High Court. But we are of opinion that these cases interpret the Code correctly. Section 567 requires the lower Court of appeal to proceed to determine the appeal. Section 571 requires it to pronounce judgment, and s. 574 *is imperative as to what the judgment is to contain.*

We, therefore, set aside the decree of the District Court and remand the appeal to that Court, in order that it may record judgment as required by the law, and pass a *decree thereupon.* Under the circumstances, we direct that the parties pay their own costs in this Court.

Decree reversed and case remanded.

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PRESENT:

Lords Hobhouse, Macnaghten, Hannen and Shand and Sir Richard Couch.

[On appeal from a judgment of the Governor in Council of Bombay as an appellate Court under Regulation XXIX of 1827.]

SHEKH SULTAN SANI (*Appellant*) *v.* SHEKH AJMODIN (*Respondent*); AND BY REVIVOR SHEKH SULTAN SANI (*Appellant*), AND BEGUMBI KOM AJMODIN AND OTHERS (*Respondents*). [18th, 19th, 24th and 25th June, and 1st July, 1891 and 19th November, 1892.]

Resumption by the Government of estates held on political tenure—Mixed estate of saranjam and inam so held—Non-jurisdiction of Civil Courts.

The engagements entered into by treaty between the British Government and the Raja of Satara in 1819, and the terms fixed separately with the several Satara jaghirdars in 1820, did not impart any greater fixity of tenure than had previously belonged to the latter under Maratha rule; and their jaghirs remained liable to resumption at the will of the Government.

The question to whom a saranjam, or jaghir, shall be granted, upon the death of its holder, is one which belongs exclusively to the Government to be determined upon political consideration; and it is not within the competency of any legal tribunal to review the decision.

Inam villages and lands, with the mokasa, included originally in one saranjam granted under the Maratha rule for the support of troops, remained after 1820, when the rule of the Peshwa had ceased, a personal and military jaghir, forming a mixed estate of saranjam and inam. The tenure remained, under British rule, political; and no distinction could be drawn in this respect between the inam lands and the saranjam. The whole estate passed to the person whom the Government at its discretion, for political reasons, recognized as the grantee, without its being competent to any Court of law to question the decision of the executive authority in the matter.

[R., 34 B. 329 (339) = 12 Bom. L.R. 208 = 5 Ind. Cas. 965; 5 Bom.L.R. 983 (986).]

APPEAL from a judgment (28th April, 1887) of the Governor of Bombay in Council, as an appellate Court under Regulation XXIX of 1827, varying a judgment (8th June, 1886) of the Court of the Agent for Sardars in the Deccan and Khandesh.

The plaintiff (now appellant) alleges himself to be the son of Shekh Khan Mahomed Waikar, deceased on 31st December, 1872, who was a jaghirdar, and sardar of the second class on the list of the Agent for Sardars. The defendant Shekh Ajmodin valad Abdul Rajak was the son of the daughter of the **[432]** brother, named Abdul Kadar, of the abovenamed

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sardar. Abdul Kadar died in 1873, after taking his grandson as his "adopted son." The administrators of the estate, Rao Bahadur Gopal Hari Deshmukh and Ganesh Dinkar Joshi, represented Ajmodin in the earlier proceedings, and on his death this appeal was revived against the other respondents abovenamed.

The principal question was whether the saranjam and inams claimed as part of the inheritance and property which had belonged to the deceased Shekh Khan Mahomed were or were not political tenures to which the succession could be dealt with by the Government only, at its discretion, apart from any jurisdiction of the Civil Courts.

In the last century, when the family to which Shekh Khan Mahomed Waikar belonged was represented by Shekh Mira, then in the service of the Raja of Satara, grants of inam, mokasa and saranjam were made to Shekh Mira, comprising villages in Satara, Poona, and Khandesh; and with some of these the estates now claimed were identical. The grants were continued by the Maratha ruler to Shekh Mira's adopted son, who was succeeded by his son Shekh Mira II in 1785. After the hostilities of 1818 had ended, the treaty of 25th September 1819 guaranteed the possession of the latter, and he, besides, was one of the jaghirdars with whom an engagement was separately made by the Government in 1820. He died in 1828, leaving two sons, of whom the abovenamed Shekh Khan Mahomed, who died in 1872, was the elder, and Shekh Abdul Kadar abovenamed, who died in 1873, was the younger. In December, 1836, Sultan Sani, this appellant, was born, and from his birth down to Shekh Khan Mahomed's death in 1872 he was acknowledged by Khan Mahomed to be his legitimate son. However, it was equally a fact that in 1857 an official inquiry was held as to Sultan Sani's birth, and it was decided that he was not the son of the Shekh, or of his wife, but was a child substituted by arrangement when born, as he was, of one of the female servants of the house. This decision was accepted as correct by the Governor in Council and Her Majesty's Government; and it was, in consequence, determined that Khan Mahomed's saranjam [433] should be resumed at his death. Shekh Khan Mahomed having died, the Government on the 23rd October, 1873, ordered the Agent for Sardars to investigate judicially, and after notice, whether Shekh Ajmodin was the legitimate successor to the headship of the Waikar family, either by adoption or descent. The Agent reported that no custom of adoption among Mahomedans in the Deccan was proved, but that Abdul Kadar did, before his death in 1873, execute a document with intent that Shekh Ajmodin should be his heir; the Agent referred also to Shekh Mira's having "adopted" a son in 1740. The Government on the 27th March, 1874, declared that there were sufficient reasons for recognizing Shekh Ajmodin as the head of the family, to whom the saranjam should be continued. This was confirmed by the Secretary of State for India on the 18th June, 1874. The inam portion of the family estate remained after Khan Mahomed's death in the hands of the Collector of Satara, who managed it; and as to it, the opinion of the "Alienation Settlement Officer" was called for. This he gave on the 6th October, 1876, to the effect that "the whole estate intact, having been restored under the treaty of the 3rd July, 1820, was continuable as a guaranteed estate to Shekh Ajmodin as the head of the family." The Government on the 6th November, 1876, resolved that this should be carried out. The saranjam and inam estates were then made over to the defendant, to whom the administrators abovenamed made over the private property

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of the late Mahomed Khan. This was reported to the Government by the Collector of Satara on the 7th February, 1877.

