according to the terms of his bond. I cannot imagine that it was ever intended that the law should produce such an extraordinary result as that. I think the proper order to pass in this suit is that Rs. 9,500 are due by the mortgagor-defendants to the plaintiff. That amount we direct to be paid in two instalments, Rs. 4,750 to be paid on the 21st June 1922, and the second instalment of Rs. 4,750 to be paid on the 21st June 1923. In default the plaintiff should apply under section 15B of the Dekkhan Agriculturists' Relief Act.

The 8th respondent, who is a party to the suit as defendant No. 9, is a second incumbrancer, and the Judge has rightly directed that the property subsequently mortgaged to him should only be sold when it has been found that the sale-proceeds of the remaining properties encumbered in favour of the plaintiff are insufficient to meet the plaintiff's decree.

The costs of the appeal and of the suit to be added to the mortgage amount.

*Decree accordingly.*

R. R.

## PRIVY COUNCIL.*

FORT PRESS COMPANY, LIMITED, DEFENDANTS *v.* MUNICIPAL CORPORATION OF THE CITY OF BOMBAY AND ANOTHER, PLAINTIFFS.

P. C.* 1922. *May* 25.

[On Appeal from the High Court at Bombay.]

*Land Acquisition Act (I of 1894)—Proceedings under Act—Competence of parties to agree value.*

Although proceedings have been taken for the compulsory acquisition of land under the Land Acquisition Act, 1894, the owner and the acquiring party remain competent to enter into an agreement as to the price, and an agreement so made is capable of being enforced in the ordinary way. An agreement

*Present*:—Lord Buckmaster, Lord Atkinson, Lord Sumner, Lord Carson and Sir John Edge.

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between the parties as to the price does not interfere with the jurisdiction of the Collector under the Act.

Judgment of the High Court affirmed.

APPEAL (No. 74 of 1921) from a judgment and decree of the High Court in its Appellate Jurisdiction (July 31, 1919) affirming a decree of the Court in its Original Civil Jurisdiction.

The suit was instituted by the respondents in the High Court in the circumstances stated in the judgment of the Judicial Committee. The plaint prayed for declarations that there was a contract binding on the defendants (the present appellants) in the terms of the letter from the plaintiffs dated 12th September 1917, (referred to in that judgment) accepted by the defendants, that the defendants were not entitled to claim in the proceedings under the Land Acquisition Act any sum for compensation other than that agreed by the contract, that if the Collector awarded more than that sum the excess would belong to the plaintiffs and if he awarded less the plaintiffs were bound to pay the full agreed sum ; and for further relief.

The suit was tried by Macleod J. who found that there was a concluded and valid agreement between the parties. The learned Judge made declarations substantially as prayed.

The appeal was heard by Heaton and Marten JJ. and was dismissed, the terms of the declarations, however, being slightly varied. Marten J. agreed with the view of the trial Judge that it was competent to the parties to agree as to the compensation to be awarded, and that they had concluded a binding agreement. Heaton J. while formally accepting that view thought that probably the true effect was that the parties agreed as to the value of the property, and left all other questions to be determined under the Act. The judgment of the

appeal Court will be found reported in I. L. R. 44 Bom. 797.

1922, May 25 :—*G. J. Talbot, K.C.* and *Wootten, K.C.*, for the appellants. The procedure under the Land Acquisition Act, 1894, differs from that under the English Lands Clauses Act. The Indian Act gives an overriding power, vested in the Government, to settle compensation by the procedure under the Act. No binding contract could be made by the parties after the proceedings under the Act had been instituted. The letters amount only to admissions between the parties as to the value of the property. If there was a binding agreement, it left the value of the easements to be determined by the Collector.

[Reference was made to the Land Acquisition Act, 1894, the City of Bombay Municipal Act (III of 1888) section 91, sub-section 2, and *Ezra* v. *Secretary of State for India*[1].]

*Upjohn, K. C., Sir George Lowndes, K. C.* and *E. B. Raikes*, for the respondents. There is nothing in the Act to prevent the parties coming to an agreement after the Collector has been called in to adjudicate. (They were stopped.)

May 25 :—The judgment of their Lordships was delivered by

LORD BUCKMASTER:—In this case the Corporation of Bombay entered into negotiations during the years 1916 and 1917 with the appellants (The Fort Press Company, Limited) for the purpose of acquiring from them by agreement certain lands that were needed for local purposes. Those negotiations were not successful and on the 26th July, 1917, while they were still pending, the Government issued, under the Land Acquisition Act,

[1](1905) 32 Cal. 605; L. R. 32 I. A. 93.

