* v. *Bhandari Pema* at page 592 of the Printed Judgments for 1896 runs :—

"Opponents brought this suit against the present applicants in the Court of the Mámlatdár for removal of an alleged obstruction to the flow of water caused by applicants. The judgment (Farran, C.J., and Hosking, J.) is—

We think that the Mámlatdárs' Act has been correctly interpreted by this Court in *Jaga Valabh* v. *Dahyabhai Monbhai*,(1) and that its provisions do not include the easement which the plaintiffs seek to have preserved to them by the Mámlatdár. It is to be regretted that the Legislature did not use expressions wide enough to include this privilege, but we cannot strain its language so as to make it include what it does not. Under these circumstances we think that the Mámlatdár has no jurisdiction in this case."

A reference to the record of this case in the High Court does not show what was the plaintiffs' claim in the Mámlatdár's Court. But a reference to the authority quoted in the above judgment shows that it could not have been simply against an obstruction of the use of water. For in *Jaga Valabh* v. *Dahyabhai*(2) the plaintiff complained to "the Mámlatdár that the right he had of passing water from the roof of his house and his ground on to, and having it carried away over, the land of the defendant had been obstructed by the act of the latter in building a shed on his (the defendant's) own land." It is obvious that the claim of the plaintiff to get rid of the water from his roof, &c., over defendant's land was not a claim to the use of water from any well, tank, canal or water-course. The matter is self-evident; but it does not follow that an act done by defendant on his own property, which causes an obstruction to the use claimed by plaintiff of the water from a water-course (natural or artificial) does not come within the jurisdiction of the Mámlatdár. Thus in *Balvantrao* v. *Sprott*(3) plaintiff was the owner of Survey No. 13, through which a natural water-course flowed. The neighbouring owner of Survey No. 17 erected in his own property a dam, which entirely obstructed the water from flowing down to plaintiff's Survey No. 13. Plaintiff succeeded, without question as to jurisdiction in the Mámlatdár's Court, and the dam was removed. In one sense the "wahiwat" which the plaintiff claimed, and

(1) P. J. for 1896. p. 340.

(2) P. J. for 1896. p. 340.

(3) (1899) 23 Bom. 761.

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which was maintained, was an easement. The use was the use of the water from the streamlet, without obstruction from the neighbouring owner, or any one on his behalf, owing to something being done by that owner (or some one on his behalf) on his own property.

In the judgment in the above case (Parsons and Ranade, JJ.) there is no trace of a suggestion that the claim being of the nature of an easement was outside the jurisdiction of the Mámlatdár. On the contrary their Lordships said (pp. 765-66)—

"The Mámlatdár has nothing whatever to do with the law of the case; all he has to do is to determine three simple issues of fact. Admittedly there is a water-course" (a streamlet) "and there is a flow of water down that water-course the use of which the plaintiff claims. What therefore the Mámlatdár has to determine is—(1) whether the plaintiff is actually in possession or enjoyment of the property or use claimed, (2) whether the defendants are disturbing or obstructing or have attempted to disturb or obstruct him in such possession or enjoyment, (3) whether such disturbance or obstruction or such attempted disturbance or obstruction first commenced within six months before the suit was filed; and to pass a decree according to his findings thereon."

I entirely concur with the propositions so laid down in the above judgment. The Mámlatdár has nothing whatever to do with the law of the case.

But in *Babaji Ramji* v. *Babaji Devji*[1] the same Judges took an apparently contrary view. In that case the "wahiwat," which the plaintiffs sought to have maintained, was that they and the defendants, who were owners of lands through which a natural water-course flowed, erected dams so as to collect the water and irrigate their fields. There was no alleged custom of turns. The "wahiwat" alleged to exist was that the defendants' dam was always constructed with a sluice or passage in it of a certain size, so that a supply of water came down the water-course to plaintiffs' lands. The Mámlátdár raised the three simple issues of fact, and passed a decree accordingly, though he recorded no formal findings, *viz.*, he held in effect that the plaintiffs had been in possession of the use claimed, that defendants obstructed the same by building their dam without the passage above noted, and that such obstruction first commenced within six months

[1] (1897) 23 Bom. 47.

before the suit was filed. He therefore issued an injunction to defendants that "according to the wahiwat" they should have a sluice of a certain defined size in their dam. That was exactly the "use" or "wahiwat" which was held in *Rakhma* v. *Tulaji*[1] to have been rightly maintained.