On the 8th September, 1884, a certificate under the 6th section of the Pensions' Act, XXIII of 1871, was granted by the Government, enabling the plaintiff to take the present proceedings, which he attempted to commence as a pauper on the 1st November, 1884; but on the 5th June, 1885, he paid the Court fees, and the suit came on for hearing before the Agent for Sardars. The suit, valued at Rs. 3,75,870, was for the possession of (1) four parcels of inam land and two parcels of mirasi land in the taluka of Wai in the Satara district; (2) the income of mokasa amals and saranjam in villages in different districts of the Deccan and Khandesh; (3) of inam and mirasi lands in the district of [434] Khandesh, the rents of which had been withheld by order of the authorities, from the plaintiff: (4) of devashthan land. The property was described at length in four schedules corresponding to the above. A declaration of right, an injunction and mesne profits were claimed by the plaintiff, as son and heir, and also as devisee under a will of Khan Mahomed executed on 29th September 1860.

The fact of the will was undisputed: but the defence, in brief, was that the plaintiff was not the son of Shekh Khan Mahomed. It was also insisted that the Government Resolution of 27th March, 1874, confirmed on 18th June, 1874, as to the saranjam, and another Resolution of the 6th November, 1876, as to the inam lands, had given the defendant a title of which he could not be deprived by the order of any Civil Court. The issues raised questions indicated by this defence.

The Agent for Sardars found on the evidence that the claimant was the only son of Khan Mahomed, and as such was entitled to share in all his property in respect of which the Court was competent to pass any decree. This he considered it competent to do as to all the property except the saranjams. These he held to be completely at the disposition of the Government. As to the rest of the property, including the inams, he decreed to the plaintiff that share of it to which the Mahomedan law would have entitled him as only son.

Mesne profits were not allowed, on the ground that, the defendant's possession having been given to him by the Government, he was not in wrongful possession. Both parties appealed under Reg. XXIX of 1827, to the Governor in Council constituted by that law an appellate Court from that of the Agent. The Governor in Council was not satisfied that the plaintiff was the legitimate son of Khan Mahomed, and the decision of the Agent was reversed upon this point. The following is the judgment so far as it is material to this report. After a statement of the facts, the Governor in Council continued thus:—

"It follows that Sultan Sani is not entitled to succeed to any property as heir. But Khan Mahomed executed a will in Sultan [435] Sani's favour: and as he must be regarded as a stranger, this will, though made without the consent of heirs, is valid to the extent of one-third of any property of which Khan Mahomed, and not the Government, had the disposal.

"The great mass of the property which forms the subject of the suit was held by Khan Mahomed's ancestors under grants of old date, which merged into a re-grant under the agreement concluded with Shekh Mira Waikar, dated 3rd July, 1820, which will be found at p. 377 of the IV Vol. of Aitchison's Treaties (Ed. 1876). By this agreement the 'jaghirs, &c.,' were restored to Shekh Mira, and the 'Inam villages, watans, and

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other allowances ' were continued to him. Upon Khan Mahomed's death, the Government, in accordance with the decision already referred to, resumed the jaghir or saranjam, and after a while regranted it to the defendant, Ajmodin. There is no doubt whatever that the Government had a perfect right to do this, and that its action cannot be questioned. It is settled law that the Government may resume jaghirs or saranjams whenever it pleases, and that the Civil Court cannot question such action. Even, therefore, if the resumption of a saranjam were wholly unjustifiable, it would be none the less valid: but certainly no resumption could be more justifiable than one made as a punishment to the saranjamdar for palming off upon Government a spurious son as his heir. This has hardly been disputed; and the argument at the Bar has been mainly directed to the question whether the resumption and regrant to Ajmodin of the inam, as distinguished from the saranjam, can be upheld as an act legally within the competency of Government. Now, it certainly appears from the old sanads that the inams were originally held on a somewhat different tenure from the saranjam. They seem to have been granted for maintenance and as a reward for past service, rather than on condition of future service. The same distinction may perhaps have been intended, though it is not very clear, in the agreement of the 3rd July, 1820. It is also evident that, after it had been determined to resume the saranjam, Government did not for some time contemplate a resumption of the inam, but rather intended that all claims to the inam should be adjudicated on in the usual course by the **[436]** Civil Court. But in 1876 Government finally determined to resume the inam, and regrant it to Ajmodin: and the question is, not whether this determination was consistent with the advice of all its officers, or with its own previous views and opinions, but whether its action was within the powers vested in it by law. Now, looking to the provisions of sch. B, Rule 10 of Act XI of 1852, to s. 1, cl. 2, and s. 16 of Bombay Act II of 1863, and to s. 2, cl. 2 and s. 32 of Bombay Act VII of 1863, it must, in the opinion of the Governor in Council, be held that Government has the power to resume, on political considerations, any property which is held on political tenure: and that it is for Government to determine, in every instance, whether the tenure is political. This being so, the question is whether Government did, in 1876, resume the inams of the Waikar family on the ground that they were held on political tenure. Now, the decision of Government is contained in its Resolution No. 6836 of the 6th November, 1876, which in its preamble sets forth a memorandum of the Alienation Settlement Officer, containing his opinion that 'as Government have sanctioned the adoption' (*i.e.* of Ajmodin) 'the whole estate, intact, saranjam and inam, as restored after the war under the treaty of 3rd July, 1820, is continuable as a guaranteed estate to the adopted son as the head of the family, and should be entered in the accounts accordingly, the same as all other treaty estates of mixed saranjam and inam;' and then the Resolution is passed in the following terms:—'The suggestions of the Alienation Settlement Officer are approved, and should be carried out.' So that Government adopted the view of the Alienation Settlement Officer, and that view clearly was that, under the terms of the treaty of 1820, and other similar treaties, a mixed estate of saranjam and inam is all held on the same political tenure, and ought to pass intact to the person whom Government may recognize as the head of the family. This view may have been right or wrong, (and looking to the terms of the treaty of 3rd July, 1820, the Governor in Council would find it difficult to say that it

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was wrong); but, at any rate, as it was adopted by Government as the ground of its action, it does not appear open to any Court to dispute it.

