

APPELLATE CIVIL.

Before Sir L. H. Jenkins, Chief Justice, and Mr. Justice Chandavarkar.

1901.

July 31,
August 7
and 14.

DADOBHA JANARDHAN (ORIGINAL PLAINTIFF), APPELLANT, v. THE
COLLECTOR OF BOMBAY (ORIGINAL DEFENDANT), RESPONDENT.*

*Land Revenue in Bombay—Assessment—Enhancement of assessment—
Bombay Act II of 1876—Sale of land by Government to a purchaser assessed
at a certain rate—Subsequent enhancement—Vendor and purchaser—
Estoppel—Evidence Act (I of 1872), sec. 115.*

Certain lands in Bombay consisting of three separate plots were held by the Trustees of the Free Church of Scotland Mission under a grant from Government (no deed, however, being executed) for the purposes of a school for native girls. No assessment was paid for a part of the land and a merely nominal assessment was paid for the rest. Being desirous of transferring the school to another locality, the Trustees obtained the consent of Government to sell the land, and in order to put the Trustees in a position to sell, certain indentures were executed to the Trustees. Plot 1 was conveyed by Government to them "their heirs and assigns for ever" subject to a right of resumption, but without any mention of assessment. Plots 2 and 3 were conveyed by Government to them, "their heirs, executors, administrators and assigns for ever," but in this case the conveyance was "subject to the payment of all taxes, rates, charges and assessments leviable or chargeable in respect of the premises or anything for the time being thereon."

On the 25th August, 1886, one Janardhan Gopal offered to buy the whole piece of land for Rs. 32,500, on condition (*inter alia*) that the whole property should be conveyed to him "as freehold tenure or for a nominal Government tax." The Trustees desired to accept this offer, and communications took place between them and Government with reference to it. On the 21st June, 1887, they wrote to Government stating that it was most desirable that the offer should be accepted, but that the purchaser required that the amount of assessment on the land should not exceed what was payable in respect of pension and tax tenure in the same locality, and they requested the Government to ask the Collector of Land Revenue to say "what the land would be assessed at for the purposes of the land revenue, it being assumed that the land was of the pension and tax tenure." On the 11th July, 1887, the Government passed a Resolution in reference to this request as follows: "The land in question will be liable in the purchaser Mr. Janardhan Gopal's hands to be assessed under the rules ordinarily applicable to land of the same description. The Collector should be desired, on the application of either the Secretary of the Free Church Mission or of the purchaser, Mr. Janardhan Gopal, to state what the assessment of the land revenue will be and what are the rules affecting the amount of the assessment."

* Revenue Suit No. 18 of 1899; Appeal No. 3 of 1901.

Acting on this Resolution Messrs. Ardesir Hormasji & Co. as attorneys both for the Trustees and the purchaser wrote to the Collector on the 14th July, 1887, setting forth the above Resolution, and requesting him to furnish the desired information. On the 25th July, 1887, the Collector replied: "I have the honour to inform you that the land will be assessed at the rate of nine pies per square yard per annum. This is the rate of assessment which is charged for Government land in this locality * * * * which has been followed for the last six years."

With a view to facilitate the sale by the Trustees to Janardhan Gopal, the Government on the 20th December, 1887, granted all the reversion and estate in the three plots of land to the Trustees, their heirs, administrators and assigns for ever, but subject to the payment of taxes, rates, charges, assessments leviable or chargeable in respect of the premises or anything for the time being thereon. The deed recited that the Trustees, with the approval of Government, had resolved to sell the said land and that they had agreed with the said Janardhan Gopal for the absolute sale of the same to him.

On the 16th January, 1888, the land was conveyed to Janardhan Gopal, the purchaser. The parties to the deed were the Trustees of the Mission, the Secretary of State, and the said Janardhan Gopal, and it recited that the Trustees had agreed for the absolute sale of the land to Janardhan Gopal, and with the consent of Government it conveyed the same to him, "his heirs, executors, administrators and assigns for ever, subject to the payment of all rates, taxes, charges, assessments leviable or chargeable in respect of the premises." And the Secretary of State for himself and his successors released and discharged the said Janardhan Gopal, his heirs, executors, administrators and assigns from all manner of rights, powers, authorities and privileges reserved in respect of the premises &c. &c.

In 1893 the property became vested (under a partition) in the plaintiff, who was Janardhan Gopal's son. Until 1899 the assessment of nine pies per square yard was paid, but in August 1899 the plaintiff received from the Collector a notice under section 8 of Bombay Act II of 1876 that the assessment was enhanced to six annas and six pies per square yard per annum. The plaintiff thereupon filed this suit in the Court of the Revenue Judge under section 14 of Bombay Act II of 1876, contesting the legality of the enhancement. The Revenue Judge dismissed the suit. On appeal to the High Court,

Held, reversing the decree and setting aside the order of enhancement, that the plaintiff had a right to hold the land for ever on payment of assessment at the rate of nine pies per square yard per annum, and that the Government had no right to enhance the said rate. Janardhan Gopal had purchased the property out-and-out for its full value. To such a purchaser the right to enhance the assessment should in all fairness have been clearly disclosed. The meaning that a reasonable man would under the circumstances ascribe to the Collector's letter of the 25th July, 1887, was that a specific limit of nine pies per square yard per annum was established under section 8 of Bombay Act II of 1876. That being so, the Government and the Collector were bound. The conduct of Government, coupled with the statement of Government made on their behalf

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for the purposes of the purchase was, under the circumstances, such as to create and encourage in the purchaser as a reasonable man the belief that he was purchasing property substantially worth Rs. 33,000, and that Government were not silently reserving to themselves an unfettered right to destroy the value of that property and practically to confiscate that which had been sold.

APPEAL from the decision of the Revenue Judge, W. Webb, Acting Chief Presidency Magistrate.

By a notice dated the 24th August, 1899, but served on the plaintiff on the 1st September, 1899, the Collector of Bombay, under section 8 of the Bombay Act II of 1876, gave the plaintiff notice that he had fixed the assessment for land revenue payable by the plaintiff in respect of certain land situate in Bombay of which he was the owner, at six annas and six pies per square yard per annum, such assessment to come into force on the 1st October, 1899, and to be guaranteed for fifty years. The assessment on the said land up to that time had been nine pies per square yard.

The plaintiff immediately filed this suit in the Court of the Revenue Judge of Bombay under section 14 of Bombay Act II of 1876 contesting the legality of the assessment.

On the 10th October, 1900, the Revenue Judge dismissed the plaintiff's suit with costs. The plaintiff now appealed.

The land in question belonged to the Government of India, and originally consisted of three separate plots adjacent to each other situate near French Bridge, Girgaum, in Bombay. It had been held since the year 1865 by the trustees of the Free Church of Scotland Mission, and used by them for the purposes of a boarding school for native girls. Plot No. 1, consisting of 1,484 square yards, was granted to the said trustees in or about the said year as a site for the school. Plot No. 2, consisting of 1,011 square yards, was used as a play-ground, and was held by the trustees on a yearly tenancy at a nominal rent; and plot No. 3, consisting of 578 square yards, was a passage used for the purpose of access to the back of the school-house. It was held on sufferance. Although the whole of the land was in the possession of the said trustees from about the year 1865, no deed in respect of any portion of it was executed until the year 1884 as hereinafter stated,

In the year 1879, the trustees considered the situation unsuitable and desired to transfer the school elsewhere. They accordingly addressed a letter to Government requesting permission to sell the school-house and the land connected with it and to devote the proceeds of such sale to the establishment of the school in another locality. The Government assented to this proposal, and in order to put the trustees in a position to sell, the Government by a deed dated 1st October, 1884, conveyed plot No. 1 to them, "their heirs and assigns for ever," and by a lease of the same date plot No. 2 was leased to the said trustees for a year as from the 1st July, 1865, and so from year to year at the yearly rent of Re. 1, until the demise should be determined. This lease contained a covenant by the lessess to pay "all rates, taxes, assessments, duties and charges which are or may become due or payable in respect of the said premises."

An offer to purchase the land was subsequently made by one Narayan Mulji, and the Secretary to the Mission requested the Government of Bombay to ascertain from the Government of India on what terms the land could be made over to a purchaser. The Government of India suggested that the whole of the land should be sold as one plot and should be valued as such by a professional valuer.

On the 25th August, 1886, Janardhan Gopal, the father of the plaintiff, made the following offer to purchase the land in question :

"I have this day made an offer of Rs. 32,500 (Rupees thirty-two thousand and five hundred) for the purchase of the building near French Bridge, known as the Free Church Boarding School, together with the site admeasuring about 1,450 square yards belonging to the school and also all that piece of ground admeasuring 1,011 square yards at the rear or between the school site and the Railway line.

The whole property as above described admeasuring 2,461 square yards or thereabouts shall be conveyed to me as freehold tenure, or for a nominal Government tax.

The vendors shall make out a marketable title to the aforesaid property. In the event of their inability to do so, it will be at my option to complete the contract or not. The entire expense of conveying the whole property to me by the Free Church Mission as aforesaid to be borne half and half by me and the vendors.

In case of the Government refusing to sell the piece of ground admeasuring 1,011 square yards for Rs. 5 per square yard, the writing to fall through.

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If the final conveyance is not executed within four months from this date, it shall be at my option to make myself free from the contract.

The final conveyance should be executed by all the proper parties.

This contract is effected through Messrs. Sorabshaw and Company, and they shall be entitled on completion of the purchase, but not otherwise, to their brokerage at two per cent. on the purchase-money from the purchaser and two per cent. from the vendors."

On the 31st August, 1886, the Secretary to the Mission forwarded the above offer to Government with the following letter :

To the Honourable J. B. RICHEY, Esq., C.S.I.,

Chief Secretary to Government.