This order was reversed by the High Court, who held (pp. 49-50) that the Mámlatdár had no jurisdiction, because—

"If A owns one portion of a water-course and B another, and if B takes from his portion more water than he is entitled to, so that a less amount flows down to A, we conceive no suit would lie in a Mámlatdár's Court, because A never was in possession of the use of the water in B's water-course and no obstruction has been caused to A's use of the water that might be in his water-course. If such a suit lay, then the injunction would have to be not merely that provided by schedule (C) of the Act, but an order on the defendant to do, or refrain from doing, something with his own property such as has actually been passed by the Mámlatdár in this case, for which no authority can be found in the Act. It is obviously undesirable that the nice questions which may arise between riparian proprietors as to the amount of water each can take from a stream should be determined by a Mamlatdár's Court. This really is the question at issue in the present case. It is not whether the plaintiffs have been obstructed in the use of water in their water-course, but it is whether the defendants have, by exceeding their rights as owners of land abutting on the stream, caused injury to other owners, the plaintiffs. We are of opinion that such a suit does not come within the Mámlátdárs' Courts Act."

With the greatest respect I am unable to agree with the above decision. On the facts as above stated, A was before suit in possession of the use of water coming from B's portion of the streamlet (water-course), and obstruction was caused by B to A's use of the water, which, had it not been for B's obstruction, would have been in his (A's) portion of the water-course. The form of the injunction provided by schedule (C) of the Act affords no ground for holding that the Mámlatdár has no jurisdiction in such a case. For the form does not even provide for a recital of the disturbance or obstruction which the defendant is prohibited from further making, and yet section 5 provides that the plaint shall state the nature of the injunction to be granted. The injunction which in *Balvantrao* v. *Sprott* (*supra*) the Mámlatdár was directed to issue, should he find on the issue in favour of the

(1) (1894) 19 Bom. 675.

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plaintiff, must have been that defendants should remove the dam which they had erected in Survey No. 17 in collusion with and on behalf of the owner of that survey number. If he alone had erected the dam and had been the defendant (as he was in the prior suit), he would by the injunction be directed to do or refrain from doing something with his own property, *viz.* refrain from building a dam in his own portion of the water-course so as to disturb the use hitherto enjoyed by the owner of Survey No. 13 of water in his (that owner's) portion of the water-course.

I entirely concur with the remark that it is obviously undesirable that the nice questions which may arise between riparian proprietors as to the amount of water each can take from a stream should be determined by a Mámlatdár's Court. But as shown by the judgment in *Balvantrao* v. *Sprott*, "the Mámlatdár has nothing whatever to do with the law of the case." He is simply the judge of fact: has defendant by his act deprived plaintiff of or obstructed plaintiff in the hitherto existing use? Whether that use is in accordance with the law regarding riparian proprietors is one for the Civil Court and not for the Mámlatdár; and it is open to the party who is unsuccessful in the Mámlatdár's Court to bring a suit in the ordinary Civil Court and have the question determined according to the law regarding riparian proprietors.

