levy was first made in 1886, and not in 1881 as was contended before us. Both the Courts have found that the claim was not time-barred.

On the whole, the appellants have clearly established their claim to the declaration sought by them, namely, that both the village site and the bed of the stream belong to them as being part of the inám village, and that the defendant has no right to interfere with appellants' use of both the plots for cultivation or otherwise.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

BABAJI RAMJI AND OTHERS (ORIGINAL DEFENDANTS), APPLICANTS, *v.* BABAJI DEVJI AND OTHERS (ORIGINAL PLAINTIFFS), OPPONENTS.*

1897. *December* 20.

Jurisdiction—Mámlatdár—Mámlatdárs' Act (Bom. Act III of 1876), *Sec.* 4—*Disputes between riparian proprietors.*

A Mámlatdár's Court has no jurisdiction to determine questions arising between riparian proprietors as to the amount of water each can take from a stream.

A suit will lie in a Mámlatdár's Court where a person has been dispossessed or deprived of the use, or when he has been disturbed or obstructed, or when attempt has been made to disturb or obstruct him in the use of water of which he is in possession or was in possession within six months before suit.

APPLICATION under section 622 of the Code of Civil Procedure (Act XIV of 1882).

The plaintiffs sued for an injunction in the Mámlatdár's Court under the following circumstances.

Plaintiffs and defendants were riparian proprietors of lands situate on the banks of a rivulet, defendants' lands being situated higher up the stream than that of the plaintiffs.

There were several dams erected in the bed of the stream for the purpose of regulating the flow of water to the lands of the different riparian proprietors. One of these dams belonged to the plaintiffs and another to the defendants. The distance between the two dams was 62 cubits.

*Application under Extraordinary Jurisdiction, No. 185 of 1897.

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Plaintiffs alleged that in the defendants' dam there had always been a sluice or passage left through which the water flowed down to the plaintiffs' dam and there come to a head; that they had always used the water so collected to irrigate their rice lands in the hot season. They complained that in October, 1896, the defendants, contrary to this established practice, erected a solid dam without any sluice or passage in it and thereby stopped the supply of the water to their (the plaintiffs') lands. They, therefore, prayed for an injunction directing the defendants to open a sluice in their dam, and restraining them from causing any obstruction in future to the passage of the water on to the plaintiffs' dam.

The defendants pleaded that there never had been any sluice or passage in their dam, and that the plaintiffs' user, if any, had not been obstructed by them.

The Mámlatdár found in favour of the plaintiffs, and made an order on the defendants, that "at the time of building their dam in the month of Kartik every year, or about that time, they should, according to the *vahivat* (or established practice), leave a sluice one foot in length and half a foot in height for the purpose of supplying water to the plaintiffs."

Against this order the defendants applied to the High Court under its extraordinary jurisdiction and obtained a rule *nisi* to set aside the above order.

V. G. Bhandarkar, for the plaintiffs, showed cause.

H. C. Coyaji, for the defendants, *contra*.

PARSONS, J.:—This case raises an important question of jurisdiction under the Mámlatdárs' Courts Act, 1876. The parties are riparian occupants of lands situated on the banks of a rivulet, the land of the defendants being higher up the stream than that of the plaintiffs. In order to regulate the flow of water, dams are erected in the bed of the stream and thus a head of water is obtained which is led off by channels into the adjacent fields. There are, it seems, no less than six of such dams, of which the plaintiffs own one and the defendants another. Each of the owners is by custom allowed to take a certain quantity of

water, leaving the rest to flow over his dam to the dam of the next owner.

The plaintiffs allege that as their dam is very close to the defendants', being only 62 cubits below it, the custom is that the defendants should not have a solid dam but one with a sluice or passage left in it, so that the water should not be dammed up very much, if indeed at all, by the dam, but should flow on to their dam and be there brought to a head, and that in the month of Kartik, 1896, the defendants, in breach of that custom, erected a solid dam, and they sue for an injunction that the defendants should be ordered to open a passage in their dam and should not disturb or obstruct the flow of water.

The Mámlatdár raised the issues mentioned in section 15 (*c*) of the Act. He did not, however, record any findings thereon, but he decided that "an injunction be issued to the defendants that at the time of building their dam in the month of Kartik every year, or about that time, they should, according to the *vahivat*, leave a sluice one foot in length and half a foot in height for the purpose of supplying water to the plaintiffs."

The question is, whether he had jurisdiction to hear such a suit and grant such an injunction. We are of opinion that he had not. We think that a person can only sue under the Act when he has been dispossessed or deprived of the use, or when he has been disturbed or obstructed, or when an attempt has been made to disturb or obstruct him in the use of water of which he is in possession or was in possession within six months before suit. A owns a well or water-course, which is in his possession. If B prevents A taking water therefrom, or takes water therefrom himself, a suit will properly lie; but if A owns one portion of a water-course and B another, and if B takes from his portion more water than he is entitled to, so that a less amount flows down to A, we conceive no suit would lie in a Mámlatdár's Court, because A never was in possession of the use of the water in B's water-course and no obstruction has been caused to A's use of the water that might be in his water-course. If such a suit lay, then the injunction would have to be not merely that provided by Schedule (*c*) of the Act, but an order on the defend-

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ant to do, or refrain from doing, something with his own property such as has actually been passed by the Mámlatdár in this case, for which no authority can be found in the Act. It is obviously undesirable that the nice questions which may arise between riparian proprietors as to the amount of water each can take from a stream should be determined by a Mámlatdár's Court. This really is the question at issue in the present case. It is not whether the plaintiffs have been obstructed in the use of water in their water-course, but it is whether the defendants have, by exceeding their rights as owners of land abutting on the stream, caused injury to other owners, the plaintiffs. We are of opinion that such a suit does not come within the Mámlatdárs' Courts Act. We make the rule absolute with costs.

Rule made absolute.

CRIMINAL REVISION.

Before Mr. Justice Parsons and Mr. Justice Ranade.

1897.

QUEEN-EMPRESS *v.* GANESH RAMKRISHNA.*

December 20.

Criminal Procedure Code (Act X of 1882), Secs. 195-369—Sanction to prosecute—Revision—Session Judge's power to review his order in proceedings taken to revoke sanction.

A Sessions Judge, having once refused to revoke a sanction granted by a Subordinate Court under section 195 of the Criminal Procedure Code (Act X of 1882), has no jurisdiction afterwards to review his order and set aside the sanction.

An application to a Sessions Judge for revocation of a sanction granted under section 195 of the Code is a criminal proceeding in revision. Any order passed in such a proceeding is final, and cannot be reviewed or revised by him.

APPLICATION under section 435 of the Code of Criminal Procedure (Act X of 1882).

The accused Ganesh Ramkrishna Pathak, having obtained a decree against one Gangaram bin Sankraji in the Court of Small Causes at Poona, applied for execution of this decree without certifying to the Court certain payments which had been made in part satisfaction of it. Thereupon the Small

* Criminal Revision, No. 321 of 1897.