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The Mahomedan Law of gifts still abounds with those pitfalls, which belong to an archaic system of law; for the Mussalman community, differing in this respect from the Hindu, is for some reason or other excluded from the operation of those portions of the Transfer of Property Act, which according to the decisions enable a gift to be effected by a registered deed.

But it has not been suggested before us that any of those pitfalls except that with which I have dealt, call for consideration in the circumstances of this case.

Objection has been taken to the order allowing 2 sets of costs, but I think the learned Judge was within his discretion.

The result is that the decree must be confirmed with costs, but only one set will be allowed in appeal.

Decree confirmed.

Attorneys for the appellant:—*Messrs. Tyabji, Dayabhai & Co.*

Attorneys for the respondents:—*Messrs. Mirza and Mirza and Messrs. Payne & Co.*

A. H. S. A.

APPELLATE CIVIL.

Before Mr. Justice Russell and Mr. Justice Batty.

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BALVANT RAMCHANDRA NATU AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL (ORIGINAL DEFENDANT), RESPONDENT.*

Construction of grant—Court Fees Act (VII of 1870), section 7, clause 5, proviso 3—Annual Survey Assessment which is remitted—Limitation Act (XV of 1877), schedule II, article 14—Executive Government—Ultra vires order—Nullity—Pensions Act (XXIII of 1871), section 4—"Relating to," construction of—Right to hold land distinguished from the right to money or revenue—Right of an alienee of the revenue to possession of land—Holdings which an Inámdár acquires by purchase from a kadim occupant or by lapse of prior occupancies distinguished from the rights which he obtains directly from the grant itself—Bombay Revenue Jurisdiction Act (X of

* First Appeal No. 163 of 1903.

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1876), section 4, Proviso—Bombay Land Revenue Code (Bom. Act V. of 1879)—Construction of statutes—Land Acquisition Act (I of 1894)—Indian Forest Act (VII of 1871), sections 3, 4, 10—"To constitute a reserved forest"—Local Government, powers of, regarding waste land—Civil Courts—Jurisdiction.

A grant which purports to be a grant only of the Royal share of the revenue given in commutation of cash theretofore payable as a palanquin allowance, must be construed strictly in favour of the Crown, and is *prima facie* a grant only of the revenue.

Proviso 3 to clause 5 of section 7 of the Court Fees Act (VII of 1870) has apparently reference only to "the annual survey assessment which *is* remitted," that is to say, to the rate of remission at date of suit. It has, therefore, no reference to remissions previously made but no longer existing.

Article 14 of the schedule II of the Limitation Act is applicable to acts or orders done in the exercise of powers legally exerciseable by the executive, subject to conditions, the fulfilment of which is denied by the party impugning the act or order, or invested with no finality by the empowering enactment.

An order which is entirely *ultra vires* of the Executive Government is a mere nullity and no suit is necessary to set it aside.

Section 4 of the Pensions Act (XXIII of 1871), construed strictly as it must be is entirely silent as to suits to recover possession of land the revenue of which has been remitted. The words "no Civil Court shall entertain any suit relating to any pension or grant of money or land revenue," occurring in the section, cannot, without a manifest strain of words, cover a suit to recover the possession of land or to obtain a declaration of a right to hold land. The phrase "relating to," as occurring in an enactment restrictive of the right to sue must be construed strictly, *i. e.*, in favour of the right to proceed.

The right to hold land is a right distinct from the right to money or revenue, and a suit relating to the former is distinct from a suit relating to the latter.

The right of an alienee of the revenue to possession of the land may survive the resumption of the grant of exemptions from liability to land revenue.

The decided cases make no distinction between holdings which an Inámdár has acquired by purchase from a kadim occupant or by lapse of prior occupancies, and the rights which he may have obtained directly from the grant itself to hold at his disposal lands comprised therein which at date thereof no other person had a right to occupy. If the grant places land at the disposal of the alienee of the revenue, where there are no pre-existing claims to hold it, the alienee though not an owner of the soil, is entitled to dispose of it as he chooses. He is not bound to give it out to tenants but may retain it in his own possession, and becomes the holder thereof within the meaning of the Bombay Land Revenue Code, 1879; and his rights are as indefeasible so far as the right to possession is concerned as the rights of an occupant of unalienated land.

The right to hold land, even though it be not as proprietor of the soil, is incontestably one of which the Civil Courts can take cognizance, if not barred by statutory provision.

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The proviso to section 4 of the Bombay Revenue Jurisdiction Act (X of 1876) contains no exceptions in respect of holdings unaccompanied by proprietary right in the soil, and there is no saving clause which would suggest that such a claim to such holdings might fall within the purview of the Pensions Act. The right of an alienee of the revenue to sue for disturbance of his possession by a stranger or by Government is clearly recognised by the proviso above cited, and the only condition required is that the claim should be under an enactment, instrument, sanad, written grant or judgment such as is described in the proviso.

The general presumption is against construing a statute as ousting or restricting the jurisdiction of the superior Courts. The intention must be expressed in clear terms, not merely implied, but necessarily implied: the general rights of the Queen's subjects are not hastily to be assumed to be interfered with and taken away by Act of Parliament. Such statutes are to be strictly construed when their language is doubtful. A construction which would impliedly create a new jurisdiction is to be avoided, especially where it would have the effect of depriving the subject of his freehold or of any common law right, or of creating an arbitrary procedure. No doubt when a power has been conferred in unambiguous language by statute, the Courts cannot interfere with its exercise and substitute their own discretion for that of persons or bodies selected by the Legislature for the purpose. Nor does any presumption arise against the finality of a decision by an authority with statutory powers to pronounce in respect of a duty or liability created by the statute.

The most important distinction between the Land Acquisition Act (I of 1894) and the Indian Forest Act (VII of 1871) lies in this:—that whereas in the Land Acquisition Act the Legislature has expressly constituted the Local Government the sole arbiter as to what land shall be acquired for a public purpose, the Indian Forest Act gives the power to afforest subject to conditions as to the fulfilment of which the Local Government is given no express power to decide.

Section 3 of the Indian Forest Act (VII of 1871) does not make the exercise of the power conferred dependent on the opinion or decision of the Local Government but upon a question of fact. It runs "the Local Government may constitute any forest land or waste land which is the property of Government, etc." If the land actually fulfils that condition Government can exercise the powers not otherwise. The test is, not what appears to the Local Government, but what is the actual fact and as the enabling section gives the Local Government no power to decide that fact, it can only be decided by recourse to the Courts which have authority finally to decide on questions of law and fact wherever their jurisdiction is not expressly barred by the Legislature.

The power in section 4 of the Indian Forest Act (VII of 1871), to appoint an officer to inquire and determine as to rights, is limited to land which it is proposed to constitute reserved forest and "to constitute a reserved forest" is a phrase defined in section 3. And under that definition, the constitution of

a reserved forest connotes as the object forest or waste land only. The specified character of the land is an essential part of the Act defined. According to the definition the phrase "to constitute a reserved forest" means to convert land by notification from forest or waste. The land, therefore, to which a proposal under section 4 relates, must be forest or waste land, and it is only in respect of such land that the officer appointed has power to inquire and determine.

When the land is forest or waste, the Forest officer has the power to inquire into and determine as to rights of way or pasture, forest produce or water courses, and he may admit or reject such claims with finality because he is dealing with land in respect of which he has a duly delegated jurisdiction. It is possible there may be other rights in or over land which may render it desirable for Government to acquire full ownership and for such cases section 10 of the Indian Forest Act (VII of 1871) provides, without, however, extending the application of the section to any land incapable of constitution as reserved forest.

The provisions of the Indian Forest Act (VII of 1871) do not bar the jurisdiction of the Courts to decide whether the land in suit is or is not forest or waste land and whether if it be not such land, the plaintiffs are entitled to the occupation thereof.

APPEAL from the decision of A. Lucas, District Judge of Poona.

The British Government granted an annual cash allowance of Rs. 600 to Balaji Narayan Natu, forefather of the plaintiffs, for the expenses of a palanquin. This allowance was received by the forefathers of the plaintiffs till 1831, when the Government resolved that in lieu of the cash allowance they should be granted inám lands which they would select. The grantees thereupon selected the whole village of Wahagaon in Khed Táluka and a piece of land near Poona termed "Ganjiche-wawur," and the Government granted the same as inám to them. Since then the grantees remained in enjoyment of the said land and village from generation to generation, and the Government granted the land and village to the family of the plaintiffs on the same tenure as other hereditary ináms granted to them. The plaintiff alleged that they and their forefathers had been in the enjoyment of the aforesaid piece of land and village as owners with all the proprietary rights appertaining thereto. They were also enjoying all forest produce such as ráb, grass, &c.