If the propositions which I have endeavoured to enunciate are correct, it follows that I entirely agree with the final decision of this Court in *Narayan* v. *Keshav*[1] that the Mámlatdár had jurisdiction to grant an injunction in that case, in which it was found that plaintiff had enjoyed the use of water flowing through the streamlet, that defendant had obstructed plaintiff in such enjoyment by digging a trench in his (defendant's) land and so diverting the water, and that therefore defendant was by injunction rightly directed to refrain from doing something with his own property, *viz.*, not to dig the trench in his own land. I also concur with the remark that the Legislature possibly thought that for water disputes a speedier remedy than the ordinary Courts can afford is often desirable in the interests of agriculture and for the preservation of the peace, the party dissatisfied with the Mámlátdár's decision being at liberty to seek redress

(1) (1898) 23 Bom. 506.

by a regular suit in the Civil Court. But with great respect I dissent from the proposition that the question as to the reasonableness of defendant's obstruction to plaintiff's use, by diverting the water, is one of fact to be decided by the Mámlatdár according to section 7 of the Easements Act or the law in regard to riparian proprietors. On the contrary, I hold that the Mámlatdár has nothing whatever to do with the law of the case. For the above reasons I would answer the question referred to us in the affirmative.

RANADE, J.:—The point referred to us is whether a Mámlatdár has jurisdiction under Bombay Act III of 1876 to inquire into a case where it is alleged that an upper riparian proprietor has unduly interfered with the flow of water in a natural water-course from which a lower riparian proprietor also takes water. The Division Bench made the reference, because it was of opinion that the decisions in *Babaji* v. *Babaji*[1] and *Narayan* v. *Keshav*[2] appear to have decided the point differently.

In the first of these cases the principal dispute was not as to actual disturbance or dispossession, about which there was no dispute in that case, but as to whether one proprietor should keep open a sluice in his own dam so as to permit water to go to the owner of a lower dam in the same stream more than sixty cubits distant. This was held to be not a dispute about possession cognizable by the Mámlatdár. In the next case—*Narayan* v. *Keshav*[3]—the dispute was as to an alleged disturbance caused by the actual diversion of the stream made by digging a trench which took away the greater part of the water from plaintiff's land to defendants' land. The Judges who decided this last case referred to the earlier decision on page 47, and distinguished it as being a peculiar case in which the parties relied on a particular custom about the use of water by turns. There was thus no conflict between the two cases.

The point arose again in *Balvantrav* v. *Sprott*[4] before the same Judges who decided *Babaji* v. *Babaji*,[5] and they held that

(1) (1897) 23 Bom. 47.
(2) (1898) 23 Bom. 506.
(3) (1898) 23 Bom. 506.
(4) (1899) 23 Bom. 761.
(5) (1897) 23 Bom. 47.

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the Mámlatdár had jurisdiction where the complaint was about the disturbance of the water-course. There is thus no real conflict of opinion on the point. The Mámlatdárs' Act makes no distinction between the use of artificial and natural water-courses. It does make a distinction between actual possession which is disturbed, and rights claimed as easements without actual possession. The latter class of rights, excepting a right of way to fields, does not come under the jurisdiction of the Mámlatdárs' Courts. If the use of water is disturbed or obstructed, the Mámlatdar has jurisdiction to restore possession, and the present case was therefore rightly decided.

CROWE, J.:—I am of opinion that a Mámlatdár has, under Bombay Act III of 1876, jurisdiction to enquire into a case where it is alleged that an upper riparian proprietor has unduly interfered with the flow of water in a natural water-course from which a lower riparian proprietor also takes water.

The Act makes no distinction between a natural and an artificial water-course. In the cases cited by the referring Bench the question at issue was one and the same and was differently decided. It is immaterial whether the obstruction to the use of the water by the plaintiff was occasioned by a dam or the closing of a sluice, or the digging of a trench or any other method by which the water was diverted. In *Babaji* v. *Babaji* [1] plaintiff alleged there had been a sluice or passage which defendants stopped up. The defendants denied the existence of such sluice or passage and the Mámlatdár found in the plaintiff's favour. By such stoppage the plaintiff was clearly *obstructed in the use of water of which he had been in possession*, to use the words of the Act. The Act takes no account of the *amount* of water and whether the obstruction affects the amount to the extent of one per cent. or ninety per cent.: in each case it is an obstruction to the use of the water and properly falls within the jurisdiction of the Mámlatdár.

