

APPELLATE CIVIL.

Before Mr. Justice Russell, Chief Justice, acting, and
Mr. Justice Batty.

VAJECHAND RAMJI (ORIGINAL DEFENDANT), APPLICANT, v. NANDRAM
DALURAM (ORIGINAL PLAINTIFF), OPPONENT.*

1907.

July 16.

*Mámlatdárs' Courts Act (Bom. Act III of 1876), section 4⁽¹⁾—Mámlatdárs'
Courts Act (Bom. Act II of 1906), section 5⁽²⁾—Mámlatdárs' Court—Suit
for possession of a house situate within a town—Jurisdiction—Act of
procedure—Repealed statute.*

A suit for the recovery of possession of a house situate within a town was instituted in the Court of a Mámlatdár while the Mámlatdárs' Courts Act (Bom.

* Application No. 354 of 1906 under the extraordinary jurisdiction.

(1) Section 4 of the Mámlatdárs' Courts Act (Bom. Act III of 1876) was as follows:—

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

The said Court shall also have power within said limits, when any person is disturbed or obstructed, or when an attempt has been made to disturb or obstruct any person, in the possession of any lands, premises, crops, trees or fisheries, or in the use of water from any well, tank, canal or water-course, or of the use of roads or customary ways to fields, to issue an injunction to the person causing, or who has attempted to cause, such disturbance or obstruction, requiring him to refrain from causing or attempting to cause any such further disturbance or obstruction.

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

The cause of action shall be deemed to have arisen on the date on which the dis-possession, deprivation, determination of tenancy or other right occurred; or on which the disturbance or obstruction, or the attempted disturbance or obstruction, first commenced.

(2) Section 5 of the Mámlatdárs' Courts Act (Bom. Act II of 1906) runs as follows:—

5. Every Mámlatdár shall preside over a Court, which shall be called a Mámlatdár's Court, and which shall, subject to the provisions of sections 6 and 26 have power,

1907.

VAJECHAND
v.
NANDEAM.

Act III of 1876) was in force, but before the suit was finally decided that Act was repealed and the Mámlatdárs' Courts' Act (Bom. Act II of 1906) had come into operation,

Held, that the Mámlatdár had no jurisdiction to decide the suit.

PER CURIAM :—The repealed statute is, with regard to any further operation, as if it had never existed.

Regina v. Denton ⁽¹⁾ followed and applied.

within such territorial limits as may from time to time be fixed by the Governor in Council, to give immediate possession of any lands or premises used for agriculture or grazing, or trees, or crops, or fisheries, or to restore the use of water from any well, tank, canal or water-course, whether natural or artificial, used for agricultural purposes to any person who has been dispossessed or deprived thereof otherwise than by due course of law, or who has become entitled to the possession or restoration thereof by reason of the determination of any tenancy or other right of any other person, not being a person who has been a former owner or part-owner within a period of twelve years before the institution of the suit of the property or use claimed, or who is the legal representative of such former owner or part-owner :

provided that, if in any case the Mámlatdár considers it inequitable or unduly harsh to give possession of any such property or to restore any such use to a person who has become entitled thereto merely by reason of the determination of any such tenancy or other right, or if it appears to him that such case can be more suitably dealt with by a Civil Court, he may in his discretion refuse to exercise the power aforesaid, but shall record in writing his reasons for such refusal.

(2) The said Court shall also, subject to the same provisions, have power within the said limits, when any person is otherwise than by due course of law disturbed or obstructed, or when an attempt has been made so to disturb or obstruct any person, in the possession of any lands or premises used for agriculture or grazing, or trees, or crops, or fisheries, or in the use of water from any well, tank, canal or water-course, whether natural or artificial, used for agricultural purposes, or in the use of roads or customary ways thereto, to issue an injunction to the person causing, or who has attempted to cause, such disturbance or obstruction, requiring him to refrain from causing or attempting to cause any further such disturbance or obstruction.

(3) No suit shall be entertained by a Mámlatdár's Court unless it is brought within six months from the date on which the cause of action arose.

(4) The cause of action shall be deemed to have arisen on the date on which the dispossession, deprivation, or determination of tenancy or other right occurred ; or on which the disturbance or obstruction or the attempted disturbance or obstruction, first commenced.

