Consequently I am of opinion that this is not a *wakf* strictly so called with the quality of absolute inalienability attached to the lands, but that the grantees were in the position of ordinary trustees. If the grantees be ordinary trustees, then article 134 of Act XV of 1877 applies, and as the defendants have been in possession under their mortgage more than twelve years, the plaintiffs' suit would be barred. The respondents-plaintiffs relied upon the case of *Trimbak* v. *Narayan*(1) which was, however, disapproved of in *Gnanasambanda* v. *Velu Pandaram*(2), and I do not therefore consider that it affords any guide to the Court in the present case. There is, however, a recent case of *Dattagiri* v. *Dattatraya*(3), which seems to me to be on all fours with this case, and, after taking into consideration all the authorities and arguments brought to the notice of the Court, I am of opinion that the plaintiffs' suit is barred and the decree of the lower Court must be reversed with costs and the decree of the Subordinate Judge restored.

Decree reversed.

(1) (1882) 7 Bom. 188. (2) (1899) L. R. 27 I. A. at p. 73.
(3) (1902) 4 Bom. L. R. 743, ante p. 363.

APPELLATE CIVIL.

Before Mr. Justice Batty and Mr. Justice Starling.

THAKORE FATESINGJI DIPSANGJI (ORIGINAL PLAINTIFF), APPELLANT, v. BAMANJI ARDESHIR DALAL (ORIGINAL DEFENDANT), RESPONDENT.*

1903. *February* 26.

Landlord and tenant—Permanent tenancy—Void lease—Lessee's adverse possession—Disclaimer of landlord's title to evict—Estoppel—Unregistered lease—Admissibility in evidence—Ratification—Acquiescence—Submission—Limitation Act (XV of 1877), schedule II, articles 120, 139 and 144—Evidence Act (I of 1872), sections 115 and 116—Registration Act (III of 1877), section 49—Panch Mahâls.

One Dipsangji, the Thakore of Kanjeri in the Panch Mahâls, died on the 7th August, 1877, leaving him surviving the plaintiff Fatesingji, who was born on the 8th December, 1874. The Panch Mahâls had been ceded by Scindia to the British Government in 1861, but by Act XV of 1874, Act XX of 1864,

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the Bombay Minors' Act, had been declared not to be applicable to that district. Act XV of 1874 came into force on the 8th December, 1874. On the 29th August, 1877, the Government of Bombay sanctioned the attachment of all the property of the plaintiff's deceased father and appointed Mr. Wilson, the Extra Assistant Collector of the Panch Mahâls, to manage the estate during the minority of the heir, and from that time the plaintiff's estate was under the management of the Collector for the time being of the Panch Mahâls. Before 1881 the defendant had been applying for a lease to him of certain waste lands in the plaintiff's estate, and in June and December, 1881, and February, 1884, three leases (Exhibits 59, 60 and 61) were granted to the defendant of portions of such land by the Collector purporting to act on behalf of Government, but no specific sanction of Government was obtained to the leases. These three leases were not registered. The Bombay Minors' Act came into force in the Panch Mahâls in 1885, and in 1886, the Collector obtained a certificate of administration to the plaintiff's property under that Act. The plaintiff came of age on the 8th December, 1895, but the administrator did not hand over his property to him on that day. On the contrary the then Collector, by his own order dated the 20th November, 1895 (Exhibit 142), and without the sanction of any superior authority, directed that the attachment of the estate was not to be removed for the present, and in fact it continued until the plaintiff received charge of his property on the 16th January, 1897. In the meantime, *viz.*, on 30th May, 1896, the Collector executed a consolidated lease of the lands comprised in Exhibits 59, 60 and 61 to the defendant without any sanction from the Government or the District Court by which he had in the first instance been granted a certificate of administration (Exhibit 62). This lease was duly registered. In January, 1900, the plaintiff informally required the defendant to give up possession of the lands he was then in possession of (Exhibit 140), and on the 13th January the defendant claimed to hold the lands under Exhibit 62, and on the 15th January, 1900, the plaintiff brought the present suit to have it declared that the defendant was only a cultivator and to be put in possession of the lands. In his written statement the defendant rested his claim on the lease, Exhibit 62. Subsequently, however, in case that might be held to be inoperative he fell back upon the leases (Exhibits 59, 60 and 61).

Held, (1) that the mere fact that the plaintiff had received through his talati two instalments of rent did not amount to a ratification of the lease of the 30th May, 1896 (Exhibit 62), though it might have been effectual as an acknowledgment of a yearly tenancy.

It was contended that the action of the Collector was ratified by Government by their Resolution No. 5008 (Exhibit 100), which however was subsequent to the appointment of the Collector under Act XX of 1864, whereby the guardianship of Government had determined.

Held, (per Batty, J.), that there can be no ratification by a person who at the time of ratification could not have done the act himself even though he had the power to do it when the original act unauthorised by him was done.

The defendant contended that he had been in possession as of right and that his possession was therefore adverse and had continued for over twelve years. That the defendant became a permanent tenant under the plaintiff's guardian, the Collector; that the plaintiff had not repudiated the act of his guardian within three years after he attained majority and consequently that in any view of the case his claim was time-barred.

Held: It is well established that there can be adverse possession of a limited interest in property as well as of the full title as owner. As it appeared that the defendant agreed to go into possession under rules which would give him a permanent tenancy and that he had ever since he went into possession claimed to be in as a permanent tenant, he had therefore since 1881 and 1884 been in adverse possession as a permanent tenant.

Held, further, that as the plaintiff had not brought the suit within three years of attaining his majority, the defendant had obtained by adverse possession a right to hold the lands as against the plaintiff as a permanent tenant.

Per Batty, J.—The authorities show that a tenant in India is not precluded by an admission of tenancy from showing that the nature of the tenancy asserted by him to the knowledge of the landlord has been for the period prescribed by the Limitation Act *pro tanto* adverse to the right to evict either at will or on notice given.