Sir,—In a letter dated 24th July, 1879 (a copy of which is annexed), the Acting Chief Secretary to Government communicated to us the favourable reply of His Excellency the Governor in Council to our application for permission to sell the Free Church Boarding School near French Bridge.

2. For some time no suitable offer was forthcoming and the school continued to work on under the difficulties which first led to our application. But then especially the openly immoral character of the immediate surroundings having been increasingly obnoxious, it has been felt necessary to make special efforts to dispose of the building, and I have now the honour to submit for the consideration of Government the accompanying offer which is the most favourable that has yet been made to us. (See copy annexed.)

3. The sale of the building has been retarded mainly by our inability to offer for sale along with the building and its limited site, the plot No. 2 of ground lying between the school site and the Railway, which is held by the school for the purpose of a compound at a nominal rental of one rupee per annum. We are not in a position to guarantee to the purchaser the enjoyment of the same privileges in regard to this portion of land, and as the ground attached to the school in freehold comprises a little less than 1,500 square yards, it is considered inadequate by the purchaser who desires to acquire the property as a residence.

4. The present offer requires that the ground sold with the school should include this piece of land, and we have the honour to request that Government may be pleased to make such arrangements with respect to this portion of ground as will facilitate the disposal of the property.

5. Judging from our recent experience, we have reason to think that the offer in question is one which we should accept if we could thereby transfer, after brokerage and other expenses have been deducted, say Rs. 28,000 to any other property of which Government may approve, but apart from this particular offer on which we have now the honour to ask the orders of Government, it is of very great importance that this portion of ground, which is so situated as to be of very little use to any other property should, if possible, be made over to

the school and disposed of along with the school building as part of the site pertaining to it.

(Signed) D. MACKICHAN.

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By Government Resolution, dated the 6th September, 1886, the Collector of Bombay was requested to carry out the instructions of the Government of India with regard to the valuation of the land, and he thereupon employed Mr. John Campbell, a Surveyor, to value the land. Mr. Campbell made a report showing the total value of the land and building in occupation of the Mission to be Rs. 31,936, the value of plot No. 2 (1,011 square yards) being taken at Rs. 1-8-0 per square yard. This report was forwarded by the Collector to the Government, which on the 18th December, 1886, passed the following Resolution :

The land should now be sold in accordance with the instructions of the Government of India in their letter No. 228 of 31st July last, embodied in Government Resolution No. 1420 of 6th September, 1886, the Free Church Mission paying to Government the price of the plot as valued.

This Resolution was forwarded to the Mission, and on the 15th January, 1887, the Secretary of the Mission informed the Government that they had determined to accept the offer of Mr. Janardhan Gopal, who had agreed to pay Rs. 82,500 for the whole property.

On 11th February, 1887, Messrs. Ardeshir, Hormasji and Dinsha, who were acting as Solicitors both of the purchaser and the Mission, submitted to the Collector for approval two draft conveyances, viz. —(a) a conveyance of the leasehold plot No. 2 to the trustees with a view to this plot being included in the sale to Janardhan Gopal, and (b) a conveyance of the whole of the land to Janardhan Gopal.

On the 28th February, 1887, the Collector returned the drafts to Messrs. Ardesir Hormasji and Dinsha "duly approved by the Government Solicitor as altered in red ink." These drafts were lost and were not produced at the hearing of the case, but the following letter, which was produced and put in, addressed by Messrs. Ardeshir, Hormasji and Dinsha to the Collector, shows the nature of the alterations made in the drafts :

Bombay, 19th March, 1887.

To J. MACLEOD CAMPBELL, Esq., Acting Collector, Bombay.

Sir,—Referring to your letter to us of the 28th ultimo, returning draft

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conveyance in this matter approved on behalf of Government, we have the honour to state that the alterations made in the drafts to the effect that the property shall be subject to taxes, assessment, &c., are inconsistent with the agreement of sale of the 25th August, 1886, between the trustees of the Free Church Mission of the one part and Mr. Janardhan Gopal, purchaser, of the other part, whereby it was stipulated that the whole of the property should be conveyed to the purchaser as a freehold tenure or for a nominal Government tax, which agreement was before Government when they were pleased to sanction the sale by the trustees.

Our client, Dr. Mackichan, the Secretary to the Mission, personally saw the Solicitor to Government, with a view to have the alterations in the drafts removed, but he was referred by him to you. Whereupon Dr. Mackichan and subsequently our Mr. Ardeshir saw you personally on the subject. Mr. Ardeshir at the interview he had with you understood that the alterations had reference only to municipal taxes. If so, we propose that the alterations be so modified as to make this clear by express mention and to exclude Government rights also by express mention.

We have accordingly modified the alterations in blue ink and we now send the drafts again to you for approval so far as the point in issue is concerned.

As the Rev. Mr. Miller, one of the trustees, will have to sign the deeds, and is shortly to leave for Europe, we request that you will be so good as to expedite the return of the drafts.

(Signed) ARDESHIR, HORMASJI AND DINSHA,
Purchaser's Attorneys.

On the 31st May, 1887, the Secretary to Government wrote to the Mission as follows :

Sir,—With reference to the correspondence ending with the Department letter No. 271, dated 15th February, 1887, I am directed to inform you that the Acting Collector of Bombay, in forwarding for the approval of Government two draft conveyances connected with the sale of the Free Church Boarding School near the French Bridge, has brought to notice that Messrs. Ardeshir, Hormasji and Dinsha, Solicitors to the Free Church Mission, contend that the alterations made by the Solicitors to Government at pages 11 and 25 of the drafts are not consistent with the agreement of sale, dated 25th August, 1886, between the Free Church Mission and Mr. Janardhan Gopal. I am to state that Government have no knowledge of this agreement of the 25th August said to have been come to between the trustees of the Free Church Mission and Mr. Janardhan Gopal; it has never been before them, nor was Government a party to it. Government therefore are of course in no way bound by this agreement.

2. I am to add that in the absence of any order of Government sanctioning the conveyance of the land to Mr. Janardhan Gopal free of liability to assessment to the land revenue, the Solicitor to Government has rightly assumed that no such exemption was contemplated.

In reply the Secretary to the Mission wrote as follows :

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With reference to your letter No. 894 of 1887 re the sale of the Free Church Boarding School near the French Bridge, Girgaum, I have the honour to state that a provisional agreement was come to in August last between the trustees of the Free Church Mission and Mr. Janardhan Gopal, and that it has been with the view of completion of this agreement that questions concerning the property have been since that date before the Governments of India and Bombay.

It was not the understanding or intention of the Mission that the agreement was binding on Government. And neither the Mission nor the purchaser expected a complete exemption of the land referred to in the agreement from assessment to land revenue. What the Solicitors, Messrs. Ardeshir, Hormasji and Dinsha, point out is that the price offered by the purchaser, viz. Rs. 32,500, for the property was on the understanding expressed in the agreement for sale that the purchaser would not be required to pay to Government more than a nominal Government tax. We understand that what the purchaser asks is that the amount charged may not exceed what is payable in respect of land of pension and tax tenure in the locality.

Having regard to the fact (1) that the piece of land containing 1,484 square yards has been held by them free from assessment to land revenue, and (2) that they pay only one rupee per annum on account of the vacant land, the trustees believe that even in the event of the sale of the same and the consequent change in the ownership of it Government would not place a heavy assessment on it ; that at any rate they would not assess it in excess of what the land was subject to before it was let to the Mission or of what pension and tax land in the neighbourhood is liable to pay.

It is the earnest desire of the Mission that this contract be completed.

Under the circumstances we hope that Government will be good enough to state or ask the Collector of Land Revenue to say what the land will be assessed at for purposes of the land revenue, it being assumed that the land was of the pension and tax tenure. The completion of the sale depends on the determination of this question, as also on the question whether a small piece of land which though not included in the original grant has been used as a portion of the school premises (which question is already the subject of correspondence between Messrs. Ardeshir, Hormasji and Dinsha and the Collector) shall be included in the sale to Mr. Janardhan, and I have to state that the Mission will feel greatly obliged to Government for an early disposal of the matter.

On the 11th July, 1887, the Government published the following Resolution with reference to the above letter of the 21st June :

It of course does not follow that because Government allowed the land to be free of assessment or to be assessed at only a nominal amount as long as it was occupied for the purposes of an educational institution, they will continue that exemption when the land passes for other purposes into other hands. It would not be fair to the general tax-payers for Government to do so.

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The land in question will be liable in the purchaser Mr. Janardhan Gopal's hands to be assessed under the rules ordinarily applicable to land of the same description. The Collector should be desired on the application of either the Secretary of the Free Church Mission or of the purchaser, Mr. Janardhan Gopal, to state what the assessment of the land to the land revenue will be, and what are the rules affecting the amount of the assessment, and the Secretary should be informed that the Collector has been so desired.

On the 14th July, 1887, Messrs. Ardeshir & Co. wrote the following letter to the Collector :

In a letter addressed by the Acting Chief Secretary to Government to the Secretary, Free Church Mission, in reference to the claim for exemption from land revenue made by the purchaser of the above property, the latter has been informed that you had been requested on the application either of the Free Church Mission or the purchaser, Mr. Janardhan Gopal, to state what the assessment of the land revenue will be and what are the rules affecting the amount of the assessment. We have therefore, as attorneys for both the Mission and the purchaser, to request that you will be so good as to furnish us with the desired information.

We understand that the whole of the land was of Pension and Tax tenure prior to its having been taken over by Government for the purpose of the Mission school.

On the 25th July, 1887, the Collector replied

In reply to your letter of the 14th instant on the subject of the assessment of the land occupied by the Girgaum Mission school, I have the honour to inform you that the land will be assessed at the rate of nine pies per square yard per annum. This is the rate of assessment which is charged for Government land in this locality in accordance with a scale of varying rates in different localities which was laid down by Mr. Jacomb when Collector and which has been followed for the last six years.

The fact that the land was of the Pension and Tax tenure before it was taken up by Government does not affect the assessment now to be levied, as the pension and tax tenure ceased when the land was bought up by Government.

