

[APPELLATE CIVIL JURISDICTION.]

Regular Appeal No. 9 of 1874.

THE GOVERNMENT OF BOMBAY. (*Defendants*) *Appellants.*²² 1875.
 HARIBHA'I MONBHA'I and December 22.

forty-five others (*Plaintiffs*) *Respondents.*

Survey—Assessment—Jurisdiction—Bombay Act I. of 1865—Regulation XVII. of 1827—Prescription—Bombay Act VII. of 1863.

The jurisdiction of the Civil Courts, in the Presidency of Bombay, in matters of revenue and land assessment considered and defined.

The enactments limiting the operation, in the Presidency of Bombay, of the maxim *nullum tempus occurrit regi* considered.

The land tenures of the district of Surat described. -

The village of Kabilpur in the district of Surat is an *ulhad bandhijama* village, settled for hereditarily and of right, by the co-sharers in it, in the gross at a fixed immutable rent, independent of the quantity of land under cultivation, payable to Government, and, as such, falls, in respect of the joint liability of the holders for the revenue in gross, within Sec. 8 of Reg. XVII. of 1827.

The village of Kabilpur is land, situated in a district ceded by the Peishwa in 1802 to the British, held by the co-sharers in it and their predecessors in title partially exempt from payment of land revenue, under a tenure recognised by the custom of the country, for more than 30 years, and, therefore, falls within the claims for exemption mentioned in Bombay Act VII. of 1863, Sec. 21.

Whether Sec. 2, Cl. 1 and Sec. 8 of Reg. XVII. of 1827 and Sec. 21 of Bombay Act VII. of 1863 are or are not controlled by Bombay Act I. of 1865, the village of Kabilpur is liable to assessment to the extent of Rs. 1,089-13-1 only, inasmuch as it falls within the concluding proviso in Bombay Act I. of 1865, saving from further assessment a village entered in the Land Register as partially exempt from payment of land revenue.

Comparison of this (the Kabilpur) case with that of Kanara (*Vyakunta Bapuji v. The Government of Bombay*) Appendix, *supra* p. 1.

THIS was an appeal from the decree of H. Birdwood, District Judge of Surat. The facts and arguments sufficiently appear in the judgment.

Scoble (Advocate General) and *Dhirajlál Mathurádás* (Government Pleader) for the appellants.

Branson and *Naginádás Tulsidás* for the respondents.

The appeal was argued, before WESTROPPE, C.J., and MELVILL, J., on 13th, 14th, and 15th December 1875. In the

1875. course of the argument the following authorities were cited :
 GOVERNMENT OF BOMBAY *Earl Beauchamp v. Winn (a), Vaman Janardhan v. Col-*
lector of Thana (b), Collector of Surat v. Daji Jogi (c), and
 v. *Sub-Collector of Colába v. Ganesh Moreshevar (d).*
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On 22nd December 1875 the following judgment* of the Court was delivered by

WESTROPP, C.J. :—This is a regular appeal from the Court of the District Judge at Surat.

The suit was instituted by the present respondents, who are co-sharers in the village of Kabilpur (alias Kubirpore), in the pargana of Supa and Collectorate of Surat. By their plaint, presented on the 28th of February 1872, and filed on the 18th of March in the same year, they alleged that they and their predecessors in title had enjoyed the proprietorship of that village for several centuries, at a fixed rent never exceeding Rs. 1,174-4 Broach currency, down to A.D. 1871. They, in effect, stated that, after the making by Government of an illegal survey and measurement of that village, against which proceeding they had remonstrated by petition, their rights were infringed by the village being treated as ordinary Khalsa (Government) land, and its assessment enhanced to Rs. 4,106-9, which is a kamal (full) assessment. They prayed a declaration that this assessment is illegal, that they are entitled to the proprietorship of the village, and that it is not liable to a higher assessment than Rs. 1,089-13-1 (Government currency). The plaintiffs' reason for naming that sum, and not the precise equivalent in Government currency for Rs. 1,174-4 (Broach currency) will presently appear. The plaint also claimed a refund of Rs. 55 in respect of a matter not of any importance, which was waived by the plaintiffs at the settlement of issues. Besides the plaintiffs there are six other Desais

(a) L. R. 6 Eng. and Ir. Ap. 223.

(b) 6 Bom. H. C. Rep., 191,194,195, A. C. J.

(c) 8 Bom. H. C. Rep., 166,172, A. C. J.

(d) 10 Bom. H. C. Rep., 216.

* Note.—The footnotes to this judgment are those of the Court itself.—*Ed.*

and eight Bhatelas, interested in the village, whose non-joinder as parties has not been objected to in this Court.

The written statement in defence, filed on the 4th of July 1872, by the Collector of Surat on behalf of the Bombay Government, in its 4th and 5th paragraphs (to which alone of its contents the Advocate General deemed it necessary to call our attention) in effect asserted that the old records, as well of the Peishwa's Government as of the British Government, show that the proprietorship of the village is that of Government, and not of the plaintiffs; that no uniformly fixed sum had been theretofore levied thereon, but that the assessment fluctuated, and that accordingly Government had the right, under the Regulation of 1827 and the Survey Act (Bombay Act I. of 1865) and the rules framed thereunder, to survey and assess the village at pleasure (a).

A preliminary question as to the sufficiency of the stamp upon the plaint was disposed of by Mr. Newnham, then District Judge of Surat, and does not present itself here. He also settled the following issues for trial:—

1. Do the plaintiffs prove their right to pay only Rs. 1,174-4 (Broach currency) as assessment? (That figure was subsequently altered by way of amendment by permission of the District Judge to Rs. 1,089-13-1 Government currency.)

2. If not, is the Collector's action in imposing the higher assessment justified?

The trial took place before Mr. Herbert Birdwood, successor of Mr. Newnham as District Judge of Surat, and occupied nine days. Mr. Birdwood has conducted it with a patient and laborious industry, and an intelligence which are alike creditable to himself and to the administration of justice in the British Civil Courts in India. He (after

(a) The 3rd para. of the written statement objected that, the village being service vatan, the suit was not within the jurisdiction of the Civil Courts; but, both in the District Court and in this Court, the defendants waived that objection, and declined to contend that the village was held for service. The plaintiffs have throughout denied that it is so.

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1875. taking time to consider the voluminous evidence, chiefly
 GOVERNMENT OF BOMBAY documentary) found the first issue (as amended) in the
 v. affirmative, and in favour of the plaintiffs. The second
 HARIJHA'I issue, therefore, did not arise. He accordingly made his
 MONBHA'I decree, declaring "that the plaintiffs, as shareholders of
 Kabilpur, are not liable to pay a higher sum than Rs.
 1,089-13-1 as assessment on that village, and that the pro-
 ceedings, taken with the object of placing a full assess-
 ment upon the village under the Bombay Survey and Set-
 tlement Act, are illegal," and he ordered the defendants
 to pay all costs.

Mr. Birdwood has thoroughly examined and sifted the evidence in the case. In his appreciation of it, as stated at length in his judgment, we agree. The discussion of the evidence by him has been so full that it would be superfluous for us now to specify it in detail. We shall merely refer to some of its salient points. We have had the great advantage of hearing the learned Advocate General's opening statement on behalf of the appellants. It occupied the whole of the 13th and 14th instant. He has not spared any pains to make us acquainted with every important and relevant part of the evidence, and has so perfectly discharged that duty that Mr. Branson, for the respondents, was enabled to limit his speech to the forenoon of the 15th instant. The Advocate General concluded his reply in the afternoon of that day, and my brother Melvill and I have, after carefully considering the case, arrived at the opinion that the decree of the District Court must be affirmed. At the conclusion of the arguments, on this day week, we had no doubt that it had been satisfactorily proved that the plaintiffs (respondents) and their ancestors had, with certain rare and unimportant exceptions which ought not to influence our decision, enjoyed the village of Kabilpur at a fixed rent of Rs. 1,174-4 (Broach currency) for a period of about one hundred and eighty years, if not much longer. The plaintiffs do not produce any sanad. Whether their remote ancestors ever had one has not been established by direct evidence. The facts, which have been proved, might

possibly, if taken together, justify us in presuming a sanad ; but, upon that point, we deem it unnecessary to give any opinion, inasmuch as we are able to decide the case upon the Regulation and Acts without actually resorting to such presumption. There is distinct evidence that the Desais, under whom the plaintiffs derive their title, were A.D. 1657-58 (*i. e.*, 213 years before the recent enhancement of the assessment in 1870-71 now disputed) in possession of the village of Kabilpur.

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Exhibit No. 32 (dated Samvat 1714, Fusli 1065, *i. e.*, A.D. 1657-58), which proves that fact, was originally obtained from the plaintiffs by the defendants, and was put in evidence in this suit by the latter. It is not a Government record, although for some years it has been in Government custody, having been produced by the plaintiffs before Mr. Simpson (Collector of Surat) in 1842, and it was before Mr. Ravenscroft in 1855. These gentlemen were at those times inquiring into the tenure of the pargana of Supa. It is a private document, purporting to provide for the distribution of fifty-one villages in the pargana of Supa into four shares among the Desais thereof. Those 51 villages are described as the Desagiri of Vasi Bhimji Gadadhar—and, so far as the terms of the document enable us to form an opinion, there is not any reason for believing that even then these villages were a new acquisition by the ancestors of the plaintiffs, the Desais. For aught that appears in that document to the contrary, their tenure may then have been ancient. The passage on which the Advocate General particularly relies is :—“ Even should there be any increase or decrease in the Jama Mushahas (stipulated revenue) of these villages in comparison with the Jama of the year 1064 Fusli (A.D. 1656-57) Samvat 1713, none shall swerve from this distribution.” Then follows an enumeration in detail of forty-four villages by name (not including Kabilpur) which are distributed into four divisions, each division being allotted to different persons. Another village (Modhara) is allotted to Morarji Bhimji. Then four other villages, namely Mansad, Kabilpur, Toli (Inam) and Tim-

1875. barni are described as remaining "in the co-parcenership of four shares (sharers)." Assuming that the proviso, that the distribution of the villages shall not be affected by any increase or decrease in the stipulated revenue, is used generally with respect to all of the villages, and not with reference to the first forty-four, it does not by any means thence follow that the Government revenue upon Kabilpur was not even then a fixed amount. The proviso may have been made *ex majori cautela* by the parties to that agreement of partition, in contemplation of the notorious uncertainty of Native rule and Native policy, and of the frequent disturbances of the country. Again, the circumstance that Toli, (which was described in that document as an inám village, and is admitted to have been so, and was, therefore, not legally liable to enhancement of assessment) is included amongst those villages of the pargana to which the proviso is said to be applicable, shows that we should not be warranted in drawing from that proviso so strong an inference as that the parties, by making it, intended to admit that every village in the pargana was liable to enhancement of assessment. The safest construction of it, therefore, is that the parties stipulated that the enhancement of the assessment of such of the villages in that pargana, as were liable to such enhancement (of which there were many), should not affect the distribution made by that document between the parties to it.

The next exhibit in point of antiquity is No. 67. Upon it the appellants have argued that the assessment upon Kabilpur in the Samvat year 1725 (A.D. 1668-69) was Rs. 921-8 and not Rs. 1,174-4. We concur, however, with the District Judge in saying that,—“It would not be safe to hold that the sum of money, entered in it opposite to the name of Kabilpur, represents the whole assessment of that village.” Subsequent accounts lead us to think that, in addition to the sum named, the village was then, at least, liable to a Moghlai charge, which would have brought the assessment nearly up to what subsequent documents establish as the ordinary amount of land revenue paid to the

Native Government. This exhibit is also open to the remark that its heading induces the supposition that the object of the document was rather to show how the villages were distributed, than what revenue was actually levied from them for the Government, although to a certain extent the latter is disclosed.

Exhibit No. 98 (dated Samvat 1748, A.D. 1691-92) records the assessment to which the several villages in the pargana of Supa were then subject. It specifies Kabilpur as liable to an assessment of Rs. 1,174-4 which is compounded of two sums, viz., Rs. 1,074-12 and Rs. 99-8, which latter sum is described as Mughlai (or Moghlai). Moghlai haks are of ancient date. They were portions of revenue retained by the Mogul Government (which preceded that of the Mahrattas) after all their other possessions had passed into other hands. They formerly belonged to the ancestors of the late Nawab of Surat. Mr. Elphinstone Robertson, in his very useful Glossary of Gujarati Revenue and Official Terms, published in 1865, says (p. 45) that these Moghlai haks have, for the most part, passed into the hands of mortgagees and purchasers, and are distinct from the chauth levied by the Mahrattas. He adds that they were levied direct by the parties entitled from the villages up to A.D. 1842, when, on the objection of the revenue authorities, Government prohibited that system of levy, and thenceforth Moghlai would appear to have been levied, as part of the assessment by Government, and the payments were made to the Hakdars direct by Government from the Government treasuries. He also says that these haks are to be found in the Surat Collectorate alone. (See further, as to Moghlai haks, Wilson's Glossary, p. 345.) This Exhibit, No. 98, contains the earliest mention, amongst the documents in evidence, of the sum of Rs. 1,174-4 as the amount of the assessment, and is named a Dehbandhi Tarija (summary of village assessment), and is one of the records of Government. Upon it the plaintiffs strongly rely.