I would answer the question in the affirmative.

WHITWORTH, J.:—This reference has been made on the ground of a conflict of decisions in *Babaji* v. *Babaji* [2] and *Narayan* v.

(1) (1897) 23 Bom. 47. (2) (1897) 23 Bom. 47.

Keshav[1] upon the question whether a Mámlatdár has jurisdiction under Bombay Act III of 1876 in a case where one riparian proprietor complains of undue interference by another with the flow of water in a natural water-course.

In the present case, as in the two just named, the question is solely as to a natural water-course. Neither in the judgments in those cases nor in the reference now before us is there any mention of an artificial water-course. Indeed, there is no doubt that in respect of an artificial water-course a Mámlatdár *has* jurisdiction; and the word "artificial" comes into the argument only when the question arises whether the word "water-course" in section 4 of the Act is confined to artificial water-courses or extends to natural water-courses also.

I am of opinion that the limited construction is the correct one. This opinion is based, first, upon the context. The words are, "any well, tank, canal, or water-course." These four words seem to be used as being *ejusdem generis*; nor is it easy to conceive how, if natural water-courses had been intended to be included, such very general and familiar words as "river" or "stream" should not have been used.

Secondly, though illustrations to enactments are not to be taken as exhaustive, and much is not to be made from omissions from illustrations, yet it may be noticed for what it is worth that the illustrations to section 4 mention four different kinds of water-supply, and all these four are in fact artificial. At least I so read them. They are "well," "water-course," "*pát*" and "*káns*." Three of these are clearly artificial; and where the term "water-course" itself is used an artificial one seems to be meant, for it is spoken of as belonging to A—"his water-course." Ordinarily a water-course which is private property is an artificial water-course.

Thirdly, it seems to me improbable that the Legislature should ever have thought of giving a Mámlatdár summary jurisdiction in the case of disputes about the taking of water from a river or other natural water-course. No doubt the questions to be determined would be only matters of fact—questions of actual use and actual obstruction; but they might be very difficult questions

(1) (1898) 23 Bom. 506.

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and very unsuitable for summary decision. Ordinarily the owners of an artificial water-course would be a small body of persons who had themselves, or whose predecessors in title had, constructed it. They would be well known to one another, and the rights and customary user of each one would be known from the day of construction. But in the case of riparian proprietors taking water from a natural water-course the conditions might be very different. For example in the case of *Babaji* v. *Babaji* (1) there were as many as six dams across the stream. In such a case one proprietor finding his supply of water to be less than usual might think his next neighbour had made his dam a little too high, but that owner might attribute the fault to the next above him, and so on; so that it might be a matter of difficulty even to determine who were the proper parties to the suit, while there would be no initial contract or understanding to refer to as a guide to subsequent practice. And the order to be passed might be an order directing the defendant to do something to his own property—lower a dam or enlarge a sluice—perhaps a mile away from the plaintiff's holding.

We know that till the passing of the present Act the Mámlatdár had no jurisdiction in respect of disputes about the use of water. The Legislature then, as I read the Act, thought it expedient to give him jurisdiction in the case of disputes among the owners, or persons claiming to be the owners, of wells or other constructed water-works. It would be going very far beyond this to give him similar jurisdiction in respect of disputes between independent proprietors as to the taking of water from streams or natural water-courses.

A third case, that of *Balvant* v. *Sprott*,(2) has been referred to in the course of argument; but of it it is sufficient to say that no objection to jurisdiction on the ground now in issue was taken in that case, and the question is not touched upon.

I would follow the ruling in *Babaji* v. *Babaji*, and reply to the reference in the negative.

The reference being answered in the affirmative, the rule was discharged with costs.

Rule discharged.

(1) (1897) 23 Bom. 47. (2) (1899) 23 Bom. 761.