

## FULL BENCH.

## APPELLATE CIVIL.

1906.  
October 16.

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

MOTILAL VIRCHAND FOR SHETH KHUSHALCHAND, MANAGER OF  
THE MANEKCHAUK PANJRAPOLE (ORIGINAL PLAINTIFF), APPLICANT,  
v. THE COLLECTOR OF AHMEDABAD AND THREE OTHERS (ORIGINAL  
DEFENDANTS), OPPONENTS.\*

*Mámlatdárs' Courts Act (Bombay Act III of 1876)—Possessory suit—Suit  
against Collector in his official capacity—Mámlatdár's jurisdiction to  
entertain the suit.*

Mámlatdárs empowered by the Mámlatdárs' Courts Act (Bom. Act III of 1876)  
cannot entertain and decide suits to which the Collector is a party.

The ruling in *Balvantrao v. Sprott* <sup>(1)</sup> qualified.

APPLICATION under section 622 of the Civil Procedure Code  
(Act XIV of 1882) from an order passed by the Mámlatdár of  
Daskroi in a suit brought under the provisions of the Mámlat-  
dárs' Courts Act (Bom. Act III of 1876).

The plaintiff filed a suit in the Court of the Mámlatdár of  
Daskroi, under the provisions of the Mámlatdárs' Courts Act  
(Bombay Act III of 1876), against the Collector of Ahmedabad  
and three others.

The facts as alleged in the plaint were as follows:—

One Vimalbhai Lallubhai (husband of defendant No. 4) owned  
a bungalow in the City of Ahmedabad. He mortgaged the pro-  
perty to the plaintiff for Rs. 5,000 on the 26th September 1902,  
but remained in possession of it under a rent-note whereby he  
agreed to pay Rs. 337-8-0 as rent every year. The lessor was  
at liberty to terminate the lease at any time.

On the 31st March 1904 Vimalbhai died. The lower portion of  
the bungalow was in the possession of the defendant No. 2, and  
its upper portion was in possession of the Collector of Ahmedabad

\* Civil Application No. 251 of 1904 under Extraordinary Jurisdiction.

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(defendant No. 1). The Collector of Ahmedabad came by the possession of the property, as there were moneys due by Vimalbhai to Government in respect of *tagavi* and assessment, in respect of which an attachment was levied upon the moveable and immoveable properties belonging to Vimalbhai. The Government dues were satisfied by sale of the moveable property; and the Collector thereupon passed an order for delivery of possession to defendants Nos. 2 and 3.

On the 30th September 1904, the plaintiff filed this suit in the Court of the Mámlatdár of Daskroi to recover possession of the bungalow from defendants Nos. 1—4.

The Mámlatdár being of opinion that he had no jurisdiction to entertain a possessory suit against the Collector, returned the plaint.

The plaintiff applied to the High Court under its extraordinary jurisdiction.

The application was first argued before a Bench composed of Russell, Acting C. J., and Beaman, J., when their Lordships in referring the case to a Full Bench delivered the following judgment:—

BEAMAN, J.:—The question is, whether a Mámlatdár's Court has jurisdiction to try a suit to which a Collector is a party? In *Balvantrao v. Sprott* <sup>(1)</sup>, it was decided that a Mámlatdár's Court had jurisdiction over all suits otherwise within its competence notwithstanding that officers of the Government were parties. That decision, widely expressed as it is, covers the case before us. But we feel considerable difficulty in accepting the conclusion in its entirety, or the reasoning upon which it is based.

That in effect is that because Mámlatdárs are not expressly debarred by section 32 of Act XIV of 1869 from trying suits to which an officer of the Government is a party, as certain other Courts named therein are, it follows that by implication the Courts of Mámlatdárs have the power. The simple answer to this appears to be that, looking at the whole scheme of the Act,

