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authorities are concurrent upon this point. In *The Attorney General* v. *Siddon*[1] the rule is thus stated: "Whatever a servant does in the course of his employment with which he is entrusted and as a part of it is the master's act." This rule, which is of general application so far as civil liability goes, is applicable to certain criminal proceedings also. In *Mullins* v. *Collins*[2], where the servant of a licensed victualler supplied liquor to a constable on duty without the authority of his superior officer, it was held that the licensed victualler was liable to be convicted under 35 and 36 Victoria, Chapter 94, section 16, sub-section 2, although he had no knowledge of the act of his servant, that statute forbidding any licensed person to supply liquor in that way. So, too, it was held in *Coppen* v. *Moore* (No. 2) [3], that a master was liable for the sale by his servants when acting under the general scope of their employment of goods in contravention of the provisions of section 2, sub-section 2 of the Merchandise Marks Act, 1887. The present case is undistinguishable from these, and we have no doubt that the appellant is liable. "Any other conclusion would render the act ineffective for its avowed purposes." The appeal is dismissed.

Appeal dismissed.

(1) (1830) 1 Cr. and J., 220. (2) (1874) L. R. 9 Q. B., 292.
(3) (1898) 2 Q. B., 306.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

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MAHIPAT RANE AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* LAKSHMAN AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Landlord and tenant—Ejectment—Disclaimer of title—Notice to quit—Limitation—Khoti Act (Bom. Act I of 1880), *Secs.* 20, 21, 22—*Decision of survey officer as to nature of tenure—Botkhat—Date of framing botkhat.*

Where a tenant under a plea of ownership has succeeded in obtaining a possessory order in a suit before a Mámlatdár, it is not necessary for the evicted landlord to give notice to quit before suing in ejectment on his title.

* Second Appeal, No. 539 of 1899.

It would be otherwise where the possessory order was sought on the ground of a disturbance of an existing tenancy.

The plaintiffs were khots and defendants were their yearly tenants in occupation of their *khoti khasgi* lands. In 1890, the survey officer purporting to act under section 20 of the Bombay Khoti Act (Bom. Act I of 1880) decided that defendants were occupancy tenants, but the plaintiffs did not come to know of this decision till 1893, when the *botkhat* was prepared and signed. Shortly afterwards the plaintiffs took forcible possession of the lands. Thereupon the defendants filed a suit in the Mámlatdár's Court to recover possession, alleging that they were owners of the land, and that they had been illegally dispossessed. The Mámlatdár restored them to possession.

In 1896, plaintiffs filed the present suit to eject defendants. Defendants pleaded (*inter alia*) that the suit was bad for want of notice to quit and that the claim was time-barred.

Held, that defendants having distinctly repudiated the landlord's title in the possessory suit were not entitled to a notice to quit.

Held, also, that the suit was within time, the cause of action having accrued in 1893, when the *botkhat* was prepared, and not in 1890, when the survey officer passed his decision.

SECOND appeal from the decision of Thakurdas Mathuradas, Assistant Judge at Ratnágiri.

Suit in ejectment.

The lands in dispute belonged to plaintiffs, who were khots of the village of Lore.

In 1842 the lands were mortgaged with possession to the ancestors of the defendants.

In 1880, plaintiffs obtained a decree for redemption of the mortgaged-lands and in execution they were put into symbolical possession of the lands in 1884.

On the 15th of April, 1890, the survey officer purporting to act under section 20 of the Bombay Khoti Act (Bom. Act I of 1880) decided that defendant No. 1 was an occupancy tenant, but the plaintiffs did not become aware of this decision till 1893, when the *botkhat* was prepared and finally signed.

Plaintiffs thereupon took forcible possession of the lands from the defendants.

Defendants then brought a possessory suit in the Mámlatdár's Court, alleging that the lands were in their possession as owners,

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and that they had been illegally ousted by plaintiffs. The Mámlatdár passed an order restoring them to possession.