Explanation.—The exercise by a joint owner of any right which he has over the joint property is not a dispossession, or disturbance of possession, of the other joint owner or owners within the meaning of this section.

(1) (1852) 18 Q. B. 761,

APPLICATION under the extraordinary jurisdiction (section 622 of the Civil Procedure Code, Act XIV of 1882) against the decision of Gopalji Gulabbhai, Mámlatdár of Dohad, in a possessory suit.

1907.

VAJECHAND
v.
NANDRAM.

On the 24th September 1906 the plaintiff brought a suit in the Court of the Mámlatdár of Dohad to recover possession of a house situate in the town of Dohad under the provisions of section 4 of the Mámlatdárs' Courts Act (Bom. Act III of 1876). While the suit was pending the said Act was repealed by the Mámlatdárs' Courts Act (Bom. Act II of 1906) which came into operation on the 29th October 1906 and the Mámlatdár decided the suit in plaintiff's favour on the 17th November 1906.

Being dissatisfied with the decision of the Mámlatdár the defendant preferred an application under the extraordinary jurisdiction (section 622 of the Civil Procedure Code, Act XIV of 1882) urging *inter alia* that the Mámlatdár had no jurisdiction in respect of the subject-matter after the Mámlatdárs' Courts Act (Bom. Act II of 1906) came into operation and that he purported to decide title and not possession. On the said grounds a *rule nisi* having been issued requiring the plaintiff to show cause why the decision of the Mámlatdár should not be set aside,

T. R. Desai appeared for the applicant (defendant) in support of the rule :—We challenge the decree of the Mámlatdár on two grounds, first, the suit being for the recovery of a dwelling house he had no jurisdiction to decide the suit under section 5 of the new Mámlatdárs' Courts Act, Bom. Act II of 1906, which came into force on the 29th October 1906 and secondly, the Mámlatdár has, instead of deciding the question of actual possession, considered the question of title to the house.

As to jurisdiction :—The suit was filed before the 29th October 1906 when the new Act came into force. Therefore, the Mámlatdár had jurisdiction to take cognizance of the suit under section 4 of the repealed Act, Bom. Act III of 1876. But under section 5 of the new Act, Bom. Act II of 1906 his jurisdiction had already come to an end when he decided the suit on the 17th November

1907.
VAJECHAND
v.
NANDRAM.

1906. The old Act was repealed by the new Act. The Mámlatdárs' Courts Act being an act of procedure, it has retrospective effect and it applied to all actions pending in the Mámlatdárs' Courts on the 29th October 1906. If Legislature had intended otherwise, they would have postponed its operation to any subsequent date in order that pending suits may not be affected thereby. The same view was taken by this Court in *Gulam Rasul v. Balu Sayaji*⁽¹⁾. Though the Mámlatdárs' Courts Act precludes the plaintiff from getting relief, still he can obtain the same relief by filing a suit for possession in a Civil Court under section 9 of the Specific Relief Act.

B. L. Dhru appeared for the opponent (plaintiff) to show cause:—Before the new Act came into force the whole case was heard including arguments and then it stood adjourned for judgment. So the new Act cannot affect our right of action: *Pinhorn v. Sonster*,⁽²⁾ where special demurrers were pleaded and the case stood over for arguments. In the meantime the special demurrers were abolished by an Act still it was held that the demurrers could be heard. See Maxwell on Statutes, page 342.

Statutes relating to procedure are, no doubt, retrospective unless they affect rights or operate unjustly or are made expressly prospective. The new Act is silent on the point. The new Act affects the right to institute a suit in the Mámlatdárs' Court. The repeal of an act cannot affect pending proceedings prejudicially in the absence of express provision to that effect. The Legislature has not expressly made it retrospective, therefore, it should not affect pending suits, see section 7, clauses (c) and (e) of the General Clauses Act (Bom. Act I of 1904), *Vedavalli Narasiah v. Mangamma*⁽³⁾, *In re Joseph Suche & Co., Limited*⁽⁴⁾; *Wright v. Hale*⁽⁵⁾, Maxwell on Statutes, pages 333, 339.