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it appears to be in the main a constituent enactment. It creates certain Courts and defines the scope of their powers. Thus where the question is in what manner suits by or against Government Officers, are to be dealt with in District Courts, Subordinate Judges' Courts, or Small Cause Courts, the Act which is immediately concerned with the constitution and powers of those classes of Courts, prescribes the limitations on those powers in respect of those particular suits. But the Act has nothing to do with Mámlatdárs' Courts. It appears then that the conclusion drawn in *Balvantrao v. Sprott*<sup>(1)</sup>, that because the Act curtailed the powers of some Courts with which it was concerned, by implication it conferred powers not so curtailed on Courts with which it was not, is, if unsupported by any other reason, a *non sequitur*, the correctness of which may well be doubted. It is true that Ranade, J., pointed out that the restriction imposed by section 32 was originally imposed only on the Courts of Subordinate Judges, and extended by the Act of 1876 to Courts of Small Causes, from which the learned Judge infers that up to that date the latter Courts had power to entertain suits against officers of the Government. And by a parity of reasoning that unless and until Mámlatdárs' Courts are subjected by express enactment to the like restriction they must retain the power. The answer seems to be, though we do not wish to commit ourselves to it definitely, that the Bombay Civil Courts' Act, as a constituent Act, did not deal with Courts of Small Causes, as distinct from Courts of Subordinate Judges, and therefore when the Act was passed, it was natural that a restriction imposed upon the last named Courts should have been understood and meant to have covered the same Courts when invested under the Act with Small Cause powers. The contrary view has been maintained by the Honourable the Advocate General whose clear, strong and concise argument made a great impression on us.

It falls into three parts: (1) Prerogative; (2) Comparison and analogy; (3) Inferences necessary to be drawn from a consideration of the origin and growth of the Mámlatdárs' Courts. It

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is contended that the maxim of English law that the Crown cannot be bound by any statute unless expressly named therein applies, and reference is made to the cases of *Ganpat Putaya v. The Collector of Kánara* <sup>(1)</sup>; *The Secretary of State for India v. Mathurabhai* <sup>(2)</sup>. Without in any way wishing to pre-judge the question or fetter future argument, we may say that as at present advised we entertain some doubt whether an exact analogy exists between the privileges and immunities of the Crown under the Constitutional Law of England and those of servants of the Indian Government. The second part of the argument may at present be conveniently passed over. What was advanced in the third part appears to us to militate most strongly against the view which was taken by the Division Bench in *Balvantrao v. Sprott* <sup>(3)</sup>. The Mámlatdárs' Courts sprung by express delegation from the Collector's Court. Originally the limited special jurisdiction exercised by these Revenue Courts was conferred, not upon Mámlatdárs, or as they were then commonly called Komavisdars, but upon Collectors. Essentially, that jurisdiction is rather, what is loosely in this country called executive, than judicial, and is closely allied with the jurisdiction conferred upon Magistrates by Chapter XII of the Criminal Procedure Code. Its object was to provide a summary local remedy for wrongs which were on the face of the proof apparent, and to exclude enquiry into all sorts of nice and complicated juridical relations. Control of all matters of that kind, bearing in theory at least directly on the maintenance of the peace, vested in the local head of the executive, the Collector. And thus at the beginning it was the Collector who had to dispose of cases which are now disposed of by the Mámlatdárs. Later this power was expressly delegated to the Mámlatdárs as Subordinates of the Collector, conveniently situated for the purpose. And last, there is the Mámlatdárs' Act more precisely defining the manner in which this power is to be exercised. But although the Mámlatdárs at present do, and the Collectors do not decide this class of cases, the historical review

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(1) (1875) 1 Bom. 7.

(2) (1889) 14 Bom. 213.

(3) (1899) 23 Bom. 701.

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made by the Honourable and learned Advocate General brings out clearly the origin and true nature of the jurisdiction. And once it is seen that the Mámlatdárs are theoretically at any rate no more than the delegates of the Collector for this special purpose, there arises an obvious difficulty in holding that while exercising these delegated powers they are competent to adjudicate upon the acts of the Collector himself. It is in effect, by a simple derivative process, making the Collector a Judge in his own cause. The question thus raised appears to us to be of so much importance and difficulty that we think it necessary to refer it to a Full Bench. We are not satisfied that all its aspects were fully seen and adequately dealt with in the case of *Balvantrao v. Spratt*<sup>(1)</sup> and in view of what has been urged against that decision by the Advocate General we are not prepared to follow it. We, therefore, refer to the Full Bench the following question:—

“Whether Mámlatdárs empowered by the Mámlatdárs’ Act can entertain and decide suits to which the Collector is a party?”

The reference came up for argument before a Full Bench composed of Russell, Acting C. J., Aston, Beaman and Heaton, JJ.

*Lowndes* (Acting Advocate General), with the Government Pleader, showed cause:—Assuming for the present that the Collector represents the Crown, I submit that a suit will not lie against the Crown unless power to do so is expressly given. For ascertaining the prerogatives of the Crown we must look to what they are in the parent country. There the Crown cannot be sued. The only remedy is by way of a Petition of Right. See *Windsor and Annapolis Railway Company v. The Queen and the Western Counties Railway Company*<sup>(2)</sup>, and *Chitty’s Prerogative*, p. 341. Of course where there is a wrongful act, a servant of the Crown can be sued even in England: *Tobin v. The Queen*<sup>(3)</sup>. The prerogatives of the Crown have been consistently recognised both in theory and practice in this country, *e. g.*, in the case of

(1) (1899) 23 Bom. 761.

