re-grant by Government, but, on the other hand, by a continuation of the grant as of right to Hukamatrái on his father's death; and I am, therefore, unable to arrive at any other conclusion than that Hukamatrái, and in consequence the present plaintiff, has acquired a prescriptive title under Reg. V. of 1827, Sec. 1: and even if this were not the case, I think, as I have above shown, that the plaintiff would be entitled to a decree in his favour on the merits.

Under these circumstances I would reverse the District Judge's decree, and award in favour of the plaintiff as claimed, with all costs on the respondent, the Government.

Decree reversed.

Special Appeal No. 21 *of* 1868.

1868. April 21.

THE COLLECTOR of KHEDA'.............. *Appellant.*
HARISHANKAR TIKAM *et al*............... *Respondents.*

Temple Allowance—Prescription—Presumed Hereditary Grant—Reg. V. of 1827, Sec. 1.

Where a charitable grant in connection with a temple was proved to have been enjoyed by the incumbent, and those under whom he held in regular succession for more than thirty years:

It was held that the grantee had acquired a right of property in it under Reg. V. of 1827, Sec. 1. By *Warden*, J., independently of the origin or nature of the grant. By *Gibbs*, J., in the absence of it being shown to have been a personal grant, and by the conduct of Government in paying it to several generations in succession.

THIS was a Special Appeal from the decision of F. D. Melvill, Acting Judge of the District of Ahmedábád, in Appeal Suit No. 126 of 1865, reversing the decree of A. Bosanquet, Senior Assistant Judge at Khedá.

The plaintiffs brought the suit against the Collector of Khedá to recover their share in a temple allowance.

The Collector answered that the allowance was a charitable, and not an hereditary, grant.

The Senior Assistant Judge called on the plaintiffs to prove that the grant to them was of an hereditary nature;

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and, being of opinion that they had not done so, or shown that it was ever recognised as such by the British Government, threw out their claim.

The Acting Judge considered that there was no doubt that the allowance had been enjoyed by the descendants of the original grantee down to a recent date, when the Government, on the death of the plaintiff's father, ordered that his share should no longer be paid. He was of opinion that the question to be determined was, whether the Government had now any right to stop the allowance, or, in other words, whether the plaintiffs had not acquired a prescriptive right to it by an enjoyment extending over more than thirty years, and found that although the grant might have originally been personal, as contended for by the Collector, yet that, the plaintiffs having proved a prescriptive title, the Government had forfeited their right of resumption. He, therefore, made a decree in favour of the plaintiffs.

The appeal was heard before WARDEN and GIBBS, JJ.

Dhirajlál Mathurádás, for the appellant:—The allowance was a personal charitable grant. There is no law, custom, or usage having the force of law, which compels a person to continue his charity against his will. The law of prescription, therefore, does not apply to the case.

[GIBBS, J.:—You attempt, by the Tákid of 1770, which you produce from your own records, to show that the grant was personal; but the Tákid shows nothing of the kind. Supposing, however, that it was personal, can the Collector, having given the allowance to the plaintiffs' ancestors for a series of years far more than thirty, now refuse to continue to give it? This case seems similar to that of *Desái Kalyánráya* v. *The Government of Bombay* (a), and if so, the ruling there may apply.]

In that case the grant of the *pálkhi* allowance to the Desái was made in consideration of good services. In this the grant was purely charitable, and had no consideration whatever to support it.

(a) *Antè*, p. 1.

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[GIBBS, J.:—The grant, which was by a former ruler, had perhaps the consideration of religious merit.]

[WARDEN, J.:—I do not want to know either the nature or the origin of the grant. We go back for thirty years, and find that this grant has been hereditarily enjoyed without any obstruction during all that time.]

There is a point of limitation which has been omitted in the memorandum of special appeal, which I propose to raise.

[WARDEN, J.:—You are too late.]—[GIBBS, J.:—You admit it has only occurred to you since the hearing commenced before us: I think you are, therefore, too late.]

WARDEN, J.:—I think the Acting Judge was quite correct in the view he took of the case. I am of opinion, independently of the origin and nature of the grant, that the plaintiffs' uninterrupted enjoyment of it for a period of more than thirty years has given them a right of property in it. The Collector has no authority to stop it. I further consider that it is too late now to permit the new point to be taken. We, therefore, confirm the Acting Judge's decree.

GIBBS, J.:—In this case, under a grant from a former government—that of the Gáikvád—a charitable allowance in connection with a temple has been paid to persons in hereditary succession for a period of more than thirty years. Government stopped it a few years ago, and hence this suit.

The Government Pleader refers to the grant to show it was purely personal, and offers a translation made by the Alienation Department, which, however, curiously omits all mention of the date. We have a copy, put in by the Collector, of the original sanad, and from that it appears it was granted on 3 Rajjab 1171, corresponding with A.D. 1770, and I fail to see that it was a personal grant. The sanad is silent on that point, but the conduct of the Government in paying it from generation to generation for many more years than thirty must militate against the view set up by the Government Pleader.

The case is very similar to the one I alluded to in the course of the argument, and I think that Reg. V. of 1827, Sec. 1, applies, and the District Judge was, therefore, correct in the decision he arrived at.

PER CURIAM:—The Court confirm the decree of the District Court with costs.

Decree confirmed.

Jan. 9.

Special Appeal No. 485 *of* 1866.

PAYA'PPA' bin SHESHA'PPA' NA'DNI' ....*Appellant.*
DHONDO NA'RA'YAN DA'MLE ....*Respondent.*

Reg. XVIII. of 1831—*Act III. of* 1863 (*Bombay*)—*Jurisdiction.*

A suit was instituted in a court, which at the date of the filing of such suit was in a Non-Regulation District, to recover possession of a piece of land situate in a village then within the jurisdiction of that court; when the Regulations were introduced, the Regulation Court, which succeeded the said court, was placed in a district different from that to which the said village was annexed.

Held that the village in which the suit arose having been transferred to a district different from that which included the court which had succeeded the Non-Regulation Court, this last-named court had no jurisdiction to try and determine the suit.

Held, also, that an appeal to a Judge of one district from a decree of a subordinate court in another district, when such an appeal was permissible, was not an appeal which could be referred by the District Judge for trial to a Principal Sadr Amín under Reg. XVIII. of 1831, Sec. 3.

Quære—When a district, or particular portion of a district, is for the first time brought under the Regulations, can the Regulation Court, which is established in the territory where a Non-Regulation Court previously existed, continue the trial of suits instituted in the Non-Regulation Court, if no provision have been made in the Act by which the Regulations became operative in the said territory, for the continuance of the trial of such suits by the said Regulation Court.

THIS was a Special Appeal from the decision of Ráv Báhádur Tirmalráv Vyankaṭesh, Principal Sadr Amín in the District of Dhárwár, in Appeal Suit No. 44 of 1864 on the file of the Dhárwár Judge's Court, confirming the decree of the Munsif of Tásgám.

The appeal was heard before TUCKER and GIBBS, JJ.