[437] "Another ground on which the resumption and regrant of the inam may well be justified is that the agreement of 3rd July, 1820, under which the inam was held, cannot be construed as amounting to more than a grant to Shekh Mira for his own life. It is true that in 1842 the saranjam was by order of the Court of Directors made hereditary; but nothing was said about the inam. It seems to follow that, if the inam was included in the order, then it was treated as saranjam and was included in the same incidents: while, if it was not included, then it has never been made hereditary, and Government had a perfect right to resume it. In either case Ajmodin's title is unassailable. It follows that all claims made in this and the companion suits to a share in the saranjam and inam estates granted under the agreement of the 3rd July, 1820, must be disallowed."

The Governor in Council then considered the claim to the private property of Khan Mahomed; holding that, as to a portion of it, limitation barred the present suit. The following relates to what was awarded, the property being considered in two classes, *viz.* (1) that which was in possession of Khan Mahomed, or held in trust for him, at the date of his death, and (2) that to which he was entitled by inheritance on the death of Abdul Kadar. The judgment continued thus:—"There are three schedules marked A, B, and C annexed to the plaint. The property contained in sch. A is in the possession of the defendant, and the plaintiff sues to recover possession. Up to 1876 this property (other than the saranjam) was held under attachment by Government for the benefit of Khan Mahomed's and Abdul Kadar's creditors, and eventually of their heirs. There was no adverse possession until the property was handed over to the defendant in 1876, and the suit is well within twelve years from that date. But the claim to the property mentioned in schs. B and C, appears to be of a different nature, and to come under a different rule of limitation. The property, mentioned in sch. B is stated in the plaint to be not in the possession of the defendant, but of third parties, and what is asked for is an injunction to the defendant not to obstruct the plaintiff in recovering the property from such third parties. The property in sch. [438] C is declared in the plaint to be in the possession of the plaintiff himself; and what is asked for is a declaration that the defendant has no title to such property. The suit then, as regards the properties set forth in schs. B and C, is one simply for an injunction and declaration; and the Governor in Council can find no sufficient authority for holding that a longer period of limitation than six years is allowed for such a suit. It appears to be a claim for which no other period is provided in sch. II of the Limitation Act (XV of 1877), and therefore to fall within art. 120. In this view, the suit in regard to the properties included in schs. B and C is barred, as against the present defendant, whatever may be the case as regards third parties, who may be in possession of any portion of the property: for it is admitted that the cause of action, so far as the injunction and declaration are asked for, arose in 1876.

"Confining his attention, therefore, to sch. A, the Governor in Council finds that Sultan Sani is entitled under the will to one-third of any private property belonging to Khan Mahomed, while Rahimunissa, as heir, takes the remaining two-thirds."

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An order as to each portion of the property separately claimed concluded the judgment.

On this appeal, preferred as provided for in the Reg. XXIX of 1827.

Mr. *R. V. Doyne*, for the appellant, argued that the Agent for Sardars, in the first instance, was wrong in dismissing the claim to the saranjam, while his decision had been right as to the inams, and as to the rest of the property which he decreed to the plaintiff. The judgment of the Governor in Council erred both as to the saranjam and the inams, which should have been held to be hereditary in the family of the late Shekh Mahomed Khan, and not liable to resumption on his death. The saranjam, although originally an estate resumable on the death of the holder by the ruling power which granted it, had subsequently been rendered an estate hereditary in the family. The effect of the guarantee of the British Government in the treaty of 1819 and of the agreement, "fixing terms," with the Waikar [439] jaghirdar in 1820, had been to confirm the title. The saranjam had not remained subject to its original conditions. It had passed from father to son for three generations. He referred to the Satara Treaty, No. II, of 25th September, 1819, in Vol. VI of Aitchison's "Treaties, Engagements and Sanads," (edition of 1864), guaranteeing in art. 7 the possession of the jaghirdars; also to the terms fixed for Shekh Mira Waikar, as one of the Satara jaghirdars, who was ancestor of Khan Mahomed, in the agreement of 3rd July, 1820, Vol. VI, (Ed. 1864), p. 78. If the words of the treaty had been conclusive that the saranjam was not hereditary, there would have been no ground for the present contention; but they were not, and they were consistent with what had afterwards taken place by way of rendering the estate continuous and hereditary in the family of the jaghirdar. Reference was made to passages in the last chapter of Grant Duff's History of the Mahrattas; and to correspondence in the years 1834—1842, inclusive, between the Bombay Government and the Court of Directors, as to the hereditary character of this tenure. According to this, it appeared to have been ordered, as between the Court and the Government, that the saranjam should be considered hereditary by the latter. However, nevertheless, on the 5th April, 1860, the Government Resolution was that even if Khan Mahomed should leave a legitimate son, the saranjam would not be continued to the latter. It was submitted that even if this had not been founded on mere error in the conclusion that Shekh Sultan Sani was not the son of Khan Mahomed, this Resolution, and all the subsequent proceedings in derogation of that son's right of succession, were beyond the scope of the executive power. The appellant's case was that in 1873 the Government had not retained, and did not possess, authority to alter the right of succession to either the saranjam, or the inam estates, which had then become fixed to descend to the elder son, in consequence of the repeated acts of recognition of the succession in the family of Khan Mahomed. But the appellant's case was stronger, as regarded the inams, which had been resumed, than as to the saranjam; the former was a reward for past services, the latter involved originally, the support of troops for service. The agreement of 1820 referred expressly [440] to inams *viz.*, to inam villages, watans, and other allowances; and the inams were not, and could not lawfully have been, comprised in the resolution of 5th April, 1860, as they had then become fixed to descend to the *Sardar's heir*, and were subject to his testamentary power, within the rules of law. Nor had the Government the power to effect what the resolution of 27th March 1874, had

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been treated as effecting the recognition of the respondent Ajmodin as the person to whom the saranjam and the inams should be continued; and in taking possession of the latter, as the Collector had done, he had acted without due warrant, these estates being subject to the law of inheritance, and the rights of the appellant subsisting. Reference was made to *Ramchandra Mantri* v. *Venkatrao Mantri* (1); *Gulabdas Jugjivandas* v. *The Collector of Surat* (2); *Premshankar Raghunathji* v. *The Government of Bombay* (3); *Dosibai* v. *Ishvardas Jagjivandas* (4); The Inam Act, XI of 1852; Bombay Acts II and VII of 1863; The Pensions Act, XXIII of 1871, s. 4. Upon the question of the appellant's birth the evidence supported the finding of the first Court that the appellant was the son of Khan Mahomed. The inquiry in 1857 was one in the Revenue Department; and the effect of a judgment could not be attributed to it. Reference was made to ss. 40—44 of the Indian Evidence Act, 1872, relating to prior judgments, when relevant, and to *Naranji Bhikhabhai* v. *Dipa Umed* (5) and *Gujju Lall* v. *Fatteh Lall* (6). Effect was to be given to the presumption of Mahomedan law as to legitimacy of birth, on which point *Ashruf ud Dowla Ahmed Hossein* v. *Hyder Hossein Khan* (7), *Mahammad Azmat Ali Khan* v. *Lalli Begum* (8) were referred to. The judgment of the first Court should be restored, and the appellant should obtain the declaration of legitimacy claimed, and of his title to the saranjam and inams.