A manifest assertion by the tenant to the knowledge of the person representing the landlord's interests of a right inconsistent with that claimed by the landlord to treat him as a tenant-at-will or from year to year would be a disclaimer of the landlord's title: *Vivian* v. *Moat* (1) relied on.

A landlord merely by receiving rent cannot preserve his right to other claims continuously denied by the tenant.

The fact that such assertion and enjoyment are not challenged does not change their adverse character when once the necessity for challenging it has arisen.

It was contended that the unregistered leases even though they required registration could still be looked to for the purpose of ascertaining what was in the contemplation of the parties.

Held, (per Batty, J.): "A document inadmissible under section 49" (of the Registration Act) "could not, I think, be used as evidence of delivery of possession. But seeing that the Legislature has advisedly rejected in the more recent Act the phrases which made such unregistered documents absolutely incapable of being received in evidence at all and has very guardedly stated the purposes for which they shall not be received, I think, in the absence of authority to the contrary an unregistered document inadmissible for the purpose of affecting immoveable property or of any transaction affecting immoveable property may yet be looked to, not in any way as creating a title, or as showing a transaction that affected the property, but merely as containing

(1) (1881) 16 Ch. Div. 730.

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a clear and exhaustive statement of the adverse possession which was set up a person whose claims were admittedly limited to the rights enumerated such document."

FIRST appeal from the decision of Ráo Bahádur Chunilal Mathuradas, First Class Subordinate Judge of Ahmedabad, in original Suit No. 43 of 1900.

Suit for a declaration that the defendant was a yearly tenant and for recovery of possession of lands.

The plaintiff's father Dipsangji was the Thakore of several villages in the zilla of the Panch Mahals in the Ahmedabad District. The Panch Mahals were originally the territory of the Scindia, who transferred them to the British Government in the year 1861. Under the Scheduled Districts Act, XIV of 1874, they were treated as a Scheduled (Non-Regulation) District and continued as such till 1885. Dipsangji died on the 7th August, 1877, leaving him surviving the minor plaintiff, who was born on the 8th December, 1874. At the time of Dipsangji's death the annual income of his estate was Rs. 13,000 and his liabilities amounted to Rs. 25,000. The matter was reported to Government and the Government of Bombay on the 29th August, 1877, issued a resolution directing that the estate of the deceased Thakore should be attached and managed by the Collector of the Panch Mahals through one of his assistants; that the then Assistant Collector, Mr. Wilson, should take early steps for obtaining a correct account of the Thákor's debt, and that Government, on being informed of their exact amount, would determine the best plan for effecting their liquidation. The estate was accordingly placed under attachment and was put under the management of an Extra Assistant Collector. In the year 1881 Mr. W. Woodward, who was then the Acting Collector of the Panch Mahals, purporting to act for Government, granted to the defendant 435 acres and 29 gunthás and 413 acres and 5 gunthás of waste land, subject to the conditions of the Waste Land Rules, under two permanent unregistered leases dated the 29th June, 1881, and 21st November following (Exhibits 59 and 60). A similar grant of 1,134 acres and 18 gunthás (Exhibit 61) was made to the defendant on the 26th February, 1884, by Mr. J. K. Spence, who was then the

Collector of the Panch Mahâls. All the three leases were unregistered and specific sanction of Government was not obtained for them. The Minors' Act, XX of 1864, came into force in the Panch Mahâls in May, 1885, under the Panch Mahâls' Laws Act, VII of 1885, when the Panch Mahâls were changed from a Non-Regulation District to a Regulation District, and in 1886 the Collector obtained a certificate of administration of the minor plaintiff's estate under the Minors' Act. In the meanwhile some doubt as to the validity of the aforesaid three leases having arisen owing to the conversion of the Panch Mahâls into a Regulation District, the then Acting Collector proposed to Government in the year 1890 that he should execute, with the requisite sanction of Government, a revised and consolidating lease for the purpose of securing the defendant's position. The Government thereupon on the 18th July, 1890, issued a Resolution, No. 5008, R. D. (which recited the Collector's proposal), to the local authorities for "information and guidance" without further expressing their own views. On the 30th May, 1896, Dr. J. Pollen, who was then the Collector of the Panch Mahâls, purporting to act as the Administrator of the plaintiff's estate, passed to the defendant a registered consolidated lease (Exhibit 62) of the lands comprised in the three previous leases which were thereby cancelled. Though the plaintiff attained majority on the 8th December, 1895, the attachment on his estate continued till the 16th January, 1897, when he was put in charge of the estate. After the plaintiff received charge he wrote some letters requesting the Collector to furnish him with all the papers in connection with the grant to the defendant, and on the 23rd September, 1898, he was supplied with a copy of the consolidated registered lease dated the 30th May, 1896. The plaintiff received from the defendant rent for the years 1897-98 and 1898-99, and in or about the month of November, 1899, he sent his man to the defendant asking him to vacate the lands. The defendant thereupon informed the plaintiff that he held the lands as a permanent tenant under the leases granted by the Collectors. On the 11th January, 1900, the plaintiff gave the defendant notice of a suit owing to the defendant's failure to vacate the lands, and on the 13th January the defendant

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answered relying on the leases. On the 15th June following the plaintiff filed the present suit impeaching the Collector's authority to create a permanent tenancy. He prayed for a declaration that the defendant held the lands in suit as his yearly tenant and for recovery of possession of those lands.

