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## APPELLATE CIVIL.

*Before Sir Michael Roberts Westropp, Kt., Chief Justice, and Mr. Justice M. Melvill.*

DOLSANG BHAVSANG AND OTHERS (*Original Plaintiffs*), *Appellants v.* THE COLLECTOR OF KAIRA AND OTHERS (*Original Defendants*), *Respondents.** [28th August, 1879.]

*Summary settlement—Sanad—Revocation of sanad—Garas—Wanta—Mazmun—Narva—Bhagdari.*

Where a *sanad* by way of summary settlement of land revenue has been granted by Government under Bombay Act VII of 1863, Government cannot reform or set it aside, without the assent of all parties interested therein. To do so, would be an assumption, by Government, of the function of a Civil Court.

A Civil Court cannot, on the ground that Government has, by mistake, granted such a *sanad* to a person not the owner of the land, reform or set aside the *sanad*. Section 7 of Bombay Act VII of 1863 renders the quit rent, fixed by the *sanad*, binding alike on Government and on the rightful owner of the land, but the latter may recover the land from the grantee of the *sanad*, subject to the quit-rent, fixed by the *sanad*, and payable to Government; and such grantee will be declared to have taken the *sanad*, as a trustee for the rightful owner.

Where Government had granted seven *sanads* to certain garasias in respect of lands, part of which had been previously sold by the garasias, and Government had attempted to revoke and cancel those *sanads*, and had subjected the lands to a full assessment, on the ground that the garasias were not entitled to any of the said lands and that the *sanads* had been granted by mistake.

[368] *Held*, that such attempted revocation, cancellation and reassessment were void and of no effect, and that the grantees were entitled to hold the lands on the terms mentioned in the *sanads*, but, so far as recorded the sold portion of the said lands, in trust for the vendees thereof and their heirs, representatives and assigns.

*Quære*—Whether a Civil Court can give relief, either by reforming or cancelling such *sanads*, against mistakes, other than those relating to ownership, which may be found to exist in the *sanads*.

The terms '*wanta*,' '*garas*,' '*mazmun*,' '*narva*,' and '*bhagdari*' explained.

[R., 4 B. 643; 15 B. 172 (175) (F.B.); 35 B. 97 (101)=12 Bom.L.R. 903=8 Ind. Cas. 624.]

THIS was an appeal from the decision of W. H. Newnham, Judge of Ahmedabad, rejecting the plaintiffs' claim.

The facts, arguments and authorities are fully set forth in the judgment of the Court.

*Kashinath Trimbak Telang* and *Nagindas Tulsidas* appeared for the appellants, the original plaintiffs.

*Marriott* (Advocate-General) and *Nanabhai Haridas* (Government Pleader), for the respondent, the Collector and original defendant No. 1.

The other defendants put in no appearance.

### JUDGMENT.

The judgment was delivered by

WESTROPP, C. J.—This suit relates to certain lands forming part of the village of Nauli (Nahavali), in the taluka of Borsad (sometimes Anand or Napad), in the zilla of Kaira (Kheda), and described in the Government records and many other exhibits in this case as "*wanta*" lands.

* Regular Appeal, No. 27 of 1874.

The plaintiffs are Rajputs of the Palmar clan. That ancient clan and many of its members are noticed in the Ras Mala, the valuable work, on the *res gestæ* of Gujrat, of our late learned and esteemed colleague, Mr. Kinloch Forbes(1). The plaintiffs are, in the documentary and oral evidence in the cause, frequently described as garasias (grassias, girasias).

With a view to a clear understanding of the questions at issue, some preliminary remarks on *wanta* lands, garasias and *garas* (*gras giras*) will here be appropriate.

The Marathi word '*vanta*,' '*vunta*,' '*wanta*,' '*wanto*,' '*waunta*' or '*banta*' means in its original signification a share, a part, a [369] portion (of an estate, of a contribution, of a mercantile concern, &c.), and '*vantadar*,' '*wantadar*' or '*bantadar*,' means the holder or contributor of a share, &c.(2). As applied to lands, Mr. Robertson (in his Glossary of revenue and official terms used in Gujarat at p. 54, pl. 5) defines it as "a description of land held rent-free, although much of it pays *salami* to Government." He continues thus: "Prior to the Mussulman conquest, the Rajputs and others had possession of the country. The Mussulmans dispossessed these people, who then took to plunder. The conquerors were unable to stop this. A compromise was effected, the Mussulmans keeping three-fourths of each village under the name of '*talpad*,' and the remaining one-fourth was allotted to the original holders under the name of "*wanto*;" for this they agreed to cease plundering, and to keep order and peace in their villages(3). The holders of *wanto* land are amongst the most noble and ancient families in the country. This land has in some cases been given away, in some sub-divided, and in some sold(4). In some cases the holders of *wanto* were too strong for the Government authorities holding the '*talpad*,' and they seized the '*talpad*' and annexed it to their '*wanto*,' the whole still being held by them under the name of '*wanto*.' There are also cases in which the Government has been strong enough to do without the assistance of the old proprietors. In these cases the *wanto* has been resumed, and is now held and known as '*wanto japti*.'" Professor H. H. Wilson(5) says of *wanta* that "in Gujarat it denotes lands either exempt from assessment or held at a quit-rent, chiefly by Rajputs, although sometimes by Kolis and Mahomedans; the tenure is prescription of remote antiquity without any deeds or grants"(6). Of the term '*wanto nakro*' Mr. Robertson (Gloss., [370] p. 54, pl. 7) says that it is "*wanto*-land held entirely free of any rent or tribute;" and of '*wanto salamiyo*' that it only differs from '*wanto nakro*,' in that the holder has to pay a certain *salami* or quit-rent *per* vigha or khumba; and of '*wanto-udhad-salamiyo*' that "the land is '*wanto*,' and only differs from '*wanto salamiyo*' in that the holder pays a quit-rent upon the

(1) Ras Mala (2nd ed.), pp. 536, 200, 71, 75, 89, 90, 108, 115, 117, 125, 147, 161, 163, 222, 227, 279 to 281, 328, 329, 401, 402; (1st ed.), Vol. I, 94, 99, 117, 118, 141, 150, 152, 162, 191, 210, 211, 212, 287, 294, 363 to 366, 427; Vol. II, 59, 60, 234.

(2) Professor H. H. Wilson's Gloss., pp. 541, 555: Robertson's Gloss., 54 pl., Bird's Hist. of Gujarat, 409, 411.

(3) An attempt was made, A.D., 1545, by the Mussulmans to resume the *wanta*—Bird's Hist., Gujarat, 266, 267—which attempt produced an insurrection of the Rajputs, garasias, &c., which was eventually successful: Ras Mala (2nd ed.), 296, 297; (1st ed.) Vol. I, pp. 386, 387.

(4) As to the denomination of such land when sold, *vide* Robertson's Gloss. *in voce* '*wanto vechan nakro*,' p. 55, pl. 3.

(5) Wilson's Gloss., p. 555.

(6) See to the same effect paras, 3, 4, 7, 17, 20 of Mr. Peile's memo. on *wanta*, Selections from Government Records, N. S., No. CVI, pp. 48, 49, 52, 56, 57.

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whole of the land held," *i.e.*, in the lump. Mr. Bird, in his translation of the Mirat Ahmadi, or Mirror of Ahmad, called by him the History of Gujarat, gives at p. 406 an order or farman of the Emperor Akbar, dated A.H. 999, A.D. 1590-1 (abolishing transit duties), which substantially supports the description given by Mr. Robertson of the original of *wanta* land, styled in the farman '*banta*,' and at p. 410 distinguishes it from *gras* (*garas*). To the like effect are certain passages from the same work translated by Mr. Kinloch Forbes in the Ras Mala(1). And Mountstuart Elphinstone, in paragraph 3 of a minute of the 15th August 1821, says that "*wanta* was originally a fourth of the land of each village left or restored by the Mogul Government to the garasia, who was originally proprietor of the whole. It is now reduced by sale, mortgages and encroachments of the patels and of the Government officers, until it has ceased to bear anything like its original proportion to the *talpad*. It is sometimes managed by the proprietor, who pays a quit-rent to Government; but *it is very often managed by the patel, who pays a pecuniary amount to the proprietor*" (2). His colleague, Mr. Pendergast, having expressed a doubt (3) as to the accuracy of that account of the origin of '*vanta*,' Mr. M. Elphinstone in a further minute (4) said: "The account given of *wanta* in all the reports of the Collectors beyond the Mahi is that which I have mentioned; it is supported by the Mahomedan histories and documents connected with revenue, and I believe by the traditions of the hereditary Hindu officers. My idea of the history is, that there were several Rajput [371] principalities in Gujarat under different dynasties of Solukas, Sumas, Gohils, Weghelas, &c., each of which, according to the Rajput practice, divided the country among the relations and Tattayats of the raja, till the whole country was shared out amongst them, as Kutch, Kathiawar and other neighbouring countries not subdued by the Mussulmans are still. That when the Mussulmans got the country, they took three-fourths of the Government share of the revenue to themselves, leaving the Rajputs in the possession of the remaining one, precisely as it is now proposed that we should do with the garasias of Dhanduka, Gogha and Ranpur. The raiyats retained their share under both Governments, and retain it still." To the same effect is the account of Captain Robertson in July 1804, and of the Broach Commissioners in August 1805 referred to in a minute of the Bombay Government of the 28th May 1817, paras. 62, 64. In the 110th para. of the same minute that Government said: "The old *wanta* or such lands to which the garasias may be able to establish a title, either by deed or by the production of village accounts of long standing, are to be scrupulously respected" (5). And accordingly we find '*wanta*' at the head of the lists of tenures, recognized as in accordance with the custom of the country, in Appendix A to Bombay Regulation I of 1823 in relation to s. 3, cl. 2 of that Regulation, and in Appendix A to Bombay Regulation XVII of 1827 in relation to s. 35, cl. 2 of the latter Regulation.

The vicissitudes of the term '*garas*' in Gujarat are remarkable. Its primary signification is "a mouthful, or a quantity equivalent to it" (6).