(2) (1886) 11 App. Cas. 607 at p. 614.

(3) (1864) 16 C. B. (N. S.) 810.

Escheat, vide *The Collector of Masulipatam v. Cavalry Vencata Narrainapah*<sup>(1)</sup>.

*Secretary of State for India v. Bombay Landing and Shipping Company*<sup>(2)</sup> decides that the Crown has priority over judgment-creditors. See *Gunpat Putaya v. The Collector of Kánara*<sup>(3)</sup>; *Secretary of State v. Mathurabhai*<sup>(4)</sup>, where the same principle is recognised and affirmed. By section 39 of 21 and 22 Vic., clause 106, all the moveable and immoveable property of the East India Company has been vested in the Crown for the purposes of the Government of India and by section 18 of 52 and 53 Vic., clause 63, British India is defined to be the territories governed by the Governor General of India or Governors or other Officers under the Governor General in Council. Ahmedabad is part of British India. No suit therefore can lie against the Collector as representing the Crown unless the statute expressly grants such a right.

Coming now to the question whether the Collector represents the Crown, the Collector is administering the revenues of the Crown and can therefore claim the same exemption. Section 411, Civil Procedure Code, deals with the recovery by Government of court-fees in pauper suits, in the same manner as costs of suits are recoverable under the Code. The case of *Gunpat Putaya v. The Collector of Kánara*<sup>(3)</sup> was a suit against the Collector as representing the Government. In the same way in *Secretary of State v. Mathurabhai*<sup>(4)</sup> the suit was against the Secretary of State as representing the Government.

Power to sue the Crown can be given in India by virtue of 24 and 25 Vic., section 24. It is specifically given by the Civil Procedure Code and by the Bombay Civil Courts Act. The Mámlatdárs' Act gives no such power. Under section 9 of the Specific Relief Act a possessory suit in its nature similar to the one under the Mámlatdárs' Act cannot be filed against Government.

A glance at the reasons inducing the Legislature to prescribe such a speedy relief being administered through the Mámlatdárs'

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(1) (1860) 8 Moo. I. A. 500 at p. 525.

(3) (1875) 1 Bom. 7.

(2) (1868) 5 Bom. H. C. R. O. C. J. 23.

(4) (1889) 14 Bom. 218.

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Courts would show that no such suit as the present could have been contemplated as coming within its scope. The principle ground is the summary prevention of breaches of the peace, and this Government could not be guilty of.

Looking to the history and origin of the Mámlatdárs' Act, we should arrive at the same conclusion. Originally they exercised delegated authority from the Collector and Bombay Act V of 1864 merely removes the doubts once entertained as to the nature of the jurisdiction exercised by the Mámlatdárs. Mám-latdárs are the direct subordinates of the Collector and it would be absurd if they—and the powers of the Mámlatdár can be exercised even by those who for the time being perform the duties of a Mámlatdár—could take cognisance of suits in which their superiors were concerned as parties. It would be something like a person being sued in his own Court when regard is had to the originally delegated nature of the Mámlatdárs' jurisdiction.

The reference should therefore be answered in the negative and the case of *Balvantrao v. Sprott*<sup>(1)</sup> should be overruled.

*B. L. Dhru*, in support of the rule :—Taking the latter ground first, it may be that the Mámlatdárs previously exercised a jurisdiction that was delegated to them by the Collector. But a glance at the preamble to Bombay Act V of 1864 would at once show that that Act for the first time created the Courts of Mámlatdárs and invested them with separate jurisdiction of their own, and all shadow of doubt as to their subordination to Collector in the matter of these possessory suits is specifically removed by the omission of all reference to such subordination which was to be found in the previous Regulations and Acts on the subject. In the face of this, it cannot for a moment be said that the Mámlatdárs even now exercise a jurisdiction delegated to them from the Collector. The jurisdiction is conferred upon them by Statute and the exercise of such jurisdiction cannot be controlled by what was the state of facts previous to the passing of the Statute. And the same jurisdiction is continued by the present Act (Bombay Act III of 1876). Again the Courts of

(1) (1899) 23 Bom. 761.