The defendant contended that the claim was time-barred; that the lands in question were let to him as a permanent tenant under the Government Waste Land Rules; that at the time of the death of plaintiff's father, the Panch Mahâls were a Non-Regulation Province, so the Collector attached the plaintiff's property under the orders of Government and began to administer it as their agent; that the Panch Mahâls became a Regulation District in 1885 and the Collector thereupon, in 1886, obtained a certificate to administer the plaintiff's estate under the Minors' Act (XX of 1864); that the lands were let out by the Collectors to him solely for the benefit of the plaintiff; that the Collector granted to him a consolidated lease on the 30th May, 1896; that he has been enjoying the lands as a permanent tenant since 1881 and 1884; that he paid rents according to the terms of the leases and the plaintiff and the Collectors accepted them; that the Collectors had authority to grant the lands to him permanently and the contract was binding on the plaintiff; that he expended in good faith Rs. 3,00,000 on the improvement of the lands; that the plaintiff could not recover possession of the lands without paying him their value; that the plaintiff having recovered rents for the years 1897-98, 1898-99 according to the terms of the permanent lease, he was estopped from bringing the suit; that the plaintiff's allegation that he first came to know of the permanent tenancy in 1899 was not true and that the plaintiff was not entitled to evict him so long as he paid rents as a permanent tenant.

The Subordinate Judge found that the claim was not time-barred; that the plaintiff had not given a proper notice to quit, but the service of such notice was not necessary; that the lands in suit were let out to the defendant on permanent tenure; that the lands were first let out to him by the Collectors of the Panch Mahâls as the sole managers of the estate appointed by Government and they were next let out to him by the Collector as

plaintiff's certificated guardian; that the Collectors of the district as sole managers of the estate so appointed by Government had authority to grant the lands in such permanent tenure as they had given and the plaintiff having ratified the leases granted by the Collectors could not repudiate them; that the defendant had expended large sums in improving the lands and colonizing them and he was entitled to get back the costs of all necessary improvements if he was to be ejected from the lands, and that the plaintiff was not entitled to any relief. The Subordinate Judge, therefore, rejected the claim with all costs on plaintiff.

The plaintiff appealed.

Inverarity (with *P. M. Mehta* and *Lallubhai A. Shah*) appeared for the appellant (plaintiff):—The defendant claims to hold the lands under Exhibit 62, the consolidated registered lease of 1896. He also, in case that lease be held to be void, seeks to fall back upon the three prior leases of 1881 and 1884, which were unregistered. The first question is whether the prior leases being unregistered are admissible in evidence. We contend that they are not, inasmuch as they purported to create an interest in immoveable property to the extent of more than one hundred rupees, see section 17 of the Registration Act (III of 1877). The Panch Mahâls, which were originally the territory of the Scindia, were ceded by him to British Government in 1861. Therefore at the time of those leases the Panch Mahâls were included in British India, and consequently the leases were governed by the Registration Act which applies to the whole of British India.

If the leases did not require registration, then the next question would be whether the Collectors had authority to grant them. The Minors' Act XX of 1864 was not then applicable to the Panch Mahâls which became a Regulation District under Act VII of 1885 and the Minors' Act was introduced in the Panch Mahâls in May, 1885. The Collector took a certificate of administration in 1886; the leases of 1881 and 1884 were therefore unauthorised and further they had not been sanctioned by Government. The very fact that the Collector subsequently asked for the sanction of Government for the lease of 1896 shows that the previous leases were not authorised. The defendant, therefore, cannot rely on those leases in support of his rights.

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As regards the consolidated lease of 1896 the Collector had, as administrator, then become *functus officio* because the plaintiff had then attained majority by completing his twenty-one years in December, 1895. The lease was, therefore, unauthorised and not binding on the plaintiff: *Khettur Nath Doss* v. *Ram Jadoo Bhuttacharjee*.(1) With respect to all the leases we contend that the Collectors had exceeded their authority in creating a permanent tenure. Even at the time of the consolidated lease, the Collector, though he had obtained a certificate under the Minors' Act, had no authority to create a permanent tenancy because the Minors' Act contemplated alienations of short durations only. Even under the Guardian and Wards Act (VIII of 1890) the powers given to a guardian are limited. The Collector as representative of Government can have no greater powers than an ordinary guardian.

There is nothing in the case to show that we ratified the leases after we attained majority. Mere receipt of rent would not amount to either estoppel or ratification. There is no evidence to prove that we had full knowledge of all the terms of the leases. Actual knowledge on our part must be proved: *Jugmohandas* v. *Pallonjee*.(2) As soon as we came of age we applied to the Collector to furnish us with copies and other papers relating to the transaction, and immediately after we learnt the terms of the leases we repudiated them and brought the present suit. The leases being void *ab initio* there can be no ratification of such leases.

The defendant would have been entitled to a notice to quit if he had admitted our right to recover possession as landlord, but he denied our right, therefore no notice was necessary. There was a distinct disclaimer of our title: *Venkaji* v. *Lakshman*(3); *Baba* v. *Vishvanath*(4); *Gopalrao* v. *Kishor*(5); *Vivian* v. *Moat*.(6)

The Judge found that our claim was not time-barred, but he dismissed our suit on the ground that the defendant had acquired a permanent tenancy.

Scott, Advocate General (with *Branson*, *Raikes* and *Rustam*

(1) (1875) 24 Cal. W. R. 49.
(2) (1896) 22 Bom. 1.
(3) (1895) 20 Bom. 354.
(4) (1883) 8 Bom. 228.
(5) (1885) 9 Bom. 527.
(6) (1881) 16 Ch. D. 730.

B. Paymaster) appeared for the respondent (defendant):—The plaintiff cannot repudiate the leases granted to us by the Collectors as representatives of Government because his father by a treaty agreed to conduct himself in conformity with the orders of Government: see Aitchison's Treaties, Vol. VI, pages 424 and 428, No. CLV, clauses 13 and 15. Under the terms of that treaty his son succeeded to the estate under the orders of Government. This was one of the reasons why the Thakore's estate was placed under attachment after his death. The order for attachment was in force when the last consolidated lease was passed. Therefore the Collector's authority had not, till the removal of the attachment, come to an end. The consolidated lease may, therefore, be taken to have been granted by the Collector as *parens patriæ*.

