v. *Bayaji* (1), does the tenure by which the lands are held impose, *according to the customary law of the district*, any and what limits upon the power of a grantee from the Government in inam to enhance the rent or assessment payable on account of the said lands? In *Baba* v. *Vishvanath* (2) the plaintiff was the same plaintiff as in the present cases; but the defendant pleaded that he was not bound ever to pay anything beyond the fixed rent of Rs. 11. He did not plead (as here) that he was willing to pay a reasonable rent, and the important question of local usage was not raised.

We may remark here that we do not agree with the Subordinate Judge that, if the lands were leased to the tenants at a time before the inamdar had accepted the provisions of the summary settlement, the tenants must necessarily be presumed to have entered on their tenancy under a belief that should the inam lapse to Government, their rent would not be enhanced beyond a reasonable rate, and, therefore, the present inamdar is bound to give effect to that understanding. The defendants raised no such plea, nor apparently was it accepted by the District Judge. Nor do we agree with the Subordinate Judge that mirasdars in an inam village can always claim to hold at a fixed rent. As stated in *Lakshman* v. *Ganpatrav* (3), an inamdar can enhance the rents of mirasdars within the limits of custom. In the present cases the tenants, though found not to be mirasdars, claim the same right.

Lastly, it must be noted that in these cases a distinct issue was raised as to what should be the limit of the rent, if the inamdar's power of enhancement is limited. We do not think that this should be left to be determined in execution proceedings. As the cases must go down, we think that the question should be decided in the trial, if the inamdar's right of enhancement is found to be limited.

[485] In order that the various questions above indicated may be duly investigated, we reverse the decree of the District Judge and remand the case for a further investigation with reference to the above remarks, with power to take such fresh evidence as may be necessary and legally admissible. Costs throughout should be disposed of on the further trial in such manner as may be just.

Decree reversed and case remanded.

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17 B. 485.

APPELLATE CRIMINAL.

Before Mr. Justice Jardine and Mr. Justice Telang.

QUEEN-EMPRESS *v.* BHIMA.* [3rd August, 1892.]

Evidence Act (I of 1872), ss. 25 and 26—Confession—Confession made to a police patel, admissibility of—Evidence—Police officer.

A police patel is a police officer within the meaning of ss. 25 and 26 of the Indian Evidence Act (I of 1872). A confession made to a police patel is inadmissible in evidence.

[D., 2 C.W.N. 71 (73); 1 L.B.R. 65 (67).]

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* Criminal Appeal No. 130 of 1892.

(1) 3 B. 141 (144). (2) 8 B. 228. (3) 3 B. 145, note.

1892 AUG. 3. — APPELLATE CRIMINAL. — 17 B. 485.

APPEAL against the conviction and sentences passed by Rao Saheb Venkatrao R. Inamdar, Joint Sessions Judge of Bijapur, in the case of *Queen-Empress* v. *Bhimabin Hanmapa.*

The accused was charged under s. 457 of the Indian Penal Code with house-breaking by night with intent to commit rape, and under s. 354 with assaulting the complainant with intent to outrage her modesty.

At the trial the prosecution tendered in evidence a confession made by the accused to the police patel in the presence of the *panch.*

The Sessions Judge admitted this confession on the ground that the police patel was not a police officer within the meaning of ss. 25 and 26 of the Indian Evidence Act.

On this confession as well as on other evidence in the case the accused was convicted under ss. 457 and 354 of the Indian Penal Code respectively, and sentenced to rigorous imprisonment for one year for the first offence, and for six months for the second.

[486] Against this conviction and sentences the accused appealed to the High Court.

There was no appearance for the Crown or for the accused.

JUDGMENT.

JARDINE, J.—The joint Sessions Judge admitted evidence of a confession made by the prisoner to a police patel, holding that a police patel is not a police officer within the meaning of ss. 25 and 26 of the Indian Evidence Act. He thought this novel view of the law is supported by the cases, of *Queen-Empress* v. *Sama Papi* (1) and *The Empress* v. *Ramanjiyya* (2) on Village Munsifs in the Presidency of Madras. But these cases are decided on the view that those Munsifs are Magistrates and not police officers, which cannot be said of police patels in this Presidency. *Vide* the Bombay Village Police Act, 1867. We follow *Queen* v. *Hurribole Chunder Ghose* (3), in which it was held that the term "police officer" in these sections should be read not in any strict technical sense, but according to its more comprehensive and popular meaning, and we are of opinion that the evidence of the confession was inadmissible. But as the conviction can be sustained on the remaining evidence, we dismiss the appeal.

Appeal dismissed.

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17 B. 486.

APPELLATE CIVIL.

Before Mr. Justice Bayley, Chief Justice (Acting), and Mr. Justice Candy.

BHASKAR PURSHOTAM AND OTHERS (*Original Plaintiffs*), *Appellants* v. SARASVATIBAI (*Original Defendant*), *Respondent.**
[11th August, 1892.]

Hindu law—Verbal gift of immoveable property—Death of the donor—Possession given to the donee by the son of the donor.

One Ganesh Vithal, being possessed of certain lands which were his self-acquired property, died in 1878. On his death-bed he told his son, Purshotam Ganesh, (the plaintiff's father), to give these lands to his (Ganesh Vithal's) daughter,

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* Second Appeal No. 337 of 1891.

(1) 7 M. 287. (2) 2 M. 5. (3) 1 C. 207.