APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL (ORIGINAL DEFENDANT), APPELLANT, *v.* LALDAS NARANDAS (ORIGINAL PLAINTIFF), RESPONDENT.*

1909. *November* 30.

Bombay Land Revenue Code (Bombay Act V of 1879), section 48†— Government—Assessment on land—Land appropriated for agricultural purposes—Special user of land by stacking thereon timber in fair season— Construction of statute.

The plaintiff, who was the occupant of land used for agricultural purposes, paid to Government the assessment chargeable on "land appropriated" for those purposes under clause (*a*) of section 48 of the Bombay Land Revenue Code, 1879. During the seasons when the land was not used for agricultural purposes, the plaintiff had let it out for stacking timber and derived profit from this special user of the land. Government levied an additional assessment on the land on account of that special user, purporting to do so under section 48, clause (*b*), of the Code.

Held, that the lands could not be charged with any additional assessment in respect of the special user under section 48, clause (*b*), of the Code; for the expression "appropriated for any purpose" in the clause means set apart for that purpose to the exclusion of all other uses.

The Bombay Land Revenue Code (Bombay Act V of 1879) is a taxing enactment and must be construed strictly in favour of the subject.

APPEAL from the decision of F. X. DeSouza, District Judge of Thana.

Suit for declaration and injunction.

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* First Appeal No. 29 of 1909.

† The Bombay Land Revenue Code (Bombay Act V of 1879), section 48, runs as follows:—

The land-revenue leviable under the provisions this Act shall be c' geable—

(*a*) upon land appropriated for purpose of agriculture,

(*b*) upon land appropriated for any purpose from which any otl er profit or advantage than that ordinarily acquired by agriculture is derived,

(*c*) upon land appropriated for building sites.

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1909.

SECRETARY OF STATE v. LALDAS.

The plaintiff Laldas owned certain lands which were used for agricultural purposes during the cultivating season, and for which he was paying to Government an annual agricultural assessment of Rs. 18-5-6. During the fair season, the lands were every year rented by the plaintiff to timber merchants for the purpose of stacking timber thereon.

The Collector of Thana, purporting to act under section 48 and Rule 56 of the Rules framed under the Bombay Land Revenue Code (Bombay Act V of 1879), levied altered assessment on the lands in view of their non-agricultural use during the fair season; and recovered Rs. 501-15-8 for the years 1904—1907 from the plaintiff. The plaintiff paid the amount under protest.

Subsequently, the plaintiff filed this suit against the Secretary of State for India in Council praying for a declaration that the lands were not liable to altered assessment, for refund of the amount already paid by him, and for an injunction restraining the defendant from further levying additional assessment.

The District Judge decreed the plaintiff's claim by granting the declaration and injunction sought by him; and by awarding refund of Rs. 122-3-2. In the course of his judgment, the Judge remarked as follows:—

> The crucial point in this case is whether it can be said that in the circumstances above described the plaint-lands have been appropriated to a purpose unconnected with agriculture within the meaning of section 48 (*b*) of the Land Revenue Code. The learned Government Pleader presses for an answer in the affirmative, contending that the section contains no such adverb as "perpetually" or "permanently" to qualify the word appropriated. He argues that the appropriation to non-agricultural uses may well be a temporary appropriation only durig the fair season, and he urges that if an occupant derives an extra profit by temporarily appropriating land to a non-agricultural purpose, it is within the scheme of the Land Revenue Code that the Crown should participate in any such extra profit. He adverts to the rule of construction that statutes imposing burdens, like Penal Acts, are not to be so construed as to furnish a chance of escape and a means of evasion (Maxwell on the Interpretation of Statutes, 3rd edition, p. 405), and he asked the Court to apply that rule in the present case by giving effect to the interpretation for which he contends.
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> Now, the maxim *ex antecedentibus et consequentibus fit optima interpretatio* furnishes a well-known rule of construction i the interpretation of statutes.