(1) Ras Mala (2nd ed.), pp. 563, 564, 566; (1st ed.), Vol. I, II, pp. 270, 271, to 724.
(2) 3 Rev. and Jud. Sel. pp. 677, 678; and see his Minute of 6th May 1821, para. 6, *ibid.*, p. 698.
(3) *Ibid*, p. 705. (4) *Ibid*, p. 708.
(5) Rev. and Jud. Sel., pp. 718, 719, 727; and see *per* the Court of Directors, *ibid.* pp. 730, 731.
(6) Wilson's Gloss., p. 187.

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Mr. Kinloch Forbes says that it was in early times applicable to alienations of land by the sovereign in favour of religious personages or places of worship (1). Subsequently we find it frequently applied to the rents and profits arising from *wanta* land as well as to the land itself, and the owner of the land denominated a garasia. Looking to the origin of *wanta* [372] land already mentioned, we can easily understand how, having regard to the primary signification of *garas*, it was used to designate such land and proceeds. Mr. Kinloch Forbes mentions the frequent application of the same term "in the bardic chronicles to the lands given for their subsistence to junior members of the Rajput chieftains' families, and this sense of the word continued, for a long time to be the prevalent, if not the exclusive, one" (2). Amongst the various meanings given by Professor H. H. Wilson to "*gras*" (*garas*) is "land held by garasias in Gujarat" (3).

Mr. Robertson describes the "garashiyas" as "the holders of *garas*-lands or allowances—for the most part Rajputs" (4). Mr. Kinloch Forbes continues thus: "At length the term '*gras*' (*garas*) was also used to signify the black-mail paid by a village to a turbulent neighbour as the price of his protection and forbearance and in other similar meanings" (1). This sort of *garas* is more especially designated "*toda* or *tora garas*' and is a *hak* (4). Mr. Kinloch Forbes proceeds: "Thus the title of grassia (garasia), originally honourable, became at last as frequently a term of opprobrium, conveying the idea of a professional robber, "a soldier of the night (5)," such as the Meleeker of Bhunkora. It is very important that we should re-collect these distinctions, as the disregard of them has been the cause of embarrassment, if not of injustice. The concessions, which, under the names *gras* or *wol* (*vol*), Rav Chando forced from the usurpers of his hereditary principality of Idar (Eedur), should not be confounded with the black-mail, which also, under the names of '*gras*' or '*wol*' the banditti of the Rajpipla hills extorted from the defenceless villager, or the receivers of the *chunwal* from the travelling merchant; much rather should confusion be avoided between either of these classes of claims and the regular and legal title to a share of the family lands which was possessed by the grassia cadet of a Rajput [373] house" (1). Mr. Kinloch Forbes then quotes the description, given by Colonel Walker of the titles borne by the different chieftains throughout Kathiawar which Mr. Kinloch Forbes observes "may be applied more generally to the whole of Gujarat." Colonel Walker, after mentioning that the sons of rajahs, ranas (ravs) and rawals (raouls) bear the appellation of kunvar (prince) and their sons the designation of thakur provided they have succeeded to an estate, said: "The sons of a thakur are also called 'kunvar' during their father's life. On his death, the eldest becomes the thakur, and the other 'bhumeeas' and 'garasias.'" Subsequently he says: "'Bhumeea' is applied to all possessors of landed property who are not rajahs or thakurs, of which they are the inferior gradation. We have generally called them 'garasias' in consequence of their being the ancient hereditary proprietors of the portion of territory they possess, in which sense the word '*gras*' is used and it is equivalent to '*asil*' or '*cuddeem*'

(1) Ras Mala (2nd ed.), pp 186, 567, 568; (1st ed.), Vol. I, pp. 241, 242 3 Vol. II, p. 276.
(2) Ras Mala (2nd ed.), p. 568; (1st ed.), Vol. II, p. 276.
(3) Wilson's Gloss., p. 187. (4) Robertson's Gloss., p. 17, pl. 6.
(5) Professor Wilson, Gloss., p. 178, says that '*girasi*' means "a caste or individual of it living by piracy."

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(*kadim*), Mahomedan words which mean root, origin, foundation, and ancient, old, former" (1).

In the *tevis kalambandi* (Ex. 183), to which we shall have occasion again to refer at greater length, it appears that the village of Nauli together with four other villages was, so early as Samvat 1201 (A.D. 1145), conferred by a senior member of the Parmar clan upon a junior branch; and subsequently, in Samvat 1425 (A.D. 1369) the village of Nauli was given to a yet more junior branch of the same clan, as '*jivai*', (maintenance), which circumstances, according to Colonel Walker's view of the mode in which the appellation of garasia was acquired, would account for its being borne by the plaintiffs, the present representatives of that branch.

The village of Nauli contained lands other than those in dispute in this suit, which other lands, it is admitted, were, at the time of the granting of the seven *sanads* hereinafter mentioned relating to the lands in dispute, held on the *narva* tenure, which in its main features is identical with *bhagdari* tenure(2). Although [374] narvadars and bhagdars are, in a certain sense, always deemed proprietors of the soil(3), yet the majority of, though not all, villages held on *narva* and *bhagdari* tenure are liable to full assessment, and, in that sense, are styled *khalsa* or *sarkari* villages (4). In some few *narva* and *bhagdari* villages the assessment is permanently fixed, *i.e.*, those villages are partially exempt from land assessment (5). The *narva* lands of the village of Nauli, however, seem to have been liable to full assessment. Villages held on *narva* or *bhagdari* tenure are also sometimes styled *udhad bandi* or *hunda bandi*(6). The leading features of the *narva* or *bhagdari* tenure are that the village community, (*i.e.*) the shareholders in the village lands (the subject of such tenure), settle hereditarily and in the gross for the payment of the revenue assessment on those lands to Government. By "in the gross" is meant that the responsibility of the villagers for land revenue is joint(4). This tenure is well described by Mr. Pedder in his report No. 11 of 1862, *passim*, and especially paragraphs 21 *et seq*, (7), and also by Mr. Robertson (8). The main portion of a *narva* village would be allotted to the respective villagers in *bhags* (shares) and sub-shares; but, Mr. Pedder says, "a certain portion of the lands usually the least valuable, was generally set aside to be still held in common as common pasturage, *wattuns* (*vatans*) of village servants, and to be let to non-proprietary cultivators on behalf of the community. This was called '*gaumbhag*' (*i.e.*, village share) or '*maimoon*'" (*majmun* or *mazmun*) (9). Mr. Robertson describes

(1) Ras Mala (2nd ed.) pp. 568, 569; (1st ed.), Vol. II, p. 277.
(2) Robertson's Gloss., p. 42, pl. 9.
(3) Bom. Reg. XVII of 1827, s. 8; 12 B. H. C. R., Appx., 235, 252, note (i) and p. 43; R. A. 50 of 1873; Printed Judgments for 1879, p. 333.
(4) 12 B. H. C. R. Appx. i, p. 252, note (i).
(5) Report of Gujarat Vatan Commissioners of 14th August 1865, paras. 47-49. Papers relating to District Hereditary Officers' Vatan, printed for Government in 1866, pp. 23, 24; *Government of Bombay* v. *Haribhai Manbhai*, 12 B. H. C. R., Appx. 225; *The Government of Bombay* v. *Sunaarji Savaram*; Printed Judgments for 1879, p. 333.
(6) 12 B. H. C. R., Appx., p. 259, note.
(7) Bombay Government Records, Selections from No. CXIV, N. S. pp. 10 *et seq*. See also his report No. 3 of 1863, *ibid*, pp. 530, *et seq*.
(8) Robertson's Gloss., p, 27, pl. 8, and p. 42, pl. 8, 9.
(9) Bombay Government Records, No CXIV, N. S. p. 5, para. 9; 530, paras. 86, *et seq*.

'*majmun*' somewhat differently, and [375] perhaps his description more nearly corresponds with the sense in which the Government revenue officers essayed to use it in this case. He says: "*Majmun* land signifies the land in a *narva* village which is not *narva*, and which is liable to assessment by Government. The *majmun* land is sometimes divided in equal proportions among the narvadars, who are thereby rendered responsible for it, and at other times it is let out yearly by the village talati to any cultivator"(1).

On the 11th April 1864, the Government of Bombay granted a *sanad* (Ex. 135) of certain lands in Nauli village, in the taluka of Borsad and zilla of Kaira, to Anopsing Bhimji, the tenth plaintiff, and on the same date, another *sanad* (Ex. 138) of certain other lands in the same village, to Raj Nathuji Mahavsang (represented by the sixth plaintiff, Sadubhai Kararsang, and by the seventh plaintiff, Motibhai Nathuji), and on the 13th July 1864, another *sanad* (Ex. 134) of certain other lands in the same village, to Raj Dolsang Bhavsang, the first plaintiff, and Amarsang Bharethbhai, the second plaintiff, and on the 15th October 1865, another *sanad* (Ex. 136) of certain other lands in the same village, to Jibhai Jithaji Raj, the ninth plaintiff, and on the same date, another *sanad* (Ex. 137) of certain other lands in the same village, to Ramsang Mansang Raj, the fifth plaintiff, and on the same date, another *sanad* (Ex. 139) of other lands in the same village, to Dolsang Bavaji (represented by the fourth plaintiff Dajibhai Dolsang) and Rasabhai Bavaji, the third plaintiff, and on the same date, another *sanad* (Ex. 140) of other lands in the same village, to Ranchore Amarsang (represented in this suit by Bhaiba Ranchore, a minor, by his guardian Bai Gulab, widow of the said Ranchore Amarsang).

On the 16th of January 1864, notices (of which Ex. 20 is an example) had been sent on behalf of the Government of Bombay to the plaintiffs under Bombay Act VII of 1863, to accept the summary settlement contemplated by that enactment, or to abide an inquiry into their title to hold the said lands in the village of Nauli (Nawulee) as *wanta salami* lands. The plaintiffs, [376] or the deceased persons whom they represent, accepted the summary settlement, and Government accordingly executed the above-mentioned *sanads* to them. The plaintiffs, until A.D. 1867, paid the two-anna cess, stipulated under those *sanads*, to Government.