Exhibit 68 (Tarija) for Samvat 1781 (A.D. 1724-25), shows a total assessment on Kabilpur of Rs. 1,809-2. Of

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1875. this sum, however, only Rs. 1,054 seem to have been collected, whereof Rs. 937 were received by Government and Rs. 117 appear under the head of "Ganim." Kesavlal (the principal witness for Government) says that the word Ganimai indicates the dues of the Mahratta Government, as Mughlai (or Moghlai) indicates those of the Mogul Government (b). But having regard to the ordinary proportions (shown in numerous Government records in this case) in which the Mahratta and Moghlai authorities received their respective dues, there is reason to suspect that in this year (A.D. 1724-25) the accountant inverted the proper positions of the Mahratta and Mogul dues, the proportions assigned in the accounts of these years being altogether anomalous. Again, the sum of Rs. 516-0-4 placed in the column (in the translation) headed 'Recoveries' wears much more the aspect of a remission of revenue (or Mafi) than of a recovery. This appears from an examination of the other columns. The amount of revenue collected, Rs. 1,054, added to the second balance, Rs. 238-14 (which we understand to mean the uncollected revenue payable to Government and still due) gives the first balance Rs. 1,292-14, which the figures already mentioned would indicate to be the whole amount of revenue receivable for Government. If this be so, this account has been prepared on a principle somewhat similar to that adopted by Mr. Shaw more than 120 years afterwards, viz., from A.D. 1848-49 to A.D. 1868-69. The Rs. 1,809-2 would in that case represent the whole assessable value, whereof Rs. 516-0-4 were remitted

(b) Ganimai (from Ganim)—Invasion, hostile irruption.

Ganim or Galim. The enemy, the public foe. Molesworth's Mar. and Eng. Dic.

Ghanim. An enemy, a plunderer. Forbes' Hind. and Eng. Dic.

Ghanim. Plunder, spoil, the acquisition of a thing without labour and trouble.

Ghanim. Plunder, booty, spoil, prey (taken especially in a war with infidels). Johnson's Arabic, Persian and Eng. Dic.

"The Mogul rule was succeeded by that of the Mahrattas, who, whatever may have been their merits in their own country, were in Guzerat mere plunderers." Mr. Pedder. Bombay Gov. Records, No. CXIV., New Series, p. 9.

probably as *mafi* and Rs. 1,292-14 were receivable by Government, which exceeds the normal rate of Rs. 1,174-4 (c). Howsoever this may be, this account, which is in some respects

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(c) Our remark, as to the probability of the sum of Rs. 516-0-4 representing revenue remitted, is merely conjectural, and rests upon the following grounds:—The fourth column of figures in Exhibit 68, in which that sum appears opposite to Kabilpur, is headed with the word “Recoveries” in the translation furnished by the defendants (Government). The sixth column of the same translation is headed with the words “Amount of Revenue collected,” under which heading the sum opposite to the name of Kabilpur is Rs. 1,054. Those headings appearing to be similar in meaning, we referred to the vernacular document, or rather to two copies of it furnished by the defendants; one having been filed in this case and the other in the Visalpur case, the original account not having been filed in either. The heading of the fourth column of figures in both copies is a compound word, but in one is spelt differently from what it is in the other. In one the word is Wásal-chothvo; in the other copy it is Wásal-cháthvo. The Gujarati word Wásal (Wasil, Wasilat, Wusúl in Hindustani; Wasúl in Marathi), derived from the Arabic *Wsl*, when used simply as a revenue term ordinarily implies “revenue collected” and sometimes “revenue” alone. In the sense of “revenue collected” it is used as the heading of the sixth column of figures in both copies, and has been rightly rendered in the translation as “amount of revenue collected.” (See Molesworth’s Marathi and Eng. Dic., 2d ed., p. 738; Forbes’ Hind. and Eng. Dic. [Persian character] p. 772; Wilson’s Gloss., p. 536). The second portion of the compound word, whether it be “chothvo” or “cháthvo,” is not to be found in any of the dictionaries, but our interpreter is of opinion that it is probably a corruption of the Sanskrit word “Cáturtha,” a fourth (from Catur, four) and allied to the Marathi “Chauth” (incorrectly, but commonly written “chonth”) or “chautha,” and the Gujarati word “choth,” all of which signify a fourth. If the compound word be Wásal-chothvo or Wásal-cháthvo, the correct translation of the heading of the fourth column would probably be “Revenue one-fourth” or “Revenue collected, one-fourth,” and would indicate a levy of chauth by the Mahrattas A.D. 1725 to the extent of Rs. 516-0-4, which sum is not, however, a fourth of the sum (Rs. 1,809-0-2) given in the third column of figures as the total amount of the assessment for that year, or of any other sum opposite to Kabilpur in Exhibit 68. But, further, the sixth column purporting to show the amount of revenue collected as Rs. 1,054, and the eighth column pointing out that a portion, at least, of that sum was a Mahratta levy under the name of Ganim, raised a doubt whether the fourth column was intended to show the revenue collected by the Mahrattas. And the difference in the spelling of the second portion of the compound word, forming its heading, leads us to think it probable that the vowels had, as is frequently the case, been omitted in the original, and inserted in the copies at the direction of the copyists. If á had been the right vowel, we should have the word “cháthvo, which, no more than “chothvo” or “chathvo,” is to be found

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unlike any other to which our attention has been directed, shows that Rs. 1,054 only (which is somewhat below the normal rate), were paid to the Government authorities in A.D. 1724-25.

On a first glance at the printed summary of assessments and payments extending from A.D. 1668-69 to 1870-71. handed to us by the Advocate General at the commencement of the argument, several ostensible variations from the normal

in the dictionaries, but might be traced to "chhūt," a Gujarati and also Hindustani word (śūt in Marathi), meaning "remissions." On that hypothesis the compound word would mean "Revenue remissions," and the fourth column would not seem to be redundant or inconsistent with the sixth and eighth columns.

Assuming, however, that this conjecture is ill-founded, and that the fourth column was, as is quite possible, intended to show a levy of Mahratta chauth, we cannot attach any importance to Exhibit 68. The Christian year 1725 was a period of anarchy in Guzerat, and, therefore, furnishes no safe guide to the extent of the rightful or normal assessment. The Mussulmans and Mahrattas were not only in antagonism to each other, but were divided amongst themselves. Shujaet Khan (the Foujdar of Surat), as deputy of Sirbuland Khan, was at war with and was eventually defeated and slain by Hamid Khan, the deputy of Nizam Ool Moolk. Rustam Alikhan continued the contest with Hamid Khan. Pilaji Gaekwar at first aided one, and, eventually, the other of these combatants, and was himself, as lieutenant of the Senapati (then Trimback Rao Dhabarey), embroiled with Kantaji Cuddum Banday as officer of the Raja of Satara in levying the Mahratta chauth, which (together with the Sirdesmuki) was at first mere freebooting, and was not conceded as a right by Sirbuland Khan until A.D. 1729—a concession highly disapproved by the Court of Dehli, and for which Sirbuland Khan was superseded in his office. (Wallace: *The Gaekwar*, pp. 8, 9, 10, 15, 19.) Col. Wallace, speaking of the dispute between Pilaji Gaekwar and Kantaji, says: "For some time these dissensions only caused their demands to fall with heavier weight on the unfortunate towns and villages, &c. (p. 10.) The Sirdesmuki, granted in 1729, was ten per cent. of the whole revenue, both on the land and customs with the exception of the port of Surat and the district around it, and the chauth was one-fourth of the whole collections of the land and customs, excepting Surat, and five per cent. on the revenues of the city of Ahmedabad (*Ibid.*, p. 15).

Since the judgment in this case was delivered and the above was written, the Visalpur case has been argued before us, and we have, with the consent of counsel on both sides, procured from Surat the original of Exhibit 68 (numbered in the Visalpur case as Exhibit 49), and find that the heading of the fourth column is "Wásal-Chothvo" and must be taken to indicate a levy of chauth by Mahrattas to the extent of Rs. 516-0-4 in Kabilpur in A.D. 1725.

rate of Rs. 1,174-4 appear. Mr. Birdwood, however, has completely succeeded in showing that the great majority of those variations is only apparent and not real. The addition of the Moghlai, which, though it may not appear in some of the accounts, does appear in many of them, and undoubtedly was leviable from a time anterior to the Mahratta Government, explains most of the variations. The difference of currencies, the deductions in respect of land taken for roads, the temporary charges for a talati, havildar and majmadar, and the Thanavari receipts, explain most of the other discrepancies quite satisfactorily. (Of these, the difference of currency, the deductions in respect of land taken for roads, and the Thanavari receipts, furnish the reason for the District Judge fixing the amount of land assessment at Rs. 1,089-13-1 Government currency.) The very few unexplained exceptions to the uniformity of the assessment, occurring, as they do, mostly in the early accounts, are merely such *pauca maculae* as to the fair and moderate rather help to prove the rule, and could suggest imperfection of title to none but the over-keen and astute in resumption, whose well-intentioned, but excessive zeal to advance the interests of the State really produces the opposite result. This case differs widely from the Kanara Land Revenue case.* There, previously to the British rule, the assessment was proved to have frequently varied, as much as 50 per cent. on one occasion alone having been added to the assessment and continued. Sir Thomas Munro, indeed, spoke of the land rent as fixed, but his own history of it showed that it was so only *sub modo*—that is to say, the variations were not so numerous or so serious as in some adjacent provinces, but they were very great and frequent in comparison with the exceptions in this case; and, moreover, were almost all in the direction of augmentation of land revenue, which, down to the fall of Tippoo Sultan in 1799, and the consequent inauguration of the British rule, was in a state of growth. Here, however, when there have been departures from the normal rate for Kabilpur, the variation has been more generally in the direction of diminution than in that of increase, the amount levied being in the

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* *Supra*, p. 1. *Vyakunta Bapuji v. Government of Bombay.*

1875. case of the very few unexplained variations more usually below than above the normal rate. It is a circumstance particularly worthy of note that while from year to year we find the total annual amount levied from the pargana of Supa ever fluctuating, and the assessment on its villages other than Kabilpur also fluctuating, the assessment on Kabilpur itself has been uniform. In speaking of the other villages we are not to be understood as including amongst them the few villages admitted to be vazifa, or the village of Toli (throughout described as inámi), or the three villages beside Kabilpur in which the right of enhancement is in litigation, inasmuch as we are unwilling to say anything in the present suit with regard to those three villages. Excepting accordingly from our remarks those three villages and the vazifa villages and the villages of Toli and Tambarni, and taking, as instances, the Christian years A.D. 1754-55, 1764-65, 1765-66, 1767-68, and 1770-71, we find that villages other than Kabilpur have in those years varied much from year to year in assessment, and the total assessment on the pargana of Supa, in which they are situated, has also varied sometimes in the direction of increase, sometimes, otherwise, yet in Kabilpur it has been steady at Rs. 1,174-4 with the unimportant exception, in two of those years, of an additional rupee as present for a peon or chitnis, and a *primâ facie* exception in the year 1754-55, which disappears when the ordinary Moghlai (Rs. 199-8) is added to the sum (Rs. 974-12) mentioned in Exhibit No. 239 as received by Government.

We are unable to concur in the argument for the appellants that the introduction of a talati, havildar, and majmudar, in A.D. 1819-20, by the British Government was a variation of the assessment, or indicates a right to vary it. Previously to the introduction, although the cost of them does not appear upon the accounts, the village most probably had, and paid some such officers of its own. Moreover, the Government talati appears to have been, on the remonstrance of the Desais, removed in A.D. 1824 as improperly introduced (*d*). And at somewhat later periods the charges for

(*d*) See Exhibit 219, the petition of the Desais, and the order of Mr.

the havildar and majmudar disappeared from the accounts.

We now proceed to refer to the law as it affects this case.

The portion of the preamble of Regulation XVII of 1827 of Mountstuart Elphinstone's Code, material to the question of the jurisdiction of the Civil Courts in matters of assessment, is that which recites, as one of the objects of the Regulation, "that the *titles* held to confer a *right*, except in times of exigency, to entire or partial exemption from the payment of revenue, should be declared, and a mode provided for trying the *title* to exemption enjoyed when such *title* is deemed insufficient by the revenue officers." This, it will presently be seen, is consistent with the purview, *i.e.*, the providing part or body of the regulation.