Mr. *R. B. Finlay*, Q. C., and Mr. *J. D. Mayne*, for the respondent:—

[441] The principal points in their argument were the following. The appellant's title, both to the saranjam and to the inams, was derived, according to his claim, from grants to his alleged ancestors by the former ruling power, and the recognition by the present one. His title, in short, depended on the effect of the treaty of 1819, and the engagement of 1820, amounting to a grant to him; and this was his title as to both kinds of estate, the saranjam and the inams. Neither the treaty, nor the agreement, on the point as to what quantity of estate they conferred, were subject to the interpretation of the Civil Courts. They were to be construed by the Government, which had not recognized that they conferred anything more than a life tenure in either the saranjams or the inams. Both these estates were of a political character, and the succession to them was at the discretion of the Government to be allowed or not. Although the grantee's son had succeeded at his death, as in the case of Khan Mahomed in 1827, that was not by any legal right of inheritance, but because the Government, on account of his birth, and for political reasons, allowed him to succeed. The Government, after the war, parcelled out the tenures on the understanding that existing rights, with regard to Maratha custom, should be observed, and the raj was disposed of on the same terms. To the Raja of Satara the raj was granted, conditionally on his respecting the titles of the jaghirdars, to whom their titles were guaranteed, but only to the extent of their then prevailing rights. The result was that the saranjams and the inams were afterwards held, as they had been before 1820, by holders, who held them as tenures personal and military, as these tenures had been in their origin. The tenures were for life only. Saranjams by custom were at the disposal of the ruling power, and the particular estate in this case was held on a political tenure, a term used in reference to such

(1) 6 B. 598. (2) 6 I. A. 54=3 B. 186. (3) 8 B.H.C.R. (A.C.J.) 195.
(4) 18 I. A. 22=15 B. 222. (5) 3 B. 3.
(6) 6 C. 171. (7) 11 M. I. A. 94. (8) 9 I. A. 8=8 C. 422.

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estates and appearing in the acts of the legislature, as in 1863. The inams now claimed were, in effect, granted by the Government, on the same principle, and were held for life only. Although the correspondence of 1834—1842 took place, no alteration was made in the tenure of Khan Mahomed, of his saranjam and inam estates. As to the evidence about the claimant's birth, the appellate Court was [442] right in its conclusion that he had not made out his title as son and heir to Khan Mahomed; and was right in permitting his claim to rest only on the will of his alleged father as to the property that could be so disposed of. The right of the Government to deal with the other estates, the inam as well as saranjam, which in this case had been mixed together in the Maratha grants, was recognized by legislation; and the term "political tenure" used by it, was applicable here.

Reference was made to Act XI of 1852, ss. 10 and 11 of sch. B, Bombay Acts II and VII of 1863 and to *Gulabdas Jugjivandas* v. *The Collector of Surat* (1), *Dosibai* v. *Ishvardas Jagjivandas* (2), *Madhavrav Manohar* v. *Atmaram Kesha* (3).

Mr. *R. V. Doyne*, replied:—The defendant-respondent having died before the delivery of judgment, an order was made that the appeal should be revived against the respondents above named.

JUDGMENT.

Their Lordships' judgment was given on the 19th November, 1892, by LORD HANNEN:—The plaintiff, Sultan Sani, claims to be the son of Shekh Khan Mahomed, who died on the 31st December, 1872, and as such son to be entitled to certain properties alleged to have been held by Khan Mahomed, by a tenure known as saranjam, and certain other properties alleged to have been held by a tenure known as inam. The nature of these tenures will be considered presently. The plaintiff also claimed the property as devised to him under the will of Khan Mahomed.

The suit was one in the Court of the Agent for Sardars, a tribunal created in 1827 (Bombay Regulation XXIX of 1827) for the trial of suits against certain Deccan Sardars, an appeal being given to the Governor in Council of Bombay, and from him to the Queen in Council.

In this suit the plaintiff sought to recover possession from the defendant Ajnodin (the predecessor of the present respondents) of the saranjam and inam lands of which (as the plaintiff [443] alleged) the defendant had been put into wrongful possession by the Bombay Government after the death of Khan Mahomed.

In answer to this suit it was contended by the defendant that the plaintiff was not the son of Khan Mahomed; and, secondly, that the tenure of the lands claimed was such that the Government was entitled, on the death of Khan Mahomed, to resume them and assign them to whom it pleased.

The title of the plaintiff under the will of Khan Mahomed was not disputed as to the property of the testator over which the Government had not such a disposing power.

The Agent for Sardars held (8th June 1886) that the plaintiff is the son of Khan Mahomed, but that the saranjams were completely at the disposal of the Government. As to the other lands, which he distinguished as inam, he held that the plaintiff was entitled under the Mahomedan law to recover as only son of the testator.

(1) 6 I. A. 54=3 B. 186. (2) 18 I. A. 22=15 B. 222. (3) 15 B. 519.

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On appeal to the Governor in Council, His Excellency in Council held that the plaintiff was not the son of Khan Mahomed, and that the Government had power not only to resume the saranjam, but also the socalled inam property, and to assign them to whom it pleased.

From this decision the present appeal is brought to Her Majesty in Council.

The Agent for Sardars and the Governor in Council have both held that the saranjam lands were of such a tenure that the Government was entitled to resume them and to re-grant them to whom it pleased. Their Lordships propose to consider this question in the first instance.

"Saranjam" is stated in Wilson's Glossary to be an "assignment of lands or their revenue by the State for the support of troops."

"Mokasa," a word which will be found in several of the documents hereinafter referred to, appears to have a meaning nearly equivalent to that of saranjam. It is defined as "villages [444] or lands, or a share in the rule over them, and revenue arising from them, granted on condition of military service or in inam."