On the 22nd September 1868, by a Resolution No. 3557 (Ex. 45-I) Government, at the suggestion of the Collector, directed that the two-anna cess levied, under the summary settlement, from the plaintiffs (whom the Resolution designated garasias) should be formally tendered to them, and that they should be informed that the *sanads* were issued by mistake, that they conferred no right on them as against the narvadars, and that the cess would not be levied in future. A further Resolution of Government (No. 4208, dated 30th September 1869,) repeated the direction as to refund of the cess, and proceeded thus (2) "The evidence proves that the land has hitherto been erroneously entered as 'alienated.' It is for the future to be entered in the names of the occupants as '*mazmoon*' (*mazmun*), and distinct from that held by the narvadars. The full assessment will thus have to be paid by the occupants, who will, in addition, have to pay *santh* to the garasias. This is no more than they have up to the present time been in the habit of doing. If hereafter the garasias acquiesce in the arrangements that have now been ordered, and

(1) Robertson's Gloss, p. 43, pl. 8. (2) See Ex. 164.

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the real amount of *santh* is ascertainable, then Government will, on the representation of the occupants, be prepared to consider the propriety of relieving them from the burden of the *santh* by paying it themselves from the treasury."

On the 30th of June 1872, the plaintiffs filed their plaint in the present suit against the Collector of Kaira, alleging, in substance, that they were Rajputs, and that the lands, the subject of the above-mentioned seven *sanads*, had always been entered in their names, or those of their ancestors, as *udhad salami wanta* lands, subject to a fixed lump sum for *salami*, annually payable to Government; and that Government had wrongfully caused those lands to be entered in the names of the occupants, their tenants, and as Government lands, and in subjecting those lands to a [377] *kamalakar, i.e.*, full assessment, which lawfully were subject only to the two-anna cess fixed upon them by the summary settlement made under Bombay Act VII of 1863, and reserved in the *sanads*. The plaintiffs prayed a declaration of their title to the lands accordingly.

The Collector, in his written statement by way of defence, alleged that, for more than sixty years past, the plaintiffs had no occupancy of the lands which were *sarkari*, and not *wanta salami*, and had by mistake been entered as the latter in the Government books, and the assessment had been paid to Government by the persons in possession and occupation who were other than the plaintiffs. The Collector further denied the efficacy of the *sanads* granted to the plaintiffs, and that the plaintiffs were owners of the land, and objected that the persons in possession and enjoyment of, and interested, in the lands had not been made parties to the suit.

Upwards of one hundred other persons, some being narvadars (*alias* matadars or patidars or patels) and others being kunbis (cultivators), were thereupon added as parties-defendants to the suit; and, of these, Kuberdas Nathubhai, Dadabhai Nagindas and twenty-four others (all of which twenty-six persons appear to be, and style themselves, narvadars, patidars, patels) in their written statement (Ex. 12), dated 24th April 1873, admitted that the land in suit was *wanta udhad salami*, and in substance further said that the ownership of it was vested in the plaintiffs and had been so in the plaintiffs' ancestors from a time anterior to the British rule; that some parts of these *wanta* lands had been sold, and some parts mortgaged by the plaintiffs or their ancestors in their capacity of proprietors; that these defendants had no objection to the *wanta* lands being entered in the names of the plaintiffs as owners in the Government books as those lands had been *ab initio*; that the narvadars had been in the habit of collecting the *salami*; that the plaintiffs were entitled to the *vadharo* (surplus) and to change the cultivators; that Government had illegally levied a full assessment on the lands; and that these defendants as *narvadars*, collected the *salami*, and Government had wrongfully supplanted them in the performance of that duty. The two [378] first named of these defendants alleged that they had purchased four bighas of the *wanta* lands from the plaintiffs together with the *salami* thereof, and those two defendants, therefore, held those four bighas *nakri* (free).

Bechar Bhagwan and twenty-six other of the new defendants (of which twenty-seven persons, twenty-one appeared to be narvadars and six to be kunbis) in their written statement (Ex. 13) said that the land in dispute belonged to Government, and that for more than sixty years these defendants and their ancestors had been and still were in possession of it,

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and paid the Government assessment; that the plaintiffs, as garasias, neither have any right to the land, nor paid the Government assessment of it, nor ever received the produce of it; that the plaintiffs are not the owners of it, notwithstanding that their names may have been entered as such by the village officers (patel or talati) in the Government books "from the beginning"; that the Collector had erroneously issued *sanads* to the plaintiffs, and subsequently had cancelled them at these defendants' request. These defendants denied the validity of the *sanad* as against them, and alleged that the plaintiffs had unsuccessfully sued some of these defendants for recovery of the lands.

Two other of the new defendants, Ambaidas Gangadas and Narayan Mangalji, in their written statement (Ex. 16) denied the title of the plaintiffs, and alleged that part of the lands had been in their (these defendants') possession for many years. They also pleaded that the suit was barred by the law of limitation.

Kalidas Ramdas and twenty-eight other of the new defendants (styling themselves narvadars) filed a written statement, nearly identical with the written statement, first above mentioned, of Kuberdas Nathubhai and his associates, admitting the land in dispute to be *wanta* land belonging to the plaintiffs and their ancestors, and entered in the Government records in their names; that the plaintiffs had sold and mortgaged parts of it as proprietors, and stating that these defendants held some of it *nakri*; that the *wanta* land is held by plaintiffs on *udhad salami* tenure, the amount of the *udhad salami* (lump quit-rent) payable to Government [379] being Rs. 1,488-4-3 *per annum*; that until Samvat 1903 (A.D. 1846-47) the *udhad salami* had been levied by the narvadars, but since that year Government levied it directly, which they had not any right to do; that the plaintiffs are entitled to manage the letting of the lands, to enjoy the *vadharo* (surplus), and change the cultivators; that the narvadars are injured by the act of Government in removing the names of plaintiffs as proprietors from the Government records, because the narvadars are entitled to levy the *salami*, and in placing a full assessment on the lands against the consent of the defendants.

On the 30th July 1873, Kuberdas Nathubhai, Bechardas Mulji, and four others out of the twenty-four, who had joined them in the written statement (Ex. 12) first above mentioned as filed on the 24th April 1873, presented an application (Ex. 71) in which they stated that that written statement was signed by them without any proper knowledge of its contents, or by whom it was prepared, and asked for permission to file a new written statement. This permission was accorded to them by the Assistant Judge, but they did not subsequently avail themselves of it. Their original written statement had been verified by them on solemn affirmation. The result of the written statement of such of the new defendants as have answered the plaint, is, that fifty-five of them have admitted the plaintiffs' case, and twenty nine have denied it, and six of the fifty-five have made an effort to recede from their admissions.

The issues settled were—

1. Is this suit barred by the law of limitation?
2. Have the plaintiffs proved their title to the land the subject of the suit.
3. Had the Collector defendant No. 1, authority to alter the description of the land, in the Government registers for 1868-69, from *sanadi* or *wanta salami* to *sarkari*?

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The District Judge made a decree against the plaintiffs; but ordered the Collector, as representing Government, to pay the costs of the suit.

The plaintiffs have appealed against that decree to this Court.

[380] At the hearing of this regular appeal before us, the plaintiffs were represented by Mr. *K T. Telang* as counsel and Mr. *Nagindas Tulsidas* as pleader. The first defendant (the Collector) was represented by Mr. *Marriott* (Advocate-General) and the Government Pleader. The other defendants, who are principally narvadars, but partly cultivators, did not appear personally or by counsel or pleader. Any objection on the ground of misjoinder of plaintiffs was waived by the learned Advocate-General.

It was pointed out to him by the Court that the Executive Government could not, without the assent of the plaintiffs and other persons, if any, interested in the seven *sanads* granted by that Government, assume to itself the functions of a Civil Court having an equity jurisdiction, and, on the ground either of alleged mistake or fraud, cancel those *sanads*; that, therefore, such cancellation as the Executive Government had attempted, was ineffectual; and that, in order to induce the Court to cancel or reform those documents, it lay upon Government to show that the *sanads* were executed under such circumstances as to entitle it to call upon the Court to adopt such a course. The learned Advocate-General having assented to this view, it was agreed, between counsel for both parties here represented, that the real question was, had the *sanads* been executed under any mistake? and, if so, to what extent? and that the object of both sides was to have a decision on the merits. It was candidly and rightly admitted by the Advocate-General, that there had not been any fraud on the part of the plaintiffs in obtaining the *sanads*. The contrary does not appear to have ever been contended. In fact, as we have seen, the initiative was taken by Government in sending the notices, under Bombay Act VII of 1863, to the plaintiffs. The question, whether the *sanads* have been issued by mistake to the plaintiffs, involves the question whether the plaintiffs, at the time of the issuing of the *sanads*, were "holders" of the lands mentioned in the plaint within the meaning of ss. 2 and 6 of Bombay Act VII of 1863. In s. 32, cl. (*f*), it is enacted that, "for the purposes of this Act, the word 'holder' shall be taken to signify the person who by himself, his tenants, sub-tenants, or agents, is in possession of the land held wholly or partially exempt from land-revenue assessment, and shall include [381] a mortgagee in possession as aforesaid." If, at the time the *sanads* were granted, the persons in occupation of the *wanta* lands were, in respect of those lands, tenants of the plaintiffs, the plaintiffs would clearly have then been in possession of the *wanta* lands within the meaning of the Act.

In certain, though not in all, of the conclusions of the District Judge we concur. Those, in which we agree with him, are the following:—

1. That the garasias (represented by the plaintiffs) were the original owners of the *wanta* land in dispute, though for a long time they have, for the most part, been absentees from the village of Nauli, of which those lands (as distinguished from the *narva* lands of the same village) form part.

2. That during that period they have not (with a few exceptions, see Ex. 192 as to fields 930 and 944) themselves personally occupied the land.

3. That the narvadars have collected from the actual cultivators the *salami* (quit-rent) until A.D. 1846, and paid it into the Government treasury, but that nevertheless, it has from the earliest times until A.D. 1867 been credited in the Government accounts to the garasias, whose names appear

in the "*maldhani*" (owner) column of those accounts as the owners of the *wanta* land. This last fact is admitted by the principal witness for the Collector on his cross-examination (see Ex. 208). In A.D. 1846 it would appear that Government took upon itself the collection of the *salami* directly from the cultivators on the introduction of Mr. Blane's forms (see Ex. 288), but nevertheless credited it to the garasias as owners until 1867.