The first clause of the 2nd section of the same regulation enacted that :—

"All land, whether applied to agricultural or other purposes, shall be liable to the payment of land revenue to Government, according to the established principles which govern the assessment of that description of land to which it belongs, *except such as may be proved to be either wholly or partially exempt from the payment of land revenue*, under any of the provisions contained in Chapters IX. and X. of this Regulation."

Chapters IX. and X. (comprising Sections 35 to 51) of that Regulation having been repealed by Section I of Bombay Act VII. of 1863, the Advocate General argued that the clause of the Regulation, just quoted, must be now regarded as stopping at the word "belongs," and that the concluding exception is wholly repealed. But the Legislature of India has, in Act XII. of 1873, declared that the portion repealed consists of the words "under any of the provisions contained in Chapters IX. and X. of this Regulation"—so the clause quoted is still in force down to and including the words "payment of land revenue" where they occur for the second

Lumsden, the Collector, endorsed thereupon, directing the removal of the talati.

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time, and the exception now stands thus :—“ except such as may be proved to be either wholly or partially exempt from the payment of land revenue.” That declaration of the Legislature of India, made so recently as 1873, should be taken into consideration, were it necessary now to determine how far Regulation XVII. of 1827 is affected by Bombay Act I. of 1865.

The 2nd Clause of Section II. of Regulation XVII. of 1827 provided that nothing contained in the first clause of that section “ shall be understood to affect the right of Government to assess to the public revenue all lands under whatever title they may be held whenever and so long as the exigencies of the State may render such assessment necessary.”

Section IV. Clause 1 enacted that “ *When there is no right on the part of the occupant in limitation of the right of Government to assess, the assessment shall be fixed at the discretion of the Collector, subject to the control of Government.*”

The special subjection of the *discretion* of the Collector to the control of Government, on the principle of the maxim *expressio unius est exclusio alterius*, precludes the construction that the Collector's *discretion* is subject to the control of the Civil Courts.

Section IV., Clause 2 of the same Regulation enacted that “ *When there is a right on the part of the occupant in limitation of the right of Government, in consequence of a specific limit to assessment having been established and preserved, the assessment shall not exceed such specific limit.*”

This clause deals with ‘rights,’ not with ‘discretion,’ and contains no provision, either express or implied, that ‘rights’ are to be excluded from the consideration of the Civil Courts. That portion, therefore, of Clause 2 of Section IX. which gives a resort to the Civil Court, would operate upon questions of right arising out of a specific limit to the assessment.

Section IX., Clause 1, enacts that, “ *The Collector's decision upon any question arising out of the provisions of the*

preceding sections shall, in the first instance, be obeyed and acted upon as the rule."

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The second clause of the same section is important. It enacted as follows:—"But if any person should deem himself aggrieved by any such decision, he may present to the Collector a petition, addressed to Government, praying for redress, or may file an action against the Collector in the Civil Court, under the ordinary rules, or he may pursue both methods at the same time."

"Third.—The Collector shall forward to Government, without delay, any petition presented to him under the preceding clause; but the reference to Government shall have no effect upon any suit instituted in the Civil Court."

The observations already made upon Clauses 1 and 2 of Section IV. show that, in order to give to those clauses, respectively, their full and just effect, the second clause of Section IX. must, in matters of assessment, be read distributively, or as it is called, *reddendo singula singulis*. Thus Government must be regarded, when a petition is presented to it by a person deeming himself aggrieved by a decision of the Collector, as having authority to deal with it as Government may please, the discretion of the Collector being in all respects subject to the control of Government.

But in the case of an action in the Civil Court, the latter can only interfere with regard to (*i. e.*, adjudicate upon) the legal right or title of the plaintiff to exemption or partial exemption from payment of land revenue, by reason of the existence of a specific limit to the assessment in the case. This construction at once harmonises all three clauses, without violating the provisions, express or implied; contained in any of them, and also attains the object set forth in the preamble.

Those two clauses of Section IV. are most important, when taken in connexion, as they must be, and, as we believe, they always have been, with the second clause of Section IX. as fixing a boundary beyond which the Civil Courts may not travel in questions of assessment of land revenue.

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We have, therefore, with much astonishment learned that, in a quarter which is entitled to better information, it has been stated that the discretion of the Collector is, in all matters of land assessment, subject to that of the Civil Courts—that there is not a single question which can arise in the course of a settlement, whether it relates to the fertility of soils, or the prices of produce, or any other matter, if any there be, even more impossible for a Court of Law to investigate, which may not be taken out of the skilled hands that can deal with it and carried before a tribunal that knows nothing about it. It has been also said that the Civil Judge may even control the broadest principles of an assessment; that he may disapprove of the portion of the assets which the Government think it right to take; that he may think that the assessment ought to be governed by prevailing rates of rent instead of the productiveness of the soil and the rates of prices, or he may think the contrary; that he may even decide that the exigencies of the State are not such as to warrant the imposition of such an assessment as the Collector has decided to impose; that in all these cases the decision of the revenue officer is expressly made disputable in a civil action; that, in short, the whole land revenue system of the country is, by this Regulation, made subject to the control of the Civil Courts.

With all due respect for the high quarter in which this view of the jurisdiction of the Civil Courts of this Presidency in its older provinces has been thus expressed, we must most emphatically state, as we have already stated, in the progress of this case, that the Civil Courts have not any such jurisdiction as has been thus ascribed to them; and that, so far as the Judges of this Court know, the Civil Courts have never asserted that they have or ever had any such jurisdiction. Nay, further, those Judges are not aware that, even in the wildest arguments of legal practitioners in those Courts, any such jurisdiction has been imputed to the civil tribunals.

Had such a jurisdiction existed, the Court would have been called on to exercise it in the Kanara case. It was

there argued that there was a specific limit of assessment—a maximum or *Kadim beriz*, as it was called, which Government could not exceed—and that, if Bombay Act I. of 1865 purported to authorize such an excess, it was for that purpose *ultra vires* and inoperative. It was not, however, so much as for one moment contended, by the learned and very able counsel for the plaintiffs, that, if he failed (as he did) on both of those points, the Court had any jurisdiction to interfere in the assessment, or discretion left to it by law with respect to the extent of the enhancement. Being of opinion, as my brother West and I were, that the Bombay Legislature had not, in that portion of Act I. of 1865 which affected the case, gone beyond its authority, and that neither by grant, sanad, lease, patta, or other contract, legislation (and this, as we shall presently show, includes prescription) or otherwise, was any specific limit to assessment established, and, therefore, that the power to enhance was vested in the Revenue Department, subject to the control of Government alone, we forebore not only from actually deciding as to the fairness of the augmentation of the assessment on the plaintiffs' lands, but even from expressing any opinion upon that question. We both thought and said that to interpose in the controversy which had arisen upon it would be a departure from our proper province and a usurpation of one of the functions of Government in its Revenue Department. We took that opportunity of disclaiming any such jurisdiction, in consequence of remarks made some time previously (e) in the same quarter as that already mentioned, but by a different speaker, which attributed to the Civil Courts an extent of authority which they never possessed, and, so far as we know, never claimed. The case, *Wannaji Sadasiv Thate v. The Collector of Ratnágiri and the Superintendent of the Revenue Survey* (which was treated as the text for those remarks), afforded no legitimate ground for attributing to the Civil Courts any such jurisdiction. The 25th Section of Bombay Act I. of 1865 requires that the assessment by the Survey Officer be “under such general and local

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(e) In August 1873.

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rules as may be in force in the survey under his charge." The plaintiff called two witnesses, one of whom was the kulkarni (*i.e.*, the village accountant, and as such a Government revenue officer), and another inhabitant of the village, who was Plaintiff's co-parcener in the land, who both gave evidence on solemn affirmation that according to former practice, as well under the Peishwa's as the British Government, and according to the rule of the Survey Department in force in the locality in which the lands are situate, the amount of assessment imposable upon such lands could not exceed one-sixth of the gross annual produce, *i.e.*, in other words that one-sixth of the gross annual produce was then by law (25th section of the Act itself) the specific limit of the assessment. They further said that the defendants had exceeded that limit. The High Court, in its judgment, observed, as the fact was, that "to meet this testimony the defendants, the Collector of Ratnágiri and the Revenue Survey Superintendent, have not condescended to give or produce any evidence whatever." It has been said that there was no such rule of the Revenue Survey as the kulkarni and the other witness deposed. Possibly this may have been so. If it were, the defendants ought to have called one or more witnesses to contradict the plaintiff's witnesses; and to the neglect to do so, and to no other cause, the decision adverse to the defendants would be due. In order to preclude the supposition that the decision would establish that, in other cases than that of the plaintiff, the alleged rule of the Survey would of necessity be accepted as a fact, the Court was careful to say that "the Court must, under circumstances such as those in which this case is brought before it, hold that the local rule of the Survey in progress in the district where these lands are situated, is that *dhara* lands should not be assessed for revenue exceeding one-sixth of their actual produce, and that, in violation of that local rule of the Survey, and, therefore, of Section 25 of Bombay Act I. of 1865; the defendants have assessed the plaintiff's land in a proportion greater than one-sixth of the annual produce." That decision proceeded on the uncontradicted testimony as to the local rule of the Survey, and on

the express provision in the Act that the assessment shall be in accordance with such local rules, which are thus thereby prescribed as the specific limit of assessment. The Court, therefore, kept most strictly within its jurisdiction as laid down in Regulation XVII. of 1827. I may add that, the Ratnágiri case being a regular appeal, we would have been at liberty to take additional evidence if we thought fit so to do, and that in that view the Court asked the learned gentlemen who appeared for the defendants on the appeal whether they could even then produce the Survey rules, but they did not do so, and did not seem to have any certain instructions at that time whether or not there were any Survey rules. Assuming that there was such a Survey rule as was sworn to on behalf of the plaintiff, and that Government in its Revenue Department deemed it an impolitic rule, the Governor in Council might, on any day, have altered it, and substituted a new rule for it under Section 28 of the same Act (I. of 1865.) If there were not such a rule as was so sworn to, its non-existence might have been proved by even some subordinate in the Survey Department: so it is difficult to understand how any consternation could have been properly occasioned in the Revenue Department by the decision in the Ratnágiri case (f).

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(f) That neither that case, nor the case of *Gadre v. The Collector of Ratnágiri* was misunderstood by the Civil Courts in the Mofussil, is sufficiently shown in the judgment, given by Mr. Birdwood on the 15th July 1872 in the District Court of Ratnágiri, in *Ramchunder Bhikaji Bhawe v. The Commissioner of Survey and the Collector of Ratnágiri*. After referring to the two first-mentioned cases, he said:—"The question then remains whether the allegation, that the defendant omitted to measure a portion of the plaintiff's land on which an assessment had been fixed, is one which a Civil Court can inquire into. I think that such an allegation can only be inquired into when there is a further allegation that the assessment actually fixed is in excess of what can be legally levied." And again:—"It is only 'when' (in the language of Regulation XVII. of 1827, Section 4, Clause 2), 'there is a right on the part of the occupant in limitation of the right of Government, in consequence of a specific limit to assessment having been established and preserved, that an assessment in excess of such specific limit is illegal; and also (as in the case of Govind Vinayek Gadre) an assessment is illegal when legal notice has not been given of an assessment." Being of opinion that the plaintiff had not established any right to a specific limit to the assessment, Mr. Birdwood dismissed the

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If the case of *Gadré v. Collector of Ratnágiri* (6 Bom. H. C. Rep. 101) decided by Tucker and Warden, JJ., be fairly examined, it will be seen that the principle on which it really turned, is this: that although the Collector may assess land prospectively, yet he may not assess it retrospectively, so as to alter the terms as to rent on which the tenant entered upon and cultivated the land for the passing year; or, in other words, to infringe upon the specific limit as to rent fixed by the contract on the faith of which he so entered and cultivated for that year. That decision was, therefore, not only perfectly just, but strictly within the bounds of the jurisdiction of the Civil Courts as we understand it to be laid down in Reg. XVII. of 1827, and the learned Judges manifestly had no intention to outstep those bounds. The case of the *Sub-Collector of Colába v. G. M. Mchendale* (10 Bom. H. C. Rep. 216) was one in which the revenue officers there concerned attempted, in violation of the terms of certain kauls or leases under which the plaintiffs had expended capital in reclaiming land from the sea, to increase the assessment on the land so reclaimed. That, therefore, was the case of a specific limit by contract, and fell precisely within the circumscribed jurisdiction conferred upon Civil Courts by Reg. XVII. of 1827 as understood here.

