1884

SHIVRÁM UDÁRÁM v. KONDIBÁ MUKTÁJI.

There is another principle enunciated by Savigny which, like the *dictum* of Willes, J., already referred to, has an important bearing on the case. It is this, that a law passed to promote some important public interest may be given on that account a retroactive operation if necessary, as the rule against such operation rests itself on such a general public interest, which may, under the circumstances, be deemed of less importance than the one embodied in the statute. The purpose of the Dekkhan Agriculturists' Relief Act was undoubtedly to shield the property of agriculturists against their creditors, and this purpose we cannot but see was considered by the Legislature one of great public importance: thus only are the anomalous provisions of the Act to be accounted for. Such a purpose so manifested we cannot suppose to have extended only to the cases of attachments made after the Act had come into force. No intelligible reason could, we think, be assigned for such a distinction.

For these reasons we are of opinion that in this case, though the immoveable property had been attached before 1st February, 1883, yet, as the order of sale was not made until the 15th June, 1883, that order could not then legally be made, and that it should be set aside without execution.

APPELLATE CIVIL.

Before Mr. Justice Kemball and Mr. Justice West.

March 4.

MANOHAR GANESH TA'MBEKAR (ORIGINAL PLAINTIFF), APPELLANT, *v.* CHUTA'BHA'I MITHA'BHA'I AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Narva tenure—Its history and incidents—Grant of narva village in inám—Alienations by narvádárs—Báhárkhali—Gám majmun—Páti majmun—Revenue survey in a narva village—Suit by inámdár to recover rent as settled by the survey—Landlord and tenant.

The *narva* tenure and its incidents discussed and explained.

The *inámdár* of the *narva* village of Dákor desired that the revenue survey should be introduced into it. The usual measurements and assessments were made, and the Superintendent of the Revenue Survey, following the analogy of the system prevalent in Government villages, held a conference with the *narvádárs* and drew up a scheme to which the *narvádárs* assented for the future management of the village and for settling the future relations between the *narvádárs* and the *inámdárs* as representing the fiscal interests of the Government. The *narvá-*

* Second Appeal, No. 469 of 1882.

1884

MANOHAR GANESH TÁMBEKAR v. CHUTÁBHÁI MITHÁBHÁI.

dárs agreed to retain their *narva* tenure along with an assessment made upon the principles of the revenue survey; and they resigned their right over *báhárkhali* lands aliened from the several *narva* shares, on the undertaking that the *inámdár* was to levy from the tenants one-fourth of the difference between the quit-rent actually paid and the full assessment as ascertained by the survey. The *narvádárs* and their tenants, the actual holders of the *báhárkhali* lands, having refused to pay this one-fourth, the *inámdár* sued them to recover it or the full assessment as ascertained by the survey.

Held that the *inámdár* was entitled to recover the one-fourth according to the scheme, which was binding on the whole body of *narvádárs*, even though the defendant and others, being a minority, had not assented to the action of the majority.

The *inámdár's* fiscal rights include the right to levy the ordinary assessment, except where a contract stands in the way, and he can raise the assessment to a limit which is fair and equitable according to the custom of the country.

As between the *narvádárs* and the Government there is nothing to prevent the former from consenting to the exclusion of any part of the village lands from the contract.

The severance of such part makes it immediately subject to full taxation on ordinary principles, and any agreement with an incumbrancer in limitation of the *narvádár's* right to take rent can operate only as a ground of action against the *narvádárs* themselves.

THIS was a second appeal from the decision of Arthur H. Unwin, Assistant Judge of Ahmedabad, reversing the decree of R. S. Harderám Anuprám, Subordinate Judge of Umreth.

The plaintiff Manohar Ganesh Támbekar is a trustee of the village of Dákor, holding a grant of it from the Peshwa for the benefit of the temple of Ranchod Ráiji. The father of the defendants was a holder of lands at the village which were alienated or severed from his share by a *narvádár*, and was also himself the *narvádár*.

