

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice (Officiating), and Mr. Justice M. Melvill.

1880

February 9.

JAGJIVAN JAVERDA'S, APPLICANT, v. ISMA'IL ALLI KHA'N AND THE COLLECTOR OF KOLA'BA', OPPONENTS. *

Bombay Act III of 1874, Section 10—Vatan—Removal of attachment—Collector's certificate.

The applicant held a decree, dated the 28th June, 1861, against Isma'il Alli Khan and another for Rs. 3,956-13-7, of which he had already recovered Rs. 2,742-4-5. On the 24th December, 1866, he applied to the Court of the Subordinate Judge at Pen for the attachment of the proceeds of a certain *vatan*, belonging to the judgment-debtors, in satisfaction of the balance, Rs. 1,214-9-2, due to him under his decree. On the 7th February, 1868, the Court attached the proceeds by a prohibitory order to the Mamlatdar of Pen. While this attachment was pending, the Collector, on the 13th December, 1878, sent a certificate to the Court, and informed it that the proceeds of the *vatan* were not liable to attachment under sections 10 and 13 of Bombay Act III of 1874. The certificate referred to the profits of the *vatan* which had accrued due before the passing of the Act, and also to those which had been subsequently assigned by the Collector as remuneration of the officiator. The Court on receiving it removed the attachment, and dismissed the application on the 11th January, 1879. The order was affirmed in appeal. On an application to the High Court under its extraordinary jurisdiction,

Held, that the Collector was authorized, by the first part of section 10 of the Vatan-dars' Act, to inform the Court by his certificate that a portion of the profits attached, had been assigned by him as remuneration to the officiator, and that the Court was bound, on receiving it, to remove the pending attachment.

Held, also, that the arrears due at the date of the Act, and which had not been assigned, fell within the latter part of the section.

The High Court, accordingly, dismissed the application with costs.

THIS was an application, under the Court's extraordinary jurisdiction, against the order of W. M. Coghlan, District Judge of Thana, affirming the order of the Second Class Subordinate Judge of Pen.

The applicant Jagjivan held a decree, dated the 28th June, 1861, against the opponent Isma'il Alli Khan and another for Rs. 3,956-13-7, of which he had already recovered Rs. 2,742-4-5. On the 24th December, 1866, he applied to the Court of the Subordinate Judge at Pen for the attachment of the proceeds of a certain *vatan*, belonging to the judgment-debtors, in satisfaction of the

* Application, No. 81 of 1879 under Extraordinary Jurisdiction.

balance, Rs. 1,214-9-2, due to him under his decree. On the 7th February, 1868, the Court attached the proceeds by a prohibitory order to the Mámlatdár of Pen. While this attachment was pending, Mr. George Waddington, Collector of Kolába, on the 13th December, 1878, sent a certificate to the Court, and informed it, that the proceeds of the *vatan* were not liable to attachment under sections 10 and 13 of Bombay Act No. III of 1874. The certificate stated that the profits of the *vatan*, accumulated from 1864-65 to 1873-74, had amounted to Rs. 1,583-3-7; that from 1874-75 their amount was annually settled at Rs. 169-15-11, of which Rs. 168 were assigned as yearly remuneration to the officiator, and that the Court should remove its attachment, as the profits of the *vatan* could not be paid, under the Act, to any person other than the vatandár or officiator. The Court, on receiving the certificate, removed the attachment, and dismissed the judgment-creditor's application on the 11th January, 1879.

Jagjivan appealed to the District Judge of Thána, who rejected the appeal.

Jagjivan thereon applied to the High Court under its extraordinary jurisdiction.

Ráo Sáheb *V. N. Mandlik* for the applicant.—The proceeds of the *vatan* were attached long before the passing of the Vatandárs' Act. The attachment, therefore, was good, at least for the amount which had accrued due before the Act came into force. It cannot have a retrospective effect.

Nánábhái Haridás (Government Pleader) for the Collector.—The object of the Vatandárs' Act is to protect the rights of hereditary vatandárs, and to secure the continuance of the *vatan*s in their families or in those of recognized officiators. The profits of the *vatan* are in no case to pass out of their possession or ownership. It is competent to the Collector, under section 10, to ask for the removal of an attachment on the proceeds of the *vatan*, whether they accrued due before the date of the Act or subsequently, or whether they are assigned or not. Under that section he can ask even to set aside a sale or to cancel a decree. The learned pleader cited *Mahádáji Bhikáji v. Rájáárm Vithal* (Mis. S. A. 17 of 1876); *Martand Visáji v. Rájáram Vithal* (Mis.

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S. A. 22 of 1876), both decided by Westropp, C. J., and Melvill, J., on the 19th December, 1877. He also referred to *Gopál Hanmant Gumáste v. Sakhárám Govind* (Mis. S. A. No. 7 of 1877).

G. N. Nádkarni appeared for the opponent.

The following is the judgment of the Court :—

SARGENT, C.J.—The Collector's certificate refers both to the profits of the *vatan* which had accrued due before the passing of the Act, and also to those which have been subsequently assigned by him as the remuneration of the officiator. As to the latter, there can be no doubt that, as, in virtue of the pending attachment of 1866, they might pass into the beneficial possession of the attaching creditor, the Collector was authorized by the first part of section 10 of the *Vatandárs' Act* to inform the Court by his certificate that such portion of the profits had been assigned, and that the Court was bound, on receiving such certificate, to cancel the pending attachment, in so far as it might affect the portion so assigned. As to the arrears due at the date of the Act, and which have not been assigned, they fall under the latter part of the section, where it is true that the words "may have passed" are not to be found; but we think the section must be read as if they had been, as it can scarcely be supposed that it was intended that the Collector should pay over the profits to the attaching creditor one day and apply the next day to the Court for an order to have them restored, as he would be entitled to do as soon as they had passed into the "beneficial possession" of the attaching creditor. The decisions in *Miscellaneous Appeals No. 17 of 1876* and *No. 22 of 1876*, both decided on 19th December, 1877, are apparently in conformity with this view. We must, therefore, discharge the rule with costs.

Rule discharged.

NOTE.—The decision in this case was followed in *Applications Nos. 91 and 93 of 1879* under *Extraordinary Jurisdiction*, both decided by Westropp, C. J., and F. D. Melvill, J., on the 23rd February, 1880. In both of them the attachment placed on the *vatans* was removed by the Court on the receipt of the Collector's certificate, granted under section 10 of the *Vatandárs' Act*, although the decrees sought to be executed were against the *vatans* as mortgaged property.