On the 29th July 1897, the Government of Bombay published in the *Bombay Government Gazette* a notification that Survey

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No. 125, measuring 648 acres, situated in Wahagaon village, was to form a part of the reserved forest from the 1st October 1897.

The plaintiffs thereupon filed a suit against the Secretary of State for India in Council, to obtain (1) a declaration that "they have a proprietary right over Survey No. 125" situated in Wahagaon village and for possession of the same, (2) for an injunction restraining the defendant from obstructing plaintiffs from the enjoyment of the land as proprietor and from cutting ráb, &c., and for other incidental relief. They valued their claim at Rs. 510.

The defendant by his written statement contended, *inter alia*, that the claim, so far as it related to the possession of the lands, was undervalued. No assessment has been fixed on the land in the recent surveys; but in the old survey paper of 1860-61 the land is entered as measuring 3¼ khandis ½ maund and assessed at Rs. 163-12. The claim should have been valued on the basis of this item under proviso 3, clause 5, section 7 of the Court Fees Act. That the suit was barred by limitation under article 14, schedule II of the Limitation Act (XV of 1877), the suit having been instituted more than one year from the 8th May 1897, on which date the Government Resolution No. 3098, dated the 27th April 1897, was communicated to the plaintiffs. That the proprietary rights in the land claimed belong to Government and not to the plaintiffs, who were only grantees of land revenue. That the Civil Courts had no jurisdiction to entertain the suit without a certificate from the Collector under sections 4 and 6 of the Pensions Act (XXIII of 1871). That the land in dispute being waste land belonging to Government, the Civil Court was, under section 4, clause (*f*), of the Bombay Revenue Jurisdiction Act (X of 1876) not competent to take cognizance of a suit instituted for its occupation or for a declaration of proprietary rights therein. That the plaintiffs having been only entitled to the revenues and not to the soil of the village, could not by long user or enjoyment become the proprietors of the soil and of timber or forest rights there. That the action of Government in constituting the land a reserved forest and placing it under the restrictions attaching to such forest is, under the Forest Act, 1878, one that might legally be done by Government, and the Civil Court had no power to inter-

fere with the exercise by the Government of its discretion in the discharge of its functions.

The findings of the District Judge were that the claim was not undervalued; that the suit was not barred by the Law of Limitation, schedule II, article 14; that the Civil Court had jurisdiction to entertain the suit without a certificate from the Collector under sections 4 and 6 of the Pensions Act (XXIII of 1871); that the jurisdiction of the Court to entertain the suit was barred by reason of the provisions of the Forest Act (VII of 1878); that the land in dispute was waste land belonging to Government and the jurisdiction of the Court was barred by the Bombay Revenue Jurisdiction Act (X of 1876), section 4, clause (*f*); that the plaintiffs were only grantees of land revenue and that the plaintiffs were not proprietors of the land and were not entitled as owners to cut rán and enjoy the land as full proprietors; that the action of Government in constituting the plaint land a reserved forest and placing it under the restrictions attaching to such a forest was legal under the Forest Act (VII of 1878). As a result of these findings the District Judge held that the plaintiffs were not entitled to the relief sought.

The plaintiffs appealed against this decision to the High Court and the defendant also filed cross-objections to the effect that the claim in so far as it related to the possession of the land was undervalued; and that the suit was barred by article 14 of the schedule II to the Limitation Act, 1877.

Branson with *K. H. Kelkar*, for the appellants.

Raikes (acting Advocate General) with Ráo Bahádur *Vasudeo J. Kirtikar*, Government Pleader, for the respondent.

BATTY, J.:—This is a first appeal from a decision of the District Judge of Poona dismissing with costs the suit of the plaintiffs, who sought a declaration of their proprietary right over Survey No. 125 in Wahagaon village, and injunctions restraining the defendant from obstructing the plaintiffs' enjoyment of that land.

The land in question had admittedly been declared by the Government of Bombay, reserved forest by a notification purporting to have been issued in exercise of powers conferred by the Indian Forest Act, 1878.

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The plaintiffs claimed that the land formed part of a grant conferred on them by the British Government in 1831, evidenced by Exhibit 34 on the record of the case. And the plaintiffs' contention was that this grant conferred on them full proprietary right in the soil, by virtue of which all timber growing thereon would, they allege, belong to them and not to Government.

It is convenient to dispose of this contention at once before proceeding to discuss the further points raised.

The grant contains no such words as *Jaltaru, Trun, Pashan, Nidhi Nikshep* (water, trees, grass, stone and treasure-trove), referred to in the ruling in *Ruttonjee Eduljee Shet* v. *The Collector of Thana and the Conservator of Forests* (1) followed in *Vaman Janardan Joshi* v. *The Collector of Thana and the Conservator of Forests*(2). The grant in this case purports to be a grant only of the Royal share of the revenue given in commutation of cash theretofor payable as a Palanquin allowance (Exhibits 29, 30 and 34). Such a grant must be construed strictly in favour of the Crown, and is *primâ facie* a grant only of the revenue —*Krishnarav Ganesh* v. *Rangrav et al*(3).

Exhibits 31 and 32, to which we have been referred, in no way displace the ordinary presumption. Great stress has been laid for the appellant on Exhibit 118, which is an extract from a despatch from the Court of Directors to Government of Bombay, dated August 1853, and specially on the concluding para. of that extract.

That passage runs thus:—"We therefore direct that the village of Wahagaon and the land of Ganjiche Wawur be continued to the family on the same tenure as their other hereditary Inams." But this passage can only be rightly construed in connection with the context which shews that the sole question then under consideration was whether the grant referred to should be recognized as hereditary or as conferring only a life-interest. It was under consideration whether Mr. Giberne had exceeded his authority in making the Sanad hereditary; and the original instruction was discussed not with any suggestion that a grant of the soil had been in contemplation, but with

(1) (1867) 10 W. R. P. C. 13; 11 M. I. A. 295. (2) (1869) 6 B. H. C. R. 191, A. C. J.
(3) (1867) 4 B. H. C. R. 1 (A. C. J.) p. 7.

reference to the question whether it should operate in the words of Lord Clare's minute as "a perpetual alienation of so much of the Government Revenue instead of an honorary allowance for life". That was the only question put and the only question answered. Unquestionably no proposal was made to extend the nature of the grant in any direction except that of time; and we therefore think that Exhibit 118 confirms the view taken by the lower Court, and shews that the sanction of the Court of Directors merely established in perpetuity a grant which they had contemplated as one for life and which therefore could not have been regarded as giving an interest in the soil. The District Judge's finding on this point we think, therefore, is correct.

This finding, however, does not dispose of the case. For appellants' counsel urges that although the grant does not confer a proprietary interest in the soil, it certainly did confer on the ancestors of the plaintiffs an interest in the revenue derivable from all the land to which it extended, and, therefore, placed at the disposal of the Inamdar subject to all pre-existing rights still subsisting, the actual occupation of all lands comprised within the grant so as to enable him to realise the revenue which the grantor, the State, might at date of the grant have enjoyed from the land.

This is an aspect of the case which has not been considered by the District Judge, though we are assured by learned counsel for the appellants that it was presented in the Court below.

Before, however, proceeding to discuss the value of the argument addressed to us in support of this contention, it is necessary to deal with the other grounds on which the defence rely as barring the suit altogether. Some of these grounds have been adopted by the District Judge in his judgment as reasons for dismissing the suit; others, not so adopted by the District Judge, have been re-asserted in cross-objections raised by the respondent in this appeal.

We take these grounds in the order in which they appear in the issues raised by the lower Court. The first relates to the undervaluation of the claim. This point has not been pressed by the Honourable the Advocate General. It was decided against

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the defendant by the lower Court on the ground that the land in question is not now assessed, and that, therefore, the plaintiffs had not undervalued it for the purposes of the Court-Fees Act in omitting to compute the value under proviso 3 to clause 5 of section 7 of the Court-Fees Act, 1870. We note that the cross-objection filed on behalf of the respondent, alleges that in the old survey papers of 1860-61, the land was assessed at Rs. 163-12-6, and that, therefore, the claim should have been valued at ten times the above assessment. This statement may prove of importance in connection with another point arising in the case to be dealt with later. But so far as concerns the application of the 3rd proviso to the sub-section of the Court-Fees Act cited, it suffices to remark that the proviso has apparently reference only to "the annual survey assessment which *is* remitted," that is to say, to the rate of remission at date of suit. It seems, therefore, to follow that the enactment cited has no reference to remissions previously made, but no longer existing. And as it is admitted that there is now no assessment on the land, there is now no remission of assessment on which the valuation for the purposes of the Court-Fees Act could now be computed.