On the 20th December, 1887, a deed was executed between the Secretary of State for India of the one part and the trustees of the Mission of the other part; whereby, after reciting the above-mentioned lease of plot 2, dated the 1st October, 1884, and that the land then demised was so demised as a play-ground in connection with the land and the hereditaments (*i.e.* plot No. 1) adjoining the same which were also granted by Government to the said trustees by another indenture of the 1st October, 1884

(abovementioned), and that another piece of land (plot No. 3) had been permitted to be used as part of the garden and play-ground aforesaid and had been treated as held by the said trustees on sufferance and that the said trustees had with the approval of Government resolved to sell all three pieces of land and that Government with a view to facilitate the said sale had agreed to grant to the trustees all their reversion and estate in the said respective premises and that the trustees had entered into a contract with one Janardhan Gopal for the absolute sale to him of all three pieces of land, it was witnessed that the Government did thereby grant to the said trustees, their executors, administrators and assigns as to plot No. 2 all their reversion and estate expectant on the determination of the lease of the 1st October, 1884, and as to plot 3 all their reversion and estate expectant on the determination of the beforementioned demise on sufferance to hold all the aforesaid premises to the use of the said trustees, their heirs, executors, administrators and assigns, "but subject to the payment of all taxes, rates, charges and assessments leviable or chargeable in respect of the said premises or anything for the time being thereon."

On the 16th January, 1888, the whole of the aforesaid land consisting of the said three plots was conveyed to Janardhan Gopal for Rs. 33,000. The parties to the conveyance were the trustees of the Mission of the first part, the Secretary of State of the second part, and Janardhan Gopal of the third part, and the land was thereby conveyed to the said Janardhan Gopal, his heirs, executors, administrators and assigns for ever "but subject to the payment of all taxes, rates, charges, assessments leviable or chargeable in respect of the said premises or anything for the time being thereon;" and the Secretary of State did thereby for himself and his successors acquit, release and for ever discharge the said Janardhan Gopal, his heirs, executors, administrators and assigns of and from all manner of rights, powers, authorities and privileges to him and his successors reserved in respect of the premises therein—before fully described in and by the indenture of grant of the 1st October, 1884, and from all consideration, limitation and obligation by the said indenture imposed upon the use and enjoyment of the said piece of land and hereditaments and premises.

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In 1893 the land in question became vested in the plaintiff (the son of Janardhan Gopal) on a partition. Until 1899 the assessment thereon at the rate of nine pies per square yard was paid, but on the 24th August, 1899, the Collector gave the notice already mentioned to the plaintiff that after the 1st October 1899 the assessment would be at the rate of six annas and six pies per square yard and was guaranteed for a period of fifty years from that date.

The plaintiff thereupon (on the 26th September, 1899) filed this suit under section 14 of Bombay Act II of 1876.

By Government Resolution, dated the 6th January 1900, the enhancement of assessment made by the Collector was sanctioned.

In his plaint the plaintiff set forth the above facts and relied on the letters above set forth of Messrs. Ardeshir Hormasji and Dinsha to the Collector, dated the 14th July 1887, (*supra* page 722) and the Collector's reply, dated the 25th July, 1887 (*supra* page 722). The following paragraphs of the plaint are material:

10. On the faith of the understanding that assessment at the rate so fixed and no more would be charged by Government to the purchaser with regard to the said premises the purchaser completed the said purchase, and the said assessment has been since paid.

11. The plaintiff says that the purchaser had from the first stipulated for a fixed nominal assessment, and that though he consented in the end to the substantial assessment fixed by Government, he never imagined that the said assessment was to be subject to revision and enhancement at the pleasure of Government, and that neither during the course of the negotiations nor at the completion of the said purchase was any intimation given to the purchaser by or on behalf of Government that the assessment they wished to fix and which they did fix would be liable to revision and enhancement, and the plaintiff submits that if any such revision or enhancement was in contemplation, which he denies, or was believed to be competent to Government, they were in law bound to have informed the purchaser of the same before he completed the purchase and they would have done so.

12. Recently, however, the plaintiff has been served with a notice from the Collector of Bombay, dated the 24th day of August last, but received by the plaintiff on the 1st instant, intimating that he had fixed the assessment on the said premises at the rate of six annas and six pies a square yard, the same to come into force on 1st October, 1899. This assessment will amount to Rs. 1,248-6-0 per annum, which sum, even at 25 years' purchase, represents a capital value for the land above of Rs. 31,200, which land is thus claimed to be

still in Government in spite of the absolute grant by them of the said premises at their full price and value to the said trustees and through the trustees to the plaintiff's father, and through the latter to the plaintiff as hereinbefore more particularly set out. The plaintiff says that if the said assessment be upheld the effect of it would be to reduce the selling value of the said property by fully Rs. 30,000.

13. The plaintiff says that the said revision and enhancement of assessment are in breach of the agreement and understanding above referred to, and that in any case Government by their conduct aforesaid are estopped from claiming any right to enhance the assessment once so fixed. The plaintiff states that if any intimation or hint that Government claimed such right had been given to the said purchaser before the completion of the said purchase, the said purchaser would have been entitled to refuse to complete the said purchase and would certainly have refused to do so, nor would any other purchaser for the said property have been found. The plaintiff is also advised and submits that Government can claim no rights in respect of the said premises which are not expressly or by necessary implication reserved to them under the said Indentures executed by them to the said trustees and the purchaser, and that the said Indentures do not contain any such reservation.

14. The plaintiff therefore contends that in the circumstances above set out there is a right on his part in limitation of the right of Government to raise the said assessment and that a specific limit to assessment, viz. nine pies per square yard per annum, has been already established and preserved with regard to the premises in question within the meaning of section 8 of the City of Bombay Land Revenue Act, under which the said assessment has been raised, so that no assessment can be fixed which exceeds such limit.

15. The plaintiff also says that if there be any right in Government, which he denies, to enhance the assessment once fixed on the said premises, the enhancement now made is in any case beyond reason and precedent premature, and is also beyond reason and precedent excessive for land of the character in question, and on those grounds also the said assessment is wrong and illegal, and ought to be disallowed.

The prayer of the plaintiff was as follows :

(a) That it may be declared that there is a right on the part of the plaintiff in limitation of the right of Government to hold his said land for ever on payment of assessment at the said rate of nine pies per square yard per annum and that Government have no right to enhance the said rate.

(b) That in any case the said revision of assessment may be declared to be premature and may be set aside.

(c) That in any case the increased assessment may be declared to be unreasonably excessive and unwarranted by anything that has occurred in the circumstances of the property and that the same may be set aside.

(d) That the defendant may be ordered to make full and complete discovery to him of all the documents and papers, including all Government Resolutions,

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instructions and rules in his possession or power in any way relating to the said original assessment of the said land and to the revision and enhancement of it now notified by the defendant.

(e) That the plaintiff may have such further or other relief as the circumstances of the case may require.

The following was the defendant's written statement :

1. The defendant says that the Government were not parties to the negotiations between the plaintiff's predecessor in title and the trustees of the Free Church of Scotland Mission for the purchase by the former of the land and premises in the plaint described, and that the Government did not agree, nor hold out any representations to the parties to such negotiations that the said land and premises should be assessed at a nominal assessment and that such assessment should thereafter be maintained for ever or for any definite time at the same amount. As a matter of fact, the Government refused to agree that the said land and premises should be treated in any way different from other Government lands which were liable from time to time to be assessed.

2. The defendant further says that the Government never agreed nor represented that the said trustees should be enabled or would be able to convey to the plaintiff's predecessor in title an estate in fee simple free from Government assessment or from assessment at anything more than a nominal sum.

3. At the time of the purchase of the land and premises, Messrs. Ardeshir Hormasji and Dinsha were acting as attorneys for the purchaser as well as for the trustees in the matter of the said purchase and they were duly informed of the fact that the Government were not willing that the said land and premises should be conveyed to the purchaser in fee simple, but that the said land and premises would be assessed in the same manner as other assessable Government lands were assessed and the said land and premises were conveyed to the purchaser subject to the payment of Government assessment.

4. The defendant further says that the enhanced assessment complained of in this suit is perfectly legal and is not contrary to any agreement or understanding on the part of the Government, nor is the Government estopped by any conduct on their part or that of their officers from making such enhancement.

5. The defendant further says that if the Government are entitled to enhance the assessment on the land and premises, it is not competent to this Court to interfere with the amount thereof, but if the plaintiff feels himself aggrieved thereby his remedy is to petition the Government for a reduction of the assessment now put upon the said land and premises.

The following issues were raised at the hearing :

1. Whether there is a right on the part of the plaintiff in limitation of the right of Government to hold his land for ever on payment of assessment at the rate of nine pies per square yard per annum.

2. Whether the Government ever agreed or represented that the said land should be conveyed to the plaintiff's predecessor in title in fee simple from Government assessment or from assessment from anything more than a nominal sum.

3. Whether there is any right on the part of the plaintiff in limitation of the right of Government through the Collector to assess land from time to time at his discretion.

4. Whether it is competent for this Court to inquire into the unreasonableness or excessiveness of assessment fixed by the Collector and to set aside or alter the same.

5. Whether there was any understanding as set out in paragraph 10 of the plaint, and if so, whether Government was a party thereto as alleged.

6. Whether the notice of the assessment issued by the Collector of the 24th August, 1899, was issued under the orders or with the authority of Government.

7. If not, whether such notice is not illegal and inoperative so as to terminate any right or interest of the plaintiff.

8. Whether the plaintiff is not entitled to hold 1,484 square yards, a portion of the land in the plaint mentioned, free from all Government assessment for ever.

9. Whether the Government have any right to enhance the rate of assessment in respect of any, and if so, what portion of land in suit.

