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without foundation of truth. Appearances may no doubt create in this respect a wrong impression, but where there is real ground for the complaint, it discloses a most discreditable abuse of power. We earnestly hope that those judicial officers whose official movements may leave them open to this charge, will strive to exercise their powers with such consideration for those who appear before them as will secure them from any imputation of misconduct in this respect. The decree must be confirmed with costs.

Decree confirmed.

G. B. R.

PRIVY COUNCIL.

MUNICIPAL OFFICER, ADEN (DEFENDANT), v. ISMAIL HAJEE
ALLANA AND OTHERS (PLAINTIFFS).

[On appeal from the High Court of Judicature at Bombay.]

P. C.*
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November
17, 23

Transfer of suit—Civil cases—Power of High Court to remove suit from Court of Political Resident at Aden—Letters Patent of High Court, 1865, clause 13—Superintendence of High Court—Charter Act (24 and 25 Vict., c. 104), section 15—Aden Courts' Act (II of 1864).

The Civil Court of the Political Resident at Aden, as constituted by the Aden Courts' Act (II of 1864), is subject to the superintendence of the High Court at Bombay within the meaning of clause 13 of the amended Letters Patent, 1865; and the High Court has power to remove a suit from that Court to itself for trial and determination.

APPEAL from a judgment and order (July 7th, 1903) of the High Court at Bombay by which the respondents' suit was transferred from the Court of Political Resident at Aden for trial by the High Court in its Extraordinary Original Civil Jurisdiction.

The order was made under clause 13 of the amended Letters Patent of the High Court dated 28th December 1865, and the only question on this appeal was whether the High Court had power to make such an order.

* *Present*:—Lord Macnaghten, Sir Ford North, Sir Andrew Scoble, and Sir Arthur Wilson.

The facts relating to the application for transfer which was made by the plaintiffs, now respondents, and the judgments of the High Court (CANDY, acting C. J., and CHANDAVARKAR, J.) allowing the application are reported in I. L. R. 27 Bom. 575.

On this appeal.

Cohen, K. C., and *A. Phillips* for the appellant contended that the High Court had no jurisdiction to make an order for the removal of the suit to itself for trial, the Court of the Political Resident at Aden not being subject to the superintendence of the High Court within the meaning of clause 13 of the Letters Patent, 1865, or of section 15 of the Charter Act (24 and 25 Vict., c. 104). The power of superintendence of the High Court under the Aden Courts' Act (II of 1864) was restricted to the powers contained in that Act which were limited and did not extend to "superintendence" within the meaning of either of the above sections. To have superintendence over another Court, under section 15 of the Charter Act, the High Court must, it was submitted, have appellate jurisdiction over it: for that section only gave superintendence to the High Court over Courts which were subject to its appellate jurisdiction: and it must be read with clause 13 of the Letters Patent which gave the High Court power to remove a suit for trial by itself only from a Court subject to its superintendence. But under Act II of 1864 the High Court had no appellate jurisdiction over the Court of the Political Resident at Aden; for no appeal lay from the latter Court to the High Court (see section 8 of the Act). To give the High Court power to make such an order as was now under appeal, clause 13 should have "appellate jurisdiction" imported into it as a condition for the High Court's exercise of the power of removal of the suit to itself for trial. No power of transfer of a suit was given to the High Court under Act II of 1864 although other provisions of section 15 of the Charter Act were introduced into it: the presumption was, therefore, that the power to transfer a suit was intentionally omitted. The power of superintendence of the High Court over the Court of the Political Resident at Aden was merely ministerial and not judicial. In a similar way ministerial jurisdiction of the High Court at Calcutta was allowed over the Court at Moulmein: see

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In the matter of John Thomson ⁽¹⁾. Reference was made to the Scheduled Districts Act (XIV of 1874); and it was submitted that the order of the High Court should be set aside.

Herbert Birdwood for the respondent was not heard.

28th November 1905:—The judgment containing the reasons for their Lordships' report was delivered by

LORD MACNAGHTEN:—At the conclusion of the arguments in this case their Lordships intimated that they would humbly advise His Majesty to dismiss the appeal, and added that the costs of the appeal would be paid by the appellant. It only remains for their Lordships to state their reasons.

The suit in which the appeal was presented concerns land in Aden. It was brought, and properly brought, in the Court of the Political Resident there. The High Court of Judicature at Bombay has made an order for the transfer of the suit for trial and determination by the High Court itself.