The second preliminary point which formed the subject of issue 2 in the lower Court is whether the suit is barred by the law of Limitation, article 14, schedule II of the Limitation Act, 1877. That point was also decided by the lower Court against the defendant.

It is revived in para. 3 of the cross-objections filed on behalf of respondent. Article 14 provides a period of one year from the date of an act or order of an officer of Government in his official capacity not otherwise expressly provided for, as the period within which a suit to set aside such act or order must be brought.

Now the present suit purports to be a suit for a declaration of the plaintiffs' proprietary right to land and for possession of that land. It does not purport to ask that any act or order should be set aside. It is the defendant who alleges the existence of an order, *viz.* a Government Resolution of 27th April, 1897, communicated to the plaintiffs on 8th May, 1897. And it is the

defendant who alleges that the existence of this order is a bar to the plaintiffs' title and to the recovery of possession, and that unless and until that order is set aside, the plaintiffs can obtain no relief. The plaintiffs' answer to this contention seems an obvious one. They complain, as the District Court observed, of forcible dispossession. To such an act, if done otherwise than in due course of law, Article 142 would seem to be as applicable as it would be if the act had been done by a private individual, and the case would not be one "not otherwise provided for" in the Schedule as contemplated in Article 14. Article 14 appears to us to be applicable to acts or orders done in the exercise of powers legally exerciseable by the executive, subject to conditions the fulfilment of which is denied by the party impugning the act or order, or invested with no finality by the empowering enactment. The Legislature has in many instances made provision for orders of the nature last specified. Such for example, are Magisterial orders under section 145 of the Code of Criminal Procedure, for which Article 47 applies, orders under section 21 of the Khoti Act, 1880, and the like. But the defendant does not contend that the order passed in the Government Resolution abovementioned was an order which could be set aside.

The defendant's contention is that the order itself had legal finality and conferred a right which the plaintiffs cannot dispute. That contention forms the subject of the 4th and 8th issues in the lower Court, which must be considered later. And it appears to us that such a contention is inconsistent with the suggestion that the present suit falls within Article 14 of Schedule II of the Limitation Act, 1877. If the order cannot be set aside, then obviously the suit, though it may fail on that ground, cannot be regarded as one in which the setting aside of the order is the primary necessity, and which would be barred accordingly if not brought within one year of the date of that order. The defendant alleging and the plaintiffs denying, that the order was within statutory powers exerciseable by the Executive Government, the real issue is not whether it can be set aside, but whether it is final or a mere nullity. If it is, as the plaintiffs allege it to be, an order entirely *ultra vires* of the Executive Government, then it is a mere nullity and no suit is necessary to set it aside—

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Ardesar Hormasji Wadia v. *The Secretary of State for India in Council*(1); *Oghad Odha* v. *Nag Mulu*(2); *Surannanna* v. *Secretary of State for India* (3); *Shivaji Yesji Chawan* v. *The Collector of Ratnagiri* (4); *Bejoy Chand Mahatab Bahadur* v. *Kristo Mohini Dasi* (5); *Laloo Singh* v. *Purna Chander Banerjee*(6); *Moti Lal* v. *Karrabuldin*(7).

The question whether the order now in question is a nullity or not will be discussed later in dealing with the 4th and 8th of the issues framed by the District Court. The pleadings exclude the question raised in the 2nd of the issues framed in the District Court. We hold that Article 14 has no application to this suit.

We proceed to deal with the 3rd issue framed by the District Court, which is whether the Courts have jurisdiction to entertain the suit without a certificate under the Pensions Act (XXIII of 1871).

Now "an enactment of a character . . . which purports to deprive the subject of his right to resort to the Ordinary Courts of Justice for relief in certain cases, ought to be construed strictly, and the Courts should not extend its operation further than the language of the Legislature requires"—*Ravji Narayan Mandlik* v. *Dadaji Bapuji Desai*, Per Sir M. Westropp C. J.(8), followed in *Gurushidgavda* v. *Rudragavdati* (9) and in *Nagar Mal* v. *Ali Ahmad*(10) and in *Gangadhar Hari Karkare* v. *Morbhat Purohit*(11).

The Act has accordingly been frequently held inapplicable to suits in which the claim is not for a pension or grant of money or land revenue, conferred or made by the British or any former Government, but for the actual land itself—*Babaji Hari* v. *Rajaram Ballal*(12); *Panchanada* v. *Nilakanda*(13) and *Kumara* v. *Bangaru*(14) where it was observed "it cannot be said that the giving of land free of revenue is a grant of land revenue",

(1) (1872) 9 B. H. C. R. 177, p. 197.
(2) (1881) P. J., 26.
(3) (1900) 24 Bom. 435; 2 Bom. L. R. 261.
(4) (1886) 11 Bom 429.
(5) (1894) 21 Cal. 626.
(6) (1896) 24 Cal. 149 at p. 151.
(7) (1897) 25 Cal. 179.
(8) (1875) 1 Bom. 523, p. 529.
(9) (1877) 1 Bom. 531, p. 533.
(10) (1888) 10 All. 396, p. 398.
(11) (1893) 18 Bom. 525, p. 532.
(12) (1875) 1 Bom. 75.
(13) (1882) 7 Mad. 191.
(14) (1898) 21 Mad. 310, p. 320.

and *Babaji Hari* v. *Rajaram Ballal*[1] is quoted as authority for the position.

The passage cited runs "The land revenue arising from a man's own holding, when it is remitted, and the land pays nothing, is rather extinguished than granted."

Undoubtedly the Act applies where the claim is to recover money retained by Government—*Vasudev Sadashiv Modak* v. *The Collector of Ratnagiri*[2]; *Maharaval Mohansingji* v. *The Government of Bombay*[3]. And so even when the dispute is between private individuals as to money payable by Government—*Syed Mahommed Isaack* v. *Azeezoon Nissa Begam*[4]; *Vyankaji* v. *Sarjarao*[5]; *Andi Achen* v. *Kombi Achen*[6]; *Deo Kuar* v. *Mun Kuar*[7]; *Miya Vali Ulla* v. *Sayad Bava Santi Miya*[8]. The Madras High Court has held, however, that the Act does not apply when the claim is for a declaration of status—*Kombi* v. *Aundi*[9], though Muttusami Ayyar, J., appears to have modified the view he took in that case by his subsequent judgment in *Andi Achen* v. *Kombi Achen*[10].

These two classes of cases make a broad distinction between claims to the soil, to which the Pensions Act is held inapplicable, and claims to moneys payable by Government which are barred by that Act.

The Honourable the Advocate General contends that the claim in the present case falls within the first mentioned class, and that the plaintiffs having failed to establish a grant of the soil itself, the Courts are barred by the Pensions Act, 1871, from entertaining the present suit.

In support of this contention the Honourable the Advocate General has referred us to the following authorities:—*Ramchandra* v. *Venkatrao*[11]; *Shivram Dinkar Gharpuray* v. *The Secretary of State for India*[12]; *Raoji Mahipat Naik* v. *Gangaram*

(1) (1875) 1 Bom. 75 at p. 81.
(2) (1877) 2 Bom. 99 P. C.: S. C., 4 I. A. 119.
(3) (1881) 8 I. A. 77.
(4) (1882) 4 Mad. 341.
(5) (1891) 16 Bom. 537.
(6) (1894) 18 Mad. 187.
(7) (1894) 21 I. A. 148.
(8) (1896) 22 Bom. 496.
(9) (1889) 13 Mad. 75.
(10) (1894) 18 Mad. 187.
(11) (1882) 6 Bom. 598, p. 608.
(12) (1886) 11 Bom. 222.

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Sadashiv [1]; *Naro Damodhar Ghugri* v. *The Collector of Poona* [2]; *Vasudev Sadashiv Modak* v. *The Collector of Ratnagiri* [3]; and *Rama* v. *Subba* [4].

Of these cases the second, *Shivram Dinkar's* case [5], the third, *Ravji Mahipat's* case [1], the fourth, *Naro Damodhar's* case [2], the fifth, *Vasudev Sadashiv's* case [3], were clearly and in terms claims in respect of actual moneys, of grants of money or of land revenue. The case first in the above list of those cited by the Advocate General—*Ramchandra* v. *Venkatrav* [6]—is somewhat different.