Mámlatdárs were created for a special purpose, to provide a summary remedy in cases of disturbed possession and it is to the Statute therefore that we must turn to see if it creates any bar in respect of particular parties to suits instituted in their Courts. Section 4 of the present Mámlatdárs' Act is the governing section and it is in virtue of that section that the Mámlatdárs exercise the jurisdiction conferred upon them. That section authorises Mámlatdárs to entertain suits of a particular description without any reservation as to the character of any party to them in regard to whom they would be precluded from the exercise of their jurisdiction. The test laid down in this section for conferring jurisdiction upon Mámlatdárs is simply with reference to the subject matter of the suit and the time within which it must be instituted. Given the subject matter and the suit instituted within the prescribed period the Court is bound to take cognizance of it. Section 9 of the Act also, which gives the Mámlatdárs power to reject the plaint in certain cases, does not touch the present question.

Mámlatdárs' Courts may be subordinate to the Court of a Collector in purely revenue cases, but in reference to suits under the Mámlatdárs' Act they are Civil Courts and as such not subordinate to the Collector. If there be any impropriety in the Mámlatdárs entertaining suits to which a Collector—in one capacity their superior—is a party, it is for the Legislature and not for the Courts of Justice to remove that impropriety.

The only enactment restrictive of the powers of a Civil Court in cases to which Government or Officers of Government are a party is contained in section 32 of the Bombay Civil Courts Act (XIV of 1869). That section is silent as to the Mámlatdárs' Courts. It is instructive to remember that the words "or Court of Small Causes" were inserted by Bombay Act X of 1876, section 15, even though the section as originally framed contained the words "in whose Court alone such suit shall be instituted."

With regard to the prerogative of the Crown it is submitted that whatever may be the case in England, the operation of the rule here in India is not universal. *Bell v. The Municipal*

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*Commissioners for the city of Madras*<sup>(1)</sup> lays down that "under the Indian Councils Act, 1861, a Provincial Council has, subject to the same restrictions as those imposed by the Act on the Governor-General's Council, power to affect the prerogative of the Crown by Legislation." See the remarks of Benson, J., at page 464, and the further remarks of the same learned Judge at pages 466-467 where he says "It would be more correct to say that, as a general rule, the Indian Legislatures have proceeded on the assumption that the Government will be bound by the Statute unless expressly or by necessary implication excluded from its operation." Sir Bhashyam Ayyangar who was a party to the Madras decision at page 483 thereof refers to the leading canon laid down in England by Lord Coke, and a little lower down thus expresses himself:—"Judicial decisions have clearly established that the Crown is sufficiently named in a Statute, within the meaning of the rule, when the intention of the Legislature to include it is clear and manifest." Here such intention becomes undoubtedly manifest when we bear in mind the omission of the Mámlatdárs' Courts from section 32 of the Bombay Civil Courts Act, especially when the Legislature, while amending it, included only the Courts of Small Causes in the restriction imposed thereby, as also the special nature of the jurisdiction exercised by Mámlatdárs under Bombay Act III of 1876. The judgments in the Madras case above referred to deal at great length with the question of this rule of the prerogative of the Crown and reference to it is solicited.

The Advocate General in reply mentioned that the Madras decision quoted with approval the two Bombay cases relied on by him.

RUSSELL, AG. C. J.—The question referred to the Full Bench by the order of Reference dated the 1st October 1906 is whether Mamlatdars empowered by the Mamlatdars' Act can entertain and decide suits to which the Collector is a party.

Two points were propounded to us by the Advocate General before the Full Bench.

(1) (1902) 25 Mad. 457.

We state them in the reverse order to that in which he argued them.

The first point, therefore, may be stated as follows, viz., that looking at the history of the Mamlatdars' Courts it could not have been intended that a suit against the Collector would lie therein. The second point was whether the prerogative of the Crown whereby in England the Crown cannot be sued in Civil Courts applies to India so as to preclude the present suit being entertained.

Before we deal with these points however we would wish to state very shortly the nature of the plaintiff's claim.

The suit was filed in the Court of the Mamlatdar of the Daskroi Taluka in Ahmedabad by the plaintiff Motilal Virchand on behalf of the Manager of the Maneckchawk Panjarapole in Ahmedabad against the defendants (1) the Collector of Ahmedabad and (2), (3) and (4), the other defendants, whose names need not be set out; and the plaintiff claimed possession of the house and premises in the plaint specifically described and stated that one Vimalbhai had died on the 31st of March 1904; that the lower portion of the bungalow in the plaint mentioned was in the possession of defendant 2 and the remaining portion in that of defendant 1; that the Collector, defendant 1, had levied an attachment upon the immoveable and moveable property of the said deceased in respect of *tagdvi* and assessment, but that the moveable property of the said deceased having been sold, and all the claims of Government having been satisfied, defendant 1 had no right to keep the said building in his possession.