Thereupon plaintiffs brought the present suit on 25th July, 1896, to eject defendants and to recover three years' mesne profits. Defendant No. 1 pleaded (*inter alia*) that he was a permanent and not a yearly tenant; that even if he were an yearly tenant, plaintiffs had not given him a legal notice to quit; that the suit was barred by limitation; and that he had paid the rent to Government for the period claimed, as the village had been under attachment.

The Court of first instance held that defendants were yearly tenants, and that as no notice to quit had been given by the plaintiffs, they were not entitled to eject the defendants.

The Court, however, awarded Rs. 55 for three years' rent, and the rest of the claim was rejected.

In appeal, the Assistant Judge held that the lands belonged to the plaintiffs as their *khoti khasgi* lands; that the defendants were their yearly tenants; that plaintiffs and their co-sharers should have given them a notice to quit before suing in ejectment; that for want of such notice the suit would not lie, and that defendants had paid rent as alleged by them.

On these grounds, the Assistant Judge varied the decree of the first Court and rejected the claim *in toto*.

Against this decision plaintiffs preferred a second appeal to the High Court.

H. C. Coyaji (for *Manekshah Jahangirshah*) for appellants.

D. A. Khare, for respondent No. 1.

PARSONS, J.:—The Judges of both the lower Courts have held the title of the plaintiffs proved, but they have dismissed the suit, because they find that the defendants were yearly tenants and no proper notice to quit had been given to them prior to suit. There can be no question of the correctness of the finding as to the title of the plaintiffs. It is proved by the mortgages and the decrees for redemption and partition. Appeal is brought by the plaintiffs only on the ground that no notice was necessary since the defendants, if tenants, had repudiated their

title. The evidence in the case shows that this is so. The defendants originally came into possession as the mortgagees of the Rane (that is, the plaintiffs') family. In the redemption suit they contended that they held possession under a permanent lease, but this plea was held not proved, and the Ranes obtained symbolical possession under their decree in 1884. In 1893 the plaintiffs gained actual possession, and it was then that the defendants went before the Mámlatdár and filed a suit in order to regain possession. In their plaint they alleged that the property was of their *málaki* (ownership) and in their occupation (*vahiwat*), and that they were about to plough and sow it when the present plaintiffs created obstruction and sowed the lands themselves. The Mámlatdár passed an order in favour of the defendants and they were placed in possession, and it is to set aside that order and to recover possession that the present suit is brought. I am clearly of opinion that, where under a plea of ownership a party has succeeded in obtaining a possessory order in a suit before a Mámlatdár, it is not necessary for the evicted party to give notice to quit before suing in ejectment on his title. It might be otherwise when the possessory order was sought on the plea of a disturbance of an existing tenancy, but that is not the case here. The Judge of the lower Court has not correctly construed the plaint and the deposition of the defendants in the suit before the Mámlatdár; for there is not a word in them about their being either occupancy or permanent tenants. The assertion was that they were the owners of the land, and it was made in no ambiguous terms, and it is impossible to hold otherwise than that it amounted to an express denial of the title of the plaintiffs to the land which justified the latter in forthwith bringing a suit in ejectment.

The respondents' pleader, however, sought to support the decree dismissing the plaintiffs' suit on the ground that the defendants' title to remain in possession of the land had become absolute by prescription. He contended that the survey officer, under the provisions of section 20 of the Khoti Settlement Act, 1880, decided on the 15th April, 1890, that the defendant Lakshman was an occupancy tenant; that under section 21 of the said Act this decision was binding until reversed by a

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decree of a competent Court; that no suit was brought to reverse it within the statutory period; and that the decision, therefore, had become final and binding on the plaintiffs. No doubt there is force in the argument if we take the starting point of limitation to be the date of the decision, namely, the 15th April, 1890, for the present suit was filed on the 25th July, 1896. The Judge of the lower Appellate Court did not take that date; he says that there is nothing in the case to show that the decision was communicated to the khot that day or that the khot had knowledge that the decision would be made that day, and he has taken as the proper date the date when the *botkhat* was signed, which was some time in 1893, and so has brought the filing of this suit within the limitation period.