The plaintiff sued to recover either Rs. 122-5-7, the amount of full assessment, or Rs. 58-10-10, the amount due under an agreement dated 26th April, 1866, on account of *salámi* [quit-rent], settlement and local funds of certain alienated lands known as *báhárkhali* in the *narva* village of Dákor. The plaintiff alleged that, besides *narva* lands in the village, there were 939 acres of alienated lands at Dákor; that all the lands at the village were surveyed by order of Government at the request and by the consent of the *narvádárs* and the other holders of lands, and an assessment was fixed with the sanction of Government; that before the said survey the said alienated lands were included in

the *narva*, and the holders, therefore, were in the habit of paying quit-rent to the *narvádárs*, who paid the full assessment upon the lands to the plaintiff; that the plaintiff was not bound by the transactions between the *narvádárs* and their alienees, but was entitled to receive full assessment on the alienated lands, but that he was willing to receive one-fourth or one-eighth of the amount of assessment according as the lands were alienated from the *pati majmun* or *gám majmun* [two kinds of non-*narva* lands] under the settlement effected by the survey superintendent; that the defendants and their father had actually paid to the plaintiff according to this settlement up to 1875, but ceased to do so thereafter; and the plaintiff accordingly prayed that the defendants, if willing to abide by this settlement, be ordered to pay Rs. 58-10-10, or otherwise the full assessment amounting to Rs. 122-5-7.

The defendants contended that the action was untenable, inasmuch as the plaintiff sued in his own right and not as a trustee; that their father was not party to the agreement of 26th April, 1866; that, if genuine, they were not bound by it, as the Survey Act I of 1865 was not applicable to Dákor; that the Collector of Kaira had decided not to levy any quit-rent upon the rent-free lands in Dákor; that the defendants were the owners of the lands, not subject to any payment, except the quit-rent; and that the additional payments made were made under protest, and on a misrepresentation by the plaintiff.

The Subordinate Judge awarded to the plaintiff Rs. 58-10-10.

The Assistant Judge held that the plaintiff was not entitled to anything more than the quit-rent, and dismissed the claim.

K. T. Telang with *Shántárám Náráyan* for the appellant. —This is a suit by the plaintiff, as *inámdár* or *vahivátdár* and trustee of the village of Dákor, to recover rent fixed by Government survey officers. As grantee of the right of Government the plaintiff has the same right as the Government. A *narvádár* has no right to make any alienations as against the rights of Government, and the *inámdár* is not bound to recognize his alienations. The *narvádárs* and the *inámdár* have both joined in fixing the rent; and the fact that the Government survey officers themselves actually settled it, shows it to be fair and

1884

MANOHAR GANESH TÁMBEKAR v. CHUTÁBHÁI MITHÁBHÁI.

equitable, and within the limit prescribed in *Pratáprâv Gujar* v. *Báyáji Námáji*[1]. The defendants must, therefore, pay the rent so agreed on, or the full assessment, under the Bombay Land Revenue Code.

Gokaldás Káhándás Párekh for the respondents.—The *inámdár* has no right to the rent demanded, which is a levy on account of the summary settlement. It has always been so understood and described both by the Government and the parties. The *inámdár* has no right to recover summary settlement. He could not recover either from the *narvádárs* or from the actual holders of alienated lands, who had acquired permanent rights against *narvádárs*. The *báhárkhali* alienations are permanent, and the *narvádárs* have no right to increase the quit-rent payable on the lands. No arrangement between the *inámdár* and *narvádárs* could deprive the alienees of their rights. There was no contract whatever between them and the *inámdár* or the *narvádárs*. The Survey Act I of 1865 was not applied to the alienated lands at the time of their severance from the *narva*. The defendants, though they were *narvádárs*, were not consenting parties to the agreement between the *inámdár* and the majority of the *narvádárs*. The *inámdár* is only the alienee of Government, and the moneys demanded by the plaintiff belong to the actual cultivators, the Government having no right to them. The estates of the cultivators would be diminished if they were made to pay a new demand.

The judgment of the Court was delivered by

WEST, J.—In the present case the dispute is between a holder of land at Dákor alienated, or severed, from his *páti* or share by a *narvádár* and the trustee of the village holding a grant of it from the Peshwa for the benefit of the temple of Ranchor Ráiji. The landholder in the present instance is himself also one of the *narvádárs*. In some others of the group of cases to which this belongs, this is not so; but in the view we take of the subject this difference is not of great importance.

The parties are agreed, as the Assistant Judge says, not only as to the grant of the village and as to its soil being held by a body of

[1] I. L. R., 3 Bom., 141.

co-sharers on the *narva* tenure, but also that the particular holding now in question once formed a part of the *narvádári* estate, and that the defendant derived his title from the *narvádárs*.