That was a suit for the division of a Jahagir or Saranjam, and the defendant contended, *inter alia*, that it was impartible and was a grant of the revenue and not of the soil, so that without a certificate from the Collector the Court had no jurisdiction to try the suit. The Court held as to the first mentioned contention that if it had jurisdiction at all, it would be bound to determine such claims according to the rules laid down by Government, the Legislature having reserved to Government the power of determining the nature and extent of its own bounty. With regard to the other question, *viz.*, whether the claim was barred by the Pensions Act, it was held that the Jahagir or Saranjam claimed was not a grant of the soil, but a grant of the royal share of the revenue, and that the plaintiffs' claim to obtain that share was therefore clearly one to which the Pensions Act was applicable. The head-note to the case does not refer to this decision as to the bar arising in such a case from the Pensions Act, although in the judgment it is spoken of as a decision upon a preliminary point which would exclude from consideration the further question as to the impartibility of the Saranjams.

It is noteworthy, however, that the judgment recognized that the decision upon the application of the Pensions Act might not be accepted by a higher tribunal, and the Court therefore dealt with the second question to which the head-note refers. The decision as to the application of the Pensions Act was therefore not necessarily the final ground on which the determination of

(1) (1891) P. J. 200.
(2) (1877) 6 Bom. 209.
(3) (1877) 2 Bom. 99.
(4) (1888) 12 Mad. 98.
(5) (1886) 11 Bom. 222.
(6) (1882) 6 Bom. 598, p. 603.

the appeal in *Ramchandra* v. *Venkatrao*[1] rested. For even had the Pensions Act been held inapplicable, the dismissal of the plaintiffs' suit would have nevertheless followed from the ruling that the right to partition a Saranjam must be a question for the determination of Government. So far as the judgment in *Ramchandra* v. *Venkatrao*[1] deals with the application of the Pensions' Act it purports to rest on the authority of *Ravji Narayan* v. *Dadaji Bapuji*[2]. *Ravji Narayan's* case decided that the Pensions Act did not appply to suits involving the rights of a proprietor in the soil, which are, as such, distinguishable from claims to mere grants of money or of land revenue. And as in that and other cases, the Courts had held that a grant of the soil barred the Pensions Act, so in *Ramchandra* v. *Venkatrao*[1], the apparent converse was accepted, *viz.*, that claims relating to grants not extending to the soil, would be barred by the Pensions Act. The nature and extent of the *grant* were taken as the test. And this seems to have been the view adopted in *Rama* v. *Subba*[3].

It is, however, to be noted that *Ravji Narayan's* case[2] only declares a grant of the soil to be beyond the operation of the Pensions Act, and that strictly speaking it does not follow as the legitimate converse of that proposition that every other grant is necessarily within the operation of that Act. The foundation of the distinction between cases to which the Act does apply and those to which it does not apply is to be found very clearly expressed in *Babaji Hari* v. *Rajaram Ballal*[4]. It is there stated (page 80) "that purpose (*i. e.* of the Act) appears to be to keep the distribution of what is regarded as a bounty of Government wholly in the hands of its executive officers; and if suits for shares could be brought, and rights, or the semblance of rights, established, by some co-sharers, while Government was paying the whole proceeds of a cash allowance to other sharers, the reclamations of the former would at least be embarrassing." In other words the Act only bars the cognizance of the Courts as to that which is the bounty of Government, the distribution of which is reserved as subject to executive control. That is to say the Act bars the cognizance of the Courts as to the *grant of*

(1) (1882) 6 Bom. 598.
(2) (1875) 1 Bom. 529.
(3) (1888) 12 Mad. 98.
(4) (1875) 1 Bom. 75.

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money or *land revenue* which the executive, even after a determination by the Civil Courts, "will be at liberty to allow or to withhold." It does not appear from the report that the grant in *Babaji Hari's* case[1] extended to any proprietary right in the soil. In the arguments (p. 78) it was stated the property in dispute was all *watan* property attached to offices *the revenue of which was alienated to the grantees.* This statement occurs in the arguments supporting the contention that a certificate was necessary. Yet the case was remanded in order that the District Court might determine what portion of the claim related to *lands,* as distinguished from money allowances, and this remand was accompanied by the remark that freedom from liability to land revenue is not identical with holding a grant of land revenue, and that the land revenue arising from a man's own holding, when it is remitted and the land pays nothing, is rather extinguished than granted. The Court observed that the point was not raised in the Court of first instance that the claim was one for alienated land revenue, and was understood to have extended to the lands themselves, subject of course to the rights of the tenants. On these grounds then the case was sent back to ascertain how far the claim related to the *lands* as distinguished from money allowances. The Court, following a then recent decision, held that the *lands* held under a grant bestowing them, and not merely the Government Revenue arising from them, do not fall within the provisions of the Pensions Act. In estimating the effect of this decision it must be borne in mind, as stated in the arguments and uncontroverted, that the lands in dispute were Vatan lands, which are not ordinarily alienable by the holders and that it was the revenue which was alienated to the grantees. The result of the decision then appears to be that though no claim for the alienated revenue would have been sustainable without a certificate under the Pensions Act, yet a suit for the lands themselves, that is the actual holding, did not fall within the provisions of that Act. The executive could still withdraw and redistribute its bounty which consisted of the alienated revenue. For the executive Government could, as laid down in the judgment, allow or withhold the grant of money or land revenue from either or both of the

(1) (1875) 1 Bom. 75.

litigants even after the Court on a reference to it by certificate under section 6 of the Act, had determined their respective interests. This implies that *a fortiori* Government could in such a case have withheld the grant of money or land revenue when there was no suit at all, or when the suit related not to the money or revenue granted but to the mere occupation of the land. The decision therefore seems to have amounted to this, that so far as the occupation, the holding, of the lands was concerned, the Pensions Act had no application, and that the power of Government to withhold the money or revenue paid or payable on the lands in question, would be unaffected by the determination of the right to hold the lands.

The judgment in *Babaji Hari's* case[1] cites as the authority which it follows—*Ravji Narayan* v. *Dadaji Bapuji*, Special Appeal 507 of 1873—subsequently reported at I. L. R. 1 Bom. 523. And as that decision underlies the judgments both in *Ramchandra* v. *Venkatrao* (6 Bom. 598) and in *Babaji Hari's* case, it is necessary to consider what was the real point decided in *Ravji Narayan* v. *Dadaji Bapuji*. This will appear from the statement of the substance of the claim which is given in the judgment of the then Chief Justice.

This will be found at page 529 of the judgment. The passage to which we refer runs as follows—

"The present suit is substantially one in which the plaintiff, in respect of his ancient ancestral estate in land, and not in respect of any mere grant of land revenue, complains of an interference with his rights as proprietor of half of the village of Nanej by the officer of the British Government, which, as representing the Vishalgarh, claims the other moiety of the same village, and in pursuance of which interference, *the Mamlatdar has collected rents** which belong to and issue forth from the estate of the plaintiff as proprietor, and *which rents in the Mamlatdar's hands**, the plaintiff alleges, are moneys had and received to his use, which he contends the Mamlatdar had not any right either to receive or detain."

The suit, therefore, in *Ramchandra* v. *Venkatrao*[2] was a suit for *money* which "the plaintiff alleged had been wrongly intercepted

(1) (1875) 1 Bom. 75. (2) (1882) 6 Bom. 598.

* These words are not in italics in the original judgment from which the passage is quoted. (Ed.)

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and withheld by the Mamlatdar". The question was whether actual moneys could be recovered from the state fisc. The Pensions Act bars such a suit if the money is claimed as a grant of money or land revenue. And it was only because the suit was for *money*, that it became necessary to consider whether the *grant* was a grant of money or of the soil.

It was necessary to consider the nature of the grant, because the claim was one relating to money received and retained by an Officer of Government as Government money. But there is nothing in the case to show that if the suit had been for the land, any question would have arisen as to the application of the Pensions Act. The case of *Babaji Hari* v. *Rajaram Ballal*(1) points to the conclusions that if the suit had been for the lands, it would not have been held a suit falling within the provisions of the Pensions Act, even though the lands were watan lands "the revenue of which was alienated to the grantees." The object of the Act according to that judgment, was to prevent difficulties about payment of cash allowances. It was said in that case (*vide* page 81 of the report). "Mr. Pandurang has contended that there is necessarily a Government revenue arising from the lands in this case, and that it does not appear clearly that the lands, and not merely the revenue arising from them, are held by the parties." But this contention was answered in the next sentence of the judgment which states that "freedom from liability to land revenue is not identical with holding a grant of land revenue." The conclusion of the sentence suggests that where the mere remission of land revenue is enjoyed together with other rights or other interests in the land, the extinguishment of the revenue claim against the holder, is no more a grant of land revenue than the extinction of an easement by unity of ownership (section 46 of the Easements Act) is a grant of an easement.