10. If so, whether Government are not estopped by their conduct, representation and acts from asserting such right.

11. The general issue whether plaintiff is entitled to the relief prayed for or any part thereof.

12. Whether the revision of the assessment in the plaint complained of is not premature beyond precedent.

The Revenue Judge (Mr. Webb, Acting Chief Presidency Magistrate) dismissed the suit with costs. In his judgment he said :

It has been argued for the plaintiff that plot No. 1 was held by him or his predecessor in title as an absolute freehold property free from all taxation and that the proviso 'subject to all rates, taxes, &c.' contained in the deed conveying to him his title was not applicable to plot No. 1. On this point, however, as it appears to me, this proviso manifestly applies to all the three plots, or in other words to the land conveyed to Mr. Janardhan, and this view was accepted by him when the deed conveying to him the property received his signature, and also by his subsequent action in paying the Collector's bills of assessment at the rate of nine pies per square yard on the whole of the property so conveyed. I am therefore of opinion that the plaintiff is not entitled to hold 1,484 square yards (plot No. 1), a portion of the land in the plaint mentioned, free from all Government assessment for ever, and in no other manner has any attempt been made to show that there was any understanding between the Government and the plaintiff's predecessor in title that he should hold the ground at the rate of assessment then fixed for ever as set forth in paragraph 10 of the plaint.

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Although it has been argued that the defendants are now estopped by their conduct, misrepresentations and acts from asserting their right, (if they possess such right) to enhance the rate of assessment of any portion of the land—not by intentional misrepresentation on their part, but by their acts leading the plaintiff's father to believe as an ordinary man would be induced to believe, that the fixing by Government of nine pies per square yard as the rate of assessment on the said land at the time of its purchase by him would continue for ever, and that as a reasonable person he accepted this as a representation of their intention that there would be no enhancement but that the rate then fixed would continue in perpetuity, yet no evidence has been given to show that Government either intentionally or indirectly led the plaintiff's father to believe that Government conferred on this land the right to a fixed and permanent rate of assessment, and I have been unable to find in any of the correspondence admitted in evidence which passed between Government and the plaintiff's father, or any one acting in his interest or on his behalf, that any conduct on Government's part misled him or that any reasonable inference that such was their intention could be drawn from any acts on their part or behalf at that time.

The deed of conveyance to Mr. Janardhan Gopal is barren of any specified fixed rate, and it is worthy of note that he made no attempt to have the specific rate he says he believed he should ever be called on to pay embodied in the deed.

With respect to the issue whether the revision of the assessment is not premature beyond precedent, no evidence has been offered, and there is therefore nothing to show me that such is the case.

There appears to me nothing in the Revenue Act to show that when there has been no specific limit to assessment established and when there is no right on the part of the superior holder in limitation of the right of Government to assess, the Collector cannot, subject to the control of Government, assess land from time to time, and that therefore there is nothing illegal in the enhancement of the assessment by him of the plaintiff's property. It may be (and if the evidence of the plaintiff's father is to be believed, and there is no reason to doubt it,) that he is undergoing a hardship in having to pay assessment on his land at a rate which would leave him a return of Rs. 7 per mensem on a capitalized sum of Rs. 47,000, and were it a part of my duty to do so, I should say his was a case entitling him to sympathy, but this is entirely a matter to be met by appeal to Government praying under the circumstances for a reduction of the enhanced assessment, but I am not called on to do more than decide what in my opinion is the law on the issues raised in this suit and whether the plaintiff is entitled to any part of the relief prayed for, and for the reasons above stated I do not think he is entitled to any relief in this suit. I find therefore all the issues in the defendant's favour and dismiss the suit with costs.

The plaintiff appealed. The grounds of appeal stated in his memorandum of appeal were as follows:

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1. That the notice of enhancement, dated the 24th August, 1899, was not issued under the order or with the authority of Government, and that the subsequent sanction of Government by Resolution dated 6th January, 1900, did not render such notice valid.
2. That the Revenue Judge was wrong in holding that it was not competent to him to inquire into the reasonableness of the assessment.
3. That the Revenue Judge was wrong in holding that when land revenue has once been fixed and levied under section 8 of Bombay Act II of 1876, the Collector had power from time to time to enhance such assessment.
4. That the plaintiff had proved as to plot No. 1 that Government had parted with all their rights in said plot and that he held it as absolute owner free from all right of Government to assess.
5. That as to plots 2 and 3 the Judge ought to have held that the plaintiff had proved that a specific limit to assessment, viz. nine pies per square yard, had been established and preserved, and that neither the Collector nor Government had power to exceed such limit.
6. That in the alternative and assuming that the said land was liable to assessment in 1887, the Collector as the representative of Government was estopped by the conduct, acts and representations of Government during the negotiations for the purchase of the said land by the plaintiff's father, from alleging that the fixed limit of assessment of nine pies per square yard had not been agreed to in perpetuity by Government.
7. That the Judge ought to have held that the Government had led the plaintiff's father to believe that the land would be sold and conveyed to him subject to the payment of assessment in perpetuity of nine pies per square yard per annum, and that upon the faith of such representation by Government, the plaintiff's father was induced to buy the property which he would not have done had he been given to understand that the assessment was liable to be enhanced, and that therefore the Judge ought to have held that the Government were now estopped from exercising their right (if any) to enhance.
8. That the Judge was wrong in holding that there was not any understanding as alleged in paragraph 10 of the plaint and that Government was not as part to such understanding.

Rivett-Carnac and *G. S. Rao* for appellant:—We contend that the Collector had no right to enhance the assessment on the plaintiff's land. First, we say that the notice of enhancement dated the 24th August, 1899, served on the plaintiff was unauthorised and invalid. By section 8 of Bombay Act II of 1876 the Collector is to act "subject to the orders of Government." If these words have any meaning, it is that the Collector must obtain the sanction of Government before he acts. A subsequent sanction is not enough. In this case Government did not sanction

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the enhancement until the 6th January, 1900, *i.e.* five months after the notice of enhancement was given.

Next, we submit that the use of the word "settlement" in section 9 of the Act implies negotiation with the person whose land is to be assessed. In this case the plaintiff was given no opportunity of stating his case to the Collector. He knew nothing of the intention to enhance the assessment until the notice was served on him and then he had no remedy but a suit within thirty days under section 14 of the Act. It is clear that section 9 contemplates a decision reached after consultation. Compare also Regulation XVII of 1827, section 3, which related to assessment of land in the mofussil.

Further, we submit that the Act only authorises the assessment of land held under Government, *i.e.* land of which Government is the owner, but which is held by a tenant under Government. It does not authorise assessment of land which as in this case has been conveyed away by Government and in which Government retains no rights as owner. Clause 4 of section 3 defines "superior holder." That definition implies that Government possesses some title to or right in the land. The superior holder is the person who has the highest title to it next after the Government. It is with that person (section 9) that the assessment is to be settled, and it is with reference to that person's rights it is to be fixed (section 8). But the Act does not contain any provision for assessing land held in freehold and in which the Government has no rights at all.

Next we say that the enhancement in this case is unreasonable. It amounts really to a confiscation of the plaintiff's property. The Revenue Judge was of opinion that he had no power to go into this question. We submit that he was wrong. The Court under section 14 can deal with any question arising on sections 8 to 13 of the Act, and the question of reasonableness of enhancement is such a question.

[CHANDAVARKAR J.:—How is that question to be dealt with by the Court?]

By taking evidence as in the case of any other question of fact. It could not have been intended to leave every landholder in Bombay absolutely at the mercy of the Collector without appeal.

The Collector necessarily acts upon the report or suggestion of some subordinate in fixing the assessment and ordering a notice of enhancement to be served. There is no inquiry into the value of the land. The landholder is not called upon or permitted to state his case. It cannot have been intended that under such circumstances the decision of the Collector should be final and that the landholder should be without redress.

Prior to Bombay Act II of 1876, the law as to land revenue in the Town and Island of Bombay was Regulation XIX of 1827. Clause 2 of section 3 of that regulation gave the Revenue Judge power to deal with the question of amount and reasonableness of assessment. Section 14 of the present Act should be construed in the same way. In the case of *Shapurji Jivanji v. The Collector of Bombay*,⁽¹⁾ Scott, J., was wrong in holding that he could not go into the question. He decided upon the authority of the Kanara case.⁽²⁾ But that was a case from the mofussil and was governed by a different regulation, viz. Regulation XVII of 1827. Clause 2 of section 9 of that regulation was in that case construed to give a right of suit only when exemption from assessment was claimed. Immediately after that decision Act X of 1876 was passed, which by section 4 only permitted a civil suit in certain cases, but section 1, clause (a), expressly exempts the Collectorate of Bombay from the operation of that Act. Bombay Act II of 1876 was subsequently passed (October, 1876). So it is clear that the rights of the landholders in Bombay are not affected by the decision in the *Kanara case*⁽²⁾ or by Act X of 1876.

Further, we submit that once an assessment is fixed upon land under section 8 of Bombay Act II of 1876, it cannot be enhanced unless it has been expressly fixed for a certain time. If no time is limited, an assessment once made by the Collector must be taken to be a permanent assessment. There is no provision in the Act giving power to enhance an assessment once fixed under section 8.

On the facts we say the Government is estopped from enhancing the assessment on the plaintiff's land. The evidence shows clearly

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(1) (1885) 9 Bom, 483.

(2) (1875) 12 B. H. C. R. Appendix 1,

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that the plaintiff bought the land in 1887 on the understanding that it would be assessed at the rate of nine pies per square yard only. The Collector's letter of the 25th July, 1887, stated that to be the rate, and it was upon that assurance the plaintiff paid the purchase money.

Scott (acting Advocate General) and *Kirkpatrick* for the respondent (the Collector of Bombay):—The decree of the lower Court is right. The Government has the power to enhance and the plaintiff has not shown that any specific limit to assessment has been established.