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at the request of the Corporation, a notification that the lands were required to be taken by the Government for a public purpose. That notification was followed in due course by a notice on the 22nd August, 1917, signed by the Deputy Collector of Bombay. The Collector proceeded in accordance with the powers conferred upon him by the Act to hear the dispute, but on the 12th September, 1917, the negotiations between the appellants and respondents were reopened and a proposal was made by the Fort Press Company stating that they were willing to accept without prejudice Rs. 1,45,517, inclusive of 15 per cent. for compulsory acquisition and the cost of the chimney, as the price of the property, subject to certain specified deductions. This proposal was accepted and approved on behalf of the Corporation of Bombay. This alteration in the position of the parties was brought before the Collector in due course, but at an adjourned hearing on the 27th January, 1918, it was denied on behalf of the appellants that any agreement had been reached, and the Collector accordingly further adjourned the proceedings, in order that, as their Lordships understand the report of what took place, the parties might take the necessary steps to settle whether or not a bargain had been made. Those steps were taken with promptitude by the respondents, who instituted proceedings in the High Court of Judicature at Bombay on the 12th March, 1918, asking for a declaration that there was a contract and for a very large number of points of ancillary relief. They succeeded before both Courts, namely, that exercising original and that exercising appellate jurisdiction and from the latter this appeal has been brought. The foundation of the appellants' case rests on the assertion that when once proceedings for compulsory acquisition have been set on foot, the interested parties cannot come to any

binding agreement regulating the amount of the purchase price. There is nothing whatever in the Land Acquisition Act itself to negative any such right. If the parties before the institution of the proceedings contemplated by that Act, chose to agree, they were perfectly competent to do so and there is nothing whatever in the words of the Act to suggest that this power is thereby taken away. The Act certainly does not directly effect such a result, nor can their Lordships ascertain any reason why the fact that compulsory powers have been invoked in order to secure property from unwilling vendors, should be regarded as denuding all parties of rights they possessed before the proceedings began.

In the present case, the Corporation of Bombay enjoys by virtue of its Municipal Act of 1888, express power to acquire immoveable property at certain terms and rates and prices as may be thought right by the Commissioner when approved by the Corporation, and consequently the Board is not faced with the consideration of the question as to whether there was any initial informality in the power of the respondents to do what they have done.

Their Lordships think that the agreement made, which is now established beyond dispute, is an agreement which bound the parties and that the High Court exercising their appellate jurisdiction, were right in the view they took.

Their Lordships' opinion is not intended to interfere with the jurisdiction of the Collector. It may be a very unusual thing that he should proceed to determine what in his view the price should be, after he had evidence of a complete contract on the point, but if he thought right to do so their Lordships' judgment will not affect his taking such a course. All they decide is that

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the parties who were competent before the proceedings to agree what they thought was the right price for the property remain competent after the proceedings and an agreement so made is capable of being enforced in the Courts in the ordinary way.

For these reasons in their Lordships' opinion, this appeal fails and must be dismissed with costs, and their Lordships will humbly advise His Majesty accordingly.

Solicitors for appellants : Messrs. *E. F. Turner & Sons.*

Solicitors for respondents : Messrs. *Sanderson, Lee, Eddis & Tennant.*

*Appeal dismissed.*

A. M. T.

## ORIGINAL CIVIL.

*Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.*

1921. *November 7.*

ABDUL HUSSEIN ADAMJI MASALAWALLA, APPELLANT *v.* MAHOMEDALLY ADAMJI MASALAWALLA AND OTHERS, RESPONDENTS*.

*Letters Patent (Amended), clause 12—Administration Suit—Whether a suit for "land"—Part of immoveable properties in suit outside High Court's original jurisdiction—Whether High Court has jurisdiction to entertain such suit.*

An administration suit is not a suit for "land" within the meaning of clause 12 of the Amended Letters Patent of the Bombay High Court.

The High Court can entertain an administration suit even though there are immoveable properties, alleged to belong to the estate of the deceased, outside the limits of its Ordinary Original Civil Jurisdiction.

APPEAL from order of Kincaid J. in an administration suit.

* O. C. J. Appeal No. 73 of 1921 ; Suit No. 3062 of 1920.