As to the first of the above points it is, we think, necessary shortly to go through the various Regulations and Statutes relating to Mamlatdars.

Now the first is Regulation XVI of 1827. This Regulation defines the duties of the Collector and his powers in regard to the Subordinate Revenue Officers; and section 6 (clause 1) provides that "all Collectors of the revenue, their Assistants, and Native Officers, shall, with respect to acts done by them in their official capacities, be subject to the jurisdiction of the Zilla

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Civil Court." Chapter II contains provisions *inter alia* as to Komavisdar or other head Native Revenue officer in any district.

Regulation XVII of 1827, chapter V, section 17, clause 1, enables the Collector to authorise Komavisdars to demand security and take other steps in that section provided to ensure the realisation of the Revenue.

These Komavisdars are, it appears, the present Mamlatdars.

By Regulation VI of 1830 it was provided that in modification of the rules of Chapter VIII of Regulation XVII of 1827 the Collector and Sub-Collector are authorised to refer to the several Komavisdars of their districts or other equal and similar officer, suits instituted under the provision of the said chapter, when the value of the matter at issue does not exceed Rs. 500 and by section 5 an appeal lay *inter alia* from Komavisdars or other similar officers to the Collector, or the Sub-Collector when within his district.

By clause 2 of section 1 of Act XVI of 1838, it was provided "that it shall be lawful for the Revenue Courts to give immediate possession of all lands . . . to any party dispossessed of the same, . . . provided applications be made to them by such party within six months from the date of such dispossession . . ."

Section 16 of Act III of 1852 authorised certain powers which were vested in the Collectors of land revenue in that section specified to be exercised by Mamlatdars and enacted that any order passed by a Mamlatdar in virtue of Act III of 1852 should be subject to appeal to the Collector or his Assistants.

Bombay Act V of 1864 in its preamble says: "Whereas doubts have been raised as to whether a Mamlatdar's Court in the Bombay Presidency can lawfully entertain applications for the immediate possession of lands, etc., under the provisions of section 1, clause 2nd of Act XVI of 1838, unless the said applications be referred to it by a Collector or Sub-Collector under the provisions of section 1 of Regulation VI of 1830, and whereas it is expedient to give Mamlatdars' Courts original jurisdiction in cases of the nature of those contemplated in section

1, clause 2nd of Act XVI of 1838, and also in cases in which a disturbance is attempted of the possession of lands etc., and to prescribe a form of procedure to be adopted by Mamlatdars when exercising such jurisdiction in cases of the above character," and enacts (section 1) that Mamlatdars' Courts may give possession of lands, etc., provided application be made within six months after dispossession and may also maintain existing possession. It then goes on to provide for the procedure in such suits. By section 20 it is provided that "the powers of the Mamlatdar under this Act may be exercised by any Revenue Officer possessing powers corresponding to the powers of the Mamlatdar, as defined in Chapter II of Regulation XVI of 1827 or by any other person who may be specially authorized by the Governor in Council to exercise the powers of a Mamlatdar under this Act." In the note to that section in Birdwood and Parsons' edition, it is said that the title Mamlatdar in Regulation XVI of 1827 does not occur; the term "Komavisdar" is employed, but the powers of that officer are not defined.

In *Ex parte Nagova kom Jakan Gauda*<sup>(1)</sup> it was decided in 1866 that the Civil and the Revenue Courts have concurrent jurisdiction to hear and decide suits in regard to immediate possession.

Bombay Act III of 1876 repealed clause 2, section 1, of Act XVI of 1838 and Bombay Act V of 1864, and stated that "Mamlatdar" includes any Revenue Officer ordinarily exercising the powers of a Mamlatdar and any other person who may be specially authorized, etc.

It is now proposed (see Bill No. IV of 1905 published in *Bombay Government Gazette*, Part VII, of the 26th February 1906) to repeal the Mamlatdars' Courts Act (Bombay Act III of 1876). In that Bill in section 23 the Collector is empowered to revise the Mamlatdar's proceedings and where he takes any proceedings under the proposed Act, he shall be deemed to be a Court under the said proposed Act. Section 26 provides *inter alia* that no suit shall lie under the proposed Act against Government or against any officer of Government in respect of any act done or purporting to be done by any such officer in his official

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(1) (1866) 3 Bom. H. C. R. A. C. J. 108.