In this point I agree with the Assistant Judge. It is true that section 21 makes mention of the decision only, but sections 20 and 22 show that it is not the decision, but the framing of the register or other record which is the important function of the survey officer. If a dispute exists, he is to determine it, but he can do this of his own motion, and no provision is made for the communication of his decision to any of the parties affected thereby. It may lie buried in his desk for three years as in the present case, and no one may know of its existence till it is made use of for the purpose of framing the register. It is not necessary to discuss what effect the proved communication of the decision might have; it is sufficient to say that the decision can have no force until it is pronounced or in some way brought to the notice of the parties, and that as this is not shown to have been done in the present case till the *botkhat* was framed and signed, the date when this was done should be taken as the starting point of limitation. The decree, therefore, cannot be supported in the way the defendants' pleader has sought to do.

The objection as to want of notice failing, there is no reason why the plaintiffs should not obtain possession of the lands which are their own and which they have redeemed from the defendants. The lease, under which the defendants claimed to have the right to hold the lands as permanent tenants, has been held to be a forgery, and the decision of the revenue authorities, that

they were occupancy tenants, has been found to be incorrect; they have, therefore, no right whatever over the lands, but are in possession as trespassers. The order of the first Court, that they pay not only the assessment but the rent admitted by them as mesne profits, is correct.

We amend the decree of the lower Court and award the plaintiffs possession of the lands in suit, with Rs. 55 as the profits thereof for the three years preceding suit, with subsequent mesne profits from the date of suit to the date of the plaintiffs' recovering possession or until three years of date of this decree (whichever event first occurs); the amount of the same to be determined in execution. We further order the defendants to pay the plaintiffs' costs throughout in this litigation.

RANADE, J.:—The dispute in this case relates to certain lands forming part of a hamlet called Wádi Gawáli, which hamlet belonged to the Rane family. Certain members of the Rane family mortgaged the whole hamlet, including the lands in dispute, to the ancestor of the defendant-respondents so far back as 1842. There were subsequent mortgage charges on the same property effected in 1854 and 1872. The mortgagor Ranes brought a suit in 1880 for the redemption of the mortgages, and got a decree in execution of which they obtained possession of the wádi in 1884. The appellant-plaintiffs were members of the Rane family, and they obtained a partition decree in 1884 against the other Rane *bhaubands*, including those of them who had mortgaged the lands with the respondents' ancestors, and obtained the redemption decree noted above. In the execution of the partition decree, the lands in dispute fell to the share of the plaintiff-appellants, and the right to recover the rent and profits of the land in dispute from the respondent No. 1 was allotted to the plaintiffs. The respondent No. 1 got the lands entered in his name in 1893 after partition with his brother, respondent No. 2, and the appellant-plaintiffs' application to have the lands transferred to their names was disallowed. Subsequently, the plaintiff-appellants and other Ranes obtained possession of the lands by force, and thereupon a possessory suit was brought by the respondent No. 1. He succeeded in recovering possession in the Mámlatdár's Court, and thereupon the present suit was brought in ejectment.