"Inami" is stated by Wilson to mean "grants of land held rent-free, and in hereditary and perpetual occupation."

The history of the property to which this suit relates is as follows:—

In 1708, one Shekh Meeran (or Mira) was in the service of the Raja of Satara. For assistance rendered to the Raja "he received the inam village of Pasarni, a pension of Rs. 1,800 monthly, and was raised to the rank of a commander of 60 horses, for the maintenance of which he held mokasa amals (meaning 'share of revenue') to the amount of Rs. 40,000. The pension ceased with the first Shekh Meeran, and the mokasa has since fallen off to about Rs. 18,000, which, with Pasarni, is still enjoyed for the performance of service to the Raja of Satara with 10 horsemen." This is given on the authority of Lieutenant-Colonel Briggs, formerly resident at Satara. The date does not appear. The property thus granted was situated in the districts of Satara, Poona, and Khandesh.

The earliest document relating to the property is of the date of 1709, A.D. This document is headed, "Body of horse under the control of the State" and it runs thus:—"Body (of horse under) Shekh Mira; saranjam, total as in last year (as per) mandatory letters;" and it includes nine mokasa villages and the inam village of Pasarni.

The next document is dated 1715, A.D., and is also headed "Body of horse under the control of the State, Body (of horse) Shekh Mira," and is as follows:—"The letter of command, dated 18th moon Saval (regarding) the village of Pasarni, Samat Haveli, Prant Wai. A deed of inam was formerly given about the grant of this village as inam to the aforenamed person, together with all rights and cesses, the present and future taxes and together with sardeshmukhi. The deed having been burnt, new deeds have been prepared and given."

In 1718, A.D., a document headed, "Saranjam for the body of horse under the control of the State . . . in the charge [445] of Shekh Mira," includes and comprises "village of Pasarni, inam village," also "inam lands in Kasba Wai (called) Katban, the place of residence of the aforenamed person, are granted in inam."

Katban appears to have been granted to Shekh Mira, (date uncertain, qu. 1715), "to him and his son, grandson, &c., from generation to generation."

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The grant of Pasarni was confirmed in 1752 by the mother of the then Raja of Satara to Shekh Khan Mahomed I, the son of Shekh Mira, in the same terms.

In a document described as the Peshwa's diary of 1763, A. D., it is recorded that " Mokasa villages, &c., have been continued by the Government from former times to Shekh Khan Mahomed in the service of Government. They are in the same manner confirmed."

Amongst the properties enumerated are " the whole village of Pasarni, Samat Haveli, Prant Wai, together with the deshmukhi and sardeshmuki (rights) being inam."

In 1785, A.D., in the diary of the Peshwa is registered " the sanad for continuing the saranjam to Shekh Mira Waikar," *i.e.*, Mira II, and the saranjam is thus described,—" A saranjam (consisting) of amal (shares of revenue) of mahals and of single villages, as also inam villages and lands, were continued from former times to Shekh Khan Mahomed Walad Shekh Mira for the support of troops. He having died, the saranjam and inam villages and lands have as before been confirmed upon his son Shekh Mira for the support of troops." Then follows an enumeration of the properties, which includes the mokasa lands and inam villages and lands, amongst these latter being the whole village of Pasarni, Samat Haveli, Prant Wai.

It is to be observed that this document clearly includes the inam villages and lands with the mokasa as parts of one saranjam for the support of troops.

When the power of the Peshwa was overthrown, Shekh Mira II was in possession of this saranjam. A portion of the conquered territory was placed under the Government of the [446] Raja of Satara (1), with whom a treaty was entered into on the 25th September, 1819, by which it was provided that the possessions of the jaghirdars within the Raja's territory were to be under the guarantee of the British Government, which engaged to secure the performance of the service due to the Raja according to established custom.

Separate agreements were entered into with several jaghirdars of whom Shekh Mira II was one. The agreement with Shekh Mira II, which was made on the 3rd July, 1820, thus commences (2) :—" These jaghirs, &c., were formerly held by you as a personal and military jaghir ; but having come into the possession of the British Government along with the rest of the country, they are now restored, in consideration of the antiquity and respectability of the family, to be held as formerly in personal and military jaghirs."

The 7th article stipulates that " without orders from Government no extra troops are to be levied, and none assembled for the purpose of making war on any one. In matters of family disputes concerning relationship and such like, no appeal to arms can be permitted, but the case is to be represented to the Agent of the British Government, who will communicate with the Government of His Highness, and whatever decision is given must be reckoned binding."

This agreement does not specify the jaghirs to which it relates. The 5th article is as follows :—

" Whatever inam villages, watans, and other allowances have hitherto belonged to Shekh Mira Waikar within the territories of the British Government or of His Highness shall be continued, and whatever items

(1) Aitchison, Vol. VI, edition of 1864, No. 2, Articles 1 and 7.
(2) Aitchison, Vol. VI, edition of 1864, p. 78.

of revenue belonging to His Highness's Government may be within the jaghir shall be continued to be paid."

There are no words in this agreement having reference to the descendants of Shekh Mira, and it distinctly states that the jaghirs are to be held "as formerly in personal and military jaghirs." This agreement must be regarded as the root of the title (whatever it may be) which was required by Shekh Mira II.

[447] With regard to the expression contained in some of the sanads previously cited of the grant being to the person named, "his son, grandson, &c., from generation to generation," it has been observed by many writers of authority on this subject that they do not, as might be supposed, impart a fixed hereditary tenure. Colonel Etheridge, in his preface to the narrative of the Bombay Inam Commission, quotes the language of Sir Thomas Munro in a minute of the 15th March, 1822, in which he states that the "terms in such documents (sanads) 'for ever,' 'from generation to generation,' or in Hindu grants, 'while the sun and moon endure,' are mere forms of expression, and were never supposed either by the donor or receiver to convey the durability which they imply, or any beyond the will of the sovereign;" and in a subsequent minute of the 16th January, 1823, Sir Thomas Munro shows that while the seizure of private property by the native princes would have been considered unjust by the country, jaghir grants were not regarded by the people in the light of private property. (Etheridge, p. 14.)

