# ORIGINAL CIVIL.

*Before Mr. Justice Phear.*

THE EAST INDIAN RAILWAY COMPANY *v.* THE BENGAL COAL COMPANY.

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*Sept.* 20, 24, & 28.

*Jurisdiction—Suit for Land—Letters Patent*, 1865, *cl.* 12—*Injunction.*

In a suit brought against the owners of a mine adjacent to a mine belonging to the plaintiffs, the plaint alleged that a certain boundary line existed between the two mines, and prayed for a declaration that the boundary line was as alleged, and that the defendants might be restrained by injunction from working their mine within a certain distance from such boundary line. The defendants in their written statement disputed the plaintiffs' allegation as to the course of the boundary line. The mines were situated out of the jurisdiction of the High Court, but both the plaintiffs and defendants were personally subject to the jurisdiction. *Held*, that the suit was a suit for land within cl. 12 of the Letters Patent, and therefore one which, the land being in the mofussil, the Court had no jurisdiction to try.

On the facts stated in the plaint, and before the filing of the defendants' written statement, the Court granted an *interim* injunction, and refused an application to take the plaint off the file.

THIS was described as a suit for declaration of title to certain land and mines, for an injunction and for other relief. It was brought by the owners of certain land and coal mines in the district of Hazareebagh to restrain the defendants, who were the owners of a mine adjacent to that of the plaintiffs, from working their mine within a certain distance from a line alleged by the plaintiffs to be the boundary line between their mine and that of the defendants, on the allegation that such working would be to the injury of the plaintiffs' mine.

The plaint prayed that it might be declared that the course of the boundary line was as stated by the plaintiffs; and that the defendants might be restrained by injunction from working their mine, within a certain distance of the said boundary line, and from allowing the water from their mines to flow into those of the plaintiffs, and from otherwise injuring the plaintiffs' mines. The defendants in their written statement disputed the

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plaintiffs' allegation as to the course of the boundary line, and submitted that the Court had no jurisdiction to try the suit. Both the plaintiffs and defendants had their principal offices, and carried on business, in Calcutta.

The plaint having been admitted, an application for an *interim* injunction was granted, and an application subsequently made that the plaint should be taken off the file, on the ground of want of jurisdiction in the Court to entertain the suit, was refused: and the defendants having filed a written statement, the case came on for settlement of issues, and the issue was raised as to whether the Court had jurisdiction to try the suit.

The *Advocate-General*, offg. (Mr. *Paul*) and Mr. *W. Jackson* for the plaintiffs.

Mr. *Woodroffe* and Mr. *Branson* for the defendants.

The *Advocate-General*.—By s. 9 of the High Courts' Act, 24 & 25 Vict., c. 104, the High Court was to possess the powers of the Supreme Court, except so far as they might be altered by the Legislature. The jurisdiction of the Supreme Court is shown in the Charter of 1774, and extended by s. 13 to all kinds of actions against persons resident in Bengal, Behar, and Orissa; and by s. 17 of 21 Geo. III, c. 70, the Supreme Court had jurisdiction to try all suits against inhabitants of Calcutta. It is submitted then that this is a suit which the Supreme Court would have had jurisdiction to try. By cl. 12 of the Letters Patent, 1865, the powers of the High Court extend to cases of every description in certain cases. Unless it clearly appear that this is a suit for land within the meaning of that clause, this Court has jurisdiction by reason of the defendants being resident in Calcutta. It is submitted the meaning of "suit for land" is "suit for possession of land." The cases which attempt to show that suits for foreclosure and redemption are suits for land are wrongly decided. Such suits are eminently personal suits, and possession is not a necessary element in them—*Paget* v. *Ede* (1). All suits concerning land

(1) L. R., 18 Eq., 118.

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are not suits for land. A suit for trespass to land is not a suit for land—*Rajmohun Bose* v. *The East Indian Railway Company* (1) and *Halford* v. *East India Railway Company* (2); but the suit may be brought where the person can be found. Here the plaintiffs ask that the defendants may be prevented from committing a trespass to their land. In trying suits with respect to land in the mofussil, this Court regulates its procedure by what would have been the procedure if the suit had been brought in the mofussil—*Bank of Hindustan* v. *Nundolall Sen* (3). The parties being subject to the jurisdiction, the Court has power to try this suit. The plaintiffs do not seek for an adjudication of title; see *Chintaman Narayan* v. *Madhavrav Venkatesh* (4) and *Ratanshankar Revashankar* v. *Gulabshankar Lalshankar* (5).