If, therefore, the terms settled between the *narvádárs* and the tenants of such land as this called *báhárkhali* (apparently because it did not, under the native rule, contribute its quota to the Government granary) adhere to the land whatever becomes of the *narvádár's* tenure, no higher terms can be imposed. The *salámi* forming a true quit-rent, the difference between it and the full rates to which the lands would otherwise be subject, constitutes a part of the estate of the landholders. If, on the other hand, the nature of the *narva* tenure is such as to prevent any alienation to the disadvantage of the Government without its assent, or if the sub-tenures created by *narvádárs* are essentially dependent on their own, both as to the services to be rendered and the local extent of each *narva* and its several *pátis* or subdivisions, then we shall have to see whether, in the events that have occurred, the *báhárkhali* holding in this case has, instead of the *salámi* formerly paid for it to the *narvádár*, become subject to the rent now claimed or any part of this rent in excess of the *salámi* formerly paid.

The origin of the *nárvádári* tenure is probably to be traced to the same political and social causes that have led to the joint village communities of the north of India and of Madras. As it exists the system presents a stage of progress in advance of that reached by the *mirási* villages in which an annual redistribution of the culturable lands is made amongst the community, in order to give to each household in turn the benefit and the burden of the more and of the less fertile fields. The *pátis* or shares of the village are permanent holdings, though in some the whole body of cultivating proprietors transfer their labours triennially from one part of an extensive village area to another. The reason for the removal is that the advantage may be gained of successive fallows; all move together in order to afford mutual aid, as in earlier times mutual protection[1].

(1) *Agri pro numero cultorum ab universis per vices occupantur quos mox inter se secundum dignationem partiuntur: facilitatem partiendi camporum spatia præstant*,—Tac. Germ., 26, which this practice illustrates.

1884

MANOHAR GANESH TÁMBEKAR v. CHUTÁBHAI MITHÁBHÁI.

The *pátis, bhágs*, or shares of a *narvádári* village not only constitute the shares in various proportions of the *narvádár* proprietors, but form the basis of their several responsibilities as contributors to the land revenue. Amongst themselves the co-sharers are mutually answerable for relative aliquot portions of the land-tax proportional to their shares of the village as a whole: to the Government they are jointly and severally responsible for the aggregate assessment imposed on it. The subdivision of the several *bhágs* proceeds to different degrees of minuteness; the sub-sharers are mutually responsible, first to their *bhág* or to the *muksh pátidár* who represents it; secondly, to the aggregate community for contributions to supply a deficiency occasioned by the default of any *bhág* or *páti*; lastly, they are individually responsible to the Government if the lump sum due for the whole village is not paid to the collectors of the Government revenue. In case of a general failure to meet the "demand of the Government, the *narva* is broken";—that is, as the engagement to pay, as a body, the tax imposed on the village is not fulfilled by the *narvádárs*, the Government reverts to the ordinary mode of management indicated by the term *séja* applied to the village in which this process has taken place. The cases are numerous in which a *narva* has been broken up; in many instances it has been reformed, sometimes repeatedly; in others the village having once reverted to the ordinary revenue management has remained "*séja*".

In almost every *narva* village there is a portion of the lands held for the common benefit of the corporation which is called "*majmun*". This is dealt with by the village officers for the benefit of the revenue, and the amount realized each year is credited to the *muksh bhágdárs*, who are immediately responsible for the lump assessment. Parts of this *majmun* have, in some villages, been distributed amongst the different sharers, and are hence called "*páti majmun*". These are common to all sub-sharers of the particular *páti* or share, as the *gám majmun* is common to all the *pátidárs*. The profits realized, go to reduce the total sum to be raised by contribution amongst the sub-sharers of the particular share, and thus relieve each in proportion to his sub-share, as the whole *páti* and its group of owners

are relieved by the proceeds realized from the *gám majmun*. If a sub-sharer becomes bankrupt, or his family ceases to exist, his lot necessarily becomes temporarily or permanently a part of the *páti majmun*. If a *muksh pátidár* became insolvent, the *páti* itself would become a part of the *gám majmun*. The terms of holding having in either case been broken, the sub-sharers could no longer claim to hold with the benefits of a united tenancy, and the ordinary assessment would become leviable on each for the group to which he was responsible. The deficiency arising from any failure has to be made up by a proportional contribution from each unit in the aggregate of which it forms part.