Their Lordships entertain no doubt that the engagements entered into by the English Government with the Raja of Satara and with the several jaghirdars did not impart any greater fixity of tenure than had been previously enjoyed by those jaghirdars under the native rulers, and that their jaghirs were liable to resumption at the will of the Government, although from reasons of political expediency the English authorities would not be disposed to add to the disturbance and confusion attending a conquest, by dispossessing the holders of property to any greater extent than was necessary for safety.

Thus, on the death of Shekh Mira II, in 1827, the saranjam, which he had enjoyed, was continued to his son Shekh Khan Mahomed II, but the character of his tenure was distinctly stated in the document by which possession was given to him: "Your father Shekh Mira Waikar died this year, and the saranjam in his possession was thereupon placed under attachment by Government. A petition having now been submitted by you, it has been decided to continue the saranjam to you as before for service to be rendered by you. The attachment has [448] therefore been removed, and . . . this sanad has been issued to you. The amount which is always paid from the Government Treasury on account of the mokasa, which forms part of the saranjam, shall therefore continue to be paid to you. As regards the alienated lands, you should take them back in your possession and enjoy them in accordance with past usage, and in accordance with the agreement passed by you to Government you must continue to honestly and faithfully perform the service." This last clause apparently relates to lands which had been alienated by Shekh Mira II, but which, as the Government pointed out, he had no right to do.

These were the terms on which Shekh Khan Mahomed II acquired the position of jaghirdar under the Raja of Satara. He accepted that position as the gift of the British Government, which had decided to continue the

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saranjam to him. In this document there is no reference to the descendants of Khan Mahomed, and the grant is made for service to be rendered by him, and is in its terms personal.

One of the questions to be determined in this case is whether, on the death of Khan Mahomed, the Government had or had not the same power of deciding to whom it would grant this saranjam, which it had exercised on the death of the previous holder in favour of Khan Mahomed. In making that grant the Government was no doubt influenced by the fact that Khan Mahomed was the son of the previous jaghirdar, and that it was politically expedient to continue the possession of the saranjam in the same family, but there is nothing to show that the Government recognized any right of succession in the son; the language of the grants in the cases both of Shekh Mira II and Shekh Khan Mahomed II points in the opposite direction. The practice of regranting jaghirs to the sons of preceding jaghirdars naturally had the effect of leading sons to expect to succeed their fathers, and when this practice was long continued in one family the original character of the holding became obscured. This process has been commented on by many writers on the subject of India. In the Honourable Mountstuart Elphinstone's History of India, it is said (5th ed., p. 82): "Notwithstanding all **[449]** these precautions, the usual consequences of such grants (jaghir) did not fail to appear. The lands had from the first had a tendency to become hereditary, and the control of the Government always grew weaker in proportion to the time that had elapsed from the first assignment. The original principle of the grant, however, was never lost sight of, and the necessity of observing its conditions was never denied." In the present instance there was but the one re-grant to Khan Mahomed since the original grant to Shekh Mira, and in that re-grant the character of the holding as saranjam (or jaghir) derived from the decision of the Government in the applicant's favour was expressly stated.

In 1834 an inquiry arose as to the tenure of certain jaghirs in Khandesh, and as to that of Shekh Mira. Mr. Warden, the Deputy Agent, writing to Mr. Saville Marriott on the 3rd January, 1834, says (Rec., p. 212),—"Shekh Mira Waikar was a Satara feudatory chief, serving the Raja with a few horse, and holding a saranjam for his life in Khandesh. I have referred to his sanad or title-deed, and find that his estate was clearly a life grant, the customary provision for the continuance of it by inheritance to be found in the sanads of all hereditary saranjamdars being omitted, and the usual form of life grants adopted."

What document Mr. Warden refers to does not appear; possibly it was the sanad of 1785.

In the course of the inquiry arising out of Mr. Warden's report, Mr. Elphinstone, who had been engaged in the settlement of the Deccan in 1818-19, was referred to by the Court of Directors for his advice, and he, in the year 1838, recommended that all jaghirs "granted by the Mogul Emperor or the Rajas of Satara should be hereditary in the fullest sense of the word;" and with regard to Shekh Mira he stated that his impression was "that Shekh Mira's ancestor commanded a Mogul fort at the time of the first conquest by the Marathas, and surrendered on terms, one of which was the receipt of a hereditary jaghir. If this be so we can have no right to resume his lands unless we can annul the agreements of former Governments;" and he **[450]** added that a reference to his Secretary's list of jaghirdars, prepared in 1818-19, would settle the question.

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Upon reference to this list (transmitted 25th October, 1819), which is headed, "Mr. Elphinstone's list of saranjams," Shekh Mira's name appears. He is there stated to belong to the class of Sardars or great chiefs. It is stated that he made his submission on the 28th March, having left the Peshwa at least a month before; that he is an old jaghirdar of the Shahu Raja, and under the heading "Decision" is written: "To have all his jaghirs except those in the Nizam's country on account of his early submission and ancient family." And under the heading "For what period recommended" is written "Hereditary."

It has been seen, however, that this recommendation was not acted upon at the time, and that the grant, which was in fact made to Shekh Mira, did not contain any language importing that the grant was of an hereditary jaghir.

In consequence of the advice of Mr. Elphinstone the Court of Directors, in a Despatch of the 26th October, 1842, directed that all jaghirs in "Class I of Mr. Mill's list, which bears date anterior to 1751, be, as Mr. Elphinstone recommends, hereditary in the fullest sense of the word, together with those of which the dates are unknown, but which are known to be ancient. The latter class, though small, includes the three resumed jaghirs of Shekh Mira, Sumsher Bahadur, and Eshwant Rao Dabhary. The first of these, already restored to the son of the last holder, but for life only, must be considered hereditary."

It is to be observed with regard to this direction that it recognizes that the jaghirs of Shekh Mira have been restored to the son of the last holder (that is, to Shekh Khan Mahomed II, son of Shekh Mira II), but for life only, and that the time for taking any action with reference to the succession would not arise in the ordinary course of things until the death of Khan Mahomed. No fresh grant was made to Khan Mahomed, and his rights must depend upon that grant, which had in fact been made to him on the death of his father. It remained for the Government, when the necessity should arise, to determine to [451] whom it should re-grant, or in whom it should recognize, a right of succession to the jaghirs then possessed by Khan Mahomed.