The two cases of *Babaji Hari* v. *Rajaram Ballal*(1) and *Ravji Narayan* v. *Dadaji Bapuji*(2) thus show that while it is material to consider the nature of the grant for the purposes of the Pensions Act, where the suit relates to money or land revenue, that point is not material where the suit relates to the holding of land and not to a grant of money or land revenue at all.

(1) (1875) 1 Bom. 75. (2) (1875) 1 Bom. 523.

No doubt part of the decision in *Ramchandra* v. *Venkatrao*[1], if not in *Raoji Mahipat Naik* v. *Gangaram Sadashiv*[2], suggests that the nature of the grant must be looked to whatever may be the nature of the right claimed in connection with the grant. But as already observed, the decision on this point in *Ramchandra* v. *Venkatrao*[1] was not essential to the disposal of the case, and neither in that case nor in *Raoji Mahipat's* case does it appear that the suit related to the possession or enjoyment of the land as distinct from the money or land revenue. That point does not seem to have been taken in either case as it certainly appears to have been in *Babaji Hari* v. *Rajaram Ballal*[3], and the cases of *Ramchandra* v. *Venkatrao*[1] and *Raoji Mahipat* v. *Gangaram*[2] must therefore be regarded as dealing only with suits relating to the grant of money or land revenue and not as necessarily governing suits to recover the possession of land, the revenue of which is alienated to the grantees. With regard to the case of *Rama* v. *Subba*[4] we think detailed discussion unnecessary: partly because the judgment in that case appears in some measure to turn upon the effect of local legislation in the Madras Presidency and partly because as the decision of another High Court it is not binding on us. And though doubtless entitled to great weight, it would be in conflict with that in *Babaji Hari* v. *Rajaram*[3] if it supports the contention of the defence in this case.

The Section of the Pensions Act (Section 4), construed strictly as it must be, is entirely silent as to suits to recover possession of land the revenue of which has been remitted. It enacts merely that "no Civil Court shall entertain any suit relating to any pension or grant of money or land revenue". These words could not, we think, without a manifest strain of words, cover a suit to recover the possession of land or to obtain a declaration of right to hold land. We understand the Honourable the Advocate General to contend that the words "any suit relating to any grant of money or land revenue" must be construed as meaning "any suit in which the right claimed is wholly or in part evidenced by a grant of money or land reve-

(1) (1882) 6 Bom. 598.
(2) (1891) P. J. 200.
(3) (1875) 1 Bom. 75.
(4) (1888) 12 Mad. 98.

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nue." If the phrase "relating to" be patient of such a construction, it is certainly ambiguous, and therefore as occurring in an enactment restrictive of the right to sue, must be construed strictly, *i. e.*, in favour of the right to proceed. *Umiashankar Lakhmiram* v. *Chhotalal Vajeram*(1). *The New Fleming Spinning and Weaving Company, Limited*, v. *Kessowji Naik*(2). Indeed, were the other construction for which the defence contend, put on the phrase, astonishing consequences would result. For an alienee of the Government revenue who had acquired on the failure of kadim occupants or otherwise a right to hold land to which a grant of the revenue related, might, if that contention be correct, be debarred from redress in the Civil Courts not only if Government seized the land, but even if utter strangers and wrong doers dispossessed him. We cannot think this to have been the intention of the legislature. Had such been the intention, apt words would presumably have been found to express it. (Maxwell on Interpretation of Statutes, Chap. v.)

Nor do we think that it makes any difference that the right to possession may be claimed as in this case, on the ground not of reversionary interests, but of a direct grant of the holding whether coupled with a remission of the revenue or not. The right to hold land is a right distinct from the right to money or revenue, and a suit relating to the former is distinct from a suit relating to the latter. This has been very clearly recognised in a series of decisions which were referred to by us in the course of the arguments and which have not been assailed for the defence. These cases show that the right of an alienee of the revenue to possession of the land may survive the resumption of the grant of exemptions from liability to land revenue. *Vishnoo Trimbuck* v. *Tatia et al*(3), *Shidmal Guru* v. *W. Anderson*(4), *Ganpatrav Trimbak* v. *Ganesh Baji Bhat*(5), *Hari Sadashiv* v. *Shaik Ajmudin* (6). The right, which an alienee of the revenue only may enjoy as to the possession of the land comprised in his grant, has been recognized not only by Government in the Government Resolution of 27th May 1854 cited

(1) (1875) 1 Bom. 19.
(2) (1885) 9 Bom. 373 at p. 403.
(3) (1863) 1 B. H. C. R. 22.
(4) (1874) 11 B. H. C. R. 39.
(5) (1885) 10 Bom. 112.
(6) (1886) 11 Bom. 235, at p. 240.

in *Hari Sadashiv's* case[1], but by the Court of Directors in a Despatch of 27th March 1844, to be found at p. 381 of Nairnes's Revenue Handbook, Edition of 1872. The authorities to which we have referred make no distinction between holdings which an Inamdar has acquired by purchase from a kadim occupant or by lapse of prior occupancies, and the rights which he may have obtained directly from the grant itself to hold at his disposal lands comprised therein which at date thereof no other person had a right to occupy. If the grant places land at the disposal of the alienee of the revenue, where there are no pre-existing claims to hold it, the alienee, though not an owner of the soil, is entitled to dispose of it as he chooses. He is not bound to give it out to tenants but may retain it in his own possession, and becomes the holder thereof within the meaning of the Bombay Land Revenue Code, 1879; and his rights are as indefeasible so far as the right to possession is concerned as the rights of an occupant of unalienated land. It would be very hard if it were otherwise. For it is quite conceivable that the alienee might have made a great outlay in the improvement of the land, and it would be inequitable if he could be deprived without redress of the fruits which in such case would be secured to any other holder; whether the holding is acquired by the direct effect of the original grant of unoccupied land or by the lapse of kadim mirasdar's rights is manifestly immaterial. For the foundation of the right to the holding is in both cases the same, the only difference being that the acquisition by lapse would ordinarily be the more recent.

The right to hold land, even though it be not as proprietor of the soil, is incontestably one of which the Civil Courts can take cognizance, if not barred by statutory provision. Claims against Government respecting the occupation of waste or vacant land belonging to Government are of course barred by the final provision in clause (*f*) of Section 4 of the Bombay Revenue Jurisdiction Act, 1876. And if the land now in dispute proved to be of that class, the suit would of course be unsustainable. But the plaintiffs allege a right to hold the land in suit, alleging possession and dispossession.

(1) (1886) 11 Bom. 235 at p. 240.

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And the fact that the holding is claimed to be exempt from payment of land revenue, does not change the suit into one relating to the grant of money or land revenue. In the present instance, the suggestion that the suit relates to the grant of money or land revenue savours of irony, for the land in suit admittedly is now unassessed and would yield no land revenue. But even regarding the claim as one to hold the land wholly or partially exempt from payment of land revenue, it is one which the proviso to Section 4 of the Bombay Revenue Jurisdiction Act, 1876, expressly declares cognisable in the Civil Courts if it be a claim under any written grant by the British Government expressly creating or confirming such exemption. That proviso contains no exceptions in respect of holdings unaccompanied by proprietary right in the soil, and there is no saving clause which would suggest that such a claim to such holdings might fall within the purview of the Pensions Act. The right of an alienee of the revenue to sue for disturbance of his possession by a stranger or by Government is clearly recognised by the proviso above cited, and the only condition required is that the claim should be under an enactment, instrument, Sanad, written grant or judgment such as is described in the proviso. Thus the exemption is treated as in the judgment in *Babaji Hari* v. *Rajaram Ballal*[1] not as a grant of money or land revenue, but as freedom from liability or the extinction of a liability. The District Judge has held that the Pensions Act does not apply. But apparently that is only on the ground that the suit is one to recover possession of land of which the plaintiffs are absolute proprietors. The District Judge observes that if the plaintiffs are not entitled to the land but only to the land revenue, this suit must fail altogether. But in arriving at this conclusion, the District Judge has evidently overlooked the possibility of the plaintiffs having a claim to hold the land. The claim is not a claim to the land revenue. The plaintiffs do not claim revenue at all. There is none to claim. They allege a right to possession and to recover possession. And though they may have exaggerated the extent of their rights, and may not be entitled as proprietors of the soil, that cannot deprive them of any right to possession which they

(1) (1875) 1 Bom. 75, p. 81.

may be able to establish, nor can it convert their claim into one for money or land revenue.

For the above reasons we hold that the claim is not affected by the Pensions Act, 1870.