And it has been laid down as a corollary of this maxim that "if any section be intricate, obscure, or doubtful the proper mode of discovering its true meaning is by comparing it with the other sections and finding out the sense of one clause by the words or obvious intent of another" (Broom's Legal Maxims, 7th edition, p. 433). Accordingly in order to determine whether a temporary diversion of the lands to non-agricultural purposes constitutes an "appropriation" to such purposes within the meaning of section 48 (*b*), it is necessary to refer to the clause immediately following. That clause enacts as follows:—"And the assessments fixed under the provisions of this Act upon any land appropriated for any one of the above purposes, shall, when such land is appropriated for any other of the said purposes, notwithstanding that the term if any for which such assessment was fixed, may not have expired, be liable to be altered and fixed at a different rate."

The Legislature then has classified lands for the purpose of the levy of assessment into three classes, according as they are appropriated to agricultural, non-agricultural or building purposes. This classification is obviously intended to be exhaustive; apparently it is also intended to be mutually exclusive, for it is provided that the diversion of land from one class to another entails liability to enhanced assessment under section 48 and to a fine under section 65. It was apparently not contemplated that the same land could, during the pendency of a survey settlement, be "appropriated" to agricultural as well as non-agricultural purposes during one and the same year so as to be referable to either class indiscriminately. The "appropriation" contemplated by the section seems thus to have been an exclusive and permanent appropriation so that lands assessed at the survey settlement as lands "appropriated for purposes of agriculture" would not be liable to re-assessment as lands "appropriated" for any purpose unconnected with agriculture unless they had in the interval ceased to be appropriated to agriculture. If this is the correct interpretation then it is obvious that it is not competent to the Collector to levy enhanced assessment on the plaint-lands which are admittedly "appropriated to agriculture" during the cultivating season.

The same result follows if we apply the general rule that the words of a statute are to be understood in their etymological or popular sense, unless there are special reasons to the contrary. To "appropriate" is defined in Webster's dictionary to mean "to set apart for or assign to a particular use to the exclusion of all others." Accordingly, so long as land is used for agricultural purposes "during the only period when it is capable of being so used," it cannot be subjected to enhanced assessment or fine as land appropriated to purposes unconnected with agriculture, because there has been no exclusion of agricultural uses but rather a combination of agricultural with non-agricultural uses.

The argument that the Crown is entitled to participate in any extra profit derived by the occupant from a temporary appropriation of agricultural land

1909.

SECRETARY OF STATE v. LALDAS.

to a non-agricultural purpose can easily be answered by a reference to the definitions of the words "occupant", "holder" and "right to hold land" given in section 3 (16, 11; 10) respectively of the Land Revenue Code.

An occupant's right to the possession and enjoyment or disposal of land is absolute subject only to the burdens and limitations imposed by the Land Revenue Code. Such burdens must be stated in clear terms in the Code itself and cannot be left to be inferred from extraneous considerations; for it is a recognised rule that statutes which encroach on the rights of the subject, whether as regards person or property, are subject to a strict construction, they should be interpreted, if possible, so as to respect such rights. It is presumed, where the objects of the Act do not obviously imply such an intention, that the Legislature does not desire to confiscate the property or to encroach upon the rights of persons; and it is therefore expected that, if such be its intention, it will manifest it plainly, if not in express words, at least by clear implication and beyond reasonable doubt (Maxwell on the Interpretation of Statutes, 3rd edition, p. 399).

The conclusion then at which I arrive is that the plaint-lands cannot be said to have been appropriated by the plaintiff to a purpose unconnected with agriculture within the meaning of section 48 (*b*) of the Land Revenue Code and rule 56 of the rules framed thereunder and are hence not liable to altered assessment under that section.

The defendant appealed to the High Court.

Strangman (Advocate General), with the Government Pleader, for the appellant.—The lower Court has erred in construing the term "appropriated" in clause (*b*) of section 48 of the Bombay Land Revenue Code (Bombay Act V of 1879). The wording of the section makes it clear that Government have the right to levy extra assessment when land used for agriculture in the agricultural season is utilized for non-agricultural purposes during the fair season. There is no hardship in this; for when the occupant makes extra profit, he must also be liable to extra assessment.