This was the state of things down to 1857, when one Shaikh Sultan Inamdar presented a petition to the Assistant Inam Commissioner at Satara complaining that, although he and others shared in the inams held by the family of Khan Mahomed, their names were purposely omitted by him (Khan Mahomed) in a genealogical table, which he produced before the Mamlatdar of Wai in a certain inquiry affecting those shares, while a son of one Manik Dewtia was mentioned in it as his (Khan Mahomed's) son.

This petition was forwarded to the Magistrate of Satara, who directed an inquiry into the charge thus made against Khan Mahomed of putting forward the child of another man as his own.

This inquiry was conducted by the First Assistant Magistrate, Lieutenant Sandford (afterwards Sir Herbert Sandford), whom the Governor in Council describes as a Magistrate of great experience and intimate knowledge of the people and politics of Satara. With him was associated, in the inquiry, Gopalrao Hurry, of whom the Governor says that he was an officer held in high estimation, who was afterwards raised to several important judicial posts.

This inquiry appears to have been a preliminary investigation with a view to considering the expediency of instituting criminal proceedings

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against Khan Mahomed and those supposed to have assisted him in putting forward a supposititious child as his own.

The inquiry was conducted in a judicial manner, the witnesses were examined on oath, and Khan Mahomed was offered the opportunity of cross-examining the witnesses who deposed against him, and he produced many witnesses in his defence.

In the result Lieutenant Sandford and Gopalrao Hurry concurred in reporting that the charge had been established, and that the child put forward by Khan Mahomed as his son, namely, the present plaintiff, was not his child, but the child of Manik.

[452] The report of Lieutenant Sandford and the evidence taken by him were transmitted by the Magistrate of Satara to Mr. Ellis, described as the Acting Revenue Commissioner for Alienations, and were by him forwarded to the Government at Bombay. Mr. Ellis concurred in the view of Lieutenant Sandford, and he deprecated putting Khan Mahomed and the others concerned on their trial, and for reasons which he gave he did not recommend the confiscation of his saranjam, but suggested that the name of Khan Mahomed be struck off the list of Sardars, and that he be deprived of all the honorary privileges enjoyed by persons of his rank, the only exception in his favour being the retention of the arrangement then in force, whereby a portion of his saranjam was assigned to his creditors and the balance allowed to him for subsistence. In a subsequent letter of Mr. Ellis to the Secretary to Government, dated the 16th April, 1858, he suggested that the Government should declare that even if Khan Mahomed "should leave a legitimate son, the saranjam will not be continued to him." This recommendation was ultimately, on the 5th April, 1860, adopted by the Government and communicated in a letter of that date to the Revenue Commissioner for Alienations, Captain T. A. Cowper. This resolution was communicated to Khan Mahomed, who thereupon, on the 22nd October, 1860, petitioned the Governor in Council to review the proceeding.

The petition was referred to Mr. Inverarity, the Collector at Satara, who on the 21st March, 1861, reported that he was not of opinion that Khan Mahomed had succeeded in shaking the validity of the evidence which had been brought forward, and that he did not recommend that a fresh inquiry be granted. And on the 8th April, 1861, Mr. Forbes, the Acting Secretary to the Government, informed Mr. Inverarity that, on a review of all the circumstances of this case, His Excellency the Governor in Council was of opinion that no reasons had been advanced by Khan Mahomed which would justify the grant of a fresh inquiry, and that the decision which he appealed against must, therefore, be regarded as final. Communication to this effect was directed to be made to Khan Mahomed.

[453] In 1863 Khan Mahomed again appealed to the Governor in Council, and his memorial was referred to the Duke of Argyll, Secretary of State for India in Council, who, on the 26th October, 1871, declined to re-open the case.

Khan Mahomed died on the 31st December, 1872. It then became necessary to determine to whom his saranjam should be granted. Amongst the candidates was Shekh Ajmodin, the present respondent, a descendant of Shekh Abdul Khan, the half-brother of Shekh Mahomed II. This led to a Resolution by the Government, dated the 23rd October, 1873, "that the Agent for Sardars should be requested to investigate judicially, and after due notice to all parties concerned whether Shekh

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Ajmodin is under Mahomedan law the legitimate successor to the headship of the family, either by adoption or descent."

Baron Larpent, the Agent for Satara, in pursuance of the Resolution of the 23rd October, 1873, proceeded to investigate judicially the questions referred to him after due notice to all parties concerned. Amongst the parties who appeared before him was Sultan Khan Sani, claiming to be the son of Khan Mahomed.

On the 28th November, 1873, Baron Larpent made his report. The important passages are as follows:—"The fourth issue remains for decision, *viz.*, Is Ajmodin, under Mahomedan law, the legitimate successor to the headship of the family of Shaik Khan Mahomed? I think that there can be no doubt he is not. As I have already said, Shaik Khan Mahomed left a daughter, and she has sons, and these sons are nearer the head of the family than the son of a daughter of Shaik Abdul Kadar. The decision as to who should be recognized by Government as head of this family does not, in my opinion, rest on a consideration of who may be the next of kin to Shaik Khan Mahomed under Mahomedan law. Government appears to me to have decided in their letter No. 1497, of 5th April, 1860, that Shaik Khan Mahomed's branch should forfeit all right to succeed to the estate. Paragraph 6 is as follows:—'Shaik Khan Mahomed will not probably have another son of his own loins, but the Right Honourable the Governor in Council concurs with **[454]** Mr. Ellis in considering that the Waikar should be told that, even if he have a son, that son will not be allowed to succeed..... The forfeiture was imposed on account of the fraud practised by Shaik Khan Mahomed. His name also was struck off the list of Sardars, and although subsequently the name was re-entered, for certain reasons the order of forfeiture was not rescinded. It appears to me, therefore, that any property, the succession to which Government has power to regulate, should go to Shaik Abdul Kadar's heir, Ajmodin, both on the grounds of the former decision, and because of the great wrongs which Khan Mahomed inflicted on his brother.'"

On the 27th March, 1874, the Government confirmed Baron Larpent's report in the following terms:—

"Resolution.—The proceedings of the Agent for Sardars are approved, and for the reasons given by Baron Larpent, Shaik Ajmodin should be recognized as the head of the family, to whom the saranjam should be continued. To avoid disputes the allowances for maintenance of the widows of the deceased Shaik Khan Mahomed and Shaik Abdul Kadar, and of any others who have a claim for maintenance on the estate, should be settled by order of Government after receiving the recommendation of the Agent.