The next point for consideration is that which formed the subject of the 4th issue in the District Court, viz., whether the jurisdiction of the Courts is barred by reason of the provisions of the Indian Forest Act, 1878.

Practically this involves the same questions as those raised in the 8th issue framed by the District Court and in cross objection No. 3 filed on behalf of the respondent.

The contention on behalf of the defendant, which is embodied in these issues, is put forward in paragraph 2 of the written statement as follows:—

"The Civil Courts have no jurisdiction to entertain this suit in regard to the plaintiffs' claim to rights over the land under Section 13 of the Civil Procedure Code and the general principles as to *res judicata*. Government Resolution No. 3098, dated 27th April 1897, which revised the Collector's order allowing in appeal the plaintiffs' claim to the land, and declared the land to be a reserved forest, is final and conclusive under the last paragraph of Section 17 of the Indian Forest Act, 1878, and no suit will lie to set it aside."

On behalf of appellants we have been referred to the opinion of a former Legal Remembrancer, Mr. Naylor, embodied in Government Resolution 3112 of 31st May 1881 published in a Compilation of Rules and Orders in the Revenue Department. That opinion cannot of course be regarded as binding on the defendant or as having any authority or force beyond what may be due to the accuracy of the reasoning contained in it. We refer to it only as embodying the line of arguments adopted for the plaintiffs.

Those arguments are as follows:—

"Chapter II relates to forest land or waste land described in section 3 and to no other land."

"Section 3 specifies what land it shall be lawful for the Government to constitute Reserved Forest; namely, forest and waste land belonging to Government. The words 'any land' in section 4 cannot include any other land than what it is lawful for the Government to constitute a Reserved Forest. The Government cannot notify cultivated lands, whether alien-

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ated or unalienated, as forest reserves except by first acquiring all the rights of ownership and converting them into waste lands. The object of section 10 is to meet the case of any claim that may possibly be made of private ownership in or over such forest land or waste land or any portion thereof as is notified under section 4 and to empower the Forest Settlement Officer to exclude such land from the proposed forest or obtain a surrender of it from the claimant or acquire it under the Land Acquisition Act."

"With regard to any land other than forest land or waste land belonging to Government, if required for the purposes of the Forest Act, 1878, section 83 provides that it can be treated as required for a public purpose and dealt with under the Land Acquisition Act."

The foundation of this argument, it will be seen, is that no power is given to the Local Government to constitute anything but forest land or waste land a reserved forest.

This line of argument has not been discussed by the District Judge, and apparently was not submitted to him. For his judgment states that the contention for plaintiffs was that the order of Government in revision under section 17 of the Forest Act had not the finality which it was then admitted would have attached to the Collector's order if unrevised. This contention has here been abandoned and we think rightly abandoned. We also think appellants' counsel was at liberty to resile in this Court from the admission said to have been made in the lower Court as to the finality of an unrevised order under section 17 of the Indian Forest Act. Such an admission by appellants' pleader on a point of law could not bind his clients. The question, therefore, remains open whether any order as to title to land, passed under section 17, is final.

The District Judge has held the jurisdiction of the ordinary Courts ousted as to questions of title to land, by the Indian Forest Act on the supposed analogy of certain cases under the Bombay Hereditary Offices Act, 1874, the Land Acquisition Act, 1870, and the Madras Forest Act, 1882.

Those cases turn upon the construction of the respective Acts according to well known principles of interpretation which are

fully expounded in Chapters V and X of Maxwell's work on the Interpretation of Statutes.

As there stated the general presumption is against construing a statute as ousting or restricting the jurisdiction of the superior Courts. The intention must be expressed in clear terms; "not merely implied, but necessarily implied," "the general rights of the Queen's subjects are not hastily to be assumed to be interfered with and taken away by Acts of Parliament."(1) Such statutes are to be strictly construed when their language is doubtful. *Jacobs* v. *Brett* (1). A construction which would impliedly create a new jurisdiction "is to be avoided, especially when it would have the effect of depriving the subject of his freehold, or of any common law right .... or of creating an arbitrary procedure." Maxwell, p. 158*, *Warwick* v. *White* (2), *Fletcher* v. *Calthrop* (3), *Ex parte Story* (4). Thus a statute requiring that where damage has in certain circumstances been sustained, the amount of compensation in case of dispute should be settled by arbitration, was held not to give a right to proceed by arbitration, in a case where the dispute was as to the liability to make any compensation at all. *The Queen* v. *Metropolitan Commissioners of Sewers* (5).

No doubt when a power has been conferred in unambiguous language by statute, the Courts cannot interfere with its exercise and substitute their own discretion for that of persons or bodies selected by the Legislature for the purpose. *Attorney-General* v. *Great Western Railway Company* (6), *The Queen* v. *Collins* (7), *London County Council* v. *Attorney General* (8), *East Fremantle Corporation* v. *Annois* (9). Nor does any presumption arise against the finality of a decision by an authority with statutory powers to pronounce in respect of a duty or liability created by the statute. For then "there is no ouster of the jurisdiction of the ordinary Courts, for they never had any" (Maxwell, 156).(10)

(1) (1875) L. R. 20 Eq. 1, pp. 6, 7.
(2) (1722) Bunbury 106.
(3) (1845) 6 Q. B. 880, p. 891.
(4) (1878) 3 Q. B. D. 166.
(5) (1853) 22 L. J. Q. B. 234, 1 El. & Bl. 694.
(6) (1876) 4 Ch. D. 735.
(7) (1876) 2 Q. B. D. 30 at p. 35.
(8) (1902) A. C. 165 at p. 169.
(9) (1902) A. C. 213.
(10) Second edition; p. 182 (third edition).

* Second edition; p. 184 of the third edition.

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Thus in respect of the bounty of Government, to which no individual has a common law right, the Pensions Act and the Bombay Revenue Jurisdiction Act bar the jurisdiction of the Courts, save in cases when a right to have recourse thereto has been given by written authority or instrument.

In the Bombay Hereditary Offices Act, the jurisdiction to determine as to the right to recognition as a representative Vatandar, and perform the duties appertaining to that status is by section 25 *et seqq* and sections 40, 72, 73, 77 expressly reserved to the executive. *Khando Narayan* v. *Apaji Sadashiv* (1), *Chinto Abaji Kulkarni* v. *Lakshmibai* (2), *Parsha* v. *Lagmyashan* (3). But then, as observed in *Chinto Abaji* v. *Lakshmibai* (p. 376), "the High Court, even before the passing of Bombay Act III of 1874, never went so far as to declare any member of a family or branch of a family of vatandars to be the representative of that family or branch. It expressly refused to do so: *Abaji* v. *Niloji* (4)". Thus there was no common law right, no recourse to the ordinary Courts before the Act and no ouster of their jurisdiction by the Act. Similarly a right to entry in the Vatan register is not a common law right and the Courts can entertain no suit to establish that right. But the right to be declared as the adopted son of a registered Vatandar stands on a different footing and therefore no bar to the jurisdiction of the Courts can be implied. *Balkrishna Chimnaji* v. *Balaji Ramchandra* (5). Similarly in *Govind Sitaram* v. *Bapuji* (6) following *Ramchandra Dabholkar* v. *Anant Sat Shenvi* (7) interference with a legal right to the status of a Vatandar was held to give a cause of action cognisable by the Courts. Compare also *Khashaba* v. *The Collector of Poona* (8), *Babaji bin Joti* v. *Nana bin Rangoji* (9), *Banaji Bhimaji* v. *Mr. Anding* (10), *Rangrav Venktesh* v. *Krishnarav Gopal* (11), *Yellapa bin Rayapa Patil* v. *The Secretary of State for India in Council* (12). All of these cases show how carefully the Courts

(1) (1877) 2 Bom. 370.
(2) (1878) 2 Bom. 375.
(3) (1888) 13 Bom. 83.
(4) (1864) 2 B. H. C. R. 342.
(5) (1884) 9 Bom. 25.
(6) (1893) 18 Bom. 516.
(7) (1883) 8 Bom. 25, p. 27.
(8) (1876) P. J. 207.
(9) (1876) P. J. 40.
(10) (1876) P. J. 208.
(11) (1877) P. J. 98.
(12) (1888) P. J. 224.

have avoided an implication of ouster of jurisdiction when legal rights are in question. We therefore think the cases under the Bombay Hereditary Offices Act have no relevancy in the present instance except so far as they illustrate the rule that the presumption is against the intention to bar the cognisance of the Courts when proprietary rights are concerned, unless such intention is unambiguously expressed or is a necessary implication.