The definition of British India given in the General Clauses Act X of 1897 is much wider than that given in the former General Clauses Act I of 1868. The definition given in the Act of 1868 did not bring the Panch Mahâls within British territory: *Tricam Panachand* v. *The Bombay Baroda and Central India Railway Co.*[1]; *Queen-Empress* v. *Abdul Latib.*[2] As they had not been vested in British Government under Statute 21 and 22 Vict., ch. 106, s. 1, they could not be governed by the provisions of the Registration Act III of 1877. Further, though under section 98 of the Registration Act XX of 1866 that Act was made applicable to the Panch Mahâls, still under Act XIV of 1870 the Panch Mahâls were taken out of the operation of the Act of 1866. We, therefore, contend that the leases did not require registration. Even supposing that they did require registration and being unregistered they could not affect immoveable property, still they can be looked to for the purpose of ascertaining what was in the contemplation of the parties: *Lalla Gopee Chand* v. *Shaik Liakut.*[3]

The plaintiff having recovered rent after he came of age, he is estopped from denying our permanent tenancy: *Ram Chander Sircar* v. *Pran Golind.*[4]

As to ratification the plaintiff having asked for copies of the

(1) (1885) 9 Bom. 244.
(2) (1885) 10 Bom. 186.
(3) (1876) 25 Cal. W R. 211.
(4) (1876) 25 Cal. W. R. 71.

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consolidated lease and other papers after attaining majority he must be presumed to have had knowledge of the terms of the lease, and as he did not appear in the witness-box to rebut the presumption by denying knowledge, the presumption becomes stronger: *Bolton Partners* v. *Lambert*.(1)

We have been in possession as of right since the dates of the several leases. We entered into possession as of right and continued to hold it as such for upwards of twelve years. Our possession was therefore adverse. Though the plaintiff was a minor, still his interest was represented by the Collector as guardian, and we became permanent tenant under that guardian. If the plaintiff wanted to repudiate the act of the guardian, he ought to have done so within three years after he attained majority. Under any view of the case the claim is time-barred.

Next we contend that the suit is bad for want of notice to quit. We never denied the plaintiff's title as landlord. Our case was that we were tenant entitled to hold the lands permanently. A plea of this kind is not denial of landlord's title and would not dispense with notice: *Krishna Sakharam* v. *Ladu Vithu*.(2)

Inverarity, in reply.

BATTY, J.:—In this case the plaintiff, Thákore of Kanjeri and other villages of Panch Mahals, sued to obtain a declaration that the defendant holds certain lands as his yearly tenant and also to recover possession thereof. The facts undisputed in this case are as follows. The plaintiff was born on 8th December, 1874. His father died in 1877. The zillah of Panch Mahals was at that time a scheduled district. It had been transferred to the British Government in 1861, Bombay Gazetteer, 253. The Minors' Act XX of 1864 was not in force in that district in 1877—*vide* section 5 and schedule 3 of the Laws Local Extent Act, 1874. It came into force on 1st May, 1885, under the Panch Mahals Laws Act (VII of 1885) when the district ceased to be a scheduled district. No statutory provision for the appointment of a guardian existing, the Collector, on the late Thakore's death, reported the fact, and asked and obtained the sanction of Government to the attachment and management by his office of the

(1) (1889) 41 Ch. D. 295, 301. (2) (1893) P. J. p. 292.

estate during the minority,—Government intimating that on ascertainment of the debts owing by the late holder, they would determine the plan for their liquidation (Exhibit 106, page 58). Thereafter the Collector, without applying for or obtaining further orders from Government, after some correspondence, executed in favour of the present defendant the four successive documents, Exhibits 59, 60, 61 and 62, under which the defendant claims to hold the lands in dispute, some 11,000 acres, as a permanent tenant. Of these documents, Exhibit 59 bears date 29th June, 1881; Exhibit 60, 21st November, 1881; and Exhibit 61, 26th February, 1884—all prior to the operation in the district of Act XX of 1864, and therefore without the grant of a certificate of guardianship to the Collector thereunder. The defendant obtained possession which purported to be given in pursuance of these documents. But in 1890 some doubt being entertained by the Collector as to the validity of the arrangement made with the defendant in view of the introduction into the Panch Mahâls of the Acts and Regulations applying to the rest of the Presidency, it was proposed that the Collector, who had obtained in 1886 a certificate under Act XX of 1864 and was thus governed by the Guardians and Wards Act of 1890, should execute with the necessary sanction a revised and consolidating lease for the purpose of securing the defendant's position. The then Legal Remembrancer having advised in favour of this course, Government by G. R. No. 5008, R. D. of 18th July, 1890, directed his report to be forwarded "for information and guidance" to the local authorities, without further expressing their views or wishes (Exhibits 100 and 101, pages 53-55). In May, 1896, the plaintiff attained his majority. It was not till 30th May of that year that the Collector, purporting to act as administrator of the estate, executed Exhibit 62 as a new consolidating grant of the lands in question to the present defendant in terms which were, it seems, intended to be identical with those specified in the preceding documents, Exhibits 59, 60 and 61, which it purported to cancel. This document was registered. None of the previous documents, Exhibits 59, 60 and 61, were registered. The Thakore appears to have received charge of his estate from the Collector on 16th January, 1897, Exhibit 117, page 63,

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receiving at the same time a large number of papers including a file of grants or *patas* purporting to be under rules known as the Waste Land Rules.

On 5th May, 1897, the plaintiff, referring to the removal of the so-called attachment from his State and the delivery of charge to him, in a letter to the Collector observed that during the guardianship two villages had been given on grants and requested that the originals should be supplied to him with all papers bearing on the subject (Exhibit 111, page 59).