We may have a remedy under section 9 of the Specific Relief Act. We may have a right to establish our title by a regular suit in the Civil Court. But these circumstances should not come in our way in getting relief in the Mámlatdárs' Court

(1) (1907) 9 Bom. L. R. 527.

(3) (1903) 27 Mad. 538.

(2) (1852) 21 L. J. Ex. 336.

(4) (1875) 1 Ch. D. 48 at p. 50.

(5) (1860) 6 H. & N. 227 at p. 232.

through the instrumentality of a suit instituted and fully heard before the new Act came into operation.

Desai, in reply :—The English cases do not apply. The analogy of cases under the Dekkhan Agriculturists' Relief Act indicates that whatever the effect or the hardship on the parties, the new enactment shall govern all pending actions.

RUSSELL, Ag. C. J. :—An important question is raised in this case as to the construction of the Mámlatdárs' Courts Act II of 1906.

The suit was brought in the Mámlatdárs' Court of Dohad for possession of a certain house in the town and a decree passed that the plaintiff should be restored to immediate possession of the said house, with costs to be paid by the defendant.

The suit was filed on the 24th September 1906; evidence taken on the 22nd, 24th and 26th October, and then the case was adjourned for argument.

On the 29th October 1906, the Bombay Mámlatdárs' Courts Act II of 1906 received the assent of the Governor General in Council and on the 17th of November 1906 judgment was delivered. On the 29th November 1906 possession was given under the decree, and on the 22nd January 1907 the Mámlatdár was informed by the Collector of the passing of the new Act which repealed the whole of the previous Act, Bombay Act III of 1876, without any saving as to pending proceedings.

A rule was granted by this Court on the 8th January 1907 to show cause why the Mámlatdár's decree should not be set aside on the ground (a) that on Bombay Act II of 1906 coming into force he had no jurisdiction in respect of the subject-matter; and (b) that it purports to decide question of title and not possession.

The first of these is an important point and has already been decided by Mr. Justice Béaman in the case of *Gulam Rasul v. Balu Sayaji* (1) and is likely to come up on several occasions.

Section 5, para 1 of the Mámlatdárs' Courts Act (Bom. Act II of 1906) provides as follows :—

(5). (1) Every Mámlatdár shall preside over a Court, which shall be called a Mámlatdár's Court, and which shall, subject to the provisions of sections 6

(1) (1907) 9 Bom. L. R. 527.

1907.

VAJECHAND
v.
NANDRAM.

and 26, have power, within such territorial limits as may from time to time be fixed by the Governor in Council, to give immediate possession of any lands or premises used for agriculture or grazing, or trees, or crops or fisheries, or to restore the use of water from any well, tank, cana or water-course, whether natural or artificial, used for agricultural purposes to any person who has been dispossessed or deprived thereof otherwise than by due course of law, or who has become entitled to the possession or restoration thereof by reason of the determination of any tenancy or other right of any other person, not being a person who has been a former owner or part-owner within a period of twelve years before the institution of the suit of the property or use claimed; or who is the legal representative of such former owner or part-owner.

The corresponding words in section 4 of Bombay Act III of 1876 were: "to give immediate possession of lands, premises, trees, crops or fisheries or of any profits of the same," etc.

It will be seen by Bombay Act II of 1906 that the jurisdiction is limited to the cases of agricultural lands or premises. In the Statement of Objects and Reasons as to Bombay Act II of 1906 it is stated: "in the case of *Bai Jamma v. Bai Jadav*⁽¹⁾ at pages 176 and 180 it was held that the jurisdiction of these Courts was not so limited but extended to towns and cities, and in *Kaji Isub v. Husan Sahab*⁽²⁾ the question of possession of a *masjid* was held to be within the jurisdiction. These decisions are contrary to the original object and intention of the Act, and it is considered that possessory disputes arising in towns and cities can better be disposed of by the Civil Courts, either summarily under section 9 of the Specific Relief Act, 1877 (I of 1877), or in ordinary suits. The same limitation should, it is thought, apply to disputes in regard to water."

The first clause of the head note to the case in 9 Bombay Law Reporter 527 above referred to is incorrect. What the learned Judge says is: "On the face of it, it would appear that the Mámlatdár's jurisdiction has been taken away by the later Act, and great reliance has been placed on the well-established rule that enactments relating to procedure are to be given retrospective effect." But the learned Judge held that the order of the Mámlatdár which related to a house situate within the town limits of Kalyán and which was passed after Act II of 1906

(1) (1870) 4 Bom. 168.