The District Judge has arrived at the conclusion that, although "the garasias were originally, some centuries back, the real grantees of the land in dispute," yet "that, many years before the commencement of the British rule, they had lost, probably by tacit abandonment, their right to possession of the land, retaining only the right to levy *santh*." He accordingly refused the declaration of title which the plaintiffs sought, but ordered the Collector to pay the costs, the suit having been occasioned by [382] what the District Judge conceived to be the mistake of Government in granting the *sanads* to the plaintiffs.

Except as to certain portions of the *wanta* land, which, it is admitted, have been sold by the garasias, we are unable to concur in the finding of the District Judge, that the garasias have lost the ownership of the *wanta* land. Therefore, we cannot uphold his decree.

Government by describing the garasias in their accounts and records as owners of the *wanta* land, by crediting them with the *salami*, and, as already observed, by granting to them the *sanads*, fixed upon itself the burden of showing (if it could) that the garasias are not such owners.

Again, an extract (Ex. 183), being the 11th paragraph of a book or record called the *tevis kalambandi* (*i.e.*, a writing consisting of twenty-three heads or chapters), put in evidence on behalf of the Collector, is, in so far as it is favourable to the plaintiffs' case, important evidence for them, but not so much to be relied upon where it favours the narvadars, inasmuch as the information contained in it was supplied to the Revenue Department in the Samvat year 1883 (A.D. 1826-27) and signed by some of the leading men amongst the narvadars, who are, in the heading of that exhibit, described as matadars, and sign themselves as patels. It is merely *ex-parte* evidence, given when the garasias had not an opportunity of questioning the statements in it. Thence it appears that the mauje (village) Nauli was one of five villages which, at so remote a period as the Samvat year 1201 (A.D. 1145), belonged to the ancestors of the garasias (1), that it contains *wanta* land, which, in the sixteenth century, amounted to 750 bighas, but subsequently dwindled to 655¼ bighas, designated in that document as "*wanta salami*." Of those 655¼ bighas, the same document states that 136½ bighas were afterwards sold or mortgaged by the garasias. It also states that *udhad salami* was paid to Government in respect of the *wanta* lands by "the kunbis (cultivators) of the garasias" who occupied the same. Then followed [383] this averment: "And formerly, many years ago, disputes arose between the patels (narvadars) and the garasias, and the garasias were beaten. Consequently, they (the garasias) having been unsuccessful, fled away and lived in other villages. And the kunbis cultivated their shares, each man what he possessed, and paid the *udhad salami*." As to this statement, it should be observed that the garasias were the more warlike race, and not likely to have submitted to expulsion by the narvadars or kunbis, and that, if the narvadars or kunbis had achieved such a success as to expel the garasias, it is improbable that

(1) How or when the proprietorship of the garasias commenced, is not mentioned in the *tevis kalambandi*.

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*santh* would have continued to be paid by the kunbis to the garasias. The circumstance that the garasias resided at Bhadarva and not at Nauli, seems to be the only foundation for this statement as to their expulsion. Other documentary evidence shows that they exercised the rights of ownership down to the commencement of the present dispute. The *tevis kalambandi* then proceeds at some length to describe the *udhad salami*, to assert that the patidars (narvadars) divided the *wanta* lands, and had the right to collect the *salami*, and that the garasias were merely entitled to a fixed "*santh*" in respect of the *wanta* lands, and could not cultivate the latter. There is not any assertion, in this document, of a right of the narvadars to collect more than the *salami* or to any surplus *salami*. While admitting the right of the cultivators to cultivate the *wanta* lands and to build upon them, the *tevis kalambandi* claimed for the narvadars the right to substitute new cultivators for any cultivators who died without leaving descendants. It deserves to be noted that the narvadars, though endeavouring to circumscribe the rights of the garasias and to amplify their own, not only begin their tale in the *tevis kalambandi* (para. 11) by describing the garasias as the holders of the village of Nauli, but even in the last few lines of that paragraph describe the garasias as "the present owners" of the *wanta* lands. The kunbis, too, are styled "the cultivators of the garasias." The garasias have not in this suit asserted that they now have any claim to or over the *narva* lands in that village. When these latter lands were separated from the *wanta* lands, does not appear in evidence. The statement in the *tevis kalambandi*, as to the division of the *wanta* lands amongst the narvadars, must be checked by Ex. No. 7, [384] an analysis of which shows that, of the persons at present entered in the books as occupants of the *wanta* land, fifty-four are narvadars (described as patidars), forty-two are kunbis, eight are kolis, and one is a chamadya (leather-dresser).

The collection of papers, marked as Ex. 45 and containing correspondence in the Revenue Department of Government, shows that the proceedings, which resulted in the attempted revocation of the seven *sanads*, had as their source certain conjectures (more or less ingenious) of Mr. Shambhuprasad Lakshmilal, an energetic assistant settlement officer, who, in his letter 45-A of the 27th February 1867, disclosed to his superior Major Prescott (superintendent in the revenue survey), his supposed discovery, that, "although the lands from the time of the former Government were entered as '*wanta*,' they have from a very remote period been considered and treated as '*khasla narva* lands,'" for which proposition no proof, that we deem nearly sufficient, has been brought to our notice by the learned counsel for Government. In fact, the weight of evidence seems to us to be distinctly on the other side. In the accounts of Government to which our attention has been called, the land in dispute is always called either "*wanta*," or "*wanta salami*," or "*wanta udhad salami*" (1), all of which designations are inconsistent with the land being "*khalsa*" (Government land). Some complexity, no doubt, appeared in the relation of the narvadars to the garasias, and advantage has been taken of it by the Revenue Department to advance a claim, on behalf of Government, to treat the land in dispute as "*khalsa*" or "*sarkari*," both of which epithets mean belonging to Government; but, from the earliest times down to the date of the much-suspecting

(1) See the *tevis kalambandi* itself, Ex. 183, Ex. 163, Ex. 288, Ex. 46-E, and the other documentary evidence *passim*.

Mr. Shambhuprasad's letter of 1867, not a trace has been shown to us of that land having been denoted by either of those epithets, nor has any reason been assigned why numerous generations of revenue officers should conspire to misdescribe it as *wanta* land if it were not so. It has not been contended that the garasias had any control, either direct or otherwise, over the revenue accounts and records. In the correspondence contained in Ex. 45 we [385] meet with an expression of sympathy by Mr. Shambhuprasad for the cultivators (kunbis), and allusion is made to certain suits brought against them by the garasias since the granting of the seven *sanads*; but the final result of that correspondence was to subject the cultivators [who had previously paid to Government (formerly through the narvadars, and since 1846 directly to Government) a moderate fixed lump quit-rent (*udhad salami*) and *santh* to the garasias] to a full assessment payable to Government, and a continuing liability to pay the *santh* to the garasias, with, however, a hope held out that, in the unlikely contingency of the garasias' assent to the cancellation of their *sanads*, and in the further event of an ascertainment of the amount of the *santh*, Government would take into consideration the propriety of itself assuming the burden of paying the *santh*.

The right of the garasias to receive "*santh*," in respect of the *wanta* land, is in itself strong testimony to their ownership of the land. *Santh*, it is admitted, has been throughout (with the unimportant exception of one or two years, when it was collected by the narvadars and paid over to the garasias) paid by the cultivators or actual occupants directly to the garasias without the intervention either of the narvadars or of Government. The word "*santh*," as used in Gujarat, simply signifies "rent of land"(1), and the verb "*santhvun*" means "to let to a tenant." Mr. Shambhuprasad, indeed, in his letter 45-A, already referred to, and in his deposition (Ex. 208), says that the payment made to the garasias was *kothli* (*kothali*) *santh*. He said to the District Judge: "*Kothli santh*" I take to be less than the full right which might be taken or compensation paid annually by Government for abandonment of rights." It must here be noticed that until Mr. Shambhuprasad in his letter 45-A, in 1867, designated the payment made by the cultivators to the garasias as *kothli santh*, that payment never appears to have been so styled. The learned Advocate-General and the Government Pleader (though invited by us to do so) have not either in the revenue accounts or in any exhibit in this cause, of a date earlier than the letter of 1867, 45-A, been able to point even to a solitary instance in [386] which the payment made to the garasias is described as '*kothli santh*.' The only name given to it, is *santh*, and so it is called by the narvadars in the statement which in Samvat 1883 (A. D. 1826-27) they furnished to the revenue officers, and which is embodied in para. 11 of the *tevis kalambandi*, put in evidence on behalf of the Collector. Mr. Robertson, in his Glossary of Gujarati Revenue Terms published by and for Government (at p. 10, pl. 10), describes '*kothali santh*' as "Alienated land resumed, but in compensation for which a money payment is annually made to the original holder from the Government treasury. This payment varies, continuing sometimes during one life only and sometimes during two or more; it is sometimes hereditary." This description does not in any respect tally with the *santh* payable to the garasias. The *wanta* land in Nauli never was resumed, or essayed to be so, until the effort made

(1) See Robertson's Gloss., p. 57. pl. 11.

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by Government in 1869 to subject it to a full assessment, and the *santh* never was paid by either the former or present Government from the treasury, or otherwise, to the garasias. It was (with one or two exceptions, when it was collected by the narvadars and paid by them to the garasias) paid to them directly by the cultivators or tenants in actual occupation of the *wanta* land. '*Kothali*' literally means a bag or purse, and hence, when coupled with *santh*, indicates a payment from the Government treasury, coffers or purse. Towards the end of his evidence, when examined by the District Judge on the 19th December 1873 (1), Mr. Shambhuprasad seemed to hav ebecome aware] that he had not any authority for importing the word '*kothali*' into the case, and endeavoured to sustain his theory without it. The Revenue Commissioner, however, adopted Mr. Shambhuprasad's phrase '*kothli santh*' (2) as applicable to the payment made by the cultivators to the garasias; but as Mr. Shambhuprasad's employment of that term rests upon conjecture unsupported by any previous use of it in connection with that payment, so far at least as the evidence brought to our notice is concerned, we are unable to attribute to Mr. Rogers' acceptance of the term such weight as it would have been agreeable to us to give to the views of so high an officer of Government. We observe that until he suggested (3) to the **[387]** Collector, on the 6th March 1867, to advise the narvadars to complain, by petition (4), of the *sanads* having been granted to the garasias, the narvadars do not appear to have taken any public step (at least) which betrays a consciousness, on their part, of having suffered an injury. As it is, a considerable majority of those narvadars who have filed written statements have, as we have seen, acknowledged the title of the garasias and sided with them in this suit. The theory that the payment received by the garasias from the tenantry was *kothali santh* and not *santh* or rent proper, is irreconcileable with rent notes (*ganot-namas*) produced by the garasias, and given to them by some of their tenants, which rent notes (5) also prove that the garasias dealt directly with the lands themselves. The word used in those rent notes to signify rent is '*dhan*' or '*dhana*,' which literally signifies grain (6); but rent having formerly been and being often still in this country paid in grain, *dhana* is frequently used to mean rent. In four of those documents the land taken at a rent is described as "*wanta* land." In the fifth (Ex. 153) it is described as "*udhad salamia*."