We are inclined to the opinion that the jurisdiction should be regarded as thus circumscribed even independently of the 4th section of that Regulation. For we should be dissatisfied. And in a judgment given by him in the same Court, on the 3rd of April 1873, in *Wasudeo Damodhar Joowekur v. The Collector of Ratnágiri and the Survey and Settlement Commissioner*, he said:—"And, first, it is stated that the assessment is excessive. Such an objection can apparently be entertained by a Civil Court only when, in the language of Section 4 of Regulation XVII. of 1827, there is a right on the part of the occupant in limitation of the right of Government to assess, in consequence of a specific limit to assessment having been established and preserved. In such cases any assessment in excess of such limit is illegal and can be set aside by a Civil Court." Both of these decisions of Mr. Birdwood had appeared in the public prints as well as in pamphlet form, and were perfectly well known in this Presidency, before the over-statement made, no doubt, however, inadvertently, in August 1873, as to the extent of the jurisdiction of the Civil Courts.

posed to hold that Section IX. (which empowers a person deeming himself aggrieved by the decision of the Collector to file an action against the Collector in the Civil Court) does not authorise the Court to exercise any control over the Collector unless he transgress the law. That is the proper and well-understood sphere of action of Courts of Justice, and, unless a contrary intention be clearly indicated, the Legislature should not be regarded as intending to confer upon them any greater power. The preamble, which points out that the intention of the Legislature was to provide means for determining as to the title to exemption from payment of revenue when the revenue officers deem that title to be insufficient, is completely consistent with that view. The 9th section should, we think, be interpreted in that light. Neither in that section nor in any part of the Regulation is there, in our opinion, the faintest intimation of a desire on the part of the Legislature that the Civil Judges should be transformed into Revenue Commissioners, or Collectors of a superior grade. We should no more deem the Civil Courts entitled to arrogate to themselves the duties of those offices, than Lord Selborne, sitting in Chancery, did to assume functions assigned by Statute to a School Board (L. R. 9 Chan. App. 122) or Sir G. Jessel sitting in the Rolls Court, did to appropriate to himself functions conferred upon a Railway Clearing Committee (L. R. 20 Eq. 383). The Revenue Department, when acting within the bounds of the liberal discretion which the law entrusts to it, cannot be interfered with by the Civil Courts. It is only when it passes those bounds and violates the rights of property, or otherwise transgresses the law, that the Courts can interpose. Those who wish well to the preservation of British power and honour in the East, and whose field of view extends beyond the frontier of a department, will not desire that this limited and salutary power of interposition should be destroyed or impaired. We have no reason to believe that, as a body, the revenue branch of the Civil Service of this Presidency thinks differently. Moderation and discretion, combined with ability, are too general amongst its members to lead them to desire a departure in this re-

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spect from the wise and statesmanlike principles of Mountstuart Elphinstone embodied in his Code of 1827 (*g*). India has yet to see the man who better understood what the circumstances of the various provinces of this Presidency and the temper of its people required. It is well known that it was his intention to extend, in the course of time, to the Deccan and South Mahratta Country, the right of resort to the Civil Courts which exists in the older provinces.

Continuing our remarks upon Regulation XVII. of 1827, we arrive at the 3rd clause of Section IV. which provided that "nothing contained in the last preceding clause shall be understood to affect the right of Government to institute by regulation at any time, when it may appear expedient, new and specific rules regarding assessment."

That clause, as well as the 2nd clause of Section II. of the same Regulations already quoted, were not indispensable to the preservation of the power of legislation. That would have remained in the Legislature if those clauses had never been penned. The object of them, no doubt, was to prevent any misapprehension on the part of the subject, and to warn him that, should it thereafter appear to Government, in its legislative capacity, that he did not bear his fair share of the expenses of the State, or that if the necessities of the State should demand a general increase of taxation, the provisions in that Regulation for his benefit would constitute no obstacle to such measures as Government in that capacity might deem proper. But neither of those clauses conferred nor could have been intended to confer, either upon the

(*g*) The jurisdiction of Civil Courts in this Presidency was regulated, not for the first time created, by the Code of 1827. That jurisdiction and its gradual territorial extension may be traced through Bombay Regulation III. of 1799, SS. 2, 7, 10; Bom. Reg. I. of 1800, SS. 2, 7, 9, 10; Bom. Reg. X. of 1800, S. 39; Bom. Reg. I. of 1804, S. 39; Bom. Reg. II. of 1803, S. 3; Bom. Reg. I. of 1809; Bom. Reg. III. of 1814, S. 5, Clause 2, and SS. 10, 16, 23; Bom. Reg. IV. of 1815, S. 5; Bom. Reg. VI. of 1817; Bom. Reg. III. of 1819; Bom. Reg. IV. of 1819, SS. 1, 2, 3, &c.; Bom. Reg. III. of 1820; Bom. Reg. V. of 1820, and Bom. Reg. I. of 1823, SS. 23, 25, 26. That jurisdiction rested on the same principles as those laid down by the Government of Lord Cornwallis in the memorable preambles to Bengal Regulations II. and III. of 1793. The enactments from 1819 to 1827 inclusive were passed by the Government of Mr. M. Elphinstone.

Civil Courts, authority to pronounce upon the necessity of such new measures, or, upon the Revenue Department, the right to increase the assessment beyond the specific limit assigned to it by contract, grant, enactment, or other lawful mode.

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In connexion with these Clauses 2 of Section II. and 3 of Section IV. (as interpreted in 10 Bom. H. C. Rep. 216), the Advocate General contended that the subsequent legislation contained in Bombay Act I. of 1865, Section 25 (to which we shall presently more fully advert), authorized Government, in its revenue executive capacity, to enhance the assessment on the village of Kabilpur. To that argument, however, for reasons about to be given, we are unable to yield our assent.

The 8th section of Regulation XVII. of 1827, Clause 1, enacted that "nothing contained in any of the preceding sections shall be understood to affect in any way the peculiarities of the tenure of the holders of the villages settling hereditarily and by right for the revenues of their villages in the gross, and thus possessing in some measure a proprietary right in the land of their villages; the said peculiarities shall be respected and preserved, whether they relate to the occupancy, disposal, and *assessment* of the lands of the village, the collection of the revenue, and the joint liability of the shareholders, or to the intermediate steps prescribed by the terms of the tenure, and by local usage, for the purpose of realising the revenue, in case of non-payment, without destroying the tenure." This clause is (as will presently be seen when we consider the tenure of the plaintiff) of considerable importance in the present case. The 2nd clause of the same section relates to failure to pay the revenue, but is not material here, inasmuch as there is not any allegation of failure to pay the Bandhi-jama (fixed revenue),—the only question being the right to enhance the assessment.

Bombay Act II. of 1863 (passed for carrying into effect the policy of the Governments of Lord Elphinstone and Sir George Clerk for the discontinuance of the operation of the

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Inám Commission, which had been placed upon a legal basis by Act XI. of 1852) applies only to the provinces which were subject to Act XI. of 1852, the Dekkan, and South Mahratta Country, and is, therefore, inapplicable to this case.

To Bombay Act VII. of 1863 (which is applicable to the older provinces of this Presidency to which Act XI. of 1852 did not apply) frequent reference has been made.

With regard to the 4th clause of the 2nd section of that Act, which clause excludes the jurisdiction of the Civil Courts in the case of disputes as to tenure between Government and the holders of lands held upon treaty, or granted, or held as Saranjám, or on similar political tenure, or for service, it has been admitted on both sides, before us and in the District Court, that the village of Kabilpur is not held upon any of those tenures. Sometimes, in the oral evidence, the terms "Jahagir" and "Jahagirdar" have been used, but these phrases are often used very loosely, and applied to proprietary lands not held on service, although, in their stricter sense, they are applicable only to service tenures. In some few of the documents in evidence, of dates subsequent to the year 1848, the terms "Saranjam" and "Saranjami," which also imply service tenure, occur, but no importance can be attached to them, inasmuch as neither party has, in argument, alleged that the village of Kabilpur was held as Jahagir or Saranjám, or on any other service tenure (*h*).

In the Kanara case, Mr. Justice West and one of the members of this Court gave, at some length, reasons for the opinion that, as well under the Hindu Law as under the Muhammadan Law, the rule *nullum tempus occurrit regi* prevailed in India up to the commencement of the British Government. The rule of the English Law is the same.

(*h*) The objection to the jurisdiction of the Civil Courts, contained in the 3rd para. of the written statement, already noticed in note (*a*), and in certain printed reports of Government Officers, subsequently mentioned in note (*b*), tend to show that this has not always been the view which has been taken as to the liability of the plaintiffs, their co-parceners and predecessors, to render service in respect of Kabilpur and the other villages in Supa, as to which the right to enhance the assessment is in dispute,

Its effect is this, that the rights of the Crown do not by mere non-user become abrogated. It is no doubt a maxim to be applied with caution, and with which other rules and maxims of law may perhaps at times be permitted to compete, and it has been in England, as well as here, qualified by express legislation.

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The right of the Crown to assess lands was, by Regulation I. of 1823, Section 3, Clause 2, placed under restriction, where, for more than sixty years, lands had been enjoyed (without deed or other writing) wholly or partially exempt from the payment of the public revenue, provided it was so enjoyed under some tenure recognised by the custom of the country, and more particularly under any of those specified in Appendix A to that Regulation. Clause 3 of the same section was as follows :—"But enjoyment of such exemption for 12 years antecedent to the date when the territory, in which the land is situated, came into the possession of the British Government, shall be considered as equivalent to enjoyment for sixty years, in terms of the preceding Clause." Section 4, Clause 1, was, as respected lands exempt (which would seem to mean wholly exempt) from payment of revenue for sixty years, similar to Section 3, Clause 2, without, however, the proviso as to enjoyment under a recognised tenure. That Regulation was repealed in 1827, but the foregoing provisions of it were embodied in Regulation XVII. of 1827, of which the 2nd clause of the 35th section was similar to the 2nd clause of Regulation I. of 1823, Section 3; the 3rd clause of the 35th section was similar to Regulation I. of 1823, Section 3, Clause 3, and the 36th section, Clause 1, was similar to Regulation I. of 1823, Section 4, Clause 1.

The two periods of prescription of sixty years, thus introduced into Regulation XVII. of 1827, were by Regulation VI. of 1833 reduced to thirty years.

It follows from those enactments that if, at any time during the interval of forty years between 1823 and 1863, (in which latter year the 9th Chapter of Regulation XVII. of 1827, including its 35th and 36th Sections, was repealed by

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Bombay Act VII. of 1863,) the Collector of Surat had put the plaintiffs on proof of their title to partial exemption from payment of land revenue, they might, by proof of enjoyment of such exemption, under a tenure recognized by the custom of the country in which the land is situated, for twelve years antecedent to 1802 (when the territory became British), have successfully resisted any enhancement.

We must next seek the law of prescription (which limits the operation of the maxim *nullum tempus occurrit regi*) in Act VII. of 1863, Section 21, of the Bombay Legislature; that Act having repealed Reg. XVII. of 1827 Chapters IX. and X. and Reg. VI. of 1833.

That section (21) is as follows :—

“ Claims to exemption from payment of land revenue in virtue of prescription shall be admitted under the following circumstances :—

Clause 1st.—When land situated in districts ceded by or conquered from the Peishwa after 1803, is proved to have been held by any person, his heirs, or others, deriving right from him, wholly or partially exempt from payment of land revenue, under a tenure recognised by the custom of the country, for sixty years in succession next preceding the date of this Act, or *where land situated in any other district is proved to have been held in like manner for thirty years as aforesaid.*

Clause 2nd.—Provided, however, that whenever exemption has been enjoyed under a sunnud or other writing, no title by prescription shall be admitted unless the full period required under the last preceding clause shall have elapsed subsequent to the expiry of the title under the sunnud or writing aforesaid.

Clause 3rd.—And that in no case shall a title to prescription be admitted in respect to Government lands alienated since the British Government obtained possession of the country, and without its permission.

Clause 4th.—And further that the exemption during the periods of sixty and thirty years respectively, as detailed in

Clause I of this section, be proved to have been enjoyed in strict conformity with the conditions of the recognised tenure under which it is claimed.”

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This section is clogged throughout with the provision as to recognised tenure.

Supa containing the village of Kabilpur having been ceded to the British Government on Dec. 31 1802 (*vide* Reg. II. of 1827, Appendix E, and Thomas' Treaties, pp. 513, 519), the latter portion of the first clause of that section, viz., that—“When land situated in any other district is proved to have been held in like manner” (*i.e.*, wholly or partially exempt from payment of land revenue, under a tenure recognised by the custom of the country) for thirty years, as aforesaid—“claims to exemption from payment of land revenue in virtue of prescription shall be admitted,” is applicable to that village, if it have enjoyed a partial exemption for the period of thirty years in succession next preceding the date of the Act under a tenure recognised by the custom of the country. We are clearly of opinion, as already stated, that it has been enjoyed by the respondents and their predecessors in title at a fixed revenue much below the full assessable value of the village for a very much longer period than thirty years in succession next preceding the date of the Act. We shall next proceed to consider whether it has been held under a tenure recognised by the custom of the country.