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The appellant-plaintiffs' case was that the respondent-defendants were their yearly tenants, and that respondent No. 1 had fraudulently got the lands entered in his name, and that they had a right to obtain possession of the land by evicting him. The defence was that respondent No. 1 was a permanent tenant, and his right of possession was independent of the mortgage, and that as the land was entered in his name by the settlement officer, he was entitled to retain possession, and the appellant-plaintiffs claim was time-barred. On the principal issue whether the respondent, defendant No. 1, was a permanent tenant or a yearly tenant, both the lower Courts have found against the respondent, and in plaintiff-appellants' favour. They held that the respondent had obtained possession of the lands only as a mortgagee of the Ranes, and had not obtained any permanent rights of occupancy. The Court of first instance, however, held that the appellant-plaintiffs could not, for want of proper notice to quit, recover possession of the lands in this suit and were only entitled to recover rent. The lower Court of appeal held further that the respondent No. 1 was a yearly tenant of the whole body of Ranes, and not of appellant-plaintiffs only, and that the suit must fail for want of notice, and that the claim for rent must also fail, because the assessment paid exceeded the rent, and, therefore, the appellant-plaintiffs were not entitled to recover any rent. Accordingly it amended the first Court's decree by rejecting the claim *in toto*.

In the appeal before us, the chief point urged by the appellants' pleader was that as the respondent, defendant No. 1, was a yearly tenant of the plaintiffs, notice was not necessary, and plaintiff-appellants were entitled both to possession and the rent claimed. The respondent's pleader, in support of the lower Court's decree, urged that the settlement officer's decision barred the appellant-plaintiffs' claim by reason of the six years' limitation having expired. The points for consideration are thus, whether notice was necessary in this case, (2) whether the respondent was a tenant of the appellants or of the Ranes generally, and (3) whether the claim was time-barred.

It appears to me that on all these points we must decide the issues in favour of appellants and against respondents. The decree obtained in the partition suit between the appellant-

plaintiffs and other Ranes transferred the rights of all the Rane *bhaubands* to the appellant-plaintiffs by reason of the decree, and the allotment in execution of that decree of the lands in suit to the appellant-plaintiffs. The partition decree shows that the plaintiff-appellants sought an equal one-sixth share in all the lands including the hamlet Gawáli Wádi, and the decree awarded the share as agreed to in a private arrangement between the parties (Exhibit 84), and the Collector made the allotment accordingly (Exhibit 100). After that execution, the Rane *bhaubands* had no interest left in the property, and the respondent-defendant must be regarded as a tenant, not of the Ranes generally, but of the plaintiff-appellants. The lower Court seems to have thought that the right to get possession of the land, as between the appellants and the Rane *bhaubands* generally, still remained with the latter, and the appellants only obtained the right to recover rents from the tenants. This appears to me to be a very narrow interpretation of the decree. The rights of the Ranes generally came to the plaintiff-appellants, and there was no reservation in the matter of ownership or possession. It is true that when the question of possession was raised by the respondent, the Collector, in Exhibit 98, informed him that the partition effected was confined to the right to recover rents. As against the tenants, this might or might not be true, but it did not affect the plaintiff-appellants' claim to all the rights which the Ranes enjoyed as owners. These rights both Courts have found to be of full ownership when they held that the respondent had not established his permanent occupancy, but was only a yearly tenant.

The next question, therefore, is whether the respondent was entitled to a notice to quit. That depends on the question whether he repudiated his landlord's title. If there was no repudiation, he would be entitled to a notice. Exhibit 92 shows that respondent No. 1 did set up his ownership of the lands in the application he made to the Mámlatdár. The lower Court of appeal thought that this did not amount to a denial of the landlord's right, because in his deposition, Exhibit 35, the respondent stated that he paid rent. The fact, however, that he applied to the settlement officer, and got his name entered in the *botkhat* as owner (Exhibit 91), shows that the Rane landlord's claim was denied,

