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can get an alienation declared to be no longer of any validity. But any one dealing with a widow, and taking her interest in the property, does acquire an interest in that property, and acquires an interest that does not automatically cease to exist merely because the widow dies. It may come to an end as the result of proceedings taken by the reversioner, or possibly in other ways but it does not automatically cease. Indeed it continues until it is put an end to in some regular and legal way.

In this case the plaintiffs acquired such an interest, or rather their predecessors acquired such an interest. It was in fact a right to redeem a mortgage. Now that right did not automatically cease to exist on the death of the widow, and it has never been put an end to in a legal and regular way, and therefore, it still exists, and therefore, I agree in the order proposed by my Lord the Chief Justice.

Decree reversed.

J. G. R.

CRIMINAL REFERENCE.

Before Mr. Justice Shah and Mr. Justice Hayward.

EMPEROR v. YELLAPPA RAMANGOWDA *.

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March 16.

Indian Forest Act (VII of 1878), Section 75, clause (c), Rule 2 †—Growth of sandalwood trees on occupancy lands subsequent to survey settlement—

* Criminal Reference No. 62 of 1919.

† The rule runs as follows :—

RULE 2.—No person shall cut, lop, or in any way injure, appropriate or remove any tree, or any loppings thereof, which is the property of Government grown or growing on lands belonging to or in the occupation of private persons; or knowingly or wilfully permit or abet the cutting, lopping or injuring or appropriating or removing of the same by any other person, without having first obtained the permission of the Collector, or in the case of teak, blackwood or sandalwood trees, of the Conservator of Forests.

Survey settlement made before passing of Bombay Act I of 1865—Sandalwood trees are reserved trees—Occupant's right to cut the trees—Ownership of the trees rests in occupant and not in Government—Bombay Land Revenue Code (Bom. Act V of 1879), Section 40 ‡, Section 214, Rules 91 (1) and 93§.

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‡ The material portions of the section run thus:—

In villages, or portions of villages, of which the original survey settlement has been completed before the passing of this Act, the right of Government to all trees in unalienated land, except trees reserved by Government, or by any survey officer, whether by any express order made at, or about, the time of such settlement, or under any rule or general order in force at the time of such settlement, or by notification made and published at, or any time after, such settlement, shall be deemed to have been conceded to the occupant.

But in the case of settlements completed before the passing of Bombay Act I of 1865 this provision shall not apply to teak, blackwood or sandalwood trees. The right of Government to such trees shall not be deemed to have been conceded, except by clear and express words to that effect.

§ The rules are as follows:—

RULE 91 (1).—The extent to which the right of Government to trees is generally conceded under the second paragraph of section 40 shall be specified in the notification issued under Rule 90, sub-rule (1). The said general concession will ordinarily extend to all trees, except the following (namely):—

- (a) All road side trees planted by or under orders of Government ;
- (b) teak, blackwood and sandalwood ;
- (c) trees, the produce of which has hitherto been disposed of by Government.

RULE 93 (vii).—When the right of Government to the trees in a survey number has been once disposed of to the occupant, or when all the reserved trees have been once cut and removed either—

- (a) at the grant of the occupancy, or
- (b) after such grant, or
- (c) in the Province of Sind at any time before such grant, or
- (d) elsewhere than in the Province of Sind, within five years before such grant

Government will have no further claim to trees which may afterwards grow in the number, or which may spring up from the old roots or stumps, so long as the land continues in occupation.

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In a certain village, the first survey settlement was introduced in 1855, and the revised settlement, in 1889. Some years after these settlements, sandalwood trees grew in a survey number in the village in the occupancy of the accused. Those trees were cut and removed by the accused for better cultivation of the land, and the accused were, for this act, convicted of a breach of Rule 2 framed by the Bombay Government under section 75, clause (c), of the Indian Forest Act. On a reference by the Sessions Judge :—

Held, reversing the conviction, that the trees in question which were not shown to have been in existence at the date of the settlement, belonged to the accused as occupants, inasmuch as under Rule 93 framed under section 214 of the Bombay Land Revenue Code, the right of Government was confined to reserved trees existing at the date of the settlement.

THIS was a reference made by F. K. Boyd, Sessions Judge of Belgaum.

The accused were occupants of a survey number in the village of Bancholi. The first survey settlement was introduced into the village in 1855, and the revised settlement, in 1889. At the dates of neither of these settlements were there any sandalwood trees growing on the land. But a long time afterwards, sandalwood trees grew on the land.

These trees were cut off by the accused for better cultivation of the land.

For this act, the accused were convicted of a breach of Rule 2 framed by the Government of Bombay under section 75, clause (c), of the Indian Forest Act, and sentenced to pay a fine of Rs. 15 each under section 76 of the Act.

The Sessions Judge of Belgaum being of opinion that the convictions and sentences were illegal, referred the case to High Court.

S. S. Patkar, Government Pleader, for the Crown.

No appearance for the accused.