The Collector's notice of enhancement under section 8 of Bombay Act II of 1876 does not need the previous sanction of Government. When the act of the Collector requires such previous sanction, an express provision to that effect is made: see section 6, clause 3, and section 26, clause 2, of the Act. The words in section 8 "subject to the orders of Government" mean merely that the Collector, in fixing the assessment under that section, is subject to the control of Government. A subsequent sanction is sufficient.

The word "settlement" in section 9 does not imply that the Collector before fixing the assessment must consult or communicate with the landholder. By section 8 he has an absolute discretion subject only to the control of Government and his decision is final: see section 14. "Settlement with the superior holder" means that the assessment as settled or fixed by the Collector is to be charged upon the superior holder. The words do not mean a settlement "by or between" the Collector and the superior holder. By the old law regulating assessment in the mofussil (see section 40 of Regulation XVII of 1827), it was provided that the Collector before assessing land might "call upon the occupant" to show that he was entitled to exemption. There are no such words in the Bombay Act II of 1876 relating to assessment in the Island of Bombay.

Unless Government expressly surrenders its rights as to any particular land, it has a right to raise a revenue by assessing all land. The revenue is raised for public purposes and necessities. The Government alone is the judge of those necessities. As to land in the mofussil this right of Government is expressly declared in Regulation XVII of 1827, section 2, clause 2. See also the Act

now in force : Bombay Act V of 1879, section 45. As to the Island of Bombay such a declaration was unnecessary. Here the English law has applied since the cession of the island in 1660. See *Naoroji v. Rogers* ⁽¹⁾ and *Lopes v. Lopes*. ⁽²⁾ As to English law, see Stephen's Blackstone (10th Ed.), Vol. 2, page 583.

The right to assess land is not limited to tenures of any particular description. See also Warden on Land Tenures in Bombay, paragraph 274, clause 10. It is not limited to lands of which Government is the owner. The words "superior holder" in Bombay Act II of 1876 do not imply that assessment can be levied only on Government land held by a tenant under or from Government. They indicate the person having the highest right to the land, but subject always to the paramount right of Government so far as assessment is concerned. The Act provides that it is upon him in the first instance that the assessment is to be levied. See also the definition of superior holder in Bombay Act V of 1879, section 3, clause 13.

It is not competent for the Civil Court to inquire into the reasonableness of the assessment. This suit is brought under section 14 of Act II of 1876. That section only permits the legality of the Collector's decision to be questioned in a suit. His decision upon all other questions is final, but it may be stayed until the question of its legality is decided. There is no law which fixes the measure of reasonableness, and no legal question can be raised on that point.

An assessment, unless declared to be made for a definite time, may be enhanced. There is nothing in the Act to forbid enhancement from time to time, and nothing to indicate that an enhancement once made is permanent. In England periodical assessments of land tax were made until a fixed rate was made perpetual by Stat. 38 Geo. III. c. 69, Stephen's Blackstone (10th Ed.), Vol. 2, page 588. As Scott, J., says in *Shapurji v. The Collector of Bombay*, ⁽¹⁾ "it is not only legal but politic and just to increase assessments in accordance with the increased value of land."

As to the facts in this case, it is clear that the Government when selling the land in question in 1887 to Janardhan Gopal

(1) (1837) 4 B. H. 1 C. R. pp. 30, 31 & 33. (2) (1868) 5 B. H. C. R. 172, pp. 178-9.

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never intended to surrender its right to assess. The purchaser must be presumed to have known that by law the assessment then leviable was not permanent, but was liable to further enhancement. The case of *Shapurji v. The Collector of Bombay*,⁽¹⁾ which raised the question of the right to enhance, had been decided only a few months previously. The purchaser was then a solicitor of the High Court. The Collector's letter of the 25th July, 1887, (*supra* page 722) could not have misled him. The Government Resolution of the 11th July, 1887 (*supra* page 721) stated that the land would be subject to the usual rules of assessment. Since the date of the purchase the assessment has been paid on bills which stated that it was levied under Bombay Act II of 1876. It is under this Act the enhancement is made; so that from the first the purchaser has been aware that enhancement was possible and he has acquiesced. It was upon those terms that he acquired the land and has held it ever since.

JENKINS, C.J. :—The plaintiff in this suit seeks a declaration that there is a right on his part, in limitation of the right of Government, to hold his land, particularised in the plaint, for ever on payment of assessment at the rate of 9 pies per square yard per annum, and that Government have no right to enhance the rate. On this and other grounds he seeks to have the increased assessment that has been imposed on his land set aside: The Revenue Judge has dismissed the suit with costs, and from this decision the plaintiff has appealed to this Court.

Originally, so far as the record before us shows, the land was of the pension and tax tenure. It was, however, purchased by Government from the holder, and a part of it was granted (though no deed was executed) to certain persons for the benefit of the Free Church of Scotland Mission. At the same time the Government made a grant-in-aid of Rs. 25,000 towards the erection and establishment of a school. A school house and other buildings were in due course erected.

The character of the locality, however, rendered it desirable to move the school elsewhere, so on the 29th April, 1879, Dr. Mackichan on behalf of the Mission wrote to Mr. Peile, the

(1) (1885) 9 Bom. 348.

Secretary to Government, asking for the sanction of Government to a sale of the land. On the 24th of July, 1879, a reply was received, stating that His Excellency the Governor in Council was prepared to consent to the sale on certain terms mentioned in the letter. The second and third paragraphs of the letter are as follows :

I am directed to inform you that His Excellency the Governor in Council has favourably considered this request, and is prepared to consent to the sale on the same terms as these recently offered in disposing of a similar request made by the Diocesan Board. These terms were that, on Government being satisfied through the Public Works Department that the building to which they are invited to transfer their lien is as good a security as that in aid of the building of which their grant was originally made, the sale of the latter will be permitted.

I am to add that Government desire that the terms of sale which you contemplate may be submitted for approval and that when an offer is made for the purchase of the premises this also should be submitted for the consideration of His Excellency in Council.

On the 1st of October, 1884, an indenture was made between the Secretary of State for India in Council of the one part and certain members of the Mission (to whom I will hereafter refer as the trustees) of the other part, whereby a piece of land, being part of that now in question, was conveyed to the trustees, their heirs, and assigns for ever for the purposes and subjects to the covenants and conditions therein expressed. The deed contained provisions for the use of the building as a school, and for its proper management, and finally provided, that in certain events the piece of ground and the buildings on it should revert to Government. On the same day a lease was executed in favour of the Mission trustees of another piece of land, also part of the land now in suit for the term of one year as from the 1st of July, 1865, and so from year to year at the yearly rent of rupee one until the demise should be determined as therein provided.

On the 31st of August, 1885, Dr. Mackichan wrote to the Secretary to Government, and, after alluding to the sanction given on the 24th of July, 1879, submitted for the consideration of Government an offer that had been received from Mr. Narayan Moolji, a copy of which was annexed. The purchase price offered was Rs. 29,000, and it was stipulated that the land was not to be subject to any rates or taxes. The matter was reported on

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both by the Collector of Bombay and the Superintending Engineer, N. D., and a memorandum was furnished by the Public Works Department stating that in the circumstances it did not appear desirable to resume the land. On the 4th of March Dr. Mackichan wrote to inquire as to the decision of Government, and on the 13th of March a reply came asking for further information. It seems that besides the pieces of land comprised in the two indentures I have mentioned, there was an adjoining plot of land also in the occupation of the Mission, and on the 1st of May Dr. Mackichan by letter requested the Government of Bombay to ascertain from the Government of India on what terms this plot could be made over to the purchaser of the school property. On the 2nd of June the Collector reported that it would be worth Rs. 5,065, or Rs. 5 per square yard, if sold to the persons he indicates, and that in his opinion this might be taken as its proper valuation.

The matter was then submitted to the Government of India, who replied that they were inclined to think that the fairest arrangement would be to cause the school premises and the Government plot to be appraised as parts of one whole lot by a professional valuer, who for the purposes of valuation would take into account all the circumstances of each; that this valuation in the case of the plot should supersede the arbitrary estimate of Rs. 5 per yard; and that the Mission might be permitted to sell the whole together, paying to Government the price of the plot as valued.

Mr. Narayan Moolji's offer was for some reason withdrawn, and on the 25th of August, 1886, Mr. Janardhan Gopal made the following offer :

I have this day made an offer of Rs. 32,500 (rupees thirty-two thousand and five hundred) for the purchase of the building near French Bridge known as the Free Church Boarding School, together with the site admeasuring about 1,450 square yards belonging to the school, and also all that piece of ground admeasuring 1,011 square yards at the near or between the school site and the Railway line.

The whole property as above described admeasuring 2,461 square yards or thereabouts shall be conveyed to me as free-hold tenure or for a nominal Government tax.

The vendor shall make out a marketable title to the aforesaid property. In

the event of their inability to do so it will be at my option to complete the contract or not. The entire expense of conveying the whole property to me by the Free Church Mission as aforesaid to be borne half and half by me and the vendors.

In case the Government refuses to sell the piece of ground admeasuring 1,011 square yards for Rs. 5 per square yard the writing to fall through.

If the final conveyance is not executed within (4) four months from this date, it shall be at my option to make myself free from the contract.

The final conveyance should be executed by all the proper parties.

This contract is effected through Messrs. Sorabsha and Company, and they shall be entitled on completion of the purchase, but not otherwise, to their brokerage at two per cent. on the purchase-money from the purchaser and two per cent. from the vendors.

On the same day this offer was accepted on behalf of the Mission.