The settlement of some *narvádári* villages has been first made at a recent time; others have been held on this tenure as far back as the records extend; in several, as we have seen, the *narva* contract has been again and again broken and renewed. Whether the settlement of a village on these terms by a group of three, five, or more contractors makes them proprietors of the soil, is a question that might be answered perhaps with an approach to correctness in different ways. In the case of a village reclaimed from the waste and populated by the *narvádárs* who have contracted for the payment annually of an "*udhad jama*" or fixed land-tax, one would be inclined to say they must be owners, whether subject or not to a defeasance of their rights and to confiscation on a failure to pay the stipulated tax. Where, on the other hand, a village is already populated, cultivated, and subjected to the land-tax, it would not necessarily follow from three or four of the chief inhabitants contracting to pay the tax, and recouping themselves by payments from the smaller holders, that they thus acquired any proprietorship. Such engagements, indeed, were in former days made by groups of the principal villagers in various parts of India without any pretence that they thus became owners of their village. If the mere dealing directly with the Government or its deputies would create ownership, then in every *seja* village managed *rayatwári*, or in detail when its *narvádárs* absconded or failed, the individual cultivators must have gained a proprietorship which would make a supervening proprietorship on the re-establishment of the *narva* impossible. The fact seems to be that "ownership"

1884

MANOHAR GANESH TÁMBEKAR v. CHUTÁBHÁI MITHÁBHÁI.

expresses, not a single idea, but a group of ideas, no one of which may be absolutely essential. In its ordinary sense, derived from an experience to which the relations with which we are now dealing are quite strange, it does not fit the conception that has to be uttered, and if we speak of ownership, it must be understood as only a *narva* ownership, subject to whatever terms belong to that peculiar tenure. Tenure appears to be a word properly applicable to the legal relation in question. The sovereign state as having the dominion, allows the occupation of its domain, the appropriation of certain benefit at its disposal, conditionally on a return of certain rents and services. A failure in these, causes a forfeiture at the option of the overlord: so long as they are duly rendered, the fee endures. We do not overlook the risk of stating relations that belong to one system in terms drawn from another; but here we think there is a similarity that may be usefully employed to aid our reasoning so long as the resemblance is not confounded with complete identity. It seems that, in fact, the *narva* system was devised merely to distribute with some evenness a growing burden of taxation that would otherwise have been intolerable. The lands of a village were in some cases redistributed when the *narva* was established so as to agree with the shares assigned to the several *muksh pátidárs*, but generally the shares in the *narva* were adapted to the proportional shares of the village held by the several representatives of its original founders. Such ownership as these founders had transmitted, might not necessarily be impaired by the *narva* regarded as an engagement for the land revenue, but the resort to a *narva* implied in most cases that the overwhelming impost had made the ownership almost worthless. The engagement implied that lands not included in the several *pátis* were to be subject to ordinary assessment in case of the *pátidár* joint contractors, and it does not appear that a grant of the land was formally recorded as when the Government parted with its rights, not merely defined them. A royal alienation could hardly be recognized unless thus authenticated[1], and the numerous Hindu deeds still in existence show that from a very

[1] See Vyav. May., ch. ii, sec. 1, para. 6; Cole. Dig., Bk. II, ch. iv, t. 34.

ancient time down to our own day the lands and the rights given by the sovereign have generally been set forth with the utmost precision. Where, then, a group of *narvádárs* were not proprietors, the *narva* would not give any absolute ownership, but rather a tenure dependent on the fulfilment, by them, of the prescribed terms[1]. Where they were already owners, the *narva* contract would not annul their ownership; but the terms on which such contracts were made, show that this ownership was itself subject to an eminent domain in the sovereign, in virtue of which he could re-adjust the holdings of private owners, as well as to a *jus regale* of a participation in the produce which might be aliened, but was not included in ordinary private property. Under the Hindu system, the highest right of the subject is a subordinate property[2] held as under a gift with a condition for the payment of the revenue, and incapable of enlargement by transactions amongst subjects themselves. Mere occupation of unoccupied land gives the private ownership, but always subject to the overruling sovereign property of the ruler[3]. Hence it is that his assent is required to a gift or sale between subjects[4]. He is entitled to a revenue, according to the Hindu lawyers, "because he has an interest in the soil"[5]. The right of the sovereign and of the subject being thus concurrent, the extinction, as by release or forfeiture, of the latter right leaves the former unqualified, and the land which was of legal necessity occupied partly on behalf of the king becomes in this way wholly his. In the case of *Gunga Gobind Mundul* v. *The Collector of the Twenty-four Pergunnahs*[6] the Judicial Committee say: "The Government has a title to the rent or *jama*. By whatever name it may be called, the right and title is to the rent substantially; it does not include a right to the possession of the lands, though such a right might arise by forfeiture or extinction of the ownership." Whether the relations between the private owner and the

(1) See Cole. Dig., Bk. II, ch. ii, t. 12, Comm.