On 9th November of the same year the plaintiff again addressed the Collector (Exhibit 118, page 65, Exhibit 95, page 48) on the same subject naming the defendant as the grantee, stating that previous grants had been made and that a new grant had been more recently made and registered and desiring a copy as none had been sent. On 16th December of the same year the plaintiff again applied for the grant to be sent to him (Exhibit 94, page 48, and Exhibit 112, page 59) referring more definitely to the grants as made to the defendant under the Waste Land Rules. On a further application, dated 17th May, 1898, the copy of the document of 1896 appears to have been supplied to the plaintiff on 23rd September, 1898 (Exhibit 93, page 46). The plaintiff admits in paragraph 4 of his plaint (page 2) that he received rent from the defendant for two years 1897-98 and 1898-99. But on the 11th January, 1900, he wrote to the defendant (Exhibit 140, page 90) stating that as the defendant refused to vacate and claimed as a permanent tenant under a lease of which the plaintiff knew nothing, notice of a suit for ejectment, in case this hostile claim was not withdrawn, was thereby given. And on the defendant replying on 13th January, 1900, that he relied on the lease from the Collector as guardian and administrator of the plaintiff (Exhibit 64, page 40), the plaintiff two days later, *i.e.*, on 15th January, 1900, filed this suit.

Such being the main facts in the suit, the questions that arise appear to be as follows:—

(1) Whether the Government of Bombay as *parens patriæ* had power to authorise the grant of a permanent tenure to the defendant under any circumstances?

(2) Whether if they had such power, circumstances of the necessity of the estate or of benefit to it justified their authorising such a grant?

(3) Whether the Government did in fact either authorise or ratify such a grant?

(4) Whether in the absence of authority for such a grant or of its ratification, the Collector could, as *de facto* guardian and administrator, give such a grant?

(5) Whether if the Collector could do so, the documents of 1881 and 1884, Exhibits 59, 60 and 61, being unregistered are admissible in evidence to prove such grants?

(6) Whether those documents, if admissible in evidence, are affected by the later document, Exhibit 62 of 1896?

(7) Whether the Collector having executed Exhibit 62 after the plaintiff had attained majority could and did bind the plaintiff thereby?

(8) Whether the plaintiff by his receipt of rent for 1897-98 and 1898-99 ratified or acquiesced in all or any of the grants in question?

(9) Whether if the grants to the defendant are unestablished either by reason of the documents to evidence them being inadmissible or by reason of want of authority in the Collector to execute them, the defendant has acquired a title either as permanent tenant or as absolute owner by adverse possession under the Limitation Act?

(10) Whether if the defendant by reason of the invalidity of the documents in question were a yearly tenant only, he can be ejected without due notice on his repudiation of the plaintiff's title as landlord?

(11) Whether if he be liable to ejectment he is entitled, either under section 51 of the Transfer of Property Act or in equity, to compensation for the present estimated value of improvements made by him, or to a lien on the property for the amount?

It does not appear necessary to discuss all the above questions at length. The guardianship of Government as *parens patriæ* [Mayne's Hindu Law 265; West & Bühler 541, note (*e*)] is not disputed. Authorities as to the limitations of its power as such have not been cited. It is not, however, contended that such power would be unlimited, or would extend to the absolute alienation of the ward's property without regard to justifying necessity and the interests of the minor. This indeed seems to have been recognized in the G. R. No. 5282 delegating management of the estate to the Collector, which authorises nothing but management, and reserves to Government the power to determine the best plan for liquidation of debts. It is contended for the defendant that the action of the Collector was ratified by G. R. No. 5008. But that document contains no express approval of what had been done and intimates rather that the Collector should be guided by the Legal Remembrancer's opinion that the Collector should

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comply with the requirements of the Guardians and Wards Act, in order to secure to the defendant the benefits of past transaction. Moreover it is doubtful whether Government were in full possession of all the facts, as to the three documents, Exhibits 59, 60 and 61, which are referred to as if only one agreement or lease had been entered into. And full knowledge is essential to ratification: *Lewis* v. *Read* (1); *Hilbery* v. *Hatton* (2); *Marsh* v. *Joseph*.(3) Moreover G. R. No. 5008 is dated 1890, and as its contents indicate was subsequent to the appointment of the Collector under Act XX of 1864, whereby the guardianship of Government had determined. And there can be no ratification by a person who at the time of ratification could not have done the act himself even though he had the power to do it when the original act unauthorised by him was done. For no one can supply an authority who does not possess it: *Bird* v. *Brown*.(4) That the Collector, acting on behalf of Government, could, without precedent authority or subsequent ratification, validly lease the minor's property in perpetuity has not been shown, and as observed already, Government apparently contemplated the reservation to itself of authority for such purpose.

The next question that arises is whether the documents, Exhibits 59, 60 and 61, being unregistered are admissible in evidence. It is contended that as the Panch Mahâls were never in the possession or under the Government of the company they did not vest in Her Majesty by section 2 of 21 & 22 Vict., c. 106, and were therefore not British India within the meaning of section 2 (8) of the General Clauses Act, 1868, which governed the Registration Acts of 1871 and 1877, and were therefore not included in the extent of those Registration Acts, "the whole of British India." It is however contended with much force that section 2 of 21 and 22 Vict., c. 106, vested in Her Majesty not only all territories then in the possession or under the Government of the company, but also all rights which if that Act had not been passed might have been exercised by the said company: so that all subsequent acquisitions obtained by exercise of those rights became vested in Her Majesty, and thus come within the words in section 2 (8)

(1) (1845) 13 M. & W. 834.
(2) (1864) 33 L. J. Ex. 190.
(3) (1897) 1 Ch. 213.
(4) (1850) 19 L. J. Ex. 154.