SHAH, J.:—In this case the accused Nos. 1 and 2 have been convicted of a breach of Rule 2 framed by the Local Government under section 75, clause (c), of the

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Indian Forest Act. The breach consisted in the accused Nos. 1 and 2 having cut certain sandalwood trees grown on their occupancy number. Both under the rule as well as under the clause of the section under which the rule is framed it is necessary for the prosecution to establish that the trees said to have been cut belonged to Government or were the property of Government. In the present case the occupancy was granted many years ago and it is not disputed that the sandalwood trees in question came into existence long after the first survey settlement. Whatever the respective ages of these trees might be, it is not disputed that in no case did the age exceed sixteen years. The trial Magistrate decided the case on the footing that the sandalwood trees were among the reserved trees. The reference to this Court is made on that assumption and the case is argued before us on that basis. Under section 40 of the Bombay Land Revenue Code all the trees except those that are reserved would belong to the occupant. The learned Government Pleader has relied upon the second paragraph of the section for the purpose of making it clear that in the case of settlements prior to the passing of Bombay Act I of 1865 the right to teak, blackwood and sandalwood trees was not conceded to the occupants. The first survey settlement in this village is stated before us to have been made prior to the passing of this Act, and the revision survey settlement was made after the passing of the Land Revenue Code. It may be taken that the sandalwood trees were among the reserved trees.

Proceeding on that footing it seems to me that the question is whether the reservation would apply to the trees existing at the date of the first settlement or to all subsequent growths. Rule 93, clause (vii), of the Rules framed under section 214 provides that when the right of Government to the trees in a survey number has been

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once disposed of to the occupant or when all the reserved trees have been once cut and removed the Government will have no further claim to trees which may otherwise grow in the number or which may spring up from the old roots or stumps so long as the land continues in occupation. This rule makes it clear that all the reserved trees may be cut and removed, and that after they are cut and removed, the Government has no further right to such trees growing in the occupancy number so long as the occupancy continues. We do not know in this case, for instance, whether there were any sandalwood trees originally on this survey number at the date of the settlement and whether they were cut or not. If any such trees existed originally, they must have been cut and removed, as the trees in question were comparatively recent growths, and as it is not suggested that there is any old tree on the number. Assuming, however, as suggested by the Government Pleader, that there were no such trees at the date of the grant and that there never has been any previous cutting of sandalwood trees in this occupancy number by the Government, the question is whether the sandalwood trees which have admittedly grown on the land during the occupation of the land and after the date of the settlement belong to the occupant or to the Government. It seems to me that Rule 93 indicates that the right of the Government is confined to reserved trees existing at the date of the settlement and that all subsequent growths belong to the occupant. This view of Rule 93 appears to me to be consistent with the terms of section 40 of the Bombay Land Revenue Code and to indicate the true meaning of that section. Apart from this rule, there is nothing in the language of section 40 of the Code to show that all future growths of sandalwood trees or rather of reserved trees would belong to the Government.

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The language would apply ordinarily to existing growths of reserved trees at the date of the settlement; and the doubt, if any, is removed by the wording of Rule 93, which clearly indicates the meaning of the section in that sense. The plain and natural meaning of the rule is that the existing reserved trees belong to the Government and that all future growths belong to the occupant. Thus the trees in question, which are not shown to have been in existence at the date of the settlement, belong to the occupant. I have referred to the date of the settlement as we are concerned with a case in which the settlement was completed prior to the passing of the Land Revenue Code.

This is an important question, and it may be that all the material facts are not brought out clearly in these proceedings. But considering the case on the materials available on this record, I do not think that these trees, for the cutting whereof the accused have been convicted, are shown to be the property of the Government. Therefore, in my opinion, there was no breach of the rule under the Indian Forest Act.

I would, therefore, make the rule absolute, set aside the convictions and sentences and direct the fines, if paid, to be refunded.

HAYWARD, J.:—I concur. Accused Nos. 1 and 2 cut certain sandalwood trees on their land. It seems to have been assumed that these trees were growths subsequent to the occupancy but it has not been clearly shown that they were not fresh growths from old stumps. The accused Nos. 1 and 2 were, however, fined for having cut the trees on the ground that they had in any case been reserved as the property of Government under Rule 2 published at page 59 of the First Part of the *Bombay Government Gazette* for 1883 under section 75 of the Indian Forest Act.

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It has been stated that the original settlement was in the year 1855 and the revised settlement in 1888-89, and it has been urged that as the original settlement was before 1865 all sandalwood trees, whether grown subsequently or merely fresh growth from old stumps, were reserved by reason of section 40 of the Bombay Land Revenue Code and that even if the revision settlement of 1888-89 be looked to, still there was a special reservation covering both within the meaning of section 40, under Rule 91, clause (1), notwithstanding the provisions of Rule 93, clause (vii) of the same Rules under section 214 of the Bombay Land Revenue Code.

It has not, however, been shown to my satisfaction that the reservations were ever intended to cover growths subsequent to the survey settlements. It would, in my opinion, be contrary to the ordinary rule of construction to apply the reservations to anything that was not then in existence. There would, in my opinion, have been a special clause if it had been intended by the reservation to include trees that might be grown on the land subsequent to the survey settlements and there would have been explicit reference to such growth in Rule 93, clause (vii) under section 214 of the Bombay Land Revenue Code. It seems to me, therefore, that the prosecution has not established the liability of the opponents to fine under section 75 of the Indian Forest Act. It seems to me unfortunate that where there was a doubt of this nature as to the intention of the rules, the prosecution should have been lodged and that a matter of this importance should have been left for determination upon insufficient materials in an unrepresented proceeding in a criminal Court. It would more properly have been determined by regular proceedings in the Civil Court.

Rule made absolute.

R. R.