The principal witness for the appellants, Kesavlal Nathabhai [see Exhibit No. 256], who is a Mámlatdár, and has officiated in that capacity for the pargana of Supa, distinctly admitted, and it is not in fact denied, that Kabilpur is not a rayutvari village, that is to say, it is admitted that the revenue settlement is not made with the cultivators (rayuts) individually. He says: “Kabilpur is a Hundavari village. The meaning of the words ‘Khatabandi’ and ‘Hundabandi’ is one and the same. The Government ‘Dharo’ or assessment is not taken from each field in Hundavari or Khatabandi villages, but ‘Udhad Dharo’

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(*i*) In noticing, in the above passage, with reference to Section VIII. of Reg. XVII. of 1827, that the revenue payable to Government in respect of Kabilpur is fixed, we do not intend that it should be thence' inferred that immutability of revenue is an essential characteristic of villages coming within the range of that section. In a large majority of such villages we have reason to believe that the revenue is not permanently fixed. In some few, however, as we shall presently show, it appears to be so fixed. The attribute which is indispensable to a village in order to its classification under that section, is that the shareholders of the village should settle "hereditarily and by right for the revenue of their village," not individually, as in the rayutvari manner, but "in the gross," *i.e.*, there must be a joint liability of the shareholders to Government for the revenue. And the same section preemptorily requires that the "peculiarities" of the tenure of villages, so held, must be "respected and preserved whether they relate to the occupancy, disposal, and *assessment* of the lands of the village, the collection of the revenue, and the joint liability of the shareholders, or to the intermediate steps prescribed by the terms of the tenure, and by local usage, for the purpose of realising the revenue, in case of non-payment without destroying the tenure." Hence it is not only a peculiarity in the mode of collecting the revenue of a particular village, falling within Section VIII. of Reg. XVII. of 1827, which is to be maintained, but also a peculiarity in its assessment. If, then, in such a village it happens to be a peculiarity that the assessment is invariable, and below the ordinary local rate of full assessment, that peculiarity must be respected and preserved. Such an invariability is, in other terms, partial exemption from payment of land revenue.

The principal villages falling within Section VIII. of Reg. XVII. of 1827 are those held on Bhagdari, Narvadari or such like tenure. The Bhagdari and Narvadari exist in Guzerat and are, in their leading features, similar—the term Narvadari being used in the Kaira and Ahmedabad Collectories—and the term Bhagdari in that of Broach—(Robertson's Gloss. p. 42 pl. 7, 8, 9.) Some account of this tenure is given by Mr. Mountstuart Elphinstone in a minute written in April 1821 after a brief stay in Guzerat. That minute has suffered considerably in the hands of London printers. It is published in 3 Rev. Sel. pp. 661, 680. Amongst other errors of the press the word "Bhagdars" is misprinted "Baydars"; and the villages are said to be "formed by strangers and never held ryotwar." The word

other parts of his evidence. He continues thus:—"All the sharers of the village were jointly responsible for paying Government money. They are not answerable according to their shares. Each sharer used to pay into the taluka treasury

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"strangers" is a misprint for "sharers"—which expression is used in contrast to "ryotwar." Captain Cruickshank, of the Superintending Survey in Guzerat in his report of the 10th October 1827, paras. 27, 28, has given a more detailed report of this tenure (See Robertson's Gloss. : p. 27, pl. 8 *et seq.*) He says (*inter alia*): 'The lands of Narva villages are divided into certain large divisions (from 2 to 7,) called Bhags or Patees (Patis); and these are subdivided into smaller parcels (from 10 to 200), called Rupees, Annas, Paghrees or Pans; and these again into fractional parts. The superior Bhagdars, or holders of shares" (Bhag means a share or division) "are collectively responsible for all demands of public revenue; and the inferior Bhagdars are collectively responsible for that portion of the revenue which is assigned to their Bhags. The shares or divisions, both major and minor, are sometimes of equal amount, and sometimes of unequal, but always in a known and recognised proportion, so that the revenue due by the whole village may be exactly apportioned among them." Subsequently he says: "*The Narva is considered strictly as property; it is saleable from one person to another, and inherited, subject to all the rules and customs by which the inheritance of any other kind of property is guided. Sons inherit equally, and hence the almost incredible subdivisions of the Narva, but the holder of the minutest portion claims all the privileges of a Patidar, and takes his place in the village concerns before all other ordinary members of the community.*" And again:—"Under the Narva system the Government is supposed to have nothing to do directly with the land: it makes its demand in money, which is divided among the village community, and made good; and beyond an examination of the general state of the cultivation, Government has no right to interfere in any way with the division of the land among the cultivators, or to inquire how much or how little land is held by each individual. This is essentially and entirely the province of the village community." (See also 2 Bom. H. C. Rep. 231). The leading authority on the Bhagdari and Narvadari tenure is Mr. Pedder, to whose first and principal report on that subject we can, in this note, only cursorily refer. It is published in No. CXIV, New Series, of the printed Selections from the Bombay Government Records, and is dated March 21, 1862. Mr. Pedder was then Survey Settlement-Officer in Guzerat, and it has not been disputed that in special knowledge of this subject as well as general ability as a Revenue Officer, his position is not second to that of any gentleman in the Revenue Department of this Presidency. He commences by describing his report as one "upon the different tenures in this province (Guzerat) which involve a joint responsibility for the payment of the Government Revenue, and the law relating to which is Section VIII. of Regulation XVII. of 1827." He then says:—"During this and last year I have taken much pains to make myself acquainted with the history and

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separate money for his own share, but, if one sharer failed to do so, all sharers were jointly answerable for it. Government did not make separate agreements with peculiarities of this system of tenure by personal inquiry from the ryots themselves and from the district and village officers, and by examining all official documents (English and Vernacular) which seemed likely to throw light upon a somewhat intricate subject. I hope, therefore, to be forgiven if I seem to speak with authority on questions regarding which experienced officers have held different opinions." After quoting a passage in a despatch of the Court of Directors upon Guzerat, dated in 1825 in which they remark that "the principal class of the people, the cultivators or ryots, have this in common with the same class in other parts of India: that they consist of two classes, one proprietary, one not proprietary; that among the proprietary class almost all the land is distributed; that they cannot be legally dispossessed of their lands, so long as they pay the Government demand, and that the population is divided into village communities," Mr. Pedder proceeds to speak of the two classes of village communities named by Sir G. Campbell as the aristocratic or simple form and the democratic. Of the aristocratic, Mr. Pedder says it was "a mer-aggregate of cultivators under a single headman appointed by the Raja. There was no common tenure of lands, but each man cultivated his own plot of ground, and his only proprietary right was a sort of customary one that he should not be turned out as long as he paid his rent, which he did directly to the Chief who owned the village, and the amount of which was nominally regulated by custom, but was often increased under various pretences." This was "the common form of the village communities west of the Gulf of Cambay and generally in the frontier districts of Guzerat where the country was divided among petty Chieftains." He next (para. 7 *et seq.*) treats of the second or democratic class of villages, which chiefly existed in the central districts of Guzerat—"the Duskuroees—the Cherotur or western portion of Kaira, the parganas of Broach and the Attavisi" of Surat. "Each village was originally founded by a family, or association of families of the cultivating castes—Rajputs, Kunbis, Boras, or Bhatelas, all apparently belonging to kindred tribes. After describing the constitution of such villages, and dividing the cultivators thereof into two bodies—the proprietary and the non-proprietary, and after indicating (in paras. 17 and 18) the effect of the various revenue systems of successive Governments upon these communities, he proceeded (in para. 19) thus: "The Mogul rule was succeeded by that of the Mahrattas, who, whatever may have been their merits in their own country, were in Guzerat mere plunderers. Their system was the ruinous one of farming out districts to speculators, who in their turn farmed out single villages to other persons, often unconnected with the village, but who were sometimes the patels or some influential cultivator. As the object of each farmer was simply to make as much money as he could during the few years of his lease, the villages were ruinously rack-rented. The *udhad jama* (lump assessment) of the village of Koo-budhal, for example, was raised in about forty years from Rs. 700 to Rs. 5,250

each sharer, but used to make one with all the sharers conjointly. This was done at the time of the first settlement. The time of the first settlement means the time the besides *toda givas*. This farming system was the pest of the communities, and created the Narva and Bhagdari tenures under report in the following manner. 20. In many villages, especially these in which the non-proprietary cultivators were numerous, the communities sooner or later broke down under the pressure. Every cultivator, proprietary or not, had to pay to the uttermost of his power, first, the old assessment of his land, and then a variety of cesses and other extortionate imposts, and thus any real distinction between the two classes disappeared. Many villages were deserted and never re-occupied by their original owners, and in many others the farmers altogether usurped the rights of the original proprietors. This was especially the case in the Surat Attavisi, where the powerful Desai families contrived almost everywhere to oust the old Patels, and to divide parganas among themselves as their property. At the beginning of our rule these Surat Desais seem to have occupied precisely the same position as the Zamindars of Bengal. *Vide* minute by the Rt. Hon'ble Mr. Elphinstone, Rev. Sel., Vol. III., p. 699."

Of that minute written, in 1821, by Mr. Elphinstone, the portion which is here material is the commencement of the 7th para., which is as follows:—"The system of collection in the Surat District is now almost entirely rayutvar, but this improvement is very recently introduced. Before we got this district, and for a very long time after our acquisition of it, the country was completely in the hands of the Desais, who considered their possession so permanent that each family partitioned its parganas among its members, like the Patels of a Bhagdars' village. Every Desai managed his own bhag as he pleased, and in general they displaced the old Patels, and carried on even the interior management of each village by means of their own agents who were called Talukdars. The Desai was thus the perfect master of the people without any one to check him. The mode of settlement of the revenue was for the Mámlatdár, and in our time, for the Collector, to send for the Desai and make as good a bargain as he could with him for the year's revenue of his pargana. The Desai then apportioned the sum to be paid among all the villages of the pargana, and the Talukdars (or, where there was one, the Patel) divided the assessment among the rayuts. By this plan the Collector made his assessment entirely in the dark; and although it was his intention not to increase the revenue, unless where there was an increase in the cultivation, yet the want of information on his part, as well as the fraud of the Desai, often operated to raise the begoti of the old lands. They, indeed, had no protection against the exactions of the Desai, if he chose to complain to the Collector, except an appeal to the Talati's accounts, by which his own ignorance of his rights rendered him little able to profit, and which could not be much relied on in consequence of the dependence of the Talati on the Desai." Mr. Elphinstone then described the new system introduced by the British whereby every rayut attended at the Komavisdar's Kutcherry, and his land and rent were ascertained

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shares were first determined." After saying that, in some villages, this joint tenure had broken down in consequence of the insolvency of the sharers and of other reasons, he

in his presence from the Talati's books, &c., &c. He observes (para. 8) that this new system was introduced in the year 1817-18, and there were several parganas to which it was only extended in 1820-21, and that, in some, it has not yet (1821) been completed. The probable and more obvious meaning of Mr. Elphinstone's remarks on the conduct of the Desais is that they levied from the rayuts larger sums as land revenue than they (the Desais) accounted for to the Native or subsequently to the British Government. It may be said that he further intended to imply that they improperly cast upon villages, in the parganas under their management, a portion of the burden of taxation which ought to have been borne by their own private villages situated in the same parganas. This, however, would not be consistent with his hypothesis that the Collector might not desire to increase the taxation of his pargana. If there were no such augmentation there could not be any such motive, as a desire to spare their own villages, to induce the Desais to increase the charge upon the rayuts. The first suggested meaning, namely, that the Desais embezzled a portion of the revenue levied and accordingly levied more than was necessary, is probably the true solution of what Mr. Elphinstone has written. Assuming, however, that, although he has not mentioned their private villages, he intended to include a charge against the Desais of fraudulently sparing their own villages and levying the deficiency thus occasioned from the other villages, it must be remembered that his observations are of a general character only and that he does not enter into details. If he intended to imply that the Desais, in order to save their private villages from augmentation of revenue in any particular year, distributed amongst the other villages in a pargana, managed by them, the whole amount of the increase and thus spared their own villages, it does not thence follow that in every such case the Desais acted improperly. Take, for instance, Toli, and the three Vazifa villages which are admitted to be partially exempt from payment of revenue, there would not, on the pargana of Supa being subjected in any particular year to an enhanced revenue, have been any impropriety in the Desais omitting to place any part of the increase upon Toli and the Vazifa villages, and distributing that increase amongst such other villages in the same pargana as were not exempt wholly or partially from the payment of land revenue. It still, therefore, notwithstanding Mr. Elphinstone's remark, would remain a question whether any particular village was wholly unassessable or liable to limited assessment only. We must recollect that, although the Desais might once, twice, or more frequently succeed in fraudulently exonerating from enhancement of revenue some one or more of their villages not entitled to total or partial exemption, such a course of evasion could scarcely endure without detection for any very long period of years. When the Mahratta raj became firmly established, the accounts were annually forwarded to Poona, the seat of the Peishwa's Government, whence many of them have been brought as evidence in this cause. The uniformity of the annual as-

proceeds:—" In the village of Kabilpur the first settlement had continued until the new survey was made " (viz., 1870-71).