The rent note (Ex. 149), dated 6th May 1833, is supported by Ex. 192 (A.D. 1834), which names Raghunath Waghji (or Wagha) (7) (the giver of the rent note) as tenant to the garasias of the same *wanta* fields mentioned in the note. The rent note (Ex. 151) executed in Samvat 1891, A.D. 1835, receives corroboration from Ex. 266, the tenant Bhana (Vana) Kala being there represented as in Samvat 1895 (A.D. 1839) cultivating the filed Khakani mentioned in Ex. 151. In like manner the rent note (Ex. 152) executed in Samvat 1903 (A.D. 1847) is supported by the witness Hirji Nathu (Ex. 171) and by Ex. 267, dated Samvat 1905 (A.D. 1849), showing that Jagda Vakta, the tenant in rent note (Ex. 152), was in the last-mentioned year cultivating the filed Namtavala named in the same rent note. The rent note (Ex. 153) executed in Samvat 1913

(1) Ex. 208. (2) Ex. 45-E. (3) Ex. 45-C, dated 8th March 1867.
(4) *Vide* Ex. 45-Ex. 238, dated 27th August 1867.
(5) Exs. 149, 150, 151, 152, 153.
(6) Wilson's Gloss., p. 135; Forbes Hind Dic. (2nd ed.), p. 397; Robertson's Gloss., p. 27, pl. 6.
(7) These names are the same.

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[388] (A.D. 1857), was, as appears by the indorsement upon it, given in evidence in a suit brought by Amratlal Nahalchand (who had become mortgagee of the land (Ex. 147) against Lala Hasan, the lessee named in the rent note, Ex. 153, in which suit judgment (Ex. 142) was given A.D. 1871 (affirmed on appeal, Ex. 143) upholding the right of the mortgagee as representative of the garasias as landlord. We do not perceive any reason for discrediting these rent notes. They are important evidence for the garasias, and, moreover, the only documentary evidence on the question as to who put in or changed the tenants. There is not any such evidence for the defendants. Upon this question the oral evidence for the garasias is quite as strong as that for the defence.

Upon the question, who were the landlords of the *wanta* land, the narvadars or the garasias? Mr. Beyts, the Acting Superintendent of the Revenue Survey, in his reply to question 5 of the Legal Remembrancer copied in the Collector's (Mr. Gilbert Elliot's) letter (Ex. 45,-F, col. 2) gives a most important extract from the '*Majee Juriff*' (remark book), a Government record written in the year A.D. 1825, which Mr. Beyts deemed as tending to show that the *wanta* was always separate from the *narva*. That remark is: "The *wanta vusti* is here separate. The garasias are Rajputs residing at Bhadarva. They manage their own lands (the patels say), and come frequently to Nauli. The cultivators of the *wanta* are looked down upon by the *sarkari* patidars (1) and the garasias are averse to letting their lands to any but their own people." This passage—written in 1825, and founded, not on the information of the garasias themselves but of patels—counterpoises the statement furnished by the narvadars in A.D. 1826-27, and entered in the *tevis kalambandi*, that the garasias had no interest in the *wanta* land beyond the *santh*.

A further proof of exercise of dominion by the garasias over the *wanta* land itself, is to be found in mortgages, of which several have been given in evidence. Amongst these are Ex. 46-J, a mortgage by Raj (Rajput) Bapuji Kuberji, a garasia, to Jesang Bechardas (a narvadar), dated Samvat 1906 (1st February [389] 1850) of 15½ bighas of *wanta* land, the income of which was to be taken in part payment of interest; another mortgage, dated 22nd March 1850 (Ex. 46-K), by Parmar, Nathubhai Bhausang (a garasia) to Haribhai Ramdas, a narvadar, of 4½ bighas out of a filed of 6 bighas and of the *garas* (income) arising therefrom, which the mortgagee was to receive in lieu of interest, and then followed this passage: "And on my (the mortgagor) paying off the amount, the garas will be redeemed;" another mortgage (Ex. 46-L), dated 30th March 1854, is by Bapuji Kuberji (above mentioned in 46-J) to Mulji Vasandas, apparently of the same 15½ bighas mentioned in 46-J. The income (rent) Rs. 5½ is described as *garas*, and is to be taken in lieu of interest; another (Ex. 45-M), dated 15th March 1823, is a mortgage of the *garas* (income) of 2 bighas of land by Rajput Karbising Mavsang to Bhuker Shankar. Ex. 45-N, dated 23rd May 1822, is a mortgage by Rajput Kuberji Jayabhai, a garasia, to Buhkar, a narvadar, of 2 bighas of land in a field, the *garas* of which (Rs. 2) is receivable by the mortgagee in lieu of interest; on payment of the loan, the *garas* was to be redeemed. Ex. 46-O, dated 4th May 1851, is a mortgage, by three garasias (Rajputs) to a narvadar of Nauli, of apparently the rents receivable from certain tenants, which were to be taken by the mortgagee in liquidation of interest. Ex 115 is a mortgage (dated the 18th May 1861) by Rajput Manbhai

(1) The narvadars.

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Kuvarji, a garasia, to two narvadars, of a field of 2 bighas, the boundaries of which are set forth in detail. The passage—"no interest on these rupees (the mortgage money) is to be paid, nor am I to take any *dhan* (rent) in respect of this land from you: when the rupees (shall have been paid) the land is to be delivered (to me)"— indicates that the mortgagees were to enter into actual occupation of the land. This is important evidence, executed, as this mortgage was, to a narvadar and *ante litem motam*, but nevertheless at a recent date, *i.e.*, about three years previously to the earliest of the seven *sanads*.

Mr. Shambhuprasad in his letter (Ex. 45-A), speaking of the *wanta* lands, says (para. 12): "I have seen several sale or mortgage deeds of these lands, in some of which it is clearly written the garasias have sold or mortgaged their right of *santh*—in [390] others particularly of the older dates, the *wanta* lands; but it was universally understood by the parties that the garasias could dispose of only the right of *kothli santh* (1)." This view is adopted by Captain Prescott (Ex. 45-B) and Mr. Borradaile, the Collector (Ex. 45-D, para. 7), who says: "There are many instances, procurable, of sale of the *wanta* itself as of that of the *santh* alone; and though it was perfectly understood between the parties to such sales of the *wanta* that the only thing actually sold was the *santh*, yet these are the words, and it will be difficult, if not impossible, to prove that the *wanta* land stated in documents to be sold or mortgaged was not so sold. The statement that the documents meant what they contained, can only be met by the negative proof that the buyer never took possession of the land he bought." No direct documentary evidence whatever of the universal understanding that the *santh* only was mortgaged or sold has been pointed out to us. That such was the understanding, rests, it seems to us, chiefly upon the conjecture of Mr. Shambhuprasad, unfortunately adopted by some of his superior officers. To that conjecture we cannot assign any weight. As to sales—there are persons before us in this suit who claim to be purchasers in possession, and these claims are not denied. As to mortgages—whether we look to India, to England, or elsewhere, when a mortgagee enters into possession he usually does so by receipt of the rents from the actual occupants, and if those occupants become such upon leases or agreements of date anterior to the mortgage, the mortgagee would be bound by such leases or agreements, and could not, in violation of stipulations contained in them, enhance the rents or eject the occupants, and yet the mortgagor would not on that account, when executing the mortgage, be less regarded as owner of the lands. Again, when we look to Gujarat, we must recollect that the majority of mortgages there, not only of *wanta* lands, but of lands held on every species of tenure, are *san*-mortgages, *i.e.*, mortgages without possession either by receipt of rent, or otherwise. No doubt [391] in some of the mortgages given in evidence for the plaintiffs the redemption of the *garas* (*i.e.*, the *santh* or rent) only is mentioned. Two only of the mortgages (Exs. 46-M and 46-O) are clearly mortgages of rent only; but it does not follow that, because a man mortgages only his income derivable from land, he is not owner of the land. A mortgage of rents only is not unfrequently met within this country. Again, a mortgagee may be quite content to accept the samerate of rent from the tenant which the mortgagor was satisfied to accept, although he may not have

(1) And in his deposition (Ex. 208) on re-examination he said: "In the inquiry I found that the land was often said to be mortgaged in the deeds, but it appeared to me that only the right to the *santh* was really pledged, not possession."

been without power to enhance the rent or dispossess the tenant; and, even if his tenant enjoyed the land at a fixed rent, it does not thence follow that the recipient of the rent was not owner of the land. He may have been so, subject to conditions favourable to the tenant. And we may observe here, that it is not our intention, by anything which we may determine in this case, to prejudice any claim which the tenants of the land or the cultivators may have, as against the garasias, in respect of invariability of rent or duration of tenancy, or to encourage the garasias to attempt to eject old tenants, who do not fail to pay such *santh* as they are bound to pay, the commencement of whose tenancy cannot be shown. The evidence in this case tends to show that while there are certain tenants, who are merely tenants-at-will, and who may, on due notice to quit, be ejected (1), there are, on the other hand, tenants, who, so long as they render to the garasias their dues, cannot be deprived of their holdings. The decision contained in Ex. 245 is an instance of the latter species of tenancy. That exhibit is a copy of the judgment given in 1867 in a suit brought in 1866 by two garasias against the tenants of 9 bighas of *wanta* land, in which suit the garasias failed to eject the tenants, who or whose ancestors appear to have cultivated that land for many years, and the garasias do not seem to have even pretended that any of the *santh* payable by those tenants was in arrear, but merely alleged a desire to obtain possession of the lands for the purpose of themselves cultivating those lands. Although there is much in that judgment in relation to the ownership of the *wanta* lands [392] generally which we cannot accept, inasmuch as it is displaced by the evidence in the present case and by the observations in this (our) judgment, yet we think that the Subordinate Court may have been perfectly correct in holding that, under such circumstances as existed in that case, the garasias had not any right to dispossess the tenants who were the defendants there. Very possibly the garasias in Nauli, like inamdars in other parts of this Presidency, may have authority to remove, on due notice to quit, some tenants, while other tenants may have acquired a permanent right to hold the land either at a fixed rent, or may be liable to enhancement of rent to the extent only justified by the custom of the district, and so long as they pay such rent as they may be bound to pay, cannot be evicted (2). These are questions which should be determined in each case as they arise. We hope that few (if any) will arise ; and it cannot be too distinctly understood by the garasias that this Court, by its observations or its decision in the present case, does not intend to countenance anything in the nature of a generel crusade, by the garasias against the cultivators of the *wanta* land.