Mr. *Woodroffe* for the defendants referred to the description of the suit in the plaint as showing the nature of the relief sought for. It is admitted that the defendants are entitled to work up to the limits of their land, leaving the plaintiffs to protect their mines by leaving a sufficient margin, and that the defendants cannot be restrained from so working. The question, therefore, is what is the line up to which the defendants have the right to work; in other words, is that land the plaintiffs' or the defendants' land? For the plaintiffs the argument assumed that the defendant-company was a British subject. It is submitted a suit could not have been instituted in the Supreme Court against a British subject, resident in Calcutta, for land out of Calcutta, when there was no question of contract between the parties; see *Doe* d. *Hurlall Mitter* v. *Hilder* (6). No authority has been cited to show that such a suit was ever brought. Nor since the Letters Patent, can residence be made the ground of jurisdiction, where the land is out of the jurisdiction, and the Court has for that reason no jurisdiction—*Rundle* v. *The Secretary of State* (7), *Bibee Jaun* v. *Meerza Mahomed Hadee* (8), *S. M. Lal-*

(1) 10 B. L. R., 241.
(2) 14 B. L. R., 1.
(3) 11 B. L. R., 301.
(4) 6 Bom. H. C. Rep., A. C., 29.
(5) 4 Bom. H. C. Rep., A. C., 173.
(6) Morton, 183.
(7) 1 Hyde, 37.
(8) 1 I. J., N. S., 40.

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*money Dasi* v. *Juddoonath Shaw* (1), *Blaquiere* v. *Ramdhone Doss* (2), *Denonath Sreemony* v. *Hogg* (3), *In re Leslie* (4) and *Bagram* v. *Moses* (5) was a case of a declaration of trust; the Judge there expressly says he could make no adjudication of title. *Rajmohun Bose* v. *The East Indian Railway Company* (6) has no bearing on this case. *Juggoduma Dossee* v. *Puddomoney Dossee* (7), and *Khalut Chunder Ghose* v. *Minto* (8) are distinguishable also on the ground that there was no title to land sought to be declared in either. As the Judge says in the latter case (p. 429):—No right to land, or to any interest therein, will be in the slightest degree modified or affected by the result of the suit." *Paget* v. *Ede* (9) is a decision by the Court of Chancery, which has power in any case to give a decree to affect the conscience of a defendant. This is a Court of limited jurisdiction. That decision too is contrary to the whole course of decisions in this Court. In *Chintaman Narayan* v. *Madhavrav Venkatesh* (10) and *Ratanshankar Revashankar* v. *Gulabshankar Lalshankar* (11), the question of title arose only incidentally; there was no question of title between the parties to be decided in the suit. On that point too it was held in *Surwar Hossein Khan* v. *Shahzada Gholam Mahomed* (12) that a suit to have it declared that lands were charged with the payment of a debt on an unregistered bond for a sum of money in which the lands were charged by way of mortgage and for an order for sale, was a suit for recovery of an interest in immoveable property. That was also the ground of decision in *Norris* v. *Chambres* (13).

The learned Counsel also referred to the case of *Doe* d. *Colvin* v. *Ramsay* (14) to which his attention had been called, and distinguished it from the case of *Doe* d. *Hurlall Mitter* v. *Hilder* (15), because, in the former case, the defendant

(1) 1 I. J., N. S., 319.
(2) Bourke, O. C., 319; S. C., on appeal, *Eng.*, *11th* Sep. *1865*.
(3) 1 Hyde, 141.
(4) 10 B. L. R., 68.
(5) 1 Hyde, 284.
(6) 10 B. L. R., 241.
(7) 15 B. L. R., 318.
(8) 1 I. J., N. S., 426.
(9) L. R., 18 Eq., 118.
(10) 6 *Bom.* H. C. Rep., A. C., 29.
(11) 4 Bom. H. C. Rep., A. C., 173.
(12) B. L. R., Sup. Vol., 879.
(13) 29 Beav., 246.
(14) Morton, 148.
(15) *Ib.*, 183.

was a British subject. See also the note by the editor to that case.