(2) Cole. Dig., Bk. II, ch. ii, t. 12.

(3) Cole. Dig., B. II, ch. ii, t. 24, Comm.; Manu, IX, 44.

(4) Cole. Dig., B. II, ch. iv, t. 15, Comm.; Bk. II, ch. iv, t. 55, Comm.

(5) Cole. Dig., Bk. II, ch. iv, t. 50, Comm.

(6) 11 Moore's I. A., p. 362.

1884

MANOHAR GANESH TÁMBEKAR v. CHUTÁBHAI MITHÁBHÁI.

Government be looked at from the English point of view as those of tenure, or from the Hindu point of view of concurrent superior and subordinate proprietorship, it is plain that a cesser of the individual's right over any portion of the territory causes an immediate augmentation by so much of the State's interest in the area thus freed from any other right.

The *narvádárs* usually assigned some portions of the *bhág* or of the *gám majmun* for payment of the recognized village servants. Other portions they assigned from time to time to priests and holy men whose offices would be a blessing to the community. In the division of the crop according to the earlier system the officers of the Government would hardly venture on a step so sacrilegious as to enforce a contribution from the lands held under these pious grants to the Government granary. At a later time, when payments in money were introduced, the produce of the same holdings was naturally credited to the village in account with the Government as a set-off against so much of the *kamál*, or aggregate estimated assessment. A pious grant could not, according to Nárada, be made without the permission of the king[1], but Hindu feeling always revolted at the resumption of any such estate. The *narvádár* corporation thus got the whole benefit or "fruits of piety" at the cost of what they might have made of the lands aliened in mortmain over and above the amount assessable on them for land-tax.

There were, however, many other alienations which obtained a complete or partial recognition from the Government. In times of pressure part of the common land might be sold to realize the land-tax of the year. The purchaser took it on terms of being exempt from payment to the community, who would, therefore, have to make up the deficiency by an increased *phalni* or aliquot contribution amongst themselves. Still commoner was the case of a mortgage of village lands to be held free, or at less than their value by the mortgagee until his loan should be repaid. Meanwhile, the exactions of the Government were in no way relaxed; they were constantly extended to the extreme limit of what the communities could pay. What they could pay, was lessened by

(1) Nar., pt. II, ch. xvii, sec. 46; 1 West & Bühler H.L., 216 n. (3rd ed).

the alienations of previous years, and the Government officials knowing this had to give credit for the amounts thus rendered unavailable as a deduction from the *kamál* representing the possible revenue resources of the village. Hence the *vechania* and *garenia* tenures in these villages. The full amount nominally recoverable from the alienated and incumbered lands being once entered in the village accounts to the credit of the community, while it was debited only with *salámi*, or the like, actually realized as a deduction or set-off against this credit, the available revenue was thenceforth estimated as decreased by the amount of the difference between the two. The holders of these lands had originally acquired their rights in most cases by advancing money to meet the demands of the land revenue. The rights had long been recognized and had to be recognized as property, unless the public domain were regarded as essentially inalienable, or the principle were accepted of a complete break of continuity in legal and fiscal relations at each change of rulers.

The same causes which operated on the community as a body in inducing incumbrances, often led the group of owners of a particular *páti* or share to alien or incumber part of their property. For the same reason, as in the cases already considered, the difference between the sum actually collected from the alienees of such lands and the full estimated assessment was credited to the village in account with the Government, though not really collected. By the village it was properly credited to the *páti*, to which it belonged, as a set-off against its proportional contribution to the aggregate assessment payable apart from such deductions. The holders of lands thus let for little or nothing acquired by recognition rights similar to those of alienees or incumbrancers from the community.