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assessment of a particular village could not then have escaped notice. Supposing, however, that such might have been the case, and, therefore, that such uniformity during the Mahratta rule is not deserving of much weight, it cannot be said that the British Government, whose eyes were opened to the malversations, real or supposed, of the Desais so far back as 1817, as appears from Mr. Elphinstone's minute of 1821, and who had, therefore, to a large extent in Surat substituted the rayutvari system for that of the Desais, was from 1817 down to 1870 equally blind to that uniformity of assessment. Inquiries into their claim to hold Kabilpur at a fixed revenue were actually held in 1842 and again in 1855, but the revenue officers who held those inquiries did not venture to enhance the assessment. The revenue accounts, too, as constituted by Mr. Shaw, the Revenue Commissioner of Government, for the twenty-two years extending from A.D. 1848 to A.D. 1870 have, as already observed in the text of this judgment, contained annual admissions of the validity of the plaintiffs' claim to hold Kabilpur at a fixed yearly payment below the assessable value, and accordingly partially exempt from payment of land revenue. These are facts against which the learned counsel for the appellants (defendants) have in vain endeavoured, to struggle. Again there is really nothing to show that Mr. Elphinstone intended to apply his remarks to the pargana of Supa, or to the village of Kabilpur. There are, however, reasons which render it extremely improbable that he could have so intended. The Exhibit No. 32, put in evidence on behalf of Government, shows that the persons, under whom the plaintiffs derive their title, were in possession of many, if not all, of the villages in the pargana of Supa in Samvat 1714 (A.D. 1657-58), and amongst those villages was Kabilpur. This was anterior to the irruption of the Mahrattas into Guzerat, subsequently to which Mr. Pedder describes the encroachments of the Desais as having taken place. It is admitted that Kabilpur is the principal place of residence of the plaintiffs, and is cultivated by them. Even the Zamindars of Bengal, Bahar, and Orissa (to whom Mr. Pedder has compared the Desais of Surat) though before the permanent settlement in 1793 they may have been no more than farmers of revenue as regarded the greater part of their Zamindaris, yet occasionally were the owners of some part of the land within those Zamindaris.

The earliest recorded incursion into Guzerat of Sivaji, the founder of the Mahratta power, would seem to have been A.D. 1664, on the 5th of January, in which year he sacked the city of Surat. (See Elphinstone's History, 549, 4th edition; 1 Grant Duff, 145, Bombay reprint.) He seems to have made his first demand for chauth and sirdesmuki in his negotiation through Jei Sing with the Emperor Aurangzib in A. D. 1665, and then only as against the Bijapur territory. Mr. Elphinstone says that the grant then made of the percentage (afterwards known as chauth and sirdesmuki) on the revenue of each district under Bijapur

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He then speaks of "Bandhi-jama" villages. "Certain villages in Gujarat to which sanads have been granted by Government to the effect that no more assessment than what is fixed would be received, are called Bandhi-jama

^{Mahrattas}
~~Mahrattas~~ which afforded them such constant pretexts for encroachment on foreign territories in later times" (Elphinstone's Hist., p. 550 ; 1, Grant Duff, pp. 153, 154.) "His second invasion of Gujarat was A.D. 1670. Mr. Elphinstone says that Sivaji then again plundered Surat, carried his ravages over Khandesh, and for the first time levied the chauth, afterwards so celebrated in ^{Mahratta} ~~Mahratta~~ History." (Elphinstone's Hist., p. 555 ; 1, Grant Duff, pp. 179, 180). The chauth then levied would seem to have been in Khandesh only (1, Grant Duff, p. 181). In A.D. 1702, the Mahrattas again levied contributions in Surat, but their earliest probable levy of chauth in any part of Gujarat was A.D. 1705 (1, Grant Duff, p. 288 ; Wallace's Gaekwar, p. 1). As stated *supra*, in note (c), the right to levy chauth in Gujarat was not formally conceded until A.D. 1729. If we assume that "Wasal Chothvo," which is the heading of the fourth column of figures in Exhibit 68, means chauth, that exhibit, which is the summary of village accounts for A.D. 1724-25, is the earliest evidence in this case of a levy of chauth by the Mahrattas in the pargana of Supa. The same exhibit is also the first evidence of any levy of "Ganimai" by the Mahrattas. The date (A.D. 1657-58) of Exhibit 32, when compared with the dates which we have now given as those of the primary incursions of the Mahrattas into Gujarat, and of the ultimate establishment of their revenue demands in the same province, seems conclusively to establish that, howsoever applicable the observations of Mr. M. Elphinstone and Mr. Pedder, as to the acquisitions of the Desais during the Mahratta raj, may be to other villages, they are quite inapplicable to the villages in the pargana of Supa, including Kabilpur, mentioned in Exhibit 32, and which, at its date (A.D. 1657-58), were already in the full possession of the Desais, the progenitors of the plaintiffs. Exhibit 67 (dated A.D. 1668-69), which is anterior to any levy of chauth or ganimai in the pargana of Supa, also shows that the villages of that pargana mentioned in it, including Kabilpur, were then held by the Desais.

Reverting to Mr. Pedder's same report, para. 21, we find him saying : "But in many villages, especially in Broach and Kaira, the proprietary body succeeded in retaining the management of their villages, and in order to meet the new demands, founded neither on a definite share of the produce, nor on a fixed assessment of the land, but only regulated by the ability of the rayuts to pay, they invented the narva or bhagvari system, which was simply this : the joint responsibility for the payment of the Government demands was divided in the same manner as the lands of the community had originally been, and each proprietor was held answerable for a share of the revenue proportionate to his share of the proprietary right, the members of each family holding a separate estate, being in the first instance responsible for each other, and, finally the whole co-parcenary

villages. The amounts, which Government is entitled to receive from such villages, are credited as receipts other than those of Jama Bandi." Subsequently he says: "I cannot tell whether or not Kabilpur is a Bandhi jama village." Although this witness has spoken of sanads in connection with Bandhi jama villages, he subsequently

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being jointly answerable for the entire amount being paid." Further on in para. 28, clause 1, he says that "the Narvadars and Bhagdars are merely the old proprietary cultivators, and the system only a mode of sharing the Government demands;" and in Clause 3 of the same paragraph he says: "Wherever they have not been much over-assessed they have become wealthy. Their cultivation is by far the most careful and scientific in Guzerat; and the estimation in which they themselves hold their tenure is such that nearly all of them say they would prefer no revision of their assessment to having the tenure destroyed. A more convincing proof than any of the benefits of the tenure is that, under the Mahratta rule, narva land bore a saleable value." In paragraph 29 he says—"The number of villages held on the tenures under report is as follows:—

In Ahmedabad	...	1
„ Kaira	...	96
„ Broach	...	244
„ Surat	...	12 (the number in Surat is not certain).

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He adds that "although the principle is the same in all, yet almost every village has its own peculiarities, many of which will be found in the appendix to this report." In explaining some of the leading distinctions he makes in the same paragraph the following remarks which are very important in this case:—

"Regarding *hundabandi* (udhad-bandi) villages, as a few in Surat are called, there exists a difference of opinion, it being generally thought that in them there is no *joint* responsibility. This opinion seems to be founded on a passage in the Honourable M. Elphinstone's minute on Surat (Selections, Vol. III., page 698), that 'in some parganas the hunda tenure is originally formed by the division of a village in the same manner as is usual among Bhagdars, but there is no mutual responsibility, and the division once formed, the sharers hold exactly on the terms of the Khatadars. In a few Surat villages called *hundabandi*, however, the assessment is made in the lump, and divided by a "phalnee" exactly as in narva villages (*vide* Appendix No. VIII.), and the joint responsibility is strictly enforced. I think M. Elphinstone did not refer to these villages, but to those others where the hereditary shares of the proprietors were *separately* assessed on the hunda or *khatabandi* system." The example which Mr. Pedder gives in Appendix VIII. is the village Sesodra (or Sisodri) in the

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says :—“ Bandhi jama villages are written or shown on the Tarija or gross revenue of the taluka. Such revenue statements are kept from the year 1849. The revenue of

taluka (pargana) of Supa, one of those mentioned in Exhibit 32 and many other exhibits in this cause. He says that its tenure is “ hundabandi, exactly resembling the ordinary narva of Kaira.” It is not one of those villages in which the plaintiffs allege that the assessment is invariable. We refer to it as elucidating the hundabandi tenure. Mr. Pedder says of this village :—

“ There are four original distinct families of patidars, corresponding with the four mota bhags—one of bhattela desais—and three of mutia kuubis. To each family there is one mota bhagdar, who is also muttadar. If any sharer breaks, his nearest relatives must take up his land ; if they will not do so, the mota bhagdar of his family must manage the land, pay the corresponding share of assessment, and take the profit or bear the loss. This is the only peculiar privilege of the mota bhagdar ; in other respects all sharers have equal rights. If a mota bhagdar fails, the whole co-parcenary becomes responsible to Government for his arrears, or the tenure would be broken, but this has never occurred.”

“ The tenure was founded before the memory of man. From the introduction of British rule till Samvat 1907 the hundadars paid Rs. 6,000. In that year the jumma was raised to Rs. 7,800, at which sum a lease for 10 years was given them.”

“ The mota bhags were originally distinct, but now a few persons belonging to one family, by sale or private arrangement, hold shares in another mota bhag. No stranger, *i.e.*, one not belonging to one of the four families, has been admitted to proprietary rights, nor has any hundabandi land been alienated to strangers, either by decree of Court, or by private arrangement. “ Gubhan ” land is attached to each mota bhag, but no decree has ever been passed upon such land.”

“ If a hundadar dies, leaving 3 sons, they all share his land, and become hundadars, but the name of the eldest son alone is entered. The daughter of a bhattela, in default of male heirs, may succeed her father, but not of a muttia.”

Mr. Pedder's report recommended strongly the continuance of these tenures, and was highly approved by Mr. B. H. Ellis, (same volume CXIV., Bombay Government Records, pp. 62—65) by the Government of Bombay (*Ibid.*, p. 94,) and eventually by Sir Charles Wood, then Secretary of State for India (*Ibid.*, pp. 97, 98). Mr. Ellis (*inter alia*) referred to Bombay Act V. of 1862 as a proof that Government was pledged to maintain those tenures. That Act was settled in its present form by the writer of this note when, as Advocate General, an *ex-officio* Member of the Bombay Legislative Council. Regulation XVII. of 1827, Section VIII., was most properly referred to by Mr. Pedder as comprising those tenures.

the land paying less assessment, (*i.e.*, partially exempt from payment of revenue) will be found from the above-mentioned Tarijas as well as from the 'Number Kharda.' On

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That section and the description given of those tenures by Captain Cruickshank and Mr. Pedder, as well as the evidence of Kesavlal, the chief witness for Government, to the effect that Kabilpur is a hundabandi village for whose revenue payments to Government the plaintiffs and their co-proprietors are jointly responsible and have been so since the original settlement of the village, prove (whether or not that revenue be invariable in amount) that the denial in the answer, or written statement of the defendants, that the plaintiffs are the proprietors of that village, and the assertion that it is Government property, are unsustainable. It has, however, been shown at some length in the Kanara case that the existence of private property in the soil is not necessarily inconsistent with a right on the part of Government to increase the assessment, and, therefore, that the proof of proprietorship in the rayut is not, *per se*, proof of immutability of assessment—to establish which there must be something more than mere evidence of ownership of the land. We have already in the text of our judgment and of this note pointed out that there is satisfactory proof in the documentary and other evidence received in this cause of invariability in the assessment of Kabilpur. That evidence is strongly supported by a report of the 14th August 1865 of the Guzerat Vatan Commission, of which Mr. Pedder was President, addressed to Mr. Rogers as Revenue Commissioner. We refer to the copy of it printed for Government in 1866 at the Bombay Education Society's Press. It should be recollected that the object of that Commission was chiefly to ascertain how far the persons who were or were alleged to be under the obligation of rendering service to the State in respect of their landed estates in Guzerat were willing to render it, or to compromise by making a fixed annual payment to Government out of their lands in lieu of such service, or, as it is styled in the report, to agree to a non-service settlement. We limit ourselves to a brief notice of so much as is said in that report in relation to the Surat Desais, and especially to those of Supa. Much of what Mr. Pedder had said in his previous report of 1862 with respect to Desais of Surat Attavisi is reiterated in this report of 1865 (see pp. 11, 12, 13, paragraphs 12, to 18). In reading that report the distinction should be borne in mind between villages in which the Desais had no legitimate interest beyond their Desaigniri hak or percentage on the revenue, and villages which were their own private property. Speaking of the former, this report says (p. 12 para. 15) that "The authorised emolument of the Desais was cash allowance calculated at 2½ per cent. on the village revenues. This seems to have been the original remuneration of the office, and was formally confirmed by the Emperor Aurangzib in A. D. 1669. But in Surat this limit was merely a nominal one, for all the profits, which the Desais could make from the village management, were, of course, their own." At page 8 it is stated that "the Surat Desais, with trifling exceptions, render no service whatever."