Further proof of ownership being vested in the garasias, is that from time to time they have exercised the right to sell portions of the *wanta* lands. Recollecting the strong attachment which the proprietors of *wanta* land have for it and their great reluctance to part with such lands, the instances of sale cannot be expected to be very numerous. The *tevis kalambandi* (the defendants' Ex. No. 183) states, and the plaintiffs' counsel admits, that previously to the date of the *kalambandi* (which is A.D. 1826-27) 136½ bighas of the *wanta* land have been sold

(1) *Vide* Ex. s. 142, 143 referred to above in relation to the rent note, Ex. 153.

(2) 3 B.H.C.R.A.C.J. 124; *ibid.* p. 55; 10 B.H.C.R. 324; Second App. 239 of 1878 in the Printed Judgments for 1878, p. 273; Sp. App. 39 of 1877. (Printed Judgments for 1879, p. 310), and Sp. App. 370 of 1878; *ibid.* p. 365. And see Chapter VII of the Bombay Land Revenue Code (Bom. Act V of 1879, ss. 82 to 87 inclusive).

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or mortgaged, and this none of the defendants deny. The *tevis kalambandi* does not state at what times, or in what or how many allotments, or to whom, those 136½ bighas have been so alienated. It seems that, until 1848-49, those 136½ bighas were entered in the names of the purchasers or their representatives; [393] but, on the introduction of new forms of accounts, called Blane's forms, that system of entry was by oversight discontinued, and the sold portion (136½) of the 655½ bighas, as well as the unsold portion, entered in the names of the garasias (*vide* Ex. 45-G).

Exhibit 237, dated 5th June, A.D. 1798, is a deed of sale of 5 bighas of *wanta* land by Bhavaji Alibhai Parmar (a garasia) to Punjia Ganeshji Valaji for Rs. 30. The boundaries are set forth. The vendee was to pay the Government assessment. Whether the parcels, specified in this deed, form a part of the 136½ bighas mentioned in the *tevis kalambandi*, does not appear.

Exhibit 165, dated 16th April 1844 (Samvat 1900), is a deed of sale, by three garasias (Rajputs) to two other persons, of a field of *wanta* land (described by the vendors in that document as "our own land") for Rs. 61, and provides that the vendees are to pay "the Sarkar's *salami* according to the custom of the village." The boundaries of the field are set forth in the conveyance, and the trees, water-courses, hedges and fixtures are specified amongst the parcels conveyed with the field (1). Mr. Telang, for the plaintiffs, admitted that 4 bighas of the 655¼ bighas *wanta* land have been sold by the garasias to Trikamdas Manglal the ancestor of the defendants No. 2 (Dada Nagindas) and No. 3 (Kuberdas Nathubhai), and now belong to those defendants (see Ex. No. 12, para. 6, where such a claim is put forward by those defendants). Mr. Telang also admits that the garasias have sold some small portion of the 655¼ bighas of *wanta* land to the defendants Nos. 94 (Ambaidas Gangadas) and 95 (Naran Meghji), but is unable to say how much (see Exhibit No. 16, where the claim of defendants 94 and 95 is put forward). The dates of the sales to defendants Nos. 2, 3, 94 and 95 do not appear. Possibly the *wanta* lands sold to those defendants are amongst the 136½ bighas mentioned in the *tevis kalambandi*. Mr. Marriott, for the defendant, said that defendants 7, 9, 10, 94 and 95 (2) claim tobe entitled as representatives of vendees of parts of the 136½ bighas.

[394] The number of bighas of *wanta* land mentioned in the *tevis kalambandi* as remaining with the garasias previously to the alienation of the 136½ bighas is 655¼.

The total number of bighas mentioned in the seven *sanads* is 655-16, *i.e.*, 655¾ bighas.

The total acreage mentioned at the end of the plaint is acres 368, guntas 38, *i.e.*, 2 guntas less than 369 acres, which, at 1 bigha and 7 guntas per acre, amounts to 626-3 bighas. This, being only 32 bighas and 13 guntas less than the quantity of land covered by the *sanads*, implies that the plaint treated only 32 bighas and 13 guntas of the 655¾ bighas as alienated; but, in the argument before us, the alienation has been, as already stated, admitted to have been greater.

(1) See further, as to ownership of garasias, Exs. 190, 191, 193; and, as to sale, the deposition Ex. 20.

(2) Namely, 7, Banuji Zaver; 9, Becherdas Mulji; 10, Sahkhubhai Ramdas; 94, Ambaidas Gangadas; 95, Naran Meghji.

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On behalf of the defendants the exhibit marked 45-H, dated the 28th May 1866, has been relied upon as showing that the garasias are entitled to the *santh* as a *hak*, and have no property in the *wanta* land itself. It seems to us to be a deed of sale of *santh* fabricated, since the grant of the *sanads* to the plaintiffs, for the purpose of supporting the claim of such of the narvadars as deny the ownership of the garasias. An old woman, Bai Jitaba, the widow of a garasia, appears to have been induced to execute it. Of nine attesting witnesses no less than seven are parties (narvadars), five of whom are described in the deed as managing and cultivating the land, and three of them are defendants in this suit, *viz.*, Narandas Narotamdas, defendant No. 54; Dharamdas Sambhudas, defendant No. 34; and Narotam Bhagvan, defendant No. 50. Such a document is a mark of the weakness, not of the strength, of the defendants' case.

The main contention for the Collector was that, although the garasias were undoubtedly for many centuries the owners of the *wanta* land in Nauli, the narvadars, after a contest with them at some time which the defendants have not attempted to fix, had long ago deprived the garasias of that land, had become the adverse holders of it, and had reduced them to be the mere owners of a rent seck, which the principal witness for the defendant, the Collector, has been pleased to name *kothali santh*. At that point the question naturally occurred to this Court, how could such a state of facts constitute Government the proprietors of the *wanta* [395] land, or warrant its being entered in their books as *mazmun* or *sarkari* or *khalsa*? If by the adverse possession of the narvadars, throughout many years, the garasias have lost their title to the land, the acquirers of title would, *prima facie* at least, be the adverse holders, the narvadars. But it was, at that point, contended for the Collector that, although the narvadars expelled the garasias, yet they did not thereby acquire any more absolute title to the *wanta* land than they had to their *narva* land; that they associated the *wanta* land with the *narva* land, and paid land revenue for both in the lump; and that both were assessable at the pleasure of Government; and, further, that the narvadars levied from the cultivators of the *wanta* land more than the *salami*, which had been ordinarily payable in respect of it to Government, and appropriated the surplus to their own use, which levy and appropriation, it was argued, formed conclusive proof that the garasias had wholly lost the ownership of the land. For the proposition that the payments in respect of both species of land were amalgamated, and that the *wanta salami* had altogether lost its previous character of a quit rent, the documents chiefly relied upon were Exs. 274 and 283. Of these, Ex. 274 of the Samvat year 1897 (A. D. 1840-41) is an account, in the village *khatavahi*, of payments to Government, by the narvadars, of "*falo* (*phlao*) (1) in respect of *narva*," which payments were described as "including the *wanta*." Exhibit 283, a *sudavahi* (total collection account) of Samvat 1883 (A. D. 1826-27), contains two credit items to narvadars of "*wanta* and partnership proceeds." "Partnership" means "*narva*." But in other parts of the same exhibit, credits for payments by the narvadars in respect of *wanta* are separate. These two (274 and 283) are the only exhibits brought to our notice in which there is any blending of the payments in respect of the *wanta* with those in respect of the *narva*. Looking, however, to the other accounts and documents, and the established or admitted facts of this

(1) As to *phalo*, see Robertson's Gloss., p. 40, pl. 3.