But, besides alienations and incumbrances to which the larger and the smaller groups were forced by the exigencies of their position as tax-payers, many transactions took place by which families and individual sharers sold or mortgaged their individual holdings or parts of them, or else in consideration of a fine paid down leased them at reduced rents. Capital might be wanted to construct a well in one field, which would make it profitable

1884

MANOHAR GANESH TÁMBEKAR v. CHUTÁBHÁI MITHÁBHAI.

to raise money on another. More frequently some family necessity made cash indispensable, and it could be obtained only by parting with some interest in the land. When the pressure of the revenue demand reached its extreme point, such alienations as these had to be allowed for in estimating how much could be extracted without producing immediate insolvency, and thus a large quantity of land came to be estimated as productive only at the "*salámi*" or reduced rents that would actually be realized. The difference between these rents and the proper assessment on the lands for which they were paid, was entered to the credit of the village, and again to the credit of the *páti* or the individual as *nuksán* or loss (*i. e.*, loss to the public revenue of the amount thus set off). In other cases the transaction was a purely private one. The *pátidár* made his own terms with a mortgagee or lessee, but no record of the bargain or of the terms of the subholding appeared in the village accounts. A large proportion of some *pátis* was thus incumbered with estates and interests carved out of those of the *pátidárs*.

When once the principle was admitted of a deduction from the claim to be made on a village and on a *pati* on account of alienations it was certain to be abused. The owners of a *páti*, pocketing the capitalized value of the *nuksán* caused by their leasing the land at a nominal rent, could get their contribution cut down to correspond with what they received annually, and at the same time employ the capital sum realized at a profit. They might, for instance, assist a neighbour by lending the money on mortgage to him, and thus enabling him to repeat their own operation. When once the land had been got into the annual *jamábandi* as "*salámi*," the burden of the sum raised upon it was transferred to the Government. In many instances the owners, who had ostensibly parted with lands at a *salámi*, resumed possession of them as soon as the reduction had been admitted in the accounts[1], and thenceforward held at a third or a fourth of the proper assessment.

These irregular modes of alleviating the pressure of the land-tax came to light in the investigations made by the officers of

[1] Govt. Records, No. 114, page 115.

the revenue survey in 1860 and subsequent years. The question arose, of what was to be done with respect to the numerous holdings at an inadequate assessment which necessitated the imposition of undue burdens elsewhere? The *narvádárs* could have no right to give lands to others free from liability to the land-tax, or any part of it. Such a right pushed to an extreme would have enabled the *narvádárs* of any given village to lease the whole of the lands at a nominal rent, and then throw the village upon the hands of Government with its proper revenue converted into capital appropriated by the *narvádárs*. The nature of the *narvádári* tenure, as already explained, was such that land severed from the holding or *narva* reverted to the Government, and the *narva* itself involved a condition of forfeiture of the special terms in the event of failure to pay the full land-tax of the village. By such a forfeiture the original rights of the Government would revive; the obligations of the *narvádárs* would be those of simple *rayats* subject to separate assessment, and separately responsible each for his own holding. These obligations had been in several cases enforced. Out of such a legal relation it was impossible that rights should be carved which would avail against the Government for a permanent diminution of its claims, while the tenure on which they depended, had itself come to an end. The creation of sub-tenancies seems to be an invariable consequence every where of the establishment of private estates in the land having permanence, and yielding an appreciable profit over and above the rent and other services they have to render. Such sub-tenancies, however necessary in many cases, have a tendency, unless carefully guarded, to fritter away the resources of the soil and the interests of the State. In Europe the rule that a tenant must not alienate without his over-lord's consent, became a part of the public law, dictated by necessity at a very early period[1]. The chief dissipations at that early stage consisted in pious gifts to the church[2]. In England the mischief had become manifest as early as the time of Henry II, and a tenant was then res-

(1) Hallam Mid. Ages., Vol. I, p. 174.

(2) West & Bühler H. L., 192 (c), 3rd ed.

1884

MANOHAR GANESH TÁMBEKAR v. CHUTÁBHÁI MITHÁBHÁI.

trained from alienating more than a reasonable portion of his lands even by sub-infeudation to hold from himself[1]. By the Statute of Quia Emptores alienations were allowed only on condition of the tenancies thus created being held directly from the vendor's superior, and the Statute De Prærogativa exacted from tenants-in-chief of the Crown a composition or, as we might say in India, a *nazrána* for every sale or mortgage[2]. It is curious that in England some of the great landholders became assignees of mortgages, and entered on lands which they then sought to enjoy, like the *narvádárs* of Gujarát, free from the whole or a great part of their rents and services[3]. In more recent times the alienation of the public domain, even by the sovereign, has been prohibited, or subjected to severe restrictions in almost every European State[4].