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and the rulings, therefore, relied on in his favour do not apply. The case falls more within the ruling in *Venkaji* v. *Lakshman*(1) — see also *Shahaba Khan* v. *Balya*(2) and *Dodhu* v. *Madhavrao*(3). It is a disclaimer for a yearly tenant, when he claims to be a *mirási* or permanent tenant, and such a disclaimer need not necessarily be made to the landlord himself. In a suit where defendant claimed to be a *makta* tenant as against the plaintiff who sued him for *thal*, and the defence failed, notice to quit was held not necessary. There is admittedly no lease in this case, and the mortgage under which respondent-defendant first entered into possession has been redeemed, and thus the tenant only holds over without right. A notice to quit is not, therefore, necessary in such a case. The subsequent payment and acceptance of rent might create a yearly tenancy, but no such payment has been made here, as, since 1892, the respondent got his name entered in the *botkhat* as owner and made the payment directly. We must, therefore, hold that notice to quit was not necessary in the present case. Plaintiffs' right to be full owners and entitled to possession under the partition decree is not questioned, and the technical ground on which their claim for possession was disallowed appears not to have been made out. With the claim for possession, the claim for rent must also be allowed. It was allowed by the first Court, but disallowed by the lower Appellate Court on the unsupported statement of the respondent No. 1. No receipt was put in in the Court of first instance, and the receipt produced in the second Court was not admitted by that Court. This part of the claim must, therefore, be allowed.

As regards the survey officer's decision, it was contended by the respondent that the suit was not in time as being brought more than six years after the date of the decision, *viz.*, 15th April, 1890. There is an entry in Exhibit 97, dated 15th April, 1890, to the effect that the defendant was an occupancy tenant. There is, however, nothing to show that the khots, against whom that decision was passed, had knowledge of the date fixed for the inquiry. Even the respondent was not present (Exhibit 97), and the matter appears to have been left undecided (Exhibit 96),

(1) (1895) 20 Bom., 354. (2) P. J for 1873, p. 66.
(3) (1893) 18 Bom., 110.

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and appellants came to know of the decision in 1893 when the *botkhat* was prepared and finally signed. The suit is within six years from that date. Both the Courts have held that the respondent was neither an occupancy nor a permanent tenant, but only a yearly tenant. For these reasons, I would reverse the decree of the lower Court of appeal, and award the appellants possession of the lands in dispute, together with 55 Rs. for rent and the costs of the suit with further mesne profits.

Decree reversed.

APPELLATE CIVIL.

Before Sir L. H. Jenkins, Kt., Chief Justice, and Mr. Justice Candy, and on reference before Mr. Justice Parsons.

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February 19.

SURANNANNA DEVAPPA HEGDE, (ORIGINAL PLAINTIFF), APPELLANT, *v.* THE SECRETARY OF STATE FOR INDIA AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

Limitation Act (XV of 1877), Sch. II, Art. 14—Land Revenue Code (Bom. Act V of 1879), Secs. 37, 39, 135(1)—Land presumably the property of the plaintiff—Plaintiff in uninterrupted possession—Revenue survey—Entry of the land in the register as Government waste land—Order of the Revenue Commissioner directing land to be given to defendand No. 2—Plaintiff's dispossession—Suit against the Secretary of State and defendant No. 2—Nature of the Revenue Commissioner's order—Setting aside of the order—Limitation—Title—Cause of action.

A certain land which the plaintiff alleged was his property and was uninterruptedly in his possession till the 16th November, 1895, was at the introduction

* Appeal, No. 94 of 1899.

(1) Sections 37, 39, 135 of the Land Revenue Code (Bombay Act V of 1879) :—

37. All public roads, lanes and paths, the bridges, ditches, dikes and fences, on or beside the same, the bed of the sea and of harbours and creeks below high-water-mark, and of rivers, streams, nálas, lakes, and tanks, and all canals and water-courses, and all standing and flowing water, and all lands wherever situated, which are not the property of individuals, or of aggregate of persons legally capable of holding property, and except in so far as any rights of such persons may be established in or over the same and except as may be otherwise provided in any law for the time being in force, are and are hereby declared to be, with all rights in and over the same, or appertaining thereto, the property of Government; and it shall be lawful for the Collector, subject to the orders of the Commissioner, to dispose of them in such manner as he may deem fit, or as may be authorized by general rules sanctioned by Government, subject always to the rights of way, and all other rights of the public or of individuals legally subsisting.