The authority on which the High Court assumed to act is contained in clause 13 of the Letters Patent of 1865 for the High Court of Judicature for the Presidency of Bombay, which ordains that "the High Court of Judicature at Bombay shall have power to remove, and to try and determine, as a Court of Extraordinary Original Jurisdiction, any suit being or falling within the jurisdiction of any Court, whether within or without the Presidency of Bombay, subject to its superintendence, when the said High Court shall think proper to do so, either on the agreement of the parties to that effect, or for purposes of justice, the reasons for so doing being recorded on the proceedings of the said High Court."

The High Court has duly recorded its reasons for the order of transfer. The propriety of the order is not disputed if there was power to make it. The only question, therefore, is whether the Court of the Resident at Aden is "subject to the superintendence" of the High Court at Bombay. To answer that question it is, in their Lordships' opinion, sufficient to refer to Act II of 1864 of the Governor-General in Council. By that Act, subject to certain amendments contained in Act IX of 1887, the administration of Civil Justice at Aden is now regulated. The preamble of the

(1) (1870) 6 B. L. R. 180.

Act contains a recital to the effect that certain judgments and proceedings of the Resident at Aden are not subject to the superintendence or revision of any Court of Justice except so far as they are subject to appeal to His Majesty in Council, and that it is expedient to provide for "the superintendence" or revision of such judgments and proceedings by the High Court at Bombay. No appeal is to lie from any decision or order of the Resident. But provision is made for a reference to the High Court at Bombay in a great number of cases, and in every case the Resident is bound to dispose of the matter before him conformably to the decision of the High Court. Then section 31 declares that the High Court shall have power to make general rules for regulating the practice and proceedings of the Court of the Resident, and also to frame forms for every proceeding for which the High Court shall think it necessary that a form should be provided, for keeping all books, entries, and accounts to be kept by the officers, and for the preparation and submission of any statements to be prepared and submitted by the Court of the Resident, and from time to time to alter any such rule or form, provided that such rules and forms shall not be inconsistent with the provisions of the Act or any other law in force.

The learned Counsel for the appellant, while admitting that the Court of the Resident was to a certain extent subject to the superintendence of the High Court of Bombay, contended that the superintendence, such as it was, was not so thorough or complete as to satisfy the requirements of clause 13 of the Letters Patent of 1865 when rightly understood. In support of this view they asked their Lordships to compare and contrast the language of clause 13 with the language of section 15 of 24 and 25 Vict., c. 104, usually called "The Charter Act," and to notice in section 15 the stress laid on the existence of appellate jurisdiction which ought, they said, to be imported into clause 13 of the Letters Patent, and, at the same time, to observe the omission from that clause of the power of transfer conferred by section 15 of the Charter Act. The answer to this ingenious, though somewhat contradictory, argument is simple enough. The power of transfer contained in the Charter Act has nothing to do with the power of removal conferred by the Letters Patent, and the

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Letters Patent make superintendence, not appellate jurisdiction, the condition of exercise of the power of removal which the High Court at Bombay has put in force.

Appeal dismissed.

Solicitor for the appellant: *The Solicitor, India Office.*

Solicitor for the respondents: *Holman, Birdwood and Co.*

J. V. W.

ORIGINAL CIVIL.

Before Mr. Justice Chandavarkar.

N. C. MACLEOD AND ANOTHER, PLAINTIFFS, v. KISSAN
VITHAL SINGH AND ANOTHER, DEFENDANTS.*

1904.
September 10.

Practice—Receiver—Suit in ejectment by Receiver—Discharge of Receiver before termination of suit—Devolution of interest—Civil Procedure Code (Act XIV of 1882), sec. 372—Mortgage—Accession to mortgaged property—Transfer of Property Act (IV of 1882), secs. 8, 70—Lease by mortgagor—Sub-lease pendente lite—Rights of mortgagee.

Somjee, a Khoja merchant, died in 1885, leaving, as his survivors, four sons by his first wife (who predeceased him), his second wife Labai, and four sons by Labai.

By his will, Somjee gave the whole of his moveable and immoveable property to his sons by his first wife, directing them out of such property to give to Labai and her sons Rs. 30,000 within six years of his death.

On the 12th January 1899 Somjee's sons by his first wife mortgaged certain of the properties to the Bank of Bombay.

In 1903, the Bank having advertised such properties for sale under a power reserved to them by the mortgage-deed, Somjee's sons by Labai (who had since died) brought a suit (No. 554 of 1903) against Somjee's sons by his first wife and the Bank of Bombay, claiming that the properties could only be sold subject to the charge in their favour.

On the 14th January 1904, the Bank assigned the mortgage to Dwarkadas.

On the 26th January 1904 Mr. Macleod was appointed a Receiver by the Court.

On the 24th February 1904, the Receiver was authorised to file ejectment suits where necessary.

* Suit No. 177 of 1904.