of the General Clauses Act, 1868, "the territories for the time being vested in Her Majesty," which phrase is equivalent, it is urged, to that used in section 1 of the Indian Penal Code, "the territories which are or may become vested in Her Majesty by the Statute, &c." There can, it seems, be no question that the Panch Mahâls are, and in 1871 as well as in 1877 were, by virtue of the rights transferred in the Statute, vested in the Crown: and not only general acceptation, but legislative expression is in favour of the construction that as such they became so vested by the Statutes, and were thus within the definition of British India in the General Clauses Act of 1868. But even if there were room for doubt on this point, it is manifest that registration of such documents as those in question was compulsory in the Mahâls at the dates they bear. For Act XX of 1866 came into operation there on 1st May, 1866, under section 98 of that Act, and the repeal of that section by Act XIV of 1870, as spent, did not under section 1 of that Act affect its already completed operation. And if the Act of 1871 did not come into force in the district as part of British India, neither did it repeal Act XX of 1866 therein by its first schedule and second section, and Act XX of 1866 must have remained in force there till the General Clauses Act, 1897. Section 49 of Act XX of 1866 read with section 17 rendered such documents as Exhibits 59, 60 and 61 inadmissible if unregistered, and the exemption in Act XXVII of 1868 of grants by Government, if operative in the district at all, was limited to "grants in reward for special services." These last words are not, it is true, reproduced in section 97 (*d*) of the Registration Act, 1871, or in section 90 (*d*) of the Registration Act, 1877. But those clauses manifestly exempt only grants or assignments by Government which under the respectively succeeding sections are kept open to inspection, and do not cover private documents purporting to be executed on behalf of minors or other private individuals. It thus appears that the documents in question cannot be received in evidence or affect any property comprised therein, if section 49 of Act XX of 1866 apply thereto. I think, however, that, as so strenuously and ably contended by the learned Counsel for the plaintiff, the Act of 1877 was in force at date of those documents.

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The provisions of section 49 of that Act differ from those used in the Act of 1866, and this indicates distinctly the intention of the Legislature in the more recent Act not to exclude as altogether inadmissible in evidence documents unregistered though compulsorily registrable, but only to prevent their affecting immoveable property comprised therein, and their reception as evidence of any transaction affecting such property. The importance and effect of this modification will be considered later. It is unnecessary to consider what effect Exhibit 62 would have on Exhibits 59, 60 and 61, and it is indeed admitted that if void itself it could not operate to cancel them.

Exhibit 62 is itself open to the objection that it was executed by the Collector after he was *functus officio* as guardian by reason of clause (*c*) of sub-section 2 of section 41 of the Guardians and Wards Act, 1890. It is contended, however, that the plaintiff ratified it; and respondent relies in this connection on the cases of *Ram Chunder* v. *Pran Gobind* (1) and *Bolton Partners* v. *Lambert*.(2) In the first of these cases, the disputed lease was executed on behalf of the minors by their mother as natural and *de facto* guardian and on behalf of the adult Pran Govind by his brother who then acted and always had acted as agent for him in connection with the property. *Bolton Partners* v. *Lambert* was a case of ratification by a principal of an acceptance by one Scratchley purporting to act as his agent. These cases therefore would not apply unless either the Collector were administrator or purported to act as agent of the plaintiff. He was not administrator. It was therefore necessary, as he was not expressly or impliedly authorised by the plaintiff, to show that the Collector acted as the plaintiff's agent: section 196 of the Contract Act and *Wilson* v. *Tumman* (3); *Saunderson* v. *Griffiths* (4); *Brook* v. *Hook* (5); *Marsh* v. *Joseph*.(6) In the document itself the parties are not so stated, the name of the principal not being first mentioned as a party, and the Collector is described as administrator. The Collector it is true purports to have affixed his own seal "on behalf of the present minor," but that is not as his agent but as administrator.

(1) (1876) 25 Cal. W. R. 71.
(2) (1889) 41 Ch. D. 295, 301.
(3) (1843) 6 M. & G. 236.
(4) (1826) 5 B. & C. 909.
(5) (1871) L. R. 6 Ex. 89.
(6) (1897) 1 Ch. 213, 238.

Had the Collector been administrator at the time, a different principle would have applied, and the cases relied upon for respondent, *Ram Chunder* v. *Pran Gobind* (1) and *Gopalnarain* v. *Muddomutty* (2), would have been in point. But as the Collector was not administrator and did not purport to act as agent, the plaintiff was not bound by and could not ratify the transaction.

The question of ratification being irrelevant, it is proposed for respondent to rely on alleged acquiescence by the plaintiff indicated by his receipt of the rent after knowledge of the alleged grant. And an attempt has been made to distinguish the present case from that of *Jugmohandas* v. *Pallonjee* (3) on the ground that in Jugmohandas' case the plaintiff proved that he knew nothing of the lease which he repudiated; whereas in the present case the plaintiff has not even come forward as a witness. In answer to the plaintiff's contention that an invalid lease could not be confirmed by the acceptance of rent only, without any intention of thereby confirming the lease, Woodfall, 15th Edition, page 221, and *Ex parte Cooper, In re North London Railway Company* (4); *Robson* v. *Flight* (5) are cited, and it is urged that "acquiescence to 'deprive a man of his legal rights,' as stated in *Willmott* v. *Barber* (6) 'must amount to fraud,' and he must be shown to have acted in such a way as would make it fraudulent to set up those rights." In reply it is urged for respondent that under the ruling in *Sitabai* v. *Wasantrao* (7) and *Sarat Chunder* v. *Gopal Chunder* (8) knowledge of the falsity of a belief induced is not necessary in a person bound by an estoppel. This argument seems to ignore the distinction between estoppel and acquiescence. In *Sitabai's case* as in *Sarat's case*, the acquiescence in question was during the progress of an uncompleted act from which the other party might, but for that acquiescence, have abstained. But the defendant in this case has adduced no evidence of any specific expenditure incurred or act done by him in consequence of the plaintiff's receipt of his rent. The case of *De Bussche* v. *Alt* (9), cited for appellant, makes clear the

(1) (1876) 25 Cal. W. R. 71.
(2) (1874) 14 Beng. L. R. 21.
(3) (1896) 22 Bom. 1.
(4) (1865) 34 L. J. Ch. 373.
(5) (1865) 34 L. J. Ch. 226.
(6) (1880) 15 Ch. D. 96, 105.
(7) (1901) 3 Bom. L. R. 201 at pp. 208, 210.
(8) (1892) L. R. 19 I. A. 203; 20 Cal. 296.
(9) (1877-78) 8 Ch. D. 286, 314.