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a subsequent day he said—“Rs. 1,606 were entered as ‘Mafi,’ (i. e., remitted revenue) in the Kabilpur jama-bandhi from the year 1849 to the year 1868. They were entered in

The exceptions are the following :—certain Desais are appointed by the Collectors, Shaikdars or village inspectors. According to the original orders of (the British) Government, their hereditary shares in their vatans ought to be considered remuneration for this duty as well as the annual pay which they receive from the ‘Sirpao Fund.’ But the office and remuneration of a Shaikdar have long been looked on as purely stipendiary.” The other exceptions do not relate to Supa. The tabular statement at page 6 shows that no portion whatever of the income of the Desais of Supa was applied in the support of officiating Desais, and that out of the whole of that pargana the officiating Majmudars received from the land only Rs. 9-4. And page 8 shows that, in the same pargana, the receipts of “rent of service land from inam and jagiri villages in Supa were, as regards Desais, nil, and as regards Majmudars Rs. 5 only. The report in p. 18, para 32, states that the Desais denied that their emoluments were held on service tenure, and that they were liable to be called on to perform district service or any service except that of heads of villages, and in pp. 15, 16 and paras. 26, 27 and its Appendix A, shows that, so far back as A.D. 1833, the Desais refused to permit any appropriation from their Desaigniri to pay the Shaikdars, and that the contest terminated by the latter being paid out of the Sirpao Fund—of which some account is given in Appendix A (see pp. 31 to 34, paras. 12 to 22). It is a fund the title to which was in dispute between Government and the Desais. There is not any direct evidence that Shaikdars were employed in the village of Kabilpur. A composition for a fixed payment to Government of 3 annas in the rupee was offered by the Commissioners, but refused by the Desais of Surat, p. 10, paras. 7—9. The Commissioners in their report expressed their opinion to be that, although the Desais had not for many years rendered service, the right to demand it was only in abeyance (p. 16, para. 28). Before extracting the remarks in the Commissioner's report as to Kabilpur and five other villages, we should mention that it has been admitted that the village of Toli being an inam village and the villages of Vigam, Magad, and Narsirpur, being Vazifa villages, are partially exempt from payment of revenue. All of these villages are in Supa. As to Toli and five other villages, the Commissioners make in para. 47 the following observations :—

“There are six villages held by Desais under the name of ‘Sirkari Udhad Jamabandi.’ Five of these are in Supa, and one in Chikli Kusbo ;^a fixed annual lump assessment is paid for these villages, which has not varied in amount since the introduction of British rule, and the right to hold them at this fixed amount is claimed as a Vatan emolument. The five Supa villages are the following, and a ‘Nuksan’ or loss to Government of the difference between the fixed and the full assessment has hitherto been shown for them in the accounts under the head of ‘Inami Sarinjami’ :—

the Tarijas, but I cannot say whether the land was Mafi or not. I have given this reply by the Collector's permission.

	Fixed-lump assessment.	Nuksan.
Jamalpur	Rs. 352	Rs. 649
Vurwari (Virwadi) ...	,, 475	,, 851
Vusulpore (Visalpur)	,, 28	,, 524
Toli	,, 385	,, 1,628
Kubirpore (Kabilpur)	,, 1,098	,, 1,606
	Rs. 2,338	Rs. 5,088

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“For Chikli Kusbo, the lands comprised in each have never been assessed at Bigoti rates, no ‘Nuksan’ has hitherto been shown. The fixed lump assessment hitherto paid is Rs. 84-13-2, and the full assessment, as fixed last season by the Survey, is Rs. 636.

“48. The information to be obtained about these villages is of the most meagre kind; the Desais are unable to show any proofs whatever of any other title than prescription. A reference to the Poona Duftur, made some years ago, showed that Toli was held as an alienation during the rule of the Peshwa, and that the four Supa villages were entered as Khalsa. Regarding Chikli Kusbo, the Durbar of his Highness the Guicowar was referred to some years ago, and replied that the village was entered as Khalsa, while the district belonged to His Highness. But it is proved that the Desais had paid the same amount of fixed assessment for the Kusbo for several years previous to the introduction of British rule. The only information which we can find about these villages, upon the early records of the Surat Collector's office, is contained in a letter of Mr. Morrison to the Collector of Kaira, in 1820, in which, speaking of Desais' emoluments, he says ‘some Desais hold entire villages, paying only a fixed salami annually to Government, but there are only six small villages of this description under Surat.’ The five Supa villages and Chikli Kusbo are the only ones which can be referred to, and from this it would seem that Mr. Morrison considered them to be Vatan.

“49. We are of opinion that all six villages should be included among Vatan emoluments, and, whatever settlement may be decided on for the Vatan generally, applied to them also. As a Nuksan has hitherto been shown for the Supa villages, we have, pending the decision of Government, included it among the emoluments of the Desais in one statement, but have not done so for Chikli, as no Nuksan has hitherto been shown for it, and as the Revenue Commissioner, two or three years ago, ordered the village to be fully assessed at the introduction of the Survey, which Captain Prescott has done, and the Desais have appealed against.”

With Chikli Kusbo the present suit is not in anywise concerned. The letter of Mr. Morrison, referred to in the Report, was dated 1st November 1820. It is given in Appendix A to the report, p. 29, para. 6. In the

1875. The Tarijas used to be kept or written by the Majmudar in the Supa Thana (Kacheri). The Desais were never required to write in the Thana."

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printed copy the word "Salami" is in two places misprinted "salary." The term "salami" signifies a quit-rent.

In para. 35 of their report the Commissioners submitted, for the decision of Government, whether, as the Vatandars had refused either to serve or to compromise by paying three annas more of revenue in the rupee, Government would declare that the vatans should lapse (cease) on the deaths of the present holders.

Mr. Rogers, in his letter to Government dated 23rd November 1865, forwarding that report, in para. 7 *et seq.* (page 3 of the printed correspondence already mentioned) said—

"The settlement that should be carried out remains to be considered. That offered to the Surat Desais by the commission is a non-service settlement of three annas in the rupee, and to those of Broach, including Unklesur, $4\frac{1}{2}$ annas, as already mentioned. Taking all of the circumstances into consideration, I think the offer is fair with regard to both divisions, and would not recommend the acceptance of any lower terms."

In para. 8 he continues thus :—

"The Desais having, however, declined to accede to this compromise, something must be done with a view to getting rid of the anomalous state of matters in Surat and to exacting efficient service in the districts of the sub-division and Unklesur. In the former the vatans are so much sub-divided as to preclude the possibility of efficient service being obtained in any one district, inasmuch as it is extremely improbable that the Civil Courts, to which an appeal would certainly be made, would recognize the authority of Government to throw together and consider as one vatan, with a view to employ a properly paid officiator, what are really sub-divisions of original larger vatans; precedents abound in the Surat Court under which each separately recorded sub-division would now be regarded as a separate vatan and be treated accordingly. Add to this the want of education on the part of the vatandars generally, and the other reasons adduced by the Commission in proof of the inexpediency of attempting any measure of the kind. There is, however, no alternative between enforcing service from each separate sub-division under the provisions of Act XI. of 1843 and the laying down of some such general rule as that proposed by the Commission in paragraph 35, viz., to declare that they shall all lapse on the death of the present holders. *This would, however, look so like a wholesale measure of confiscation that it would be better, in my opinion, to endeavour to carry out the other alternative, and exact some kind of service from every sub-division of a vatan, however small. This would probably prove sufficiently objectionable to induce the Vatandars to come round to the terms offered.*"

The Tarijas from 1848-49 to 1868-69 have been produced, and support this portion of the evidence of Kesavlal the Mámlatdár. They show the gross revenue of each year, and that it is composed of two portions, whereof one is the Bandhi-jama or portion which has uniformly been paid to Government, and the other is the Mafi or remitted portion retained by the Desais. The latter portion is called Nuksan or loss, *i.e.*, alienated by and, therefore, lost to Government. The Nuksan is, for every year from 1848-49 to 1868-69, stated to be Rs. 1,606. These Government records accordingly testify that the village of Kabilpur was then deemed to be partially alienated, and being so apparently without condition, it may, according to Robertson, be properly called inámi, a term sometimes very loosely used. The village is so called in some of the Tarijas of the period of which we are now treating. We have already observed that the phrase "Saranjami" (which also occurs in some of the same Tarijas) must, on the basis of non-liability to service, on which both parties have concurred in treating this village in this and the District Courts, be regarded as a misnomer. An unsuccessful attempt on behalf of the defendants (appellants) was made to induce the District Court to believe that the Tarijas, &c., from 1848-49 to 1868-69 were prepared by the Majmudar in fraudulent collusion with the Desais, and more especially so in showing the Mafi or Nuksan of Rs. 1,606, a bold conjecture un-

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The foregoing extracts from the report of the Guzerat Vatan Commission and of the Revenue Commissioner's letter have not been made for the purpose of deciding any question as to the liability of the Desais to service in respect of Kabilpur, but to show the view which the Guzerat Vatan Commission had taken as to the invariability of the assessment upon that village. As already observed, both parties, before the Court of First Instance and before this Court, have treated the village as not liable to service. We must, therefore, assume that it is not so liable, and we are thus relieved from considering what, on the opposite hypothesis, would be the legal consequences of the refusal of the Desais to render service. The evidence before the Guzerat Vatan Commission as to the invariability of the assessment was not so full or so strong as the evidence given in this cause to the same effect, yet that Commission, rightly as we think, came to the conclusion that the assessment was fixed.

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ported by any evidence whatever. What was termed fraud there has from the learned Advocate General in this Court received the milder appellation of probable mistake, or ignorance. We fail to discern either fraud, mistake, or ignorance in the exhibition of the Nüksan or in the use of the terms 'Bandhi-jama' or inámi. The new form of Tarija introduced in 1848-49 and showing greater details of account than were contained in the former Tarijas, was prepared in accordance, as Kesavlal the Mámlatdár states, with the orders of Mr. Shaw, then Revenue Commissioner. It is not pretended that there was any attempt on the part of the Majmudar to meddle with the amount of revenue (the Bandhi-jama) payable to Government. That amount, when the Majmudar's allowance of 15 annas and one pie, which had formerly appeared separately, is added to it, remained the same after as before 1848-49. The term 'Bandhi-jama' (fixed revenue) was shown, by the previous history of the payment which disclosed its uniformity, to denote most truly the nature of the tenure by which the village was enjoyed. It is not by any means a term or tenure novel to this Court. It occurred in many entries in number Khardas strongly relied upon in Regular Appeal No. 16 of 1873, *Lallu Harribhai v. the Collector of Surat* (decided 1st July 1873), on behalf of the Collector, and was then treated by him as a well-known tenure in his collectorate. But it is said that Kesavlal has testified that Kabilpur is a 'Hundawari or Khatawari' village, which names, he on a subsequent day said, would be more properly rendered 'Hundebandi or Khatabandi,' which latter terms he stated to be identical in meaning. On looking into Mr. Elphinstone Robertson's Glossary, p. 58, Art. 14, we find that Hundo and Hundo both mean the same as 'Udhad,' which, at p. 5, Art 11, is described as a "fixed sum paid to Government for land without reference to the number of bighas or value and description of cultivation," "Bandhi," used as a pre-

The reply of Kesavlal in his evidence that "the Desais were never required to write in the Thana" (kacheri) was evidently elicited for the purpose of showing that they had not an opportunity of tampering with the Government accounts.

fatory adjective, means fixed. "Uhdad jamebandi" Robertson describes as "a fixed unalterable revenue settlement, either for a whole village or villages without reference to the extent or nature of the cultivation, and without any right on the part of Government to interfere in the internal management" (j). Kesavlal, speaking of Kabilpur, as already stated, said:—"Uhdad Dharo" (assessment in lump) "is taken from the whole village." The Desais examined by Mr. Mulock (Assistant Collector) in 1869 (Exhibit 97) described Kabilpur as Bandhi-Jama and Uhdad-Jama (see also Exhibits 78 and 105). Mugatraya Maniraya, who had been Mámlatdár of Supa in 1854-56 and 1861-63, who was examined as a witness for the plaintiffs, and Kuvárji Shankarji, who was examined as a witness for the defendants, described Kabilpur as a Bandhi-jama village. Even Kashi-

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The liability to service being eliminated from the case, it stands thus:—Kabilpur has been proved to be a hundabandi (udhadbandi) village, held in proprietorship hereditarily by the plaintiffs and their co-parceners. These holders are jointly responsible to Government for payment of the revenue, and are, in all material respects, identical with bhagdars and narvadars, and, therefore, within the scope of Section 8 of Regulation XVII. of 1827. Kabilpur has further this special peculiarity, that its revenue payable to Government has been proved to be invariable, which, being a peculiarity of assessment, is by the same enactment required to be respected and preserved.