(2) (1894) P. J., p. 424.

came into force was wrong and must be set aside. The reasoning of Mr. Justice Beaman in that case appears to us entirely correct. We cannot think that the plaintiff in the present case can be said to have any "right, privilege or obligation" to have his case finally decided in the Mámlatdár's Court within the meaning of those words in section 7 of the Bombay General Clauses Act I of 1904, which is identical with the corresponding section of the General Clauses Act X of 1897. No person, it is said, has any vested right in procedure and as stated by Sir Charles Sargent, C. J., in *Shantál v. Hirachand*⁽¹⁾ "jurisdiction is matter of procedure." The question herein is purely one relating to the jurisdiction of the Mámlatdár's Court. After the 29th of October 1906, when the new Act received the sanction of the Governor General, it must in our opinion be held that the Mámlatdár's Court had no further jurisdiction with regard to houses in towns or cities or, in other words, the door of the Mámlatdár's Court after that date was shut to all cases relating to such houses.

Regina v. Denton⁽²⁾ is very similar to the present case. The head note says as follows:—"By Act of Parliament, the liability to repair certain highways in a parish was taken from the parish and cast upon certain townships in which the highways respectively were; and the Act gave a form of indictment against such townships for non-repair, which would have been insufficient at common law. One of the townships was indicted under the Act, but, before trial, the Act was repealed without any reference to depending prosecutions. The Court arrested a judgment given against the township on such indictment."

We read the following passages from the judgment of Coleridge, J., at page 771:—"The proceedings are before the Court, and are at a stage when the question arises whether a particular step can be justified. It can be justified only by an Act of Parliament; and that Act is repealed without any saving. Then, can the Court for the present purpose take notice of the repealed Act? The answer is that what has been done and perfected cannot be disturbed; but, if you want assistance from

(1) (1885) 10 Bom. 367 at p. 369.

(2) (1852) 13 Q. B. 761.

1907.

VAJECHAND
O.
NANDRAM.

1907.

VAJECHAND
v.
NANDRAM.

the Statute for a further purpose, as that of giving judgment, you cannot now have it." Erle, J., says "the repealed Statute is, with regard to any further operation, as if it had never existed. It gave a form of proceeding which has been followed in this indictment; and the defendants were not liable except under the Statute. Between the indictment and the judgment this Statute is repealed. To say that the proceedings may nevertheless be followed up contravenes the sense of the word 'repeal'."

Under these circumstances it is not necessary to decide the question raised in the second ground of the rule herein.

We are of opinion therefore that the decree of the Mámlatdár was wrong and must be reversed with costs:

Rule made absolute.

G. B. R.

APPELLATE CIVIL.

Before Mr. Justice Russell, Acting Chief Justice, and Mr. Justice Heaton.

1907.

July 18.

BHAGABAI, WIFE OF BIHARILAL MARWADI (ORIGINAL DEFENDANT),
APPELLANT, v. NARAYAN GOPAL (ORIGINAL PLAINTIFF), RESPONDENT,
AND NARAYAN GOPAL (ORIGINAL PLAINTIFF), APPELLANT, v.
BHAGABAI, WIFE OF BIHARILAL MARWADI.*

Civil Procedure Code (Act XIV of 1882), section 257 A—Contract Act (IX of 1872), sections 2, clause (g), 23 and 24—Mortgage-bond—Consideration made up of several items—Decretal debt one of the items—Sanction of the Court not obtained—Effect on the bond.

N. G. sued to redeem a mortgage. The consideration for the mortgage consisted *inter alia* of an amount due under a decree. The decree did not provide for interest, whereas interest was chargeable on the decretal amount included in the mortgage. The lower appellate Court held that as the agreement had not been sanctioned under section 257A of the Civil Procedure Code (Act XIV of 1882) the whole mortgage bond was void.

Held, reversing the decree of the lower Court, that though the provision in the mortgage bond regarding the decretal amount could not be enforced, the remaining provisions were good and enforceable at law.

* Cross Second Appeals Nos. 361 and 373 of 1906.