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capacity, except where acting as a manager or guardian duly constituted under any law for the time being in force, &c.

Of course the proposed Bill cannot affect the question now before us; but we only refer to it as showing the intentions of the legislature on this point.

From the above enumeration of the Statutes relating to Mamlatdars it appears to us clear that down to the time of the passing of Bombay Act V of 1864 the Mamlatdar was considered and treated as the subordinate officer of the Collector, and although that Act gave him the original jurisdiction which we have above pointed out, it is impossible for us to come to the conclusion that the legislature intended by that Act to alter his status with regard to the Collector. Original jurisdiction might be given to him consistently with his occupying the same position with regard to the Collector as he did before that Act was passed, and if we may be allowed to refer to the new Bill it appears to us clear by the provisions of that Bill, to which we have before referred, that the legislature did not intend his subordination to the Collector to be interfered with. The judgment about to be delivered by Heaton J. brings this point out with great clearness.

In the present case there can be no doubt that in attaching the property of the deceased Vimalbhai, the Collector was acting under his powers as a Revenue Officer under the Revenue Code. We cannot believe that it could have been intended by the legislature to empower the Mamlatdar to sit in judgment upon the action of his superior officer in his Revenue capacity as he would have to do if the suit were allowed to be maintained in his Court.

Speaking for myself I would have been inclined to accede to the argument addressed to us by the Advocate-General upon the other point which I have noted above. But as some of the other members of the Court are not prepared to do so, and as a finding on it is not absolutely necessary in this case I do not propose to record my reasons therefor.

Nor in this reference is it necessary to decide whether a suit such as the present will lie against a public Officer acting in his public capacity.

I would therefore answer the question submitted to us in the negative. The effect of this judgment will be to limit at all events the effect to the judgment in *Balvantrao v. Sprott*<sup>(1)</sup> to public Officers other than Collectors.

The application will be dismissed with costs.

ASTON, J.—The question put in this Reference must I think be answered in the negative. In my opinion the matter is governed by section 32 of the Bombay Civil Courts' Act XIV of 1869 as amended and re-enacted in Act X of 1876, section 15. The section as originally enacted in Act XIV of 1869 was as follows:—

“No Subordinate Judge shall receive or register a suit in which Government or any officer of Government in his official capacity is a defendant, but he shall refer the party presenting the plaint in such suit to the District Judge *in whose Court alone such suit shall be instituted.*”

This section was amended by section 15 of Act X of 1876 which runs “for section 32 of the Bombay Civil Courts Act XIV of 1869 the following shall be substituted (namely):

“No Subordinate Judge or Court of Small Causes shall receive or register a suit in which the Government or any officer of Government in his official capacity is a party, but in every such case such Judge or Court shall refer the plaintiff to the District Judge, in whose Court alone (subject to the provisions of section 19) such suit shall be instituted.”

The second paragraph of the preamble to Act X of 1876 sets forth:

“And whereas it is expedient that the jurisdiction of all the Civil Courts in the said” (Bombay) “Presidency should be limited in manner hereinafter appearing.”

Thus in an Act entitled “an Act to limit the jurisdiction of the Civil Courts throughout the Bombay Presidency in matters relating to the land revenue, and for other purposes,” in the preamble of which the sentence already quoted appears, we find repeated a provision that a suit in which the Govern-

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ment or any officer of Government in his official capacity is a party shall be instituted in the Court of the District Judge alone, subject to the provisions of section 19 of Act XIV of 1869 with which section we are not concerned in this reference, otherwise than to show that it is the sole exception contemplated by the supreme legislature when enacting Act XIV of 1869 and Act X of 1876.

The decision in *Balvantrao v. Spratt* <sup>(1)</sup> is based upon the proposition that it is only the Courts mentioned in Act XIV of 1869 whose powers are restricted to suits in which Government or an officer of Government in his official capacity is a party.

The restriction on the powers of the Courts named in the first portion of the section is referred to, but no mention is made of the exclusive jurisdiction given by the last part of the clause to the Court of the District Judge.

No reference occurs in the argument or in judgments to the title and preamble of Act X of 1876 or section 9, clause 3, of the Specific Relief Act.

It appears to me that Act XIV of 1869 deals not only with the constitution of certain Courts but deals with certain suits and it gives to the Court of the District Judge constituted under that Act (and subject to the provisions of section 19) exclusive jurisdiction as to suits of the nature covered by the question put in the Reference before us.

