

would lead to great practical difficulties. The profits would vary from day to day and the average profits for three years could never be ascertained.

Another point contended for by the Tramway Company was that what is called track rent payable to the Corporation ought to cease on the 14th March, 1901. This contention is, however, disposed of by the fact that in March, 1901, it was expressly agreed between the Tramway Company and the Corporation that the Tramway Company would continue to work the tramways pending the ascertainment and payment of the purchase-money on the understanding that they received "the income and profits of the tramway business during such period." It is plain that so long as the Tramway take the profits, they must pay the ordinary expenses of working and the rent in question.

Their Lordships will therefore humbly advise His Majesty to dismiss this appeal and the appellant Company must pay the costs of the Corporation.

Appeal dismissed.

Solicitors for the appellants—*Messrs. Blount, Lynch and Petre.*

Solicitors for the respondents—*Mr. Edm. Ward Oliver (for Messrs. Crawford, Brown, Bayley & Dunlop, Bombay.)*

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Batty.

ANTONE VALAD ZUJE PREL AND OTHERS (ORIGINAL PLAINTIFFS),
APPELLANTS, v. ADMINISTRATOR GENERAL OF BOMBAY, AS
ADMINISTRATOR OF THE ESTATE AND EFFECTS OF HAJI TYAB GUNI AND
OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

*Bombay Civil Courts Act (XIV of 1869), section 32—Civil Court—
Jurisdiction—Suit against Administrator General.*

A suit against the Administrator General as representing the estate of a deceased private individual must be brought in the District Court and not in the Court of a Subordinate Judge, by virtue of section 32 of the Bombay Civil Courts Act (XIV of 1869).

SECOND APPEAL from the decision of D. G. Gharpure, Additional Joint First Class Subordinate Judge, Appellate Powers, at Thána.

* Second Appeal No. 539 of 1903.

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TRAMWAY
COMPANY
v
THE MUNI-
CIPAL COR-
PORATION
OF BOMBAY.

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reversing the decree passed by N. N. Nanavati, First Class Subordinate Judge at Thána.

The plaintiffs brought this suit in the Court of the First Class Subordinate Judge at Thána, to recover possession of a plot of land at Kurla. They stated that the land in question was leased from them on the 15th August, 1874, by the deceased Jusaf Haji Guni for a factory at an annual rent of Rs. 50; that Jusaf passed to them on the 28th idem a registered lease in respect of the tenancy, and that they received rent in respect of the property till the 15th August, 1895, from Jusaf and his heirs, Tyab and Kusum. Tyab having died, the Administrator General was brought in as representing his estate. The prayer of the plaintiffs was that the possession of the land be awarded to them.

The Administrator General contended, *inter alia*, that under the agreement of the 28th August, 1874, Jusaf Haji and his heirs were entitled to hold the land in suit in perpetuity, subject only to the payment of the annual rent of Rs. 50; that the lease could not be cancelled, provided the rent was paid, and that he was willing to pay his share of the rent.

The Subordinate Judge decreed the suit in plaintiffs' favour by awarding the disputed land into their possession.

On appeal the defendant raised the point, whether the Subordinate Judge had jurisdiction to entertain the suit under section 32 of Act XIV of 1869, considering that one of the defendants was the Administrator General. This point was decided in the negative for the following reasons:—

“It is not contested that the Administrator General of Bombay is an officer of Government (*vide* section 5 of Act II of 1874). But it is contended that he represents a private estate. But he does so in his official capacity and he is sued expressly in such capacity. In his private capacity he has no *locus standi*. I therefore hold that the lower Court had no jurisdiction.

The plaintiffs preferred a second appeal.

M. V. Bhat, for the appellants:—There is no cause of action alleged in the plaint as against the Administrator General. My clients sue to recover possession, alleging that the deceased Tyab Haji Guni was their tenant liable to pay rent; that he, and his heirs after his death, failed to pay rent and that consequently

they were entitled to possession. The capacity in which the Administrator General is sued is his capacity as Administrator to the estate of the deceased Tyab Haji—a capacity which might have belonged to him even though he had not been the Administrator General of Bombay, for the Court might, in certain cases, have appointed any person other than the Administrator General as Administrator to the estate of the deceased person.

