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the question is wholly unsubstantial, and that may be the reason why it was never raised until the present stage of the proceedings.

Their Lordships hold that the appeal should be dismissed with costs, and they will humbly advise Her Majesty accordingly.

Appeal dismissed.

Solicitors for the appellant :—Messrs. *Barrow and Rogers.*

Solicitors for the respondents :—Messrs. *Payne and Lattey.*

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Telang.

1890.
June 30.

WA'MAN RA'MCHANDRA GAUNDE, SUB-ASSISTANT CONSERVATOR OF FORESTS, (ORIGINAL DEFENDANT), APPELLANT, *v.* DIPCHAND BA'LKISAN, (ORIGINAL PLAINTIFF), RESPONDENT.*

Forest laws—Indian Forest Act (VII of 1878), Secs. 52, 73—Sub-Assistant Conservator of Forests—Suspicion of theft—Seizure and detention of timber—Want of a valid pass.

A Sub-Assistant Conservator of Forests having seized timber on the suspicion that it had been stolen from the Government forests.

Held, that it was open to him to justify the seizure on the ground of the commission of a forest offence arising from the want of a valid pass.

According to section 52 of the Indian Forest Act (VII of 1878) a forest officer cannot justify the detention of goods on the ground of an offence against the forest laws, if he has not taken the course which that section requires of bringing the matter before a magistrate.

THIS was a first appeal from the decision of W. H. Crowe, District Judge of Poona.

The plaintiff, a timber merchant, sued to recover damages from the defendant, a Sub-Assistant Conservator of Forests, for seizing and detaining timber which was passing through a forest.

The plaintiff alleged that on the 14th January, 1886, he purchased from one Ganpatráo, the police patel of Pátnus, timber of various kinds; that while a portion of it was being conveyed in carts to Poona, the defendant seized it. The plaintiff, being asked by the defendant if he had a "pass," produced a document

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which purported to be a "pass" given by the original owner to him as the purchaser of the timber. The timber was, however, detained by the defendant until the 25th January, 1886. The plaintiff, therefore, claimed Rs. 305 as the value of the timber and Rs. 72 for cart-hire, which he was compelled to pay to the cartmen for detention for a week.

The defendant admitted the seizure and detention of the timber, but pleaded protection under the Forest Act VII of 1878. He also contended that he had reason to believe that an offence had been committed in respect of the timber; that under section 52 of the Forest Act VII of 1878[1] he was authorized to seize it; and that as the act complained of was done in good faith as a public servant, no suit could be brought against him. (See section 73 of the Act.[2]).

The District Court awarded the plaintiff Rs. 305 as the value of the timber and Rs. 36 on account of cart-hire.

In his judgment the District Judge observed: "There was no ground for distrusting the pass, signed as it was by the vendor himself, a Government officer, *viz.*, the police patel of Pátnus. As a matter of fact, however, no pass whatever is required by law for timber cut in *málki* numbers, and the occupants of such numbers are not bound to obtain passes for its removal. This view of the law, which Government have adopted, was communicated to the Forest Settlement Officer at Thána, and the Conservator of Forests, N. D., by Government Resolution No. 5437, dated the 7th of July, 1884 (Exhibit No. 40). The defendant admits that he was employed at that time in the Thána District, but that the order in question was not communicated to him. It seems inconceivable that an important decision, like the one in question, should not have been communicated by the Conservator of Forests to all the subordinate officers concerned, and it

(1) Section 52:—"When there is reason to believe that a forest offence has been committed in respect of any forest produce, such produce, together with all tools, boats, carts and cattle used in committing any such offence, may be seized by any Forest officer or Police officer."

* * * * *

(2) Section 73:—"No suit shall lie against any public servant for anything done by him in good faith under this Act."

is still more improbable that the defendant, even if the order was not communicated to him directly by the Divisional Forest Officer, had not made himself aware of the purport of it, touching, as it does, so vitally the proceedings of all forest officers in the districts concerned. Be that as it may, it was the duty of the defendant to know the law, and the plea of his ignorance of it is no excuse of his conduct. But to proceed further. It is proved that when defendant expressed his dissatisfaction with the form of the *dákhlá*, or pass, the plaintiff actually returned to Pátnus and obtained a letter from the vendor Ganpatráo, who had sold the 12 cart-loads of timber to plaintiff and that this letter was handed over to defendant at Bhorkas."

* * * "Ganpatráo proves that he caused such a letter to be written by his nephew (Exhibit 51) after being asked whether he had sold timber from his *málki* numbers to plaintiff. Plaintiff (Exhibit No. 45) proves that he brought this letter and gave it to defendant, who raised the objection that it was not written by the *kulkarni*."

Further facts, in addition to those mentioned above, appear in the High Court's judgment.

Against the decree of the District Court, the defendant preferred an appeal to the High Court.

The Government Pleader for the appellant.

Mánekshán Jehángirshán for the respondent.

SARGENT, C. J. :—This is a suit brought against the defendant, an officer in the Forest Department, for having caused damage to the plaintiff by reason of "his misconduct and his acting contrary to the law." The defendant justified his conduct under section 73 of the Indian Forest Act, VII of 1878, alleging that what was done by him was done in good faith.