I do not feel pressed by the argument that if this view is correct it was unnecessary to amend section 32 by the Act X of 1876, section 15, by including Courts of Small Cause in the first part of section 32 of Act XIV of 1869, first because amendments are often made to remove doubts and not to indicate any change in the original intention of the Legislature. Secondly, because the latter words of section 32 of the Act of 1869 giving exclusive jurisdiction in such suits to the Court of a District Judge are re-enacted in the Act X of 1876 with the avowed purpose of limiting the jurisdiction of *all* the Civil Courts in the Bombay Presidency in the manner appearing in that later Act. Thirdly Acts XIV of 1869, X of 1876 are Acts of the Supreme Legislature and the

(1) (1899) 23 Bom. 761.

Mamlatdars' Courts Act, Bombay Act III of 1876, is an Act of the Local Legislature and no argument was advanced at the hearing of this Reference to show that it was competent to the Local Legislature to create a Court with power to entertain a suit in which the Government or any officer of the Government in his official capacity is a party when the Supreme Legislature has enacted that such a suit shall be instituted in the Court of the District Judge alone.

For the purposes of this reference I have assumed that a Mamlatdar's Court created by the Local Legislature is a Civil Court. It was taken to be a Civil Court in *Balvantrao v. Sprott* <sup>(1)</sup> and that point is not referred.

For the above reason I would answer the reference in the negative.

BEAMAN, J.—I fully concur with the judgments delivered by the Chief Justice and by my learned colleague Mr. Justice Heaton.

HEATON, J.—The question referred to us is whether a Mamlatdar's Court has jurisdiction to try a suit to which a Collector is a party? This question involves another, which is whether *Balvantrao v. Sprott* <sup>(1)</sup> was altogether rightly decided.

The learned Advocate General argued that a Mamlatdar's Court is without jurisdiction to try such a suit. He put forward two distinct propositions: first that a Mamlatdar's Court is without jurisdiction to try any suit to which an Officer of Government in his official capacity is a party and second that it is without jurisdiction to try a suit to which the Collector is a party. The first proposition is based on the argument that an Officer of Government in his official capacity acts in India as in England as a servant of the King, and in doing his master's bidding is by the King's prerogative protected against a suit unless a right to sue is expressly conferred by legislation. This is a large, an important and a difficult question. It is not necessary to decide it in order to answer this reference, and therefore it seems to me better to refrain from saying more than

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that before and accepting the learned Advocate General's argument, more cogent reasons than those which he presented would be required ; unless further consideration led to the belief that those reasons are more convincing than at first hearing they appear to be.

The second proposition is founded on the peculiar position of the Collector in reference to the Mamlatdar and on the special nature of the Mamlatdars' Courts' Act. The referring judgment states a number of reasons for doubting whether *Balvantrao's* case was rightly decided, so it will suffice here to set out briefly a summary of the reasons which have led me to a conclusion.

The Mamlatdars' Courts exist in order to summary proceedings, a speedy remedy for what may be called disturbance of possession or of rights in certain cases. In a sense, no doubt, these Courts are Civil Courts ; but they provide a remedy outside of and additional to the ordinary remedies by suit ; and these remedies are obtained by a procedure provided for by a Special Act and materially different from that of the ordinary Civil Courts. The Act establishing or rather continuing these Courts is therefore an Act with a special purpose, and has to be construed with reference to that purpose. The powers of the Courts are exercised by Mamlatdars who are subordinate Revenue Officers, subject as such to the Collector's authority, who by himself or by delegation to his Assistants and Deputies, hears appeals from the orders of Mamlatdars, when those orders are made in revenue or administrative matters. Moreover these powers were originally conferred on the Collectors and came afterwards to be transferred to Mamlatdars merely as a matter of convenience. One would suppose that the Legislature which transferred these powers from the Collector to the Mamlatdars did not contemplate the possibility that they would be exercised in proceedings to which the Collector himself was a party. Nevertheless the Mamlatdars' Courts' Act (Bom. Act III of 1876) does not expressly state that a Collector may not sue or be sued in the Court of the Mamlatdar. Indeed taking the words of the Act by themselves they seem to contemplate a suit by or against any person. Therefore we are asked to hold that they do contemplate a suit by or against a Collector, as must

be held if the reasoning in the case of *Balvantrao v. Sprott*<sup>(1)</sup> is assented to.

Are we bound to accede to this request? We feel confident and that without the slightest hesitation, that the Legislature neither intended nor desired to confer on a Mamlatdar's Court the power to determine proceedings to which the Collector is a party.