It has been held that a Collector or Názir appointed to manage the estate of a minor can be sued in the Court of a Subordinate Judge: see *Mohan Ishwar v. Haku Rupa and Man Rupa* ⁽¹⁾; *Anantharaman v. Ramasami*.⁽²⁾

H. C. Coyaji, for the respondents:—The Subordinate Judge had no jurisdiction to entertain this suit (section 32, Bombay Civil Courts Act, 1869). The Administrator General of Bombay is an “officer of Government,” and he is sued in this case “in his official capacity.” The provisions of the Administrator General’s Act, 1874, show clearly that he is an “officer of Government”; he is appointed, and may be suspended or removed by the Government of Bombay (section 5); he is not an officer of the High Court (section 7); he cannot hold any other office without sanction of Government (section 9); and he gives security to the Secretary of State for India for the due execution of his office (section 11). The fact that in this case he is sued as representing what is called a private estate does not make him any the less an “officer of Government.” In *Narsingrav Ramchandra v. Laxumanrav*,⁽³⁾ it was held that the Collector who was appointed to take charge of the estate of a minor under Act XX of 1864 is appointed in his capacity as Collector, and is therefore an officer of Government within the meaning of Act XIV of 1869, section 32. The case of the Názir of a Civil Court who is appointed guardian of the estate of a minor is distinguishable: see *Mohan Ishwar v. Haku Rupa and Man Rupa*.⁽¹⁾ The Official Assignee is a public officer within the meaning of sections 2 and 424 of the Civil Procedure Code: see *Joosub Haji v. N. W.*

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(1) (1880) 4 Bom. 638.

(2) (1888) 11 Mad. 317.

(3) (1876) 1 Bom. 318.

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Kemp ⁽¹⁾, *Shahbazadee Shahunshah Begum v. Fergusson* ⁽²⁾, and *Abdul Lateef v. Doutré*. ⁽³⁾

CHANDAVARKAR, J. :—The question in this second appeal is whether the suit, having been brought against the Administrator General as one of the defendants, was wrongly instituted in the Court of the Second Class Subordinate Judge instead of the District Court. Section 32 of the Bombay Civil Courts Act, 1869, provides:—“ No Subordinate Judge or Court of Small Causes shall receive or register a suit in which the Government or any officer of Government in his official capacity is a party.” There can be no question that the Administrator General is an officer of Government, but it is urged by the appellants’ pleader that the Administrator General is not a party to the suit in his official capacity, because he is sued simply as representing the estate of a private individual. But such representative capacity is filled by the Administrator General in virtue of his official capacity; the duty of representing the estate of a deceased person under certain circumstances devolves upon him as a public officer under an Act of the Legislature which defines his powers and responsibilities as such officer. No distinction, therefore, can be made between his official capacity and his representative capacity, the latter being merged in the former. But it was further urged that the cause of action on which the suit was brought was one arising not from any act of the Administrator General, but from an act of the deceased person whose estate he represented. It is true that the plaintiffs sue to recover possession, alleging in their plaint that the deceased was their tenant, liable to pay rent, and that, according to the terms of the lease, the plaintiffs have become entitled to possession in consequence of failure on the part of the deceased when he was alive, and on the part of his heirs on his death, to pay rent. But substantially, the plaintiffs’ complaint is that there has been failure on the part of the Administrator General after he came into possession of the land either to pay rent or to deliver possession to the plaintiffs. The suit as against him

(1) (1902) 26 Bom. 809.

(2) (1881) 7 Cal. 499.

(3) (1889) 12 Mad. 250.

must, therefore, be treated as one brought for an act of wrong done by him. As held by the Full Bench of this Court in *William Allen v. Bai Shri Dariaba* ⁽¹⁾, upon the construction of section 82 of the Bombay Civil Courts Act, 1869, "the question" of jurisdiction "cannot be determined by the description given by the plaintiff himself of his suit. . . . This question of the Court in which the suit is to be tried must be determined from the contents of the plaint and a consideration of the position occupied by the defendant." In the present case both these requirements are fulfilled. The plaint alleges in substance that the Administrator General has wrongfully kept the plaintiffs out of possession to which they are entitled, and the position of the Administrator General is that of a public officer who in virtue of his office holds the property. We must, therefore, confirm the decree with costs.

Decree confirmed.

(1) (1896) 21 Bom. p. 771.

CRIMINAL REVISION.

Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, on difference of opinion between Mr. Justice Chandavarkar and Mr. Justice Aston.

EMPEROR v. BANKATRAM LACHIRAM.*

Indian Penal Code (Act XLV of 1860), section 193—Criminal Procedure Code (Act V of 1898), sections 435, 439—Perjury—Contradictory statements—Power of the High Court to interfere in revisional jurisdiction.

Where the accused was convicted and sentenced under section 193 of the Indian Penal Code (Act XLV of 1860) of giving false evidence in a judicial proceeding and where the charge was based on the allegation that in two depositions, one given on the 3rd December, 1896, and the other on the 23rd March, 1901, the accused had made two contradictory statements, and the case for the prosecution was that on that ground, though it could not be proved which of the alleged contradictory statements was false, the accused's conviction should be upheld,

Held, (by Jenkins, C.J., reversing the conviction and setting aside the sentence in revisional jurisdiction,) that to convict an accused of giving false*

* Criminal application for revision, No. 332 of 1903.

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March 23,