On the 6th of September a Government Resolution was published, which, after referring to the letter of the 31st of August, 1885, and the letter of the Government of India and to the intervening events I have narrated, proceeded: "To be communicated to the Collector of Bombay, with a request that he will carry out the instructions of Government of India in consultation with the Public Works Department and the Secretary to the Free Church Mission." A copy of this Resolution was forwarded to the Mission. Mr. Campbell, Architect and Surveyor, then, on instructions from the Collector, inspected the property, and reported as follows:

Having been requested by the Collector of Bombay in his letter No. 2280 of 20th November, 1886, to value the property of the Free Church Mission at the foot of French Bridge consisting of 1,544 square yards and a two-storeyed school-house building on same and also the piece of ground at back of the above premises to the west between same and the B. B. & C. I. Railway, which is now held by the Free Church Mission from the Government at a nominal rent of Re. 1 per annum and consists of 1,011 square yards of land without any erection on same.

I have carefully inspected both plots of land and found that the plot containing 1,484 square yards belonging to the Free Church Mission fronts on the east side of Breach Candy Road, while on the south side it is shut in by the high-level French Bridge, on the west by the plot of land held by the Free Church Mission at a nominal yearly rent of Re. 1 per annum, and on the north side by the property of Keshowjee Madhowjee.

The plot to the west between same and the Railway line containing 1,011 square yards is enclosed on the south side and partly on the west by the French

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(high level) Bridge and partly on the west by the B. B. & C. I. Railway line, on the east by the Free Church Mission property, and on the north by two properties belonging to Keshowjee Madhowjee and Babaji Gopal. At present there is no access to this plot of land except through the Free Church Mission compound.

There are only three properties to which this plot of land could be of any possible use, viz. the Free Church Mission, Keshowjee Madhowjee and Babaji Gopal's, which two latter abut upon it on the north side, and under these circumstances the plot can hardly be said to have any market value as it would be of no use at all except to one of the three parties whose properties surround it.

I find that a piece of waste land a little further on northwards, bounded on the west side by the Railway, and abutting on Mr. Babaji Gopal's land, and to which there is access by a road running out of Breach Candy Road, was sold to him by the Collector at Rs. 3 per square yard, and I am of opinion that under the circumstances half this rate or Re. 1-8-0 per square yard will be a fair rate to allow for the plot of 1,011 square yards at the back of the Free Church Mission property to the west between same and the B. B. & C. I. Railway.

The present value of the school building itself I take at	Rs. 23,000
1,484 square yards I value at Rs. 5 per square yard	„ 7,420
The land at back of above ground to the west and between same and the Railway, 1,011 square yards, I value at Re. 1-8-0 per square yard	„ 1,516

Making a total of Rs. 31,936

This report was forwarded to Government by the Collector with a request for early instructions, and on the 18th of December was published a Government Resolution that "the land should now be sold in accordance with the instructions of the Government of India in their letter No. 228 of 31st July last embodied in Government Resolution No. 1420 of September, 1886, the Free Church Mission paying the price of the plot as valued." A copy of this Resolution was forwarded to the Mission.

On the 15th January, 1887, Dr. Mackiehan wrote to the Acting Secretary to Government as follows:

In continuation of our correspondence with reference to the sale of the Free Church Boarding School, Girgaum, I have the honour to state that the Free Church Mission on receiving the Government Resolution in the Educational Department sanctioning the sale of the piece of ground in the rear of the school to the Mission at Rs. 1-8-0 per square yard according to the rate fixed by the professional valuers, agreed to accept the offer of Mr. Janardhan Gopal, who has agreed to pay Rs. 32,500 for the whole property including the piece of

ground behind the school, for which the sum of Rs. 1,516-8-0 is to be paid by us to Government.

This piece of ground is now being transferred to us and the sum stated is being paid. I have now to request that Government will be pleased to sanction the sale of the building to the abovenamed purchaser and take the necessary steps to transfer the property, releasing it from the lien which at present rests upon it as a building erected for educational purposes.

The [present lien of Government is to be transferred to other premises which we may acquire for the school, and I have the honour to request that in determining this lien Government may be pleased to fix it at Rs. 30,000 instead of Rs. 32,500 as formerly estimated, in view of the fact that the net proceeds of the most favourable offer which we can obtain will not aggregate more than Rs. 30,000.

On the 26th January, 1887, the Solicitor to Government wrote to the Under Secretary to Government, Public Works Department, but his letter has no material bearing on the case except so far as it is therein stated that "the trustees of the Free Church Mission have with *the assent of Government* sold both properties for Rs. 32,500." On the 11th February, 1887, Messrs. Ardeshir Hormasji and Dinshaw, who were acting as Solicitors both for the purchaser and the Mission, submitted to the Collector for the approval of Government two draft conveyances, one being an assurance to the trustees of the land not previously conveyed to them, and the other being a conveyance by the trustees to Mr. Janardhan Gopal of all the school premises.

On the 15th February, 1887, the following Government Resolution was published:

The correspondence should be sent to the Director of Public Instruction with a request that he will, after consultation with the Secretary, Free Church Mission, and, if necessary, the Solicitor to Government, report to Government the proceedings necessary to carry out the transfer of the Government lien to the new property of the Mission.

Copy of these orders should be sent to the Secretary with copy of the letter of the Government Solicitor that the conveyance may be prepared as advised in Mr. Little's paragraph 4.

A copy of this Resolution was forwarded to the Mission. On the 28th February, 1887, the draft conveyances were returned with certain alterations. These drafts have unfortunately been lost, but from the letter of the 19th March, 1887 (Exhibit V), it appears that the alterations were to the effect that the property

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should be subject to taxes, assessments, &c. In this letter it was stated by the purchaser's attorneys that it had been understood at a previous interview with the Collector that the alteration had reference only to municipal taxes, and it was proposed the alterations should be so modified as to make this clear by express mention, and to exclude Government rights also by express mention. The drafts were modified by Messrs. Ardeshir and Co. accordingly.

On the 31st May, 1887, the Secretary to Government wrote to Dr. Mackichan: "I am to add that in the absence of any order of Government sanctioning the conveyance of the land to Mr. Janardhan Gopal free of liability to assessment to the land revenue, the Solicitor to Government has rightly assumed that no such exemption was contemplated." Thereupon Dr. Mackichan wrote on the 21st June, 1887, to Government as follows:

With reference to your letter No. 894 of 1887 regarding the sale of the Free Church Boarding School near the French Bridge, Girgaum, I have the honour to state that a provisional agreement was come to in August last between the trustees of the Free Church Mission and Mr. Janardhan Gopal, and that it has been with a view to the completion of this agreement that questions concerning the property have been since that date before the Government of India and Bombay.

It was not the understanding or intention of the Mission that the agreement was binding on Government. And neither the Mission nor the purchaser expected a complete exemption of the land referred to in the agreement from assessment to land revenue. What the Solicitors, Messrs. Ardeshir Hormasji and Dinshaw, point out is that the price offered by the purchaser, viz. Rs. 32,500 for the property, was on the understanding expressed in the agreement for sale that the purchaser would not be required to pay to Government more than a nominal Government tax. We understand that what the purchaser asks is that the amount charged may not exceed what is payable in respect of land of Pension and Tax tenure in the locality.

Having regard to the fact (1) that the piece of land containing 1,484 square yards has been held by them free from assessment to land revenue and (2) that they pay only one rupee per annum on account of the vacant land, the trustees believe that even in the event of the sale of the same and the consequent change in the ownership of it, Government would not place a heavy assessment on it, that at any rate they would not assess it in excess of what the land was subject to before it was let to the Mission or of what Pension and Tax land in its neighbourhood is liable to pay.

It is the earnest desire of the Mission that this contract be completed.

Under the circumstances we hope that Government will be good enough to state or ask the Collector of Land Revenue to say what the land will be assessed at for purposes of the land revenue, it being assumed that the land was of the Pension and Tax tenure. The completion of the sale depends on the determination of this question, as also on the question whether a small piece of land which though not included in the original grant has been used as a portion of the school premises (which question is already the subject of correspondence between Messrs. Ardeshir Hormasji and Dinshaw and the Collector) shall be included in the sale to Mr. Janardhan, and I have to state that the Mission will feel greatly obliged to Government for an early disposal of the matter.

On the 29th of June, 1887, the drafts were returned to Messrs. Ardeshir & Co.

On the 11th July, 1887, a Resolution of Government in reference to the letter of the 21st June was published. The Resolution runs:

It, of course, does not follow that because Government allowed the land to be free of assessment or to be assessed at only a nominal amount as long as it was occupied for the purposes of an educational institution they will continue that exemption when the land passes for other purposes into other hands. It would not be fair to the general taxpayers for Government to do so.

The land in question will be liable in the purchaser, Mr. Janardhan Gopal's hands, to be assessed under the rules ordinarily applicable to land of the same description. The Collector should be desired on the application of either the Secretary of the Free Church Mission, or of the purchaser, Mr. Janardhan Gopal, to state what the assessment of the land revenue will be and what are the rules affecting the amount of the assessment, and the Secretary should be informed that the Collector has been so desired.

Acting on this Resolution Messrs. Ardeshir Hormusji & Co. on the 14th July 1887 wrote to the Collector:

In a letter addressed by the Acting Chief Secretary to Government to the Secretary, Free Church Mission, in reference to the claim for exemption from land revenue made by the purchaser of the above property, the latter has been informed that you had been requested on the application either of the Free Church Mission or the purchaser, Mr. Janardhan Gopal, to state what the assessment of the land revenue will be and what are the rules affecting the amount of the assessment. We have therefore, as attorneys for both the Mission and the purchaser, to request that you will be so good as to furnish us with the desired information.

We understand that the whole of the land was of the Pension and Tax tenure prior to its having been taken over by Government for the purpose of the Mission school.

On the 25th July, 1889, the Collector replied;

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In reply to your letter of 14th instant on the subject of the assessment of the land occupied by the Girgaum Mission school, I have the honour to inform you that the land will be assessed at the rate of 9 pies per square yard per annum. This is the rate of assessment which is charged for Government land in this locality in accordance with a scale of varying rates in different localities which was laid down by Mr. Jacomb when Collector and which has been followed for the last six years.