*The Advocate-General* in reply.—A suit for ejectment from land out of Calcutta has been held to lie in the Supreme Court against a native inhabitant of Calcutta—*Doe* d. *Bampton* v. *Petumber Mullick* (1). See also *Doe* d. *Muddoosoodun Doss* v. *Mohenderlall Khan* (2) and *Doe* d. *Chuttoo Sick Jemadar* v. *Subbessur Sein* (3), therefore the being a British subject, made no distinction. It was attempted to get rid of the case of *Paget* v. *Ede* (4), on the ground that this Court was of more limited power than the Court of Chancery; but that is not so; although the Supreme Court had power to give possession of land out of Calcutta, the Court of Chancery cannot give possession of land out of England. The case of *Penn* v. *Lord Baltimore* (5) is an authority against the defendants. It does not matter what the subject of the suit is, provided the Court acting *in personam* has power to compel the defendant to do what it orders. As to the power of the Supreme Court to issue writs out of Calcutta, see *Dorab Ally Khan* v. *Moheeruddeen* (6) and cases there cited. *Rundle* v. *The Secretary of State* (7) is not in point. In *Juggodumba Dossee* v. *Puddomoney Dossee* (8), it was contended that, by appointing a receiver, the Court practically gave possession. Now a different interpretation is attempted to be put upon that case. It is submitted that immediately the defendants reach the boundary line they will be committing a trepass which the Court has power to prevent in this suit.

Mr. *Woodroffe*, by permission of the Court, distinguished the case of *Doe* d. *Bampton* v. *Petumber Mullick* (1), inasmuch as there the jurisdiction was admitted. *Doe* d. *Muddoosoodun Doss* v. *Mahenderlall Khan* (2) does not bear out the contention it was cited to support.

(1) Bign., 24.
(2) 2 Boul., 40.
(3) *Id.*, 151.
(4) L. R., 18 Eq., 118.
(5) 1 Ves. Sen., 446.
(6) *Ante*, p. 55.
(7) 1 Hyde, 37.
(8) 15 B. L. R., 313.

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Mr. *Jackson* referred to *Doe* d. *Bampton* v. *Petumber Mullick* (1), where it is said the power contended for was always possessed by the Supreme Court.

*Cur. adv. vult.*

PHEAR, J.—It now appears that the object of this suit is not as I supposed at first, to enforce an equity against the defendant-company in regard to the user and enjoyment of its own land: but, to use the words of the learned Advocate-General, "the plaintiff asks that the defendant be restrained from passing beyond his boundary and committing a trespass on his, the plaintiff's land," and the line at which the plaintiff thus seeks to stop the defendant is not admitted by the latter to be his boundary line. On the contrary the defence is that the defendant's land extends to a second line considerably beyond that specified by the plaintiff. The sole question in dispute between the parties is, whether the margin or strip of land between these two lines belongs to the plaintiff or to the defendant. The suit is substantially brought to have it declared as against the defendant that this strip belongs to the plaintiff, and it is, therefore, I think, a "suit for land" within the meaning of the 12th clause of our Letters Patent, as it has been interpreted by a long line of cases which it is now too late to question. It is very different from the Howrah case (2), where the only question was, whether defendant, a stranger, was liable for a trespass upon the plaintiff's land, or a nuisance affecting him in the enjoyment of it, and where there was no question whatever between plaintiff and defendant, as to the plaintiff's right to the land. And the express words of cl. 12 of the Letters Patent render the principles of the decision in *Paget* v. *Ede* (3) in applicable.

The suit must be dismissed for want of jurisdiction with costs on scale No. 2. *Suit dismissed.*

Attorneys for the plaintiffs: Messrs. *Chauntrell, Knowles,* and *Roberts.*

Attorneys for the defendants: Messrs. *Berners, Sanderson,* and *Upton.*

(1) Bign., 24, at p. 43.

(2) *Rajmohun Bose* v. *The East Indian Railway Company,* 10 B. L. R., 241.

(3) L. R., 18 Eq., 118.