Where the Collector is a party, he sues or is sued in respect of some official act. This act though done in virtue of the Collector's order or delegation, is often likely to be done by the Mamlatdar himself. If then the Mamlatdar has jurisdiction in the matter, he is empowered to hear and determine a proceeding in which the act of himself or of his direct official superior, is called in question. This is a state of things contrary to English notions of jurisprudence, and must fail to ensure that entire confidence in the disinterestedness of our tribunals, which is one of the first objects and desires of the Legislature. This alone is a cogent reason for holding that the Act should be construed with reference to its peculiar purpose and in such a way as to avoid so gross an anomaly. Again the remedy intended and provided by the legislature for one aggrieved with the decision or order of a Collector is an appeal to the Commissioner. This is clear from Chapter 13 of the Bombay Land Revenue Code. Then it is enacted by section 11 of the Bombay Revenue Jurisdiction Act (Act X of 1876) that "No Civil Court shall entertain any suit against Government on account of any act or omission of any Revenue Officer unless the plaintiff first proves that, previously to bringing his suit, he has presented all such appeals allowed by the law for the time being in force, as within the period of limitation allowed for bringing such suit, it was possible to present." To allow a suit calling in question any act or omission of the Collector to be brought in the Court of a Mamlatdar in place of appealing to the Commissioner, would plainly be to defeat the intention of the Legislature.

Is it not stated and we have not enquired, whether, as a fact, the plaintiff in the referred case, had or had not exhausted his possible rights of appeal?

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We merely refer to the matter as an indication of the clear intention of the legislature. Whether the Court of a Mamlatdar, is or is not a Civil Court within the meaning of Act X of 1876, it would be absurd to hold that a suitor can call in question a decision or order of the Collector by making that officer a party in a summary proceeding before the Mamlatdar, when the law specifically provides that if an ordinary suit is brought in which any Officer of Government is a party, it must be brought in the Court of the District Judge (section 32 of the Bombay Civil Courts Act XIV of 1869). We could only arrive at the conclusion that the Collector may be a party to a suit in a Mamlatdar's Court by closing our eyes to the clear intention of the legislature, to the clear purpose of the Act, and to certain evident absurdities and anomalies. This we are unable to do; and therefore our answer to the question referred must be and is: that a Mamlatdar's Court has not jurisdiction to try a suit to which a Collector is a party.

*Application dismissed.*

R. R.

NOTE—In considering whether the first of the Advocate General's propositions is good, I read the following cases:—

- (1) *P. & O. S. N. Co. v. Secretary of State for India*, (1861) 5 Bom. H. C. R. Apr. p. 1.
- (2) *Secretary of State for India v. Bombay Landing and Shipping Co.*, (1868) 5 B. H. C. R. (O. C. J.) 23.
- (3) *Rogers v. Rajendro Dutt*, (1860) 8 M. I. A. 103.
- (4) *Forester v. Secretary of State for India*, (1871) L. R. I. A. Supp. Vol. p. 10.
- (5) *Shivabhajan v. Secretary of State for India*, (1904) 28 Bom. 314; 6 Bom. L. R. 65.
- (6) *Rajah Salig Ram v. Secretary of State for India*, (1872) L. R. I. A. Supp. Vol. 119.
- (7) *The Queen v. Lords Commissioners of the Treasury*, (1872) Ruling Cases Vol. I, pp. 802—828.
- (8) *Judah v. Secretary of State for India*, (1886) 12 Cal. 445.
- (9) *Secretary of State for India v. Mathurabhai*, (1889) 14 Bom. 213.
- (10) *Ganpat Putaya v. The Collector of Kanara*, (1875) 1 Bom. 7.
- (11) *Venubai v. The Collector of Nasik*, (1877) 7 Bom. 552 F. N.
- (12) *Nobin Chunder Dey v. The Secretary of State for India*, (1875) 1 Cal. 11.
- (13) *Musgrave v. Pulido*, (1879) 5 App. Cas. 102.
- (14) *Kinloch v. Secretary of State for India*, (1882) 7 App. Cas. 619.
- (15) *Sanitary Commissioners of Gibraltar v. Orfila*, (1890) 15 App. Cas. 400.
- (16) *Nireaha Tamaki v. Baker*, [1901] A. C. 561.
- (17) *Bell v. The Municipal Commissioners for the City of Madras*, (1902) 25 Mad. 457.
- (18) *Voss v. Secretary of State for India*, (1906) 33 Cal. 669.