The order complained of in this suit is more stringent than the course deprecated by Mr. Rogers as savouring of wholesale confiscation. That course was a resumption of the partial exemption on the deaths of the incumbents, and rested on the intended justificatory basis of a supposed liability to serve and refusal to do so. The order complained of in this suit is not sought to be justified by any such liability to serve and refusal, and has resumed in the life-time of the present incumbents the right to partial exemption from revenue. The effort on behalf of the defendants, both here and in the District Court, has been to support that order on the ground that the plaintiffs and their fellow-parceners are ordinary khal-sa-tenants, the assessment of whose land may be enhanced at the pleasure of Government. The weight of evidence in the case is, in our opinion, quite inconsistent with any such theory.

(i) On consulting our translator, we are of opinion that Mr. Robertson should have written 'udhad-bandhi-jama' not 'udhad-jamabandi.' The quality of immutability of assessment, which he intended to express, is not implied in the latter form.

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Mr. Simpson, Collector of Surat in 1842, appears to have entered into some investigation of the plaintiffs' title to partial exemption from assessment, but what precisely was the nature of that proceeding does not appear beyond the fact that he did not alter the assessment.

Mr. Ravenscroft, when Acting Collector of Surat, on the 27th of February 1855 sent to the Desais of Kabilpur a regular notice (Exhibit 216) under Regulation XVII. of 1827, Sec. 40, in which he appears to us to have distinctly treated a holding under a Bandhi-jama as a recognised tenure according to the custom of the country. He recites that the Desais enjoyed "the village of Kabilpur as a Bandhi-jama and do not pay the full assessment," and he called upon them to defend their right to the Mafi (exemption)

(*h*) As to the hostility of mortgagors to the continuance of the Bhagdari and Narvadari tenure, notwithstanding the desire for and interest in that tenure of their coparceners, see Mr. Pedder's Report No. CXIV. Bombay Government Records, p. 19, para 35.

thus enjoyed, within two months after the receipt of the notice, otherwise their lands would be fully assessed. The Desais sent in a written defence, claiming Kabilpur as a Bandhi-jama, and relying on the antiquity of their title and upon Regulation VI. of 1833, which was then in force. On the 13th November 1856, Mr. Ravenscroft made a requisition (Exhibit 218) for more papers, and in that requisition again seems to have regarded a Bandhi-jama as a recognized tenure, and requires the Desais to defend their title to it. They complied with that requisition by sending in some papers in January 1857. No further steps appear to have been taken by Mr. Ravenscroft, notwithstanding Sec. 47 of Regulation XVII. of 1827, which, though since repealed, was then law. It provided that "Whenever the holder of land held wholly or partially exempt from assessment, or any person appearing to support his claim, has given a written answer to the Collector's notice, issued in conformity to Sec. 40, and, if the claim is founded on specific grant, has produced a written deed, or shown sufficient cause for not producing it, it shall not be competent to the Collector to leave the question undecided without the consent of the party in writing, on receiving which the Collector shall furnish him with a copy of the record of his proceeding, which shall contain an intimation that his title has not been decided upon, and is subject to future examination." Mr. Ravenscroft did not obtain the consent of the Desais in writing to leave the question undecided, nor did he make any compromise under Sec. 48. The defendants have not called him as a witness to explain why he did not proceed with the case. If he became as well acquainted with the facts as the District Court and this Court now are, however, we have no difficulty in understanding why an officer of his high sense of justice and reputation for discretion should abstain from advising any increase of the assessment upon Kabilpur. As we are deciding this case upon other grounds, we do not deem it necessary to say what was the precise legal effect of the abandonment in 1857 of the regular inquiry (commenced under Section 40 of that Regulation by Mr. Ravenscroft) when taken in

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connexion with Section 47, which continued in force until 1863. We, therefore, do not give any opinion as to whether the subsequent inquiry and proceedings, which resulted in an enhancement of the assessment, were invalidated by Section 47 of Reg. XVII. of 1827. But we may say this much, that the unexplained cessation of Mr. Ravenscroft's proceedings does not tell favourably on the case.

From 1857 to 1869 the plaintiffs seem to have been permitted to remain in peaceful enjoyment of their village of Kabilpur at its ancient assessment. In the latter year, Mr. Hope then being Collector of Surat, an inquiry was conducted by one of his assistants, which terminated in the order for the enhancement of the assessment on Kabilpur from Rs. 1,089-13-1 to Rs. 4,106-9. The village had been previously surveyed. The plaintiffs complained of the survey, and assert that Mr. Hope then informed them that the survey was being made with a view to making a vatan settlement with them; but that, instead of that being done, the full assessment of Rs. 4,106-9 was placed upon the village. The defendants' principal witness Kesavlal says that when Mr. Hope returned the answer to the plaintiffs as to a settlement, he, Mr. Hope, was under the impression that Kabilpur was held on service tenure.

The enhancement is sought to be justified by Bombay Act. I. of 1865, Section 25, which enacts that "It shall be lawful for an officer in charge of a survey to assess to the land revenue, under such general and local rules as may be in force in the survey under his charge, all lands cultivated, or uncultivated, and whether hitherto assessed or not, provided that such assessment shall not be levied for more than one year, until the sanction of the Governor in Council shall have been obtained thereto, and *provided that it shall not be leviable from any land held and entered in the Land Registers as wholly or partially exempt from payment of land revenue, except to such amount as is in accordance with previous practice, or any law which has been, or may hereafter be, enacted relating to lands so held.*"

Section 49 of the same Act enacts that :—

“The provisions of this Act shall not, except for the purpose of defining village boundaries, be applied to alienated villages : Provided that it shall be competent to the Governor in Council to extend, by notification in the *Government Gazette*, all or any of the provisions of this Act to every such village, on application made in writing by the holder thereof, and further, to apply the provisions of this Act to all Government lands situated in alienated villages.”

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“Alienated village” is defined in Sec. 2, Cl. e. ; but it is unnecessary to set forth that definition, as we do not consider it necessary to give an opinion as to whether or not Kabilpur, being only partially exempt from payment of land revenue, is an alienated village within that definition.

The 51st Sec. enacted that “this Act shall be taken as part of Regulation XVII. of 1827,” but that Sec. was repealed by Sec. 20 of Bombay Act VI. of 1868.

A question might arise how far Sec. 25 of Bombay Act I. of 1865 controls Sec. 2, Clause 1 and Sec. 8 of Reg. XVII. of 1827, and Sec. 21 of Bombay Act VII. of 1863, but we see no necessity for now attempting to solve that question, inasmuch as we think that the village of Kabilpur falls within the concluding proviso of Sec. 25 of Bombay Act I. of 1865, which prohibits the levy of any assessment “from land held and entered in the Land Registers as wholly or partially exempt from payment of land revenue, except to such amount as is in accordance with previous practice or any law which has been, or may hereafter be, enacted relating to lands so held.” There is not any definition of the term “Land Registers” in the Act. No separate Land Register for Kabilpur, such as appears to have been contemplated by Reg. XVI. of 1827, Sec. 22, seems to have been kept by Government. The Advocate General, however, with becoming candour, declined to argue that the Land Registers mentioned in Sec. 25 of Bombay Act I. of 1865 are only those named in Reg. XVI. of 1827. He said most justly that “it would not be decent to contend that, where Govern-

1875. ment has failed to keep Registers under Reg. XVI. of 1827, Sec. 22, the village books or other records may not be looked to on claims for total or partial exemption from payment of land revenue," but he argued that the entries of Kabilpur in the Government records from 1848 to 1868 as, to a certain extent, rent free, were not sufficient to bring it within the proviso in Sec. 25 of Bombay Act I. of 1865. But we think that these entries, taken with the previous entries from A.D. 1691-92 down to A.D. 1848 (showing, as we have already held, a uniform payment of a sum much below the full assessable value of the lands during that time) satisfy the exigency of the proviso in Sec. 25, and abundantly establish that Kabilpur is partially exempt from payment of land revenue.

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In recapitulation, then, we hold—1st, that Kabilpur is an *Udhad bandhijama* village settled for hereditarily and of right by the plaintiffs and their co-parceners in the gross at a fixed immutable rent independent of the quantity of land under cultivation and payable to Government, and, as such, falls, in respect of the joint liability of the holders for the revenue in the gross, within Section 8 of Reg. XVII. of 1827. 2ndly, that the plaintiffs have succeeded in showing that the same village is land situated in a district ceded by the Peishwa before 1803, *i.e.*, in 1802 to the British, held by the Plaintiffs and their predecessors in title partially exempt from payment of land revenue under a tenure recognised by the custom of the country for thirty years and upwards, and, therefore, falls within the claims for exemption mentioned in Clause 21 of Bombay Act VII. of 1863. And, lastly, that whether Section 2, Clause 1 and Section 8 of Reg. XVII. of 1827 and Section 21 of Bombay Act VII. 1863 are controlled or not by Bombay Act I. of 1865, the same village is liable to assessment to the extent of Rs. 1,089-13-1 only, inasmuch as it falls within the concluding proviso in Bombay Act I of 1865, saving from further assessment a village entered in the Land Register as partially exempt from payment of land revenue.

In conclusion we must hope that the facts of this case were not fully known to those members of the Revenue Department on whose advice the assessment on this village of Kabilpur has been nearly quadrupled. Such an absence of knowledge, however, would indicate a system of investigation so imperfect, perfunctory and one-sided as, if not liable to judicial supervision, must endanger the rights of property. Of that system we regret to say that this case would be no isolated instance. We are reluctant to think that the alternative hypothesis could be true—namely, that, notwithstanding an ample knowledge of the facts which have been so satisfactorily established in the District Court and here, there could have been so much indiscreet over-zeal for the revenue, as to induce any officer to manifest such a deliberate disregard for ancient vested rights as it would be painful to think could be possible under British rule. A recurrence of similar cases would go far to shake the belief of Her Majesty's subjects in this country in the permanence of any landed property whatsoever.

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Happily for the plaintiffs they had provided for them by Mountstuart Elphinstone and his colleagues, who, in this respect, walked in the footsteps of Lord Cornwallis, a Civil Court in which both parties and their witnesses might be fully and fairly heard, and the voluminous documentary evidence thoroughly and candidly scrutinised, and resumption, not to say confiscation, of a property of more than two centuries standing, (proved to have been held at a moderate fixed rent for about 180 years of that time, and which may have been so held for a much longer period) successfully resisted. To quadruple the rent, as the Revenue Department has attempted to do here, is virtually to confiscate the property.

It is too much to expect with any confidence that an *ex parte* proceeding in such a case as this can be satisfactory. The revenue officers, if unaided by hearing the facts fully debated by the professional advisers of the parties, and left to struggle alone through an enormous mass of documents and accounts, may err on either side. Here we find them

1875. erring on the side of high fiscal views. In the Kanara case, on the other hand, it was manifest that the opposition offered to the survey and assessment, and the consequent litigation, were, in a great measure, due to the sympathy of some of the Collectors having been excited in favour of the landholders, by imperfect investigations and erroneous views as to the authority and acts of Sir Thomas Munro. We are not for a moment to be understood as saying that those Collectors intentionally sought to raise that opposition or litigation, but their opinions, confidently expressed in reports to Government, were on record in their kutcheries, and information, contained in the archives of a Kutcherry or other public office in this country, has a singular facility in making its exit if there be any person interested in assisting it to do so. Consequently the views of those Collectors were well known throughout the province of Kanara. If the decision of the Kanara case had been left to those officers, or had it been based on their reports, the result would have been the opposite of what it was in Court.

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The plaintiffs have established their case with a degree of clearness almost marvellous, when the length of time and of the accounts is considered. One volume of papers containing evidence of witnesses and documents consists of 358 pages. The other volume comprises 654 pages of accounts and papers, all of which have been translated. It could not be expected that, with the multifarious duties which press upon the members of Government, they could have found time to become acquainted with the contents of such a pile. We cannot, however, suppose that if a full and unbiassed investigation had been made, and the result properly laid before Government previously to the enhancement of the assessment in 1870-71, the plaintiffs would have been forced to incur the anxiety and expense of defending their ancient rights in a Court of Law.

We affirm the decree of the District Court with costs.