With regard to the supposed analogy of cases under the Land Acquisition Act, we think it will suffice to point out first that the Land Acquisition Act is of an exceptional character. It aims at promoting important public interests; *Salus populi suprema lex.* And to interests of such paramount importance, private interests may justifiably be subordinated. And it has been recognised that in interpreting the intention of the Legislature in statutes of that character, a construction necessary to effectuate that intention must be given thereto. *Shivram Udaram* v. *Kondiba Muktaji* (1); *Shamlal* v. *Hirachand* (2). Secondly, the Land Acquisition Act takes away no right of recourse to the Courts, but while providing a special procedure for convenient and speedy determination as to the amount of compensation, allows an appeal to the High Court (section 54). Thirdly, under the Land Acquisition Act the special procedure provided for the purpose of determining the right to compensation, still leaves a right to sue for the amount of compensation awarded (article 17, Limitation Act, 1877, schedule 2), and does not provide for any final decision as to the person entitled thereto. But the most important distinction between the Land Acquisition Act and the Indian Forest Act lies in this:—that whereas in the Land Acquisition Act the Legislature has expressly constituted the Local Government the sole arbiter as to what land shall be acquired for a public purpose, the Indian Forest Act gives the power to afforest subject to conditions as to the fulfilment of which the Local Government is given no express power to decide. This will be at once apparent on comparing section 4 of the Land Acquisition Act with section 3 of the Indian Forest Act. The former runs "whenever it appears to

(1) (1884) 8 Bom. 340, p. 347. (2) (1835) 10 Bom. 367.

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the Local Government that land in any locality is likely to be needed for any public purpose." That is to say it suffices for the exercise of the power that the Local Government is satisfied as to the existence of the condition precedent to the exercise of its powers. But section 3 of the Indian Forest Act does not make the exercise of the power conferred dependent on the opinion or decision of the Local Government but upon a question of fact. It runs "the Local Government may constitute any forest land or waste land which is the property of Government, &c." If the land actually fulfils that condition Government can exercise the power, not otherwise. The test is, not what appears to the Local Government, but what is the actual fact. And as the enabling section gives the Local Government no power to decide that fact, it can only be decided by recourse to the Courts which have authority finally to decide on questions of law and fact wherever their jurisdiction is not expressly barred by the Legislature. The only possible alternative to this construction which could be suggested, is one which the Honourable the Advocate General did not explicitly put forward but which possibly underlies the conclusions of the District Court. It is this; section 4 gives the Local Government power to appoint an officer to enquire into and determine the existence, nature and extent of any rights alleged in or on any land comprised within the limits of land which the Local Government *proposes* to constitute a reserved forest. The District Judge may have understood this as giving the officer so appointed a power extending to all land which the Local Government proposes to deal with, instead of being limited to land which the Local Government is empowered to constitute reserved forest. If this construction were correct, then no doubt the power of Government ultimately, not only to determine in revision, but to appropriate without compensation, all proprietary rights in any land within the limits of its administration would be unquestionable and subject only to the condition that it proposed to do so. We think such a construction would be repugnant not only to the express limitation of the power contained in section 3 of the Act, but to the spirit of all British legislation throughout the Empire. If such a construction can be avoided, we think that

on the principles we have already set forth, it should be avoided. The opinion we have cited as adopted for appellants in argument, suggests that the words "any land" in section 4 must be read as meaning "any such land." But we do not think any interpolation or addition is necessary. For the power in section 4 to appoint an officer to enquire and determine as to rights, is limited to land which it is proposed to constitute reserved forest. And "to constitute a reserved forest" is a phrase defined in section 3. And under that definition, the constitution of a reserved forest connotes as the object forest or waste land only. The specified character of the land is an essential part of the act defined. According to the definition the phrase to constitute a reserved forest means to convert land by notification from forest or waste. In face of this definition it would be as insensible to speak of constituting any other land reserved forest as to speak of vivisecting an inanimate object. Such a construction as involving an absurdity, must out of respect for the Legislature be avoided—Maxwell, 242 to 246[1].

If we substitute the definition for the phrase, section 4 must run, "whenever it is proposed to convert any land from forest land or waste land into reserved forest by notification." But to propose to convert land which is not forest or waste is to propose to do something which is not constituting a reserved forest; but something which the Act gives no power to do.

The land, therefore, to which a proposal under section 4 relates, must be forest or waste land, and it is only in respect of such land that the officer appointed has power to inquire and determine.

When the land is forest or waste, the Forest Officer, no doubt, has power to inquire into and determine as to rights of way or pasture, forest produce or water-courses, and he may admit or reject such claims with finality because he is dealing with land in respect of which he has a duly-delegated jurisdiction. It is possible there may be other rights in or over land which may render it desirable for Government to acquire full ownership and for such cases section 10 of the Indian Forest Act provides, without, however, extending the application of the section to any land incapable of constitution as reserved forest. Had such

(1) Second edition: pp. 277—287 (3rd Edn.).

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Officer or Government similar power in respect of all lands whether forest and waste or not, then we think it is evident that section 83 of the Indian Forest Act empowering Government to acquire any land whatsoever for the purposes of the Act under the Land Acquisition Act, would be superfluous. For if section 10 applies to all land, forest and waste or not, the power given by section 83 must already have been given. We would add that the provisions of section 9, extinguishing all claims not preferred within 3 months under section 6 or otherwise ascertained, could never have been intended, in our opinion, to apply to rights for the assertion of which the Limitation Act provides a period of 12 years.

We now proceed to discuss the weight due in connection with the Indian Forest Act, to the construction put on the Madras Forest Act of 1882 by the Madras High Court in the case of *Ramchandra* v. *Secretary of State for India in Council* (1).

On approaching the question whether the construction applied to the Madras Forest Act can safely be applied to the Indian Forest Act, the following considerations present themselves:—

First, the two Acts are enactments by two distinct Legislative bodies.

Secondly, the Indian Forest Act is the earlier in date, and was necessarily present to the mind of the local Legislature when passing the Madras Act.

It is, therefore, only reasonable to assume that all departures in the local Act from the language of the earlier enactment were advisedly made and indicate some material difference in the intention of the local Legislature that made them.

On examining the two Acts we find the Madras Legislature advisedly substituted in the empowering section 3, the phrase "land at the disposal of Government" for the phrase "forest or waste land" occurring in the corresponding section of the Indian Forest Act. The phrase in the Indian Forest Act suggests some character permanent and intrinsic in the land itself. The phrase in section 3 of the Madras Act is defined in section 2 so as to include all unoccupied land, thus suggesting as the test a relation between the land and individuals which may be only

(1) (1888) 12 Mad. 105.

temporary and which may, by appropriate legal proceedings, be displaced.

The Indian Forest Act contains no reference whatever to occupied lands, and nowhere implies that such lands are susceptible of being constituted Reserved Forest.

It is true that the strictly logical application of the definition in section 3 to section 4 of the Madras Act, would, for reasons above stated with regard to the corresponding sections of the Indian Forest Act, exclude unoccupied lands from the scope of the Madras Act. But the Madras Legislature whether logically accurate in its drafting or not, has by express language, indicated its intention not to exclude such land altogether. For the final paragraph of section 6 of the Madras Act contains special provisions preliminary to the inclusion of occupied land in Reserved Forest. Such provisions are conspicuous by their absence from the corresponding section in the Indian Forest Act. If, therefore, a comparison of the two Acts can afford any instruction at all as to the intentions of the respective Legislatures, the inference would be that the Madras Legislature deliberately intended to provide for that which the Indian Forest Act had left altogether unmentioned, *viz.*, the inclusion of land in the occupation of private holders, subject to proceedings adapted to deprive it of that character. It is only reasonable to assume that in so doing the Madras Legislature realised that the Supreme Legislature had deliberately omitted all provision for the inclusion of occupied land in a Reserved Forest.

And now turning to the ruling of the Madras High Court in *Ramchandra* v. *The Secretary of State*,[1] we find that special stress is laid in that judgment, on the fact that the Madras Forest Act provides a special mode of redress and procedure for claimants alleging title to the occupation of lands dealt with under the Madras Forest Act. Following the decision in *Kamaraju* v. *The Secretary of State for India*,[2] the Madras High Court held that a Second Appeal on questions of law and fact would in such cases lie to the High Court. And it was on the ground that such special mode of redress and procedure had

(1) (1888) 12 Mad. 105. (2) (1888) 11 Mad. 309.