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case, the remark occurs that the blending in Exs. 274 and 283 is so exceptional as to be due rather to a slovenly manner of keeping those particular accounts than to any actual union of the *wanta* and *narva* lands [396] in the narvadars as owners. Exhibits 272 and 273 are relied upon by the Collector for the same purpose as Exs. 274 and 283, but in a less degree, inasmuch as in them the *wanta* payments (*salami*) are, as in all the accounts, except Exs. 274 and 283, credited separately from the other items. Exhibit 276, "an estimate report" for the Samvat year 1885 (A.D. 1829-30), has been treated as proving the existence of a division of the *wanta* lands amongst the narvadars in a certain proportion to their *narva* holdings or *bhags* (share). It very much bears the appearance of evidence mainly collected by the subordinate revenue officers from the narvadars, and supplied by the latter with two objects, *viz.*, the keeping down of the assessment on the *narva* lands for the year, and the assumption of the ownership of the *wanta* lands. But even in that document—near its conclusion, and where it is said "and all the narvadars receive from *their* people house-rent, *vero* (cess), *salami* in respect of *wanta* land, &c., in proportion to their respective shares"—we find what they so received or levied from the *wanta* land still called "*salami*," which term indicates that it was a *fixed* quit-rent, and that expression could not have been retained consistently with the theory of the merger of the *salami* in the *narva phalo*, and of the whole having been variable at the pleasure of Government. For the Collector it was, indeed, said that the evidence of Mr. Shambhuprasad (1) proved that the annual amount of moneys collected under the name of *salami* had, in fact, varied. He spoke of its having been increased in A.D. 1796 from Rs. 917-8-0 to Rs. 1,376-4-0, and again in A.D. 1813-14 to Rs. 1,637-8-0. Mr. Shambhuprasad, being only forty-nine years of age when he gave his evidence, could only have spoken of these matters from hearsay. No accounts for those years were produced to us as corroborating these statements, which may or may not be well founded. The earliest account offered in evidence seems to be Ex. 46-E, which is for A.D. 1816, and it was said at the Bar that there were not any accounts forthcoming for the period before British rule commenced. Mr. Shambhuprasad in his evidence treats the *salami* paid to Government from A. D. 1813-14 as having stood at [397] the rate of Rs. 1,637-8-0 per annum until A. D. 1815-16, when it was reduced to Rs. 1,634-8-0, a reduction of Rs. 3, which we shall presently explain. These statements as to the amount of *salami* from A. D. 1813-14 to 1815-16 are admitted by the plaintiffs' counsel. Mr. Shambhuprasad further says that in A. D. 1818-19 the *salami* was Rs. 1,666-8-0; in A. D. 1819-20, Rs. 1,627-4-0; and in A. D. 1820-21, Rs. 1,607-4-0; and he brings it down no further. However, the Mamlatdar, Revashankar, to his report, dated October 17th, 1867 (Ex. 45-G), has annexed a statement showing the *salami* annually paid to the British Government from A. D. 1820 to A. D. 1867, which proves that throughout that time there has not been any substantial variation; for, although in that statement he admits the *salami* for the year 1819-20, 1820-21 and 1821-22 at the three different amounts given by Mr. Shambhuprasad, yet, in the memorandum following Mr. Revashankar's statement, the latter shows that the amounts for A. D. 1819-20 being too high, it was gradually so reduced in the two following years as to bring the average for the three years 1819-20, 1820-21,

(1) Ex. 208.

and 1821-22 to Rs. 1,634-8-0, the normal *salami* payable to Government. In the statement of Mr. Revashankar, the *salami* from 1822-23 down to 1840 is shown to have been always either Rs. 1,634-8-0 or 1637-8-0. Such, from what has been always gathered from the undisputed portion of Mr. Shambhuprasad's evidence, it seems to have also been from A. D. 1813-14 to A.D. 1817-18. The variation of Rs. 3 is explained in the 2nd para. of Mr. Revashankar's memorandum. There seems to have been a debatable piece of ground (only 3 bighas), which sometimes was included in the *wanta* account of the village and sometimes in the *mazmun* account, the assessment payable on which was Rs. 3 (Babashai currency), Rs. 2-11-8 Company's currency. When this piece of ground was put in the *wanta* account, the total *salami* in that account was Rs. 1,637-8-0; when this piece of ground was omitted from that account, the *salami* was Rs. 1,634-8-0. On the change, in A.D. 1841, from Babashai to Company's currency, the Rs. 1,637-8-0, Babashai, became Rs. 1,490-15-11, company's currency, at which it continued until A.D. 1867 (1), when the [398] controversy as to the validity of the seven *sanads* was started by Mr. Shambhuprasad. The result of this inquiry into the *salami* is that from A.D. 1813-14 to A.D. 1867 it has been substantially uniform. Any variation, therefore, which, during that period of fifty-four years, there may have been in the land revenue drawn from Nauli, must have been in respect of the *phalo* payable on the *narva* only. In addition to the direct inference from the description of this land in the Government accounts as "*wanta salami*" or "*wanta udhad salami*," and from the proved fixity of the assessment for fifty-four years that the *wanta* lands are partially exempt from land revenue, is the fact that a "*nukshan*" is shown in many of those accounts with respect to the same land. [See Exs. 195 (1849-50), 199 (1856), 200 (1858).] The *nukshan* means the loss to Government in respect of the difference between the fixed limited assessment and what would bea proper full assessment of the land (2). The second clause of Ex. 271, dated A.D. 1846, was relied upon as showing that any surplus *salami* collected by the narvadars from the cultivators, was there ordered to be credited to the narvadars. It is true that the talati (village accountant of Nauli is there informed that "if there be received an amount over and above the *salami* amount" he should "credit the said excess amount to the account of the narvadars on whose account the same was received;" but it is, from the same exhibit (3), evident that the talati was also ordered to keep the *wanta* account separate, and to continue to credit the payments of *salami* proper to the wantadars, *i.e.*, the persons appearing in the *wanta* accounts as the owners of the land, namely, the garasias, who, if owners, were primarily liable to pay the *salami*. And any possible force in the direction contained in that exhibit, that the surplus (if any) should be credited to the narvadars, is annihilated by the fact that, in that same year A.D. 1846, Government removed the narvadars altogether from the office, or right, or whatever it may have been, of collecting the *salami* from [399] the cultivators, and have never since permitted them to levy it. Since 1846 Government has (with the exception of the year 1865-66 (4),

(1) See Mr. Ravashankar's statement annexed to Ex. 45-G, and para. 3 of his memo. thereto.

(2) See 12 B.H.C.R. Appx., pp. 262-3, note; and *The Government of Bombay* v. *Sundarji Savaram*, R.A. 50 of 1878. Printed Judgments of 1879, p. 333 and pp. 346, 347, note 34; Wilson's Gloss. 380, 381; Mr. Pedder's Report, 6th October 1865, paras. 47 *et seq.*; pp. 23 *et seq* of papers relating to Hereditary Officers' Vatans, published by the Government of Bombay in 1866.

(3) And see Ex. 88.

(4) 45-G, para. 3.

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when the *salami* was collected by the garasias for Government) itself collected the *salami* from the cultivators, and at a fixed rate. So that the narvadars have not, since this year, had any opportunity of levying any surplus or other *salami* for themselves. Moreover, notwithstanding the direction given to the talati in Ex. 271, no entry of surplus *salami* to the credit of, or as actually received by, the narvadars, either before or after 1846, has been pointed out to this Court. However, we believe Mr. Beyts (whose view on this point is mentioned in the remarks of Mr. Gilbert Elliot in the fourth column of the statement given in his report of the 8th April 1868, Ex. 45-F, in relation to question 1, in the first column of that statement) was perfectly right in his opinion "that the Collector, in 1846, found that the narvadars abused their position as a medium of receiving the *salami* from the occupants for Government, appropriated the money, and made the Collector's establishment dun the occupants over again, and that, therefore, from 1846 the narvadars were set aside, and a direct demand on the occupants has been continued up to the present time without any protest on the part of the narvadars to justify the belief that they felt the measure an injury." It is not in the slightest degree probable that, if the narvadars had, as ejectors of, and adverse holders to, the garasias, become absolute owners of the *wanta* lands subject to the *santh* payable to the garasias, or limited owners of those lands as narvadari tenants of Government, or as its lessees of *mazmun*, they would have tacitly acquiesced, without remonstrance or resistance, in their summary removal from the making of any levy or collection from the cultivators. They have so submitted ever since 1846 and further made no claim whatever, when Bombay Act VII of 1863 was passed and put into operation, to be regarded as holders of the *wanta* lands and to a summary settlement in respect of the land revenue payable to Government for those lands. Although it would appear that Mr. Shambhuprasad succeeded in inducing the Revenue Commissioner (Mr. Rogers) and one Collector (Mr. Borradaile) to adopt his views, it is very **[400]** clear that he was not so successful with two other very intelligent revenue officers, *viz.*, Mr. Beyts and Mr. Gilbert Elliot, who for a time was Collector of Kaira. Mr. Beyts expressly held that the *wanta* land was partially exempt from assessment, and dissented from the proposition that there had been any amalgamation of the *wanta* and *narva* lands; and, although Mr. Gilbert Elliot ostensibly professed to suspend his opinion, he summed up almost derisively against Mr. Shambhuprasad's theory(1). The only indication of any connection between the *wanta* land and the village *mazmun* to be found in the evidence in this case is, that the three debatable bighas, already mentioned, were occasionally, at the pleasure apparently of the talati or other accountant, comprised in, and occasionally omitted from, the *wanta* account. Three bighas out of, or (as the case may be) in addition to the 655¾ bighas of *wanta* land, prove nothing, especially when we recollect that accounts, which separately specify payments in respect of the *wanta* land, have other items relating to *mazmun* land appearing to be completely distinct from the payments on account of *wanta* land. We set no importance on the inclusion of the *salami* in the bonds (Exs. 252 to 256) occasionally given by the narvadars for the collection of the revenue; they should, if required, give such bonds in respect of the *narva phalo*; and as they did, in fact, collect the *salami* for the Government, there was nothing extraordinary in the inclusion of the amount of the latter in

(1) Ex. 45-F.

the bonds, even if the narvadars were only agents as regards the *salami*.

In recapitulation we must say that, bearing in mind the admitted fact that the lands, the subject of those seven *sanads*, were originally and from a very remote period the property of the garasias; that, throughout the British rule, the quit-rent (*salami*), paid for those lands to Government, has substantially been uniform, and has been down to A. D. 1867 credited (without any objection by the narvadars, occupants or any other person) in the Government accounts to those original owners, the garasias, who are described in those accounts as "the owners" by being placed in the "*maldhani*" column; that, with two or three unimportant exceptions, the *wanta* payments of *salami* to Government **[401]** have been kept separate from the *phalo* payments in respect of the *narva*; that the garasias have from time immemorial received *santh* (*i.e.*, rent) from the occupants or cultivators of those *wanta* lands down to the commencement of the present dispute; that the garasias have performed acts of ownership by letting the land to cultivators and by mortgaging and selling parts of it—one mortgage being so recent as A. D. 1861, and one sale so recent as A. D. 1844; that some narvadars themselves are to be found amongst the purchasers and mortgagees of the lots sold or mortgaged; that the narvadars submitted, so long ago as A. D. 1846, without dispute to being prevented from further levying the *salami* and made no claim as owners under the Summary Settlement Act of 1863;—we have come to the conclusion that (as contended for on behalf of the garasias) previously to 1846 the narvadars, merely as agents for and on behalf of the garasias, the owners (who did not reside at Nauli but at Bhadarva), levied the *salami* and paid it to Government; (we have seen in Mr. Mountstuart Elphinstone's minute of the 15th August 1821 that vicarious management of *wanta* lands for the owners by patels was frequent; that if the narvadars levied any moneys beyond such fixed *salami*, such levy was wrongful and extortionate; and that the division of the *wanta* land among the narvadars (who did reside at Nauli) was merely resorted to as the most convenient mode of making the collection, being an allotment to each particular narvadar or bhagdar of a small district of *wanta* land within which he should collect the *salami* when he was collecting or preparing the *phalo* which he had to pay in respect of his own *narva* lands to Government; that it is probable that this mode of collection through the narvadars which the British, on obtaining the country, found in force, was assented to, if not suggested by the former Government, as, having regard to the non-residence of the garasias, the most suitable mode of recovering the *salami* of *wanta* lands situated in the same village as the *narva* lands.