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distinction between acquiescence in an act which is still in progress, and mere submission to it when it has been completed. In the first case it may operate as an estoppel if it have induced action infringing a right. In the second case, submission could not change the past, and as stated in that case "the right of action once vested cannot, at all events as a general rule, be divested without accord and satisfaction, or release under seal." Estoppel by acquiescence has no application to an *ex post facto* submission not amounting to ratification, and inducing no action or omission, and is consequently insufficient to constitute what in such case would be necessary, viz., accord and satisfaction with full knowledge. The distinction is recognized in *Jamnadas* v. *Atmaram*.(1) Acquiescence after a *fait accompli*, if not prolonged beyond the verge of limitation, is no bar to a right of suit already accrued: *Uda Begam* v. *Imam-ud-din* (2); *Peddamuthulaty* v. *N. Timma Reddy* (3); *Juggernath Sahoo* v. *Syud Shah*.(4)

The question, therefore, now arises whether the plaintiff has brought his suit within time, and this seems to be the really important issue in the case. The learned Counsel for the plaintiff contends as follows:—The defendant by entering under a void lease and paying rent became a yearly tenant and continued to be so, and the relation of landlord and tenant thus once established, the possession of the defendant could not at any time have been adverse to the plaintiff as landlord. The documents under which the defendant claims, he urges, were void *ab initio* and not voidable. They could not be and were not ratified, and the case of *Doe* d. *Rigge* v. *Bell* (5) is cited as showing that under English Law the position of the defendant would be that of a yearly tenant. Thus the learned Counsel contends the defendant had no adverse possession: he thought he was a lessee, but he was not: his possession was never challenged: it was therefore never adverse until the plaintiff claimed, and the defendant denied, the right to evict: and no bar has arisen under article 144 of the second schedule to the Limitation Act, 1877, and the defendant now having repudiated

(1) (1877) 2 Bom. 133, 137.
(2) (1875) 1 All. 82.
(3) (1864) 2 Mad. H. C. 270.
(4) (1874) 23 W. R. 99, P. C.
(5) (1794) 2 Sm. L. C. 116; 2 R. R. 642.

his landlord's title, the landlord, the plaintiff, can evict without six months' notice: *Vivian* v. *Moat*.[1] The tenancy from year to year, it is urged, had not been determined previously and therefore time did not begin to run against the plaintiff until the defendant's possession became adverse by the setting up of the permanent tenure, and article 139 applies. And if the right to possession be barred, the plaintiff contends he is at least entitled to a declaration that he is not bound by the lease and his suit would then fall within article 120, time beginning to run only from the date when the plaintiff's title was denied. Article 144, it is urged, does not apply when the suit is otherwise specially provided for and therefore has no application here. Mr. Inverarity further argues that the plaintiff does not derive his title through or under the grants of the defendant (*Runchordas* v. *Parvatibai*[2]) and the case of *Gnanasambandha* v. *Velu*[3] relied on for respondent has therefore no application. To these arguments for the plaintiff, the learned Advocate General for respondent replies that if the leases are void, the possession of the defendant became adverse from the date when he entered; that the defendant has therefore acquired an absolute title; that in any case his adverse possession of a limited interest can be set up (*Madhava* v. *Narayana*[4]); that the plaintiff was affected by that possession as the Collector represented him, and the plaintiff was not in the position of a reversioner coming in on the determination of a particular estate; that the defendant was not a tenant from year to year but entered under a lease; that the leases may be looked to for the purpose of showing the adverse nature of the possession (*Lalla Gopee* v. *Shaikh Liakut*[5]) and that the plaintiff but for his minority would have been barred in 1896 at latest; that he had three years to sue from the date of his attaining majority on 8th December, 1895, and that as the suit was not instituted till 15th January, 1900, it was time-barred. In considering these arguments it is to be noted *in limine* that the plaintiff in para. 7 of his plaint and his learned Counsel throughout this

(1) (1881) 16 Ch. D. 730.
(2) (1899) 23 Bom. 725, 736.
(3) (1899) L. R. 27 I. A. 69; 23 Mad. 271.
(4) (1885) 9 Mad. 244.
(5) (1876) 25 W. R. 211.

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appeal contend that the lease was void and not voidable. If the plaintiff entirely repudiates the representative character of the Collector, denies his power to manage and protect the property and to create a tenancy of any kind, and treats the demise as one made by a stranger, then his case would seem to be that the defendant's possession was that of a trespasser *ab initio*, and time would apparently run from the date when the leases were granted. In the case of *Governors of Magdalen Hospital* v. *Knotts* (1) where the lease then in question was held to be absolutely void within 13 Eliz., c. 10, the right of re-entry was held to have arisen from the moment of the execution of the lease, and was held barred by adverse possession. Lord Selbourne in that case was alone in the dictum that if rent however small had been reserved and received, it would have created a tenancy from year to year and limitation could not have run. The remark was not necessary to the decision of the case. It was apparently *obiter* and takes no account of the tenancy-at-will which in the absence of rent would have been called into existence and afforded a bar similar to that of a yearly tenancy. And the rulings in *Attorney General* v. *Davey* (2) (by Lord Chancellor Chelmsford and Lord Justices Turner and Knight Bruce), and in *Attorney General* v. *Payne* (3) of the M. R., where rent had been reserved and paid, show that circumstance to be immaterial as an answer to adverse possession under a void lease.

The contention of the learned Counsel for the plaintiff, that the possession of the defendant, though it may have been adverse to the Collector while representing the minor, was not adverse to the plaintiff, appears to me to be untenable. Section 7 of the Limitation Act clearly contemplates the accrual of a right to sue during disability (*Mahipatrav* v. *Nensuk* (4)), and special provision limits the right of suit after the disability has ceased. The possession of the defendant if adverse at all was no less adverse merely because there was some one who might have instituted a suit on his behalf. And as stated in *Radhabai* v. *Anantrav* (5),

(1) (1879) 4 Ap. Cas. 324.
(2) (1859) 4 De G. & J. 136.
(3) (1859) 27 Beav. 168.
(4) (1869) 4 Bom. H. C. 199, A. C. J.
(5) (1885) 9 Bom. 198, 225.