The fact that the land was of the Pension and Tax tenure before it was taken up by Government does not affect the assessment now to be levied as the Pension and Tax tenure ceased when the land was bought up by Government.

On the 20th December, 1887, an indenture was executed to which the Secretary of State for India in Council as representing the Government was a party of the one part and the trustees of the Mission of the other part. It was thereby recited that the trustees with the approval of Government had resolved to sell the pieces of land therein comprised, and that the Government with a view to facilitating the sale had agreed to grant to the trustees all their reversion and estate in the premises, and that the trustees had agreed with Janardhan Gopal for the absolute sale to him of the pieces of land. In the operative part the Government granted all their reversion and estate in the pieces of land to the trustees, their heirs, executors, administrators and assigns for ever, but subject to the payment of taxes, rates, charges, assessments leviable or chargeable in respect of the premises or anything for the time being thereon. Then followed a covenant by the Secretary of State that the premises should at all times remain and be to the use of the trustees, their heirs and assigns and be quietly entered into and upon and held and enjoyed and the rents and profits thereof received by them accordingly without any lawful eviction, in eruption, claim or demand whatsoever from or by the Secretary of State or any person claiming through or in trust for him.

On the 16th January, 1888, the conveyance to the purchaser, Mr. Janardhan Gopal, was executed. The parties to it were the trustees of the Mission of the first part, the Secretary of State of the second part and Mr. Janardhan Gopal of the third part. After reciting that the trustees had entered into an agreement with Mr. Janardhan Gopal for the *absolute sale* of the pieces of land, the trustees with the knowledge and consent of Government

conveyed the same to Mr. Janardhan Gopal, his heirs, executors, administrators, and assigns for ever subject to the payment of all rates, taxes, charges, assessments leviable or chargeable in respect of the premises or anything for the time being thereon. And the Secretary of State did thereby for himself and his successors acquit, release and for ever discharge Janardhan Gopal, his heirs, executors, administrators, and assigns of and from all manner of rights, powers, authorities and privileges to him and his successors reserved in respect of the premises thereinbefore firstly described in and by the indenture of the 1st of October 1884 and from all conditions, limitations and obligations by the said indenture imposed upon the use and enjoyment of the premises.

In 1893 the property became vested under a partition in the plaintiff Mr. Janardhan Gopal's son. Up to 1899 the assessment of nine pies per square yard was paid, but on the 24th of August in that year the Collector of Bombay wrote to the plaintiff :

I hereby on behalf of Government give you notice that, under section 8 of Bombay Act II of 1876, I have fixed the assessment for land revenue for marginally noted land in your possession at Re. 0-6-6 annas six and pies six per square yard per annum. This assessment will come into force on 1st October, 1899, and is guaranteed for fifty years from that date.

Locality Girgaum; area
of land 3,072 sq. yards; Col-
lector's new No. 16912.
1-2 & 3
New Survey No. 7902.

This was done without any inquiry of Mr. Janardhan as to the circumstances under which the property was acquired from Government, without even a word of warning, and the result was that having regard to the terms of the Bombay City Land Revenue Act the only course open to the plaintiff was at once to commence this suit, and that he did on the 26th of September, 1899.

On the 6th January, 1900, a Resolution of Government was published ratifying what the Collector had done.

It has been urged before us, and not without reason; that the action of the Collector in increasing the assessment to about nine times its original amount practically comes to a confiscation. Mr. Janardhan has stated the result in his evidence as follows :

If 9 pies per square yard would be Rs. 144 per annum, this sum capitalized

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would at 20 years' purchase, make 3,000 or at 25 years' purchase Rs. 3,500 addition to the purchase-money. I had this in my mind at the time. Government have now increased the assessment to 6 annas and 6 pies per square yard which represents Rs. 1,248-6-0 per annum; that sum capitalized at 25 years' purchase comes to Rs. 31,200. If this assessment holds good my property will be lessened in value by Rs. 31,000 or rather the difference between Rs. 31,200 and 3,500. The maximum rent of the property is Rs. 150 per mensem, and after paying taxes of Rs. 104 per mensem it would leave a rental of Rs. 46 per mensem, and then calculating with the municipal rates and taxes and money expended on repairs at 10 per cent. there would be nothing left over. A little to the bad. Had I known this I would not have purchased the property. I have spent Rs. 14,000 more on the property and now only produce Rs. 150 as rent.

Before us it has been urged (1) that the action of the Collector was invalid as he did not obtain the previous sanction of Government: (2) that there was no such settlement as is required by section 9 of the Act: (3) that the plaintiff is not a superior holder and therefore does not come within the operation of the Act: (4) that the assessment is unreasonable and therefore open to revision: and (5) that a specific limit to enhancement has been established and preserved. In support of the first two contentions it has been urged with great force that unless some such limitation is imposed as the arguments imply, the Collector is clothed with an arbitrary power which it is difficult to suppose the Legislature intended to vest in him.

In the view, however, that I take of the case it is unnecessary to deal with these points, for I think on the merits there is a valid objection to what the Collector has done.

I have set out at length the history of the case, but it will be convenient here to recapitulate briefly the salient facts. One plot of land was conveyed to the Mission trustees, "their heirs and assigns for ever" subject no doubt to a right of resumption, but without any mention of assessment. Resumption in the opinion of the Public Works Department was undesirable and in the conveyance to Mr. Janardhan the right was renounced in his favour. The other two plots of land were also conveyed to the Mission trustees, "their heirs, executors, administrators and assigns for ever," but in this case it was expressed to be "subject to the payment of all taxes, rates, charges, and assessments leviable or chargeable in respect of the premises or anything for the time

being thereon." These words appear also in the conveyance to Mr. Janardhan, the assurance to whom is expressed to be to him, "his heirs, executors, administrators and assigns for ever."

We are then met with the question, what assessments are leviable or chargeable in respect of the premises? When Mr. Janardhan sought information on this point prior to the completion of the purchase, he was referred by Government to the Collector, by whom he was told that the land would be assessed at the rate of 9 pies per square yard. Though the Collector was requested to state not only what the assessment would be, but also what were the rules affecting the amount of the assessment, he never so much as hinted that there would be a right to enhance in the future. But this silence, the defendant now suggests, practically amounted to a reservation of that right. I could understand that suggestion, had Mr. Janardhan been taking the premises as an occupant or a tenant from year to year, but it appears to me unreasonable in relation to a purchase out-and-out of the property for its full value; and here it must be remembered that Government took an expert opinion as to the value and learnt from it that Mr. Janardhan was paying for the property at its full value. Surely to such a purchaser the intention to reserve the right to enhance assessment should in all fairness have been clearly disclosed, and I cannot bring myself to believe that Government or the Collector were acting in the disingenuous manner that the defendant's counsel would now have us ascribe to them. It is in my opinion beside the point to cite the maxim that a man must be taken to know the law. Government undoubtedly had the power to fix the amount of assessment, and the only question here is whether it did not do so, and that is not a matter within the maxim. I think the meaning that a reasonable man would under the circumstances ascribe to the Collector's reply is that a specific limit of 9 pies per square yard per annum was established within the meaning of section 8 of the Act. If that be so, are not the Government and the Collector now bound? If the Government be bound, there can be no question that the Collector is: this was not disputed in the argument. But whether it be put on the ground of collateral contract or of estoppel it seems to me Government

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is bound. There was ample consideration to support a contract fixing the assessment permanently; for the Government not only received Rs. 2,383-8-0, but the balance of Rs. 30,616 went to furnish security to Government for the amount advanced as a grant-in-aid. While if the matter be regarded from the point of view of estoppel the legal result is the same. In my opinion the conduct of Government, coupled with the statement of the Collector made on their behalf for the purposes of the purchase, was, under the circumstances, such as to create and encourage in the purchaser as a reasonable man the belief that he was purchasing property substantially worth Rs. 33,000, and that Government were not silently reserving to themselves an unfettered right to destroy the value of that property and practically to confiscate that which had been sold.

The facts appear to me to bring the case within section 115 of the Evidence Act. If the defendants' counsel are right in their contention, then it was open to the Collector on the very next day to raise the assessment to the figure at which he now has purported to fix it, or even to a greater amount. Such a conclusion appears to me to be opposed to what is reasonable, to what is probable, and to what is fair. That such an idea never entered the purchaser's mind is clear from the fact that he not only completed the sale paying full value for the property (and by that I mean its value unincumbered), but has also since spent Rs. 14,000 on it. On this point we have, too, the clear evidence of the plaintiff's father, Mr. Janardhan, to which I have already referred, and on which I do not hesitate to rely, and I can only attribute to Government the knowledge that Mr. Janardhan completed the sale in the belief induced by the Collector's letter that the specific limit of his liability in respect of land assessment was 9 pies per square yard.

It has been argued that as Government is concerned we should apply a different canon of interpretation to their words and act, and construe them adversely to the grantee. Even supposing this rule to have any place in a transaction such as the present, it would not, in the view I take, alter my conclusion. In my opinion, therefore, the decree of the Revenue Judge should be reversed, and a decree passed in the plaintiff's favour in the

terms of the first part of paragraph (a) of the prayer of his plaint, and the enhancement should be set aside. The plaintiff should get his costs throughout.

CHANDAVARKAR, J.:—I am of the same opinion. The facts have been fully set out in the judgment just delivered by my Lord, and I will not recapitulate them. The question as to the right of Government to increase the assessment of the land to the land revenue must turn upon the intention of the parties—upon what in fact was in their contemplation when they entered into the contract.

At the outset we have the fact that this was an out-and-out sale by Government to the plaintiff's father, Mr. Janardhan Gopal, of all their rights as proprietors, subject, indeed, to the payment by him and those claiming under him of "all taxes, rates, charges, assessments, leviable or chargeable" in respect of the premises sold "or anything for the time being thereon." In other words, it was not a mere transfer of occupancy rights—where Government without parting with their property in the soil let the land for certain defined purposes on certain conditions for a prescribed number of years and the transferee does not become its owner but a mere "occupant" or "tenant"—a term well understood by lawyers.