"The allowances now paid to Shaik Rakmodeen and to Rahimanbee, under Government letter No. 1293, of 28th March, 1861, should be continued."

And on the 18th June, 1874, Lord Salisbury, as Secretary of State in Council, expressed the Government's approval of the above Resolution in these terms:—

"In reply to the letter of your Excellency's Government in this Department No. 17, of the 4th May, 1874, in which you report the death of Khan Mahomed Waikar, and the nomination by you of his kinsman Ajmodin, a lineal descendant of the first British grantee, as the head of the family, to whom the saranjam should be continued, I have to inform you that I see no objection to this arrangement. Shaik Khan Mahomed's

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fraud in endeavouring to obtain the succession of a supposititious child [455] having been punished by the exclusion of his own progeny from the succession, Her Majesty's Government can only express their hope that the branch of the family now installed may prove itself worthy of your selection."

In pursuance of these Resolutions the whole of the jaghir and inam incomes were made over to Shekh Ajmodin, and the agent and the administrators of the estate which had been taken into the hands of the Government, called on all persons to acknowledge him as owner. On the 6th October, 1876, Colonel Etheridge, the Alienation Settlement Officer, reported as follows :—

"He (Colonel Etheridge) is of opinion that as Government have sanctioned the adoption, the whole estate intact, saranjam and inam, as restored after the war, under the treaty of 3rd July, 1820, is continuable as a guaranteed estate to the adopted son (Ajmodin) as the head of the family, and should be entered in the accounts accordingly, the same as all other treaty estate of mixed saranjam and inam."

On the 6th November, 1876, Colonel Etheridge's report was confirmed by the Government in the following Resolution :—

"The suggestions of the Alienation Settlement Officer are approved, and should be carried out."

Thus it appears that the Government, on the death of Khan Mahomed, resumed the saranjam held by him, and re-granted it to Ajmodin, on the ground that the Government has the right to resume jaghirs. It is not to be supposed that this right would be exercised capriciously; but, assuming it to exist, it would not be competent for any Court to review this decision of the Government on the ground that the reasons upon which it proceeded were erroneous. This Board, therefore, does not feel called upon to express any opinion upon the question whether the spurious birth of Sultan Sani has been established. Their Lordships, however, see no reason to doubt that the inquiry by Lieutenant Sandford was conducted in a judicial manner, and that full opportunity was given to the accused to cross-examine the witnesses called against him, and to call witnesses in his favour. [456] The good faith of Lieutenant Sandford and his co-adjutor, Gopalrao Hurry, has not been called in question, and the various persons whose duty it has been to consider the findings of those officials have arrived at the conclusion that there was no ground to set aside those findings. Their Lordships are of opinion that the question to whom a saranjam or jaghir shall be granted upon the death of its holder, is one which belongs exclusively to the Government, to be determined upon political considerations, and that it is not within the competency of any legal tribunal to review the decision which the Government may pronounce. This principle is clearly expressed, not for the first time, in Bombay Act VII of 1863, s. 2, cl. 3, and is recognized in cases where the question has been raised.

Thus far as to the saranjams claimed by the appellant.

It has been contended that a different question arises with regard to the inams. Their Lordships, however, are of opinion that no distinction can be drawn between the inam and the other property in question. As has been pointed out, the sanad of 1785 included the inam villages and lands with the mokasa as parts of one saranjam for the support of troops. The effect of the treaty of the 3rd July, 1820, was to continue to Shekh Mira the whole of the property, including the inam, as a personal and

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military jaghir. This was done by the Government on political considerations, and the tenure thereby created was political. This was the view taken by the Government in 1876, when it adopted the report of the Alienation Settlement Officer, that "the whole estate intact, saranjam and inam, as restored after the war under the treaty of 3rd July, 1820, is continuable as a guaranteed estate to the adopted son" (Ajmodin) "as the head of the family."

Their Lordships therefore concur in the opinion expressed by the Governor in Council that a mixed estate of saranjam and inam was granted by the treaty of July, 1820, to be held on the same political tenure, and passed intact to the person whom the Government might recognize as the head of the family, and that it is not competent for any Court of law to dispute it.

[457] In this view of the case it is unnecessary to consider the various other questions which have been discussed on the argument of this appeal.

Their Lordships will humbly report to Her Majesty that the decision of the Governor in Council be affirmed. The appellant must pay the costs of the appeal.

Appeal dismissed.

Solicitors for the appellant:—Messrs. *Blount, Lynch, and Petre.*

Solicitors for the respondent:—Messrs. *Burton, Yeates, Hart and Burton.*

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17 B. 457 = Chitty's S.C.C.R. 367.

ORIGINAL CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Bayley.

DADA BHOY DAJIBHOY BARIA (*Plaintiff*) *v.* PESTONJI MERWANJI BARUCHA (*Defendant*).* [27th January, 1893.]

Contract—Consideration—Compromise of a bona fide claim a good consideration—Agreement to lend money on mortgage—Delay in completion of agreement—Subsequent agreement to pay interest from a certain date—Consideration for such agreement—Right to rescind—Time of essence of contract—Suit by lender against borrower.

On 31st August, 1891, the plaintiff agreed to lend the defendant Rs. 30,000 on a mortgage. By the agreement the mortgagor (defendant) was to clear the title, and the time fixed for completion of the agreement was eight days from its date. The mortgage was not completed within the stipulated time, in consequence of the non-production of the title-deeds by prior mortgagees, who were to be paid off out of the money to be advanced by the plaintiff. On the 9th September, 1891, the plaintiffs solicitors wrote to the defendant reminding him that the time for completion had expired, and stating that the plaintiff would require interest to be paid on the money which he had with him lying idle on the defendant's account. On the 24th September, 1891, the plaintiff formally tendered the Rs. 30,000 to the defendant, but as no mortgage-deed was then ready for execution the money was not then paid. The plaintiff was always ready and willing to advance the money but in consequence of the defendant's delay he insisted on interest being paid from the 24th September, 1891. The title-deeds were ultimately produced at the end of November or the beginning of December, and on 7th December, 1891, the draft mortgage was sent to the defendant for approval. It contained a clause stipulating for payment of interest from 24th September, 1891. On the 9th **[458]** December, 1891, the plaintiff had an interview with the defendant. The two points then discussed

* Small Cause Court Suit No. 259—17662 of 1892.