These comparisons make it plain that the Government might have relied on principles of jurisprudence almost universally recognized, if it had refused to admit any alienations of village lands made by *narvádárs* extending beyond the limits of the *narva*, and tending to impair the public revenue[5]. But, on the other hand, these alienations had, in many cases, subsisted for generations. They had been allowed by Collectors even in resumed estates[6]. In not a few instances they had been entered as a part of the fiscal constitution of the village in the *jamábandis* of the Marátha period[7]. In others they had been recognized in a re-establishment of a *narva* under the British rule[8]. It was impossible to say, but that in some cases a price had in one form or another been paid for this indulgence, which gave to it the character of property as an enlargement of the ordinary estate in taxable land. In the case of long existing tenancies from the *narvádárs* as from other landholders, the Government had insisted on the allowance of a permanent occupancy at a regu-

(1) Glanv. Bk. VII, ch. i; so also in Magn. Carta, A. D. 1217.
(2) Hallam Mid. Ages, I, 175; Stubbs Const. Hist., II, 179—181.
(3) Stubbs Loc. Cit.; Bom. Govt. Rec., 114, p. 74.
(4) Gaudry Traite du Domaine, Liv. I, Ch. II, Sec. 24 s. St.; 1 Ann., Ch. VII, Sec. 5. Com. Dig. Prærog. (D88.)
(5) See *Penn* v. *Lord Baltimore*; 2 White & Tudor at p. 844.
(6) Govt. Records, 114, p. 118. (7) *Ibid.*, 32. (8) *Ibid.*, 87.

lated rent[1] to the actual cultivator who had sunk the accumulations and the labour of a life-time in his fields[2]. Time and toil, and the strong associations that raise a long connection with the soil into a kind of ownership, were deemed a sufficient basis for arrangements that would not, perhaps, bear a minute jural analysis. The Regulations of 1827 had allowed the consecration by time of exemptions from land-tax, and in 1863 the Summary Settlement Act[3] provided for the compromise generally of the claims of Government on lands actually held tax-free at one-eighth of the full assessment[4]. Where a *salámi* or other quit-rent was paid to Government, the commutation rate fixed was one-eighth of the difference between this and the full assessment, *i. e.*, one-eighth of the amount of the exemption actually enjoyed. From these rules, however, *bhágdári* and *narvádári* lands alienated by the sharers were expressly excluded by the terms of section 3 of the Act, which enacted that, on a resumption by the Government, such lands should revert unaffected by the acts of the *pátidárs*. Still the partial recognition which such alienations had in many cases received, made it practically impossible to subject them to full assessment in the new survey. A rough practical solution of the problem was found in subjecting such lands to a special *salámi* or quit-rent of one-fourth of the apparent loss of revenue caused by their alienation, should the *narvádárs* consent. Should this consent be withheld by the *narvádár* in the hope of recovering the lands, the full assessment was to be levied[5] from the *narvádárs* interested. In the case of complete alienations from the *narva*, a tax of one-fourth of the *nuksán* or loss to the revenue was in each case to be levied. These rules were applied even where, in consequence of the *narvádárs* of a village being unable to agree on the terms of a continuance of their tenure, the *narva* was dissolved[6]. In some cases of apparent alienation, in which the lands nominally transferred were really retained by the *narvádárs* subject to a rent-charge, the offer was made to recognize the alienation, as such, to the loss of the

(1) Govt. Records, 114, pp. 96, 116.
(2) *Ibid.*, 37, 44, 55, 60.
(3) Bom. Act VII of 1863.
(4) Sec. 6, Rule 3.
(5) Govt. Records, 114, pp. 93, 97, 100, 110, 118, 119, 162.
(6) *Ibid.*, 100, 109.

1884

MANOHAR GANESH TÁMBEKAR v. CHUTÁBHÁI MITHÁBHÁI.

land revenue, on payment, as *salámi*, of one-fourth of the assessment, but in these instances the *narvádárs* preferred paying the full assessment to the risk of a formal recognition of the alienation and the interest of the alienee[1]. The Government in such cases realized the whole assessment instead of being reduced to a commutation of 25 per cent. fixed for ever. Where large quantities of land nominally alienated, and, therefore, under-assessed, were found really occupied by the *narvádárs*, the settlement officers dealt with them accordingly in a re-adjustment of the shares[2]. But a proposal to subject such lands to full assessment was finally rejected by the Government[3].