Now, while the negotiations for the sale of the land to Mr. Janardhan Gopal were going on, he proposed that Government should sell the property either free of assessment or for a nominal Government tax. Government would not agree to that, but said:—"The land in question will be liable in the purchaser Mr. Janardhan Gopal's hands to be assessed under the rules ordinarily applicable to land of the same description." They did not make clear what they meant by "land of the same description." From the previous correspondence it would appear that both Mr. Janardhan Gopal and his immediate vendors—the Free Church Mission—had at first assumed that the land forming the subject of the sale was of the Pension and Tax tenure, but it was subsequently pointed out to them by the Collector that the assumption was erroneous. In other words, Government treated it as land absolutely vested in them which they could

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dispose of as they liked under section 25 of Bombay Act II of 1876. Moreover, Government referred to certain rules. It has, however, been conceded at the Bar that as a matter of fact there were no rules. Had there been any rules and had those rules, brought to the notice of the purchaser, provided that the assessment to the land revenue was liable to be enhanced at the discretion of Government, the property would have, after the purchase, become liable in his hands to such enhancement. From the words above quoted, therefore, no irresistible inference arises that Government intended to tell the purchaser that the sale was to be subject to the liability on his part of paying enhanced assessment whenever Government should choose to enhance it. Had that been their intention they would have said so in clear terms.

But it was urged that though there were no rules and though Government did not in so many words say that the purchaser was to take the land subject to the right of Government to assess it to the land revenue from time to time according to their discretion, the purchaser was well aware of that right and in the absence of any waiver of it by Government he must be taken to have bought the property subject to that right. But because he knew that, was he bound to assume that Government intended to reserve to themselves that right without any limit in an out-and-out sale in the absence of clear and unmistakeable language conveying that intention, especially when the land was fully valued and he was paying the full price of the property of both the land and the buildings thereon? They were owners of the property and could dispose of it in such manner as they thought fit under section 25 of Bombay Act II of 1876. They could propose any terms they liked to the purchaser restricting his right, and if he accepted them he would be bound, provided those restrictive terms, cutting down the proprietary title they were granting, were worded in language reasonably and sufficiently clear. As observed by Knight Bruce, V.C., in *Seaton v. Mapp*,⁽¹⁾ "When a vendor sells property under stipulations which are against common right, and places the purchaser in a position less advantageous than that in which he

(1) (1846) 2 Coll. 556.

otherwise would be, it is incumbent on the vendor to express himself with reasonable clearness; if he uses expressions reasonably capable of misconstruction, if he uses ambiguous words, the purchaser may generally construe them in the manner most advantageous to himself." Now, here Government tell the purchaser that he will be liable to pay the assessment under the rules "ordinarily applicable to land of the same description." That in itself leaves the matter ambiguous at the best. But assuming that we should construe it in favour of Government, what followed does not show that Government intended to reserve to themselves the right of enhancing the assessment at their discretion. The intention to be gathered from it seems rather to have been to fix the assessment once for all without any condition of variation. After saying that the land will be liable as above stated, Government desire the Collector "to state what the assessment of the land to the land revenue will be" and what the rules are for fixing its amount. If Government intended to hold the purchaser responsible for an assessment liable to be enhanced at any time at their discretion, where was the necessity of ascertaining the amount *then*, when they could have simply said in plain terms that he must take it subject to their paramount right to assess it to the land revenue whenever they chose?

The Collector, in accordance with the directions of Government, informed the purchaser that the land could not be treated as of the Pension and Tax tenure as it had become vested in Government and that it "will be assessed at the rate of 9 pies per square yard per annum." Neither the Collector nor Government said a word at any time during these negotiations that the amount so fixed was liable to be increased. What should the purchaser understand from all that? To any reasonable man not accustomed to the subtle refinements of a lawyer, and looking at the transaction from a common sense point of view, the whole transaction must, I think, be clear as one in which Government virtually said to the purchaser: "You ask us to sell this land either free of assessment or for a nominal Government tax. We are not willing to do that; but we sell all our rights in this property which is vested in us, subject to the payment by you as

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assessment of 9 pies per square yard per annum." That would be the construction put upon it had it been a contract between one private individual and another, and the vendor in that case who, after the purchaser had accepted those terms and the sale had been completed, claimed more than 9 pies would be at once out of Court on the ground that he had not clearly stipulated for that. Why should a different principle apply because one of the contracting parties selling the property as his happens to be Government? As held by Sargert, C.J., in *The Secretary of State for India v. Sheth Jeshingbhai Hathising*,⁽¹⁾ where an agreement is effected by way of proposal and acceptance between Government and a private individual, it "is subject to the ordinary rules applicable to contracts." It was indeed contended both by the learned Advocate-General and Mr. Kirkpatrick, who argued the case for Government, that a different rule of construction should apply here because here it is a grant from the Crown, and certain observations of Westropp, C.J., in the *Kanara Land case (Vyakunta Bapuji v. The Government of Bombay)*,⁽²⁾ were relied upon. But those were observations made with reference to a case in which the right of Government to enhance the assessment to the land revenue of land held by occupancy tenants under the *ryotwari* tenure was in dispute. It was not a case of a contract of an out-and-out sale by Government of land vested in them as proprietors. On the other hand, in the *Conservator of Forests v. Nagardas*⁽³⁾ the rule of construction adopted by Westropp, C.J., was that "upon a question of the meaning of words, the same rules of common sense and justice must apply, whether the subject-matter of construction be a grant from the Crown or from a subject," and that "it is always a question of intention to be collected from the language used with reference to the surrounding circumstances." Fulton, J., followed the same rule in *Re Antaji Keshav Tambe*.⁽⁴⁾

Here it appears to me that when we have regard to the nature of the transaction, viz., that Government was selling the property out-and-out as any private proprietor—when we look to

(1) (1892) 17 Bom. 407.

(3) P. J. for 1875, 230.

(2) (1875) 12 Bom. H. C. App. 1.

(4) (1893) 18 Bom. 670.

the whole of the language used and the acts done in accordance with it during the negotiations, to the intimation conveyed to the purchaser that the land would be assessed at the rate of 9 pies per square yard per annum without any warning that that amount was liable to be enhanced and to the fact that upon the faith of it all he paid Rs. 32,500 as its price after both the land and the buildings had been fully valued by Government and their price fixed in accordance with that valuation, the intention of the parties upon a reasonable construction must be taken to have been that the purchaser was to be liable to pay the amount of 9 pies per square yard per annum then levied as assessment and no more. To hold otherwise would be to say that in purporting to sell their property to the purchaser as they did Government intended without using apt language to express that intention to reserve to themselves the right to turn round at any time afterwards—perhaps the very next day after the sale—and so enhance the assessment as to practically nullify the purchase and confiscate the property. I do not think we should draw the inference of any such intention in the absence of clear evidence.

The understanding, then, of the parties was that the purchaser should be clothed with all the proprietary rights of Government subject to the payment by him and those taking under him of 9 pies per square yard per annum as assessment to the land revenue. It is with reference to that understanding that the deed of sale between the parties must be construed. When that deed says that the property was sold "subject to the payment of all taxes, rates, charges, assessments leviable or chargeable," it leaves the question open as to what the taxes &c. are which are "leviable or chargeable." Extrinsic evidence of that is admissible, for it neither contradicts nor varies the terms of the deed, but explains the sense in which the parties understood the words of the deed, which, taken by themselves, are capable of explanation: see *Bank of New Zealand v. Simpson*.⁽¹⁾ The understanding in question furnishes that evidence. It is also evidence of a collateral agreement outside the deed of sale, admissible as the deed itself does not express the whole of the terms regarding the taxes &c.

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(1) (1900) Ap. Ca. 182.

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which are "leviable or chargeable": see *De Lassalle v. Guildford*.⁽¹⁾

In this view of the case the other points which have been argued do not arise, and I concur both in the judgment delivered and the decree proposed by my Lord.

Decree reversed.

Attorneys for the plaintiff—*Messrs. Ardeshir, Hormasji, Dinsha & Co.*

Attorney for the defendant—*Mr. E. F. Nicholson*, Government Solicitor.

(1) (1901) 2 K. B. 215.

APPELLATE CIVIL.

Before Sir L. Jenkins, Chief Justice, and Mr. Justice Chandavarkar.

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July 31,
August 7
and 14.

JETHABHOY RUTTONSEY (ORIGINAL PLAINTIFF), APPELLANT, v.
COLLECTOR OF BOMBAY (ORIGINAL DEFENDANT), RESPONDENT.*

Land Revenue in Bombay—Assessment—Enhancement of assessment—Bombay Act II of 1876—Purchase of land from Government—Encroachment—Acquisition of land under section 26 of Bombay Act II of 1876—Vendor and purchaser—Estoppel.

The plaintiff was the owner of certain land in Bombay consisting of three separate plots which had been bought from Government at different times. Plot No. 1 had been bought by the plaintiff's father in 1880, to whom the Collector of Bombay, with the sanction of Government, had sold it at "the rate of Re. 1 a square yard and ground rent at 30 pies per *burga* of 60 square yards per annum." Plot No. 2 was acquired by encroachment, and was sold in 1884 to the plaintiff's father by the Collector under clause 2 of section 26 of Bombay Act II of 1876, five times the value of the land being paid and assessment being charged as provided by that section. Plot No. 3 was bought in 1885 for the sum of Rs. 208-14-3, the rate of valuation being stated as "Re. 1 per square yard and rent at 30 pies per *burga* of 60 square yards."

Assessment was duly paid at the rates originally agreed until 1899. In August of that year the Collector served the plaintiff with a notice enhancing the assessment to three annas per square yard per annum. The plaintiff thereupon filed

* Revenue Suit No. 21 of 1899; Appeal No. 13 of 1901.