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been provided by the Madras Legislature, the Madras High Court inferred that in giving the new powers to the Local Government, it was the intention to exclude recourse to the ordinary Courts by a second adjudication on the same questions. The mode of procedure was varied, but the ordinary rights were preserved. Thus there was no ouster of jurisdiction at all. The same Courts were to be approached through a different channel. For as pointed out in *Ramchanara's* case[1] (page 107), clause II of section 10 of the Madras Act provides for an appeal to the District Court on the rejection of a claim based on title to land, and a Second Appeal lies, as of course, from the District Court to the High Court. The judgment in *Kamaraju* v. *The Secretary of State for India*[2] expressly states "the presumption is against the taking away of a substantive right of a very valuable nature by mere implication," and on this ground holds that the right of Second Appeal is not withdrawn by the Madras Forest Act. And such full mode of redress having been thus established, the corollary follows in *Ramchandra* v. *The Secretary of State for India in Council* [1] that no second recourse to the Courts by way of ordinary suit is necessary or permissible. Admittedly the Indian Forest Act contemplates no recourse at all to the Civil Courts under its provisions. And thus the very grounds on which the Madras High Court decided the rights of such claimants to redress under the Madras Act, preclude the implication which the defendant asks us to make in this case. There is no expression of intention in the Indian Forest Act to withdraw all similar rights from claimants alleging a right to the occupation of land which Government seek to afforest under that Act. There is no reference throughout the Indian Forest Act to land in the occupation of private individuals. There is no power given to afforest such land. And neither by express provision nor by necessary implication is there any ouster of the ordinary jurisdiction of the Courts to determine whether the Local Government has or has not exceeded the powers conferred by section 3 of the Act in purporting to deal thereunder with land alleged to be beyond the scope of that section. We, therefore,

[1] (1888) 12 Mad. 105.

[2] (1888) 11 Mad. 309, p. 312.

hold that the provisions of the Indian Forest Act, 1878, do not bar the jurisdiction of the Courts to decide whether the land in suit is or is not Forest or waste land and whether if it be not such land, the plaintiffs are entitled to the occupation thereof.

We have deemed it necessary to labour the question as to the right of the Local Government to decide finally for itself as to its right to afforest any specific land, not because we deemed that question one which admitted of grave room for doubt, but because the Honourable the Advocate General pressed strenuously for a decision on the point, and we therefore deem it of importance to set out fully our reasons for rejecting what appears to us to be very dangerous suggestion. It may be that the plaintiffs even if they establish their right to the occupation of the land in suit can achieve but a pyrrhic victory, for the land may yet be acquired under section 83 of the Indian Forest Act. But the question whether the title to land taken by Government without compensation can be excluded by a notification from the cognisance of the Courts involves a principle of grave importance meriting we think more consideration than has been given to it by the District Court or by the officers who have assumed that the answer must be in the affirmative.

The question which now remains is whether the land in question is within the description of land in section 3 of the Indian Forest Act. The District Judge has held that it is not. But the grounds that he has assigned for so holding appear to us fallacious. For, first, he holds that plaintiffs are entitled only to the land revenue of the village. In this, as shown above, we think he is mistaken, as an alienee of the revenue of a village may have a right to hold land which is by virtue of his grant and the non-existence or lapse of other rights at his disposal. Secondly, the District Judge states that the land in question is by the plaintiffs' own admission unassessed. Admittedly it is so now. But the defendant in his first cross-objection has stated that in the old survey of 1860-61, the land was assessed at Rs. 163-12-0 and on this ground urged that the claim was undervalued. It is therefore impossible to accept the District Judge's further objection to the plaintiffs' claim, *viz.*

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that the plaintiffs failed to show that the land ever was assessed. Moreover the District Judge having held that the only question arising in the case was whether the plaintiffs were proprietors of the soil, the question whether they had any rights corresponding to what in unalienated land are known as occupancy rights, was never duly considered. The evidence by which the plaintiffs propose to establish that the land in suit was so at their disposal under the grant, it is we think unnecessary and undesirable for us to discuss at this stage. For the Honourable the Advocate General states that the District Court having limited the parties to the question of plaintiffs' proprietary right in the soil, he was taken by surprise in having to meet the question whether the land in suit was comprised within the grant. We are not satisfied that the plaintiffs relied exclusively on a grant of proprietary title in the soil. They alleged *enjoyment* as full owners and their recognition as such by the defendant. And from the concluding paragraph of the District Court's judgment, it appears that they endeavoured to prove such enjoyment and contended that the land was not forest land when granted. The bearing of this evidence the District Judge seems hardly to have appreciated as he refers to it only as very confusing, and ignored the contention to which it related on the ground that he had only to determine whether proprietorship in the soil had been granted and whether when included in "Forest" it was unassessed or not. His reference, however, to this last question of assessment indicates that the plaintiffs must have rested their claim in part upon the ground that the land was assessed and therefore within the grant, though the District Judge misapprehended the contentions and assumed that it could have no force if it ceased to be assessed when included in Forest. The plaintiffs' allegation that the land was assessed at date of the grant was clearly relevant to the question whether it was part of the grant placed at their disposal and as such part of a holding to the possession of which they were entitled. The Honourable the Advocate General suggests that the entire area of the village in question was grossly underestimated in Mr. Pringle's survey, that this was discovered later and that

about 6,000 acres, presumably of hilly land not easily surveyed, had been left out of computation. And the Honourable the Advocate General's further suggestion is that the land now in suit forms part of an area either so omitted in Mr. Pringle's survey or referred to therein as extending only to about 200 acres described in the grant as altogether uncultivable waste and excluded as such from the grant. The area so excluded as waste the defendant would now identify with the survey No. 125 which comprises the land now in dispute. On the other hand the plaintiffs' pleader contends that according to one of the vernacular Exhibits in the case, the land excluded as waste in the grant was the aggregate of uncultivable portions of distinct and different numbers, and therefore could not have been formed into the continuous Survey No. now in dispute. This argument is, however, inconclusive for, as the Honourable the Advocate General points out, it is conceivable that the uncultivable portions of old numbers may have been contiguous, forming a continuous fringe capable of inclusion subsequently in one new number. The appellants very naturally lay great stress on the fact that the land excluded from the grant as waste was therein estimated at about a third of the extent of the land in dispute, and they also rely upon the view taken by the late conservator of Forests, Mr. Shuttleworth, in Exhibit 62, that the land proposed for afforestment, was included in the 762 acres of *assessed* waste to which he refers in the third sub-paragraph of paragraph 5 of his letter. Mr. Shuttleworth throughout this sub-paragraph assumes that assessed waste was not included in the grant to the plaintiffs' predecessors-in-title. The foundation of the plaintiffs' claim however is that only 202 acres, entered as uncultivable lands, were excluded from the grant and that all assessed land whether then actually cultivated or not, was placed at his disposal (the assessment being remitted), subject of course to all pre-existing rights of occupation. The question, therefore, really involved in the case is whether the land now in dispute is comprised within the area to which the grant extends or formed part of the unassessed waste excluded from its operation. And as admittedly that question has not been duly considered in the Court below and both parties are desirous of

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an opportunity of adducing evidence on it, we have no alternative but to remand the case for a determination of that issue. Both parties are to be at liberty to adduce evidence on the issue thus sent down. Return should be made within three months.

Issue sent down.

R. R.

APPELLATE CIVIL.

Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Aston.

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RAGHUNATHDAS GOPALDAS AND OTHERS (ORIGINAL CLAIMANTS), APPELLANTS, *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

City of Bombay Improvement Act (Bom. Act IV of 1898), section 48 (11)(1)*— Bombay Act XIV of 1904—Acquisition of land with buildings thereon— Compensation—Net rental—Number of years purchase—Award by Tribunal of Appeal—Appeal—Cross objections—Civil Procedure Code (Act XIV of 1882), section 561.*

Section 48 (11) of the City of Bombay Improvement Act (Bom. Act IV of 1898) does not provide for leave to appeal being granted to any individual but for a certificate that the case is a fit one for appeal, that is, the whole case

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* Appeal No. 110 of 1904.

(1) Section 48 (1) and (11) of the City of Bombay Improvement Act (Bom. Act IV of 1898):

48. (1) For the purposes of this Chapter (Duties and Powers of the Board of Trustees) a Tribunal of Appeal (hereinafter called "the Tribunal") shall be constituted as hereinafter mentioned to perform the functions of the Court under the said Act, and, in the construction of the said Act and the provisions of this Chapter, the Tribunal shall be deemed to be the Court, and the award of the Tribunal, or, in the event of disagreement, the award of the majority of the Tribunal, shall be deemed to be the award of the Court, and shall, subject to the provisions for appeal hereinafter contained, be final, and the President of the Tribunal shall be deemed to be the Judge.

* * * * * * * *

(11) In any case in which the President may grant a certificate that the case is a fit one for appeal, there shall be an appeal to the High Court from the award or any part of the award of the Tribunal.