It is not in dispute that the carts containing the plaintiff's timber were stopped by the defendant on their way up the ghát to Poona, and the defendant himself admits that he did so, suspecting that the timber had been taken out of Government forests. Further, it is not in dispute that on the arrival of the plaintiff, who was some way behind the carts, he was

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asked by defendant if he had a pass, and that he replied that his servant had it; that the servant arrived the next day, when he produced a document which purported to be a pass given by the original owner to the plaintiff as purchaser of the timber. It was not contended that such a pass was a valid one under the rules made by Government with the sanction of Government of India in virtue of the Forest Act, there being no evidence that the owner, although he was a patel of the village, had authority to grant passes. The District Court, however, thinks it ought to have satisfied the defendant. This view is one in which we cannot concur, the pass not being a valid one; and although his principal motive at the time may have been that he suspected the timber had been stolen from Government forests, it is open to him now to justify the seizure on the ground of the commission of a forest offence arising from the want of a valid pass.

It is said, indeed, by the District Court that owing to a resolution of Government, No. 5437, dated the 7th July, 1884 (Exhibit No. 40), a pass was not necessary. It is sufficient to say that that resolution only referred to "teak," the ownership of which was in dispute between the Government and the occupants of the land on which it was grown, and, moreover, can only be understood (assuming that the Government intended to pass a resolution *intra vires*) as settling the question whether such owners could move their timber as contemplated by clause (*c*) of Rule 13 without passes. But that clause clearly only allows timber to be moved within the confines of the village, and has no application to this timber, which was being transported to Poona for sale. The defendant was, therefore, clearly entitled by law to seize the carts.

But it was urged before us that although he might have been entitled to seize them he ought not to have detained them from 18th January till 22nd June. As to this the evidence shows that defendant wrote Exhibit 42 on 24th January to the Forest Ranger of Kolába, stating his suspicion that it was not "*málki*," but Government timber, and asking him to make inquiries; he also reported on 25th January, 1886, what he had done to his superior officer, the Divisional Conservator of Forests of the

Poona District. The plaintiff says he frequently asked the defendant to give him up the timber between January and May, 1886, and was told by defendant that he could not do so until he got an answer, and that at last in May, 1886, he himself wrote to the Divisional Conservator, the result of which was that the defendant was directed to deliver the timber to the plaintiff.

Looking at section 52, we agree with the District Judge that the defendant cannot justify the detention on the ground of an offence against the forest laws, not having taken the course, which that section requires, of bringing the matter before a Magistrate. But suspecting, as he did, that the timber had been taken from a Government ferest, we think the defendant was justified, under the circumstances, in laying the matter before his superior officer and waiting for his orders. The circumstance that there had been robberies from Government jungles in the neighbourhood from which the timber came, as stated by the defendant, and which was not denied, coupled with the absence of a valid pass from the authorities, was sufficient to justify his suspicion that it was not *málki* timber and this detaining the timber until he received orders from his superiors on the subject, and he cannot be held personally liable for the delay which occurred in obtaining them.

It is said, indeed, that the defendant was afterwards shown a letter procured by the plaintiff at the defendant's desire stating that the patel had sold the timber from his *málki* number to plaintiff. Assuming this to have been so, the objection that it was not signed by the *kulkarni*, was one which the defendant might reasonably and in good faith take, and if plaintiff thought that the letter, as it was, was sufficient for the purpose, he could have taken it, or asked defendant to send it to the Divisional Conservator of Forests in whose hands the matter then was, and, as we cannot doubt, with the plaintiff's full knowledge. Upon the whole, we think that the defendant acted throughout in good faith, and has satisfactorily justified his conduct under section 73 of the Act.

That the question should have remained with the superior forest authorities in suspense until May, is necessarily matter

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of surprise, and if Government are unable to give some satisfactory explanation of it, the plaintiff is to say the least, entitled to favourable consideration at their hands.

We must, therefore, reverse the decree and dismiss the plaint, with costs throughout on plaintiff.

Decree reversed.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Telang.

1890. *August* 12.

MANJA'PPA HEGADE BIN DEVA'PPA HEGADE, (ORIGINAL PLAINTIFF), APPELLANT, *v.* LAKSHMI KOM RA'MA'YA AND ANOTHER, (ORIGINAL DEFENDANT), RESPONDENTS.*

Hindu law—Undivided family—Widow's right—Maintenance—Gotrája sapinda—Purchaser of a co-sharer's interest—Right of.

The widow of an undivided brother does not take a life estate. She is only entitled to maintenance. She may perhaps succeed her brother-in-law as a *gotrája sapinda.*

A person who purchases the share of a co-parcener in family property is entitled to recover that share on his vendor's succession to the property as against the vendor himself and the widow of his undivided brother.

Udárám Sitárám v. *Rânu Pánduji*(1) distinguished.

THIS was a second appeal from the decision of Gilmour McCorkell, District Judge of Kánara.

The facts of the case were as follows :—

Ganapáya, Rámáya and Venkápa were three brothers and lived together as an undivided family. Ganapáya died first, leaving his widow, Lakshmimama. After Ganapáya's death, Venkápa sold his undivided moiety of the family property to the plaintiff, Manjáppa Hegade, for Rs. 500 under a registered deed of sale, dated the 3rd July, 1886. In November, 1886, Rámáya died, leaving his widow, Lakshmi, a minor. After Rámáya's death, Laksmimama died, and also Venkápa, unmarried and without issue.

Second Appeal, No. 706 of 1889,

(1) 11 Bom. H. C. Rep., 76.