G. K. Parekh and *P. B. Shingne* for the respondent.—The Land Revenue Code should always be construed in favour of the subject. The lower Court's view is correct. There cannot be any appropriation within the meaning of section 48 of the Code, unless there is abandonment of one purpose and exclusive adoption of another. At any rate, the new purpose for which the land is used ought to be such that it becomes unalterably

attached to the soil and is not capable of abandonment easily as in the present case.

CHANDAVARKAR, J.:—The respondent is the occupant of land used for agricultural purposes and has been paying to Government assessment chargeable on "land appropriated" for those purposes under clause (*a*) of section 48 of the Bombay Land Revenue Code. During the seasons when the land is not used for agricultural purposes, the respondent has been letting it out for stacking timber and deriving profit from this special user of the land. Government by the suit which has led to this appeal claim the right to impose additional assessment on the land on account of that special user. They rely on clause (*b*) of section 48, which provides that land-revenue shall be chargeable "upon land appropriated for any purpose from which any other profit or advantage than that ordinarily acquired by agriculture is derived." The word "appropriated" means in its natural sense "made one's own" and conveys the idea of exclusion. "To appropriate" anything for any purpose is to set it apart for that purpose in exclusion of all other uses: American and English Encyclopœdia of Law; *Whitehead* v. *Gibbons*[1].

The context in which the clause in question occurs in section 48 leads to the same conclusion. Clause (*a*) relates to "land appropriated for purpose of agriculture." That obviously means land devoted to agricultural purposes and no other. Similarly clause (*c*) relates to "land appropriated for building sites"—that is, land devoted to building purposes and no other. If the word "appropriated" has that meaning in clauses (*a*) and (*c*), we must understand it in the same sense in clause (*b*) having regard to the ordinary canon of construction that a word, which occurs more than once in an Act, must be construed to have the same meaning throughout the Act unless some definition in it or the context shows that the Legislature used the word in different senses.

(1) 10 N. J. Eq. 235.

1909.

SECRETARY OF STATE v. LALDAS.

Had the Legislature intended clause (*b*) to apply to land used both for agricultural and other purposes, it would have used apt language to convey its meaning. It would have referred to the land in clause (*b*) as land appropriated for purposes of agriculture and other purposes except building sites. This is a taxing enactment, and must be construed strictly in favour of the subject.

The decree appealed from must, therefore, be confirmed with costs.

Decree confirmed.

R. R.

ORIGINAL CIVIL.

Before Mr. Justice Batchelor and Mr. Justice Chaubal.

1908. *June* 15.

BAYABAI, WIDOW, AND OTHERS, APPELLANTS AND DEFENDANTS 2, 3, 4, *v.* HAJI NOOR MAHOMED CASSAM, RESPONDENT AND PLAINTIFF, AND N. C. MACLEOD, RESPONDENT AND 1ST DEFENDANT.*

Practice—Suit against defendant on ground which failed not to be decreed on another ground—Application for leave to amend plaint after arguments heard in appeal disallowed—Res judicata.

A suit brought against the defendants on one ground which fails should not be decreed against them on another ground which they had no opportunity of meeting.

After arguments in appeal have been heard the Court will not allow an amendment of the plaint so as to convert a suit of one character into a suit of a substantially different character.

H. filed a suit in 1904 against A. and J. the drawer and indorser respectively of two hundies. At the time of filing the suit J. was dead.

H. obtained a decree against both defendants, which decree remained unsatisfied.

In 1905 H. filed a suit against the heirs of J. on the same two hundies.

Held, the earlier suit having been filed against the firm of J. and not against J. personally was a bar to the later suit.

THIS was a suit filed by Haji Noor Mahomed Cassam against the defendants as the heirs and legal representatives of one

* Appeal No. 1477, Suit No. 611 of 1905.