This investigation of the *narva* tenure and its incidents in villages retained by the Government makes it easy to understand the position of affairs in the *inám* village of Dákor, and the character and purpose of the arrangements made in 1866 by the superintendent of the revenue survey. The *inámdár* of the village desired that the revenue survey should be introduced into it. The usual measurements and assessments were made, but the rights of the *narvádárs* stood in the way of a settlement on the *rayatwári* system of Bombay. Under these circumstances the superintendent did what had been done in the numerous unalienated *(khálsa)* villages of the same class. He held a conference with the *narvádárs* and drew up a scheme, to which they assented for the future management of the village and for settling the future relations between the *narvádárs* and the *vahivátdár* or *inámdár* as representing the fiscal interests of the Government.

It has been objected to this agreement that the individual assent of the *narvádár*, now represented by the defendants, to it has not been proved. His name, it is said, was affixed to the document by another. But the fact is, that for some time he paid in accordance with the agreement. He was perfectly aware, it cannot be doubted, of its contents, and instead of paying, he would have protested and resisted from the first, had he at first not accepted the arrangement. It is beyond question that, with one or two exceptions, the body of *narvádárs* joined in the

(1) Govt. Records, 117. (2) *Ibid.*, 115. (3) *Ibid.*, 136.

settlement; and regarding them as incorporated so as to be capable of holding property and exercising proprietary rights as an aggregate, they were, on the ordinary principles of jurisprudence, bound by a vote of the majority. Such a vote would, no doubt, be invalid if it professed to do or to sanction anything beyond the scope of the corporation's capacity, but the settlement of the terms of the land-tax was peculiarly within that capacity. It is said, no doubt, that the will and the expression of the will of a joint Hindu family must be that of every member; but effect is still given to the transactions of a single co-parcener by, if necessary, dissolving the joint family. A body of *narvádárs*, however, is not at all the same as a joint family. It is a body of persons joined in a speculation as land-holders, and it would obviously be fatal to the working and the existence of such a body if the perverseness of a single member could put a veto on all action. The texts of Yajnavalkya, quoted in Colebrooke's Digest, Bk. II, ch. iii, tt. 18, 31, show that a partner may, if necessary, be expelled; much more, therefore, may he be overruled. The whole body of *narvádárs* were bound by the vote of those who assembled on due notice, and all undoubtedly had ample notice in this case.

The *narvádárs* preferred to retain their *narva* tenure along with an assessment made upon the principles of the revenue survey. The *bhág majmun* was to be retained as such, the proceeds only being distributed amongst the *pátidárs*. As to the *bákárkhali* lands aliened from the several *pátis*, the *narvádárs* agree by the settlement to resign their rights over such lands on the understanding that the *inámdár* is to levy from the actual tenants one-fourth of the *nukásn* or difference between the *salámi* actually paid and the proper assessment as ascertained by the survey. Seeing what the true position of the *narvádárs* was, there was nothing that, as between them and the Government, could prevent their consenting to the exclusion of any part of the village lands from this revenue contract. The severance of any such part made it immediately subject to taxation on the ordinary principles, and any agreement with an incumbrancer in limitation of the *narvádárs'* right to take rent could operate only as a ground of action against the *narvádárs* themselves.

1884

MANOHAR GANESH TÁMBEKAR v. CHUTÁBHÁI MITHÁBHÁI.

It was urged that the *inámdár* took only the Government's right to the revenue of the village, and that the money he now claims is a part of the property of the cultivators. Their estates, it is said, are diminished by the exaction now of what they did not pay in former times. The answer is, that even though the *inámdár* took no other than fiscal rights, these included the right to levy the ordinary assessment, except where a contract stood in the way. Such property as the tenants of *báhárkhali* lands acquired, was subject all along to this latent right. The *narvádárs* could not, by aliening every field in the village and then throwing up their *narva*, deprive the Government or the grantee for ever of his dues. An *inámdár* proposing to raise the assessment on landholders is subject to control according to the principles laid down in *Pratápráo Gujar* v. *Bayáji Námáji*[1], but here what he demands is one-fourth of the ordinary assessment. Such a claim is not one that can be objected to with even a show of reason; it has been fixed at the rate adopted by the Government on a liberal and generous consideration of the circumstances under which the *báhárkhali* lands were aliened, and of the interests that had grown up in them.

For these reasons we reverse the judgment of the Assistant Judge, and restore that of the Subordinate Judge, with costs throughout on respondents.

Decree accordingly.

(1) I. L. R., 3 Bom., 141.