Even if we had not arrived, as we have, at a clear opinion that the garasias were the holders of the *wanta* lands with the exception of the sold portion, and if we deemed the question of their ownership to be to some extent doubtful, we should feel bound to remember, with regard to the impeachment of the seven *sanads* **[402]** by Government, that those *sanads* are not ordinary grants by the Crown in virtue of its prerogative, but grants made under an Act of the local Legislature, the object of which must be kept prominently in view in dealing with the *sanads*. It is matter of history and of notoriety that, in order to allay the chronic irritation and alarm produced throughout this Presidency by the formal and protracted inquiry, in detail, into the title of persons claiming, in respect of their lands, total or partial exemption from liability to land

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revenue, the Bombay Legislature passed Acts II and VII of 1863, both being Summary Settlement Acts, and the latter (Bombay Act VII of 1863) being that in force in Gujarat, under which the seven *sanads* were granted. So desirable did that Legislature deem the summary settlement to be that, in the event of a holder of lands, alleged to be wholly or partially exempt from payment of land revenue, not answering within six months the notice sent to him pursuant to s. 9, cl. 1 of Bombay Act VII of 1863, calling upon him to state whether he is willing to accept and abide by the summary settlement described in ss. 6 and 7 of the same Act, or whether he demands a formal inquiry into his title, cl. 8 of s. 9 provides that he shall be deemed to have accepted that summary settlement. The preamble of the Act shows that the object of the Act was to provide (with certain exceptions) for the summary settlement of all claims to hold land wholly or partially exempt from payment of land revenue, for regulating the terms on which such exemption shall be recognized in future, *so as to preclude all doubt in regard to the relative rights of Government and the holders of such lands*, and, further, to make provision for the exceptions aforesaid. Sections 2 and 6 promote this quieting of titles by summary means. What Government has been here, through the Collector of Kaira, contending for, is not the ownership of the lands in dispute by the narvadars, or by the kunbis, but the right of Government, despite of its seven *sanads*, to repudiate the summary settlement as to the *wanta* lands into which it entered with the garasias, and to subject those lands to a full assessment. The seventh section, however, of the Act shows that the Bombay Legislature contemplated the possibility, in the course of the summary settlement, of the occurrence of mistake as to the ownership **[403]** of lands, for which exemption (partial or total) from liability to revenue assessment was claimed, and stated what the legal consequences of such an error should be, namely, that Government should, as against the true owner, whosoever he is, be entitled to levy from the lands the annual quit-rent fixed on the summary settlement with persons claiming to be, but not in fact, the rightful owners, and that, though the lands are to be so bound by a settlement entered into with wrongful claimants of them, yet the right and remedies of the true owner to recover the lands from the wrongful claimants shall be preserved. Such is, in substance, the effect of that section; and neither in it nor in any part of the Act do we find the slightest trace of an intention, on the part of the Legislature, to permit Government, upon the ground of its having fallen into an error as to the ownership, to recede from the settlement, to treat the lands as *khalsa* or *sarkari* or *mazmun*, and to re-assess the lands. That seventh section in nowise disturbs, so far as regards the quit-rent payable, the finality of the *sanad* as laid down in the second and sixth sections.

It is unnecessary for us now to consider, and we, therefore, refrain from offering any opinion, whether to Government, or other parties to the summary settlement of claims under Bombay Act VII of 1863, a Civil Court can give relief either by reforming or cancelling the *sanads* against mistakes, other than such as relate to ownership, which are found to exist in such *sanads*. What shall be the legal results of mistakes as to ownership, the Act itself has, as we have just seen, specially provided.

Were it open to us (which we think it is not) to relieve Government from the seven *sanads* in this case, on the ground of mistake made by Government as to the proprietorship of the lands, the subject of this suit,

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we hold, for the reasons already given in detail, that not only has Government failed, as to the main portion of those lands, to prove that such protion was not, at the time of the summary settlement in 1864 and 1865, the lands of the garasias, but that the garasias have proved that, at that time, the main portion of those lands was their *wanta* land held by them partially exempt from payment of revenue, *i.e.*, liable, together with the sold portion presently to be mentioned, to an *udhad* [404] *salami* only. Although the garasias have included in their plaint some 626 or 627 bighas out of the 655¾ bighas, yet they have not here denied the sale of 136½ bighas before A.D. 1826-27, or of a few other bighas subsequently as already mentioned, and are willing that justice should be done to the vendees or their representatives in this suit in such manner as to this Court shall appear to be most convenient and least costly to all persons concerned, and as will carry into effect the intention of the Legislature as disclosed in s. 7 of the Act. Those purchasers are entitled to the benefit of the summary settlement so far as it comprises the portions of *wanta* land bought by them, and will, therefore, be liable to the *salami* and quit-rent of two-annas payable to Government in respect thereof.

The garasias having been holders of the main portions of the *wanta* land at the time of the summary settlement in 1864-65, there is not any ground for saying that this suit, complaining of the attempted revocation, in 1869, of the *sanads*, is barred by the law of limitation.

We reverse the decree of the District Judge (except so far as it relates to the costs of the suit), and we declare that Government had not and has not any power, authority, or right to revoke, cancel, or set aside, or to have, by the Civil Courts or any of them, cancelled or set aside the seven *sanads following*: that is to say—the *sanad* (Ex. 135), dated 11th April 1864, granted by the Government of Bombay in respect of certain lands in Nauli village in the taluka of Borsad (formerly Anand or Napad) in the Zilla of Kaira (Kheda), to Anupsang Bhimji (the tenth plaintiff); the *sanad* (Ex. 138), of the same date, in respect of certain other lands in the same village granted by the said Government to Raj Nathuji Mahavsang (represented by the sixth plaintiff Sadubhai Kararsang and by the seventh plaintiff Motibhai Nathuji); the *sanad* (Ex. 134), dated 13th July 1864, of certain other lands in the same village granted by the said Government to Raj Dolsang Bhavsang (the first plaintiff) and Amarsang Bharatbhai (the second plaintiff); the *sanad* (Ex. 136), dated 15th October 1865, in respect of certain other lands in the same village granted by Government to Jibhai Jitaji Raj (the ninth plaintiff); [405] the *sanad* (Ex. 137), of the date last aforesaid, granted in respect of certain other lands in the same village by the said Government to Rama Mansang Raj (the fifth plaintiff); the *sanad* (Ex. 139), of the same date, granted in respect of certain other lands in the same village by the said Government to Dolsang Bawaji (represented by the fourth plaintiff), Dajibhai Dolsang and Rasabhai Bawaji (the third plaintiff); and lastly, the *sanad* (Ex. 140), of the same date, granted in respect of certain other lands in the same village to Ranchore Amarsang, represented by Bhaiba Ranchore, a minor (the eighth plaintiff suing here by his guardian Bai Gulab, widow of the said Ranchore Amarsang), or to levy from or in respect of the lands in the said seven *sanads* respectively mentioned or any of them, any further or other assessment in respect of land revenue than is in the said seven *sanads* respectively provided.

We declare that the parties in the said *sanads*, to whom the same were respectively granted by or on behalf of Government, then were and they or

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the heirs or representatives of such of them (if any), as are since deceased now are respectively entitled to hold the lands, in the said seven *sanads*, mentioned, upon the terms and conditions as to payment of assessment or quit-rent and otherwise therein respectively provided, but, as to certain portions of the said lands hereinafter more particularly mentioned, upon trust for and for the use and benefit of the persons to be respectively ascertained on the inquiry hereinafter directed, and to be mentioned in an order or decree in this suit supplemental to this decree to be made on the receipt of the report of the District Judge on the said inquiry, and as to the residue of the said lands for the use and benefit of the said parties to whom the said seven *sanads*, respectively, were granted, or of the heirs and representatives of such of them (if any) as are since deceased. And whereas, previously to the Christian year A.D. 1826-27, 136½ bighas of the said lands, mentioned in the said *sanads* or in some one or more of them, were sold by the plaintiffs or their predecessors in title, and some further small portion or portions of the same lands has or have since been sold by the plaintiffs or their predecessors in title, and whereas the purchasers, or their heirs, [406] representatives, or assigns are, respectively, so far as regards the portions of the said lands so sold, entitled to the benefit of the summary settlement effected between Government and the grantees in the said seven *sanads* under Bombay Act VII of 1863, this Court directs the District Judge to inquire and report to this Court, so soon as conveniently may be, who are the persons now entitled to the said 136½ bighas sold before the Christian year 1826-27, and to what portions thereof those persons respectively are so entitled, and where, amongst the *wanta* lands, the subject of this suit, the said portions are situate, and how the same are, respectively, bounded, and in which one or more of the said seven *sanads* the said portions are, respectively, comprised. And this Court declares that this decree is made without prejudice to the claims of mortgagees (if any) of the lands mentioned in the said seven *sanads* or any of them claiming under the plaintiffs or their predecessors in title (the garasias) or claiming under the said purchasers of the portions of the land which have been sold as aforesaid, and likewise without prejudice to the right (such as it may be either as to duration of tenancy or amount of *santh* or rent payable by them) of the cultivators or sub-tenants of the said lands holding under the plaintiffs or under the said purchasers.

And this Court affirms so much of the decree of the District Judge as orders the first defendant, the Collector of Kaira, to pay to the plaintiffs and the defendants respectively, other than the said Collector, their respective costs of this suit; and this Court further directs the said Collector to pay to the plaintiffs their costs of this appeal, and the defendants, respectively, to bear their own costs (if any) of this appeal. And, lastly, this Court directs the plaintiffs to pay, to such of the purchasers as may appear on the said inquiry above directed, such reasonable costs as those purchasers may properly incur in and upon the said inquiry.

*Order accordingly.*