"a restricted power of dealing with the property does not involve an incapacity of submitting to adverse possession until limitation has given a title by prescription to the adverse holder." The Collector was the manager of the plaintiff's estate for the time being and entrusted with the protection and custody thereof from the first. And it is only by admitting that the Collector so far acted as his representative and not as a stranger in adverse possession; that the plaintiff can allege that the Collector created on his behalf a tenancy-at-will, or from year to year by acceptance of rent. The further contention for the plaintiff, that a tenant in this country cannot plead the right of a permanent tenure by adverse possession, also seems to me in view of a long series of decided cases to be untenable. The following cases (cited in their chronological sequence) show how continuous the current of decisions has been in this direction. In *Shaikh Nujmoddeen* v. *Lloyd* [1], it was said "the rule that a tenant cannot plead limitation against his landlord, as laid down in *Watson* v. *Ranee Shurut Soonduree Debia* [2] in which previous decisions are cited, appears to be too general in its terms. That this view was not taken by their Lordships in the case of *Raja Saheb Prahlad Sen* v. *Durga Prasad Tewari* [3] and in *Raja Saheb Prahlad Sen* v. *Run Bahadur* [4] is clearly deducible from the judgments in those cases though not expressly stated in so many words." And the judgment cited proceeds fully to state the ground for this deduction, which appears on a reference to the Privy Council cases in question which were taken as having clearly settled the point. Next in point of time is the case of *Tekaetnee Goura Coomaree* v. *Mussamut Saroo* [5], a Privy Council case, from which a similar deduction arises in connection with the following passage in their Lordships' judgment:—"The High Court overruled the decision of the Court of first instance upon the Statute of Limitations, holding, and their Lordships are of opinion rightly, that the Statute does not begin to run in favour of the Mokurrureedar against a Zemindar until the Zemindar has had notice that the Mokurrureedar claims

(1) (1871) 6 Beng. L. R. 130; 15 W. R. 232.

(2) (1867) 7 W. R. 395.

(3) (1869) 2 Beng. L. R. 111; 12 M. I. A. 286.

(4) (1869) 2 Beng. L. R. 111; 12 M. I. A. 289.

(5) (1873) 19 W. R. 252, P. C.

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under a mokurrurce grant, and in this case it was not shown that notice had been given to the plaintiffs of such a tenure twelve years before the commencement of the suit." In 1873 the Full Bench decision of the Calcutta High Court in *Dinomoney Dabea* v. *Durgaprasad* (1) allowed limitation to be raised by a trespasser setting up but failing to prove a tenancy, and in *Petambar Baboo* v. *Nilmony Singh* (2) distinct notice of a claim on the part of the grantor to hold in perpetuity and not subject to resumption, if uncontested for twelve years, was held a bar *pro tanto* of the landlord's title.

The Bombay High Court in *Maidin Saiba* v. *Nagapa* (3) held *Dinomoney's case* conclusive as to the right of the defendant to plead both tenancy and limitation, but in that case the defendant was regarded as having been throughout a trespasser, and the Madras High Court in *Madhava* v. *Narayana* (4) followed this last mentioned case and *Dinomoney's case* as showing that a party who cannot by his admission plead prescription as to general ownership, may yet rely on it with regard to a subsidiary interest claimed by him. *Narayan* v. *Yamunabai* (5) appears to rest on the principle that the lease granted having been beyond the powers of the lessor a yearly tenancy and not a perpetual tenancy was presumable, but to have contemplated it as possible that the tenant might have set up limitation if there had been no recurrent act between the parties inconsistent with the doctrine of adverse possession, by which it seems reference was made to the yearly payment of rent as an admission of a tenancy that could be referred to no legal title but that of a tenant from year to year. That the fact of a yearly payment, however, is not fatal to a plea of adverse possession was distinctly held in *Sankaran* v. *Periasami*. (6) There it was objected that possession never was in fact adverse because *poruppu* (a quit rent: Wilson's Glossary) was always paid. But following *Madhava* v. *Narayana* (4) it was held a sufficient answer to objection on that score, that possession of a limited interest in immoveable property may be just as much adverse for the purpose of barring a suit for the determination of

(1) (1873) 12 Beng. L. R. 275.
(2) (1878) 3 Cal. 793.
(3) (1882) 7 Bom. 96, 99.
(4) (1885) 9 Mad. 244.
(5) (1889) P. J. 136.
(6) (1890) 13 Mad. 467.

that limited interest, as is adverse possession of a complete interest in the property to bar a suit for the whole property. In *Bhagu* v. *Byramji* (1) a claim to hold property comprised in an unexpired lease, in conformity with and by virtue of its terms, was held to make the possession adverse to those who claimed as owners. And the last three cases were cited with approval in *Budesab* v. *Hanmanta* (2) where several of the cases cited above were discussed. That of *Madhava* v. *Narayana*, (3) of all those there cited, appears to be the one most nearly on all fours with the present case. For there it had been urged that possession was under an invalid *kanam* and possession for twelve years was a sufficient answer to a claim to eject. A *kanam* is defined in Wilson's Glossary as an arrangement by which the landlord holds a deposit for security for his rent when lands are taken on a stipulated rent upon lease for a given term of years. The result of this and other decisions cited in *Budesab's case* was referred to in that case by Sir Charles Farran as "certainly authority for the proposition that a landlord allowing a tenant to assert the validity of an invalid lease for the statutory period of more than twelve years, may be debarred from subsequently questioning the right of the tenant to hold under its terms."

This view, that the assertion of a title under an invalid lease if allowed by the landlord would raise a bar, does not seem to have been suggested or considered in the case of *Jugmohandas* v. *Pallonjee* (4) relied on for the present appellant. In *Jugmohandas's case* the Court (Mr. Justice Strachey) seems to have assumed that because it had never occurred to any one to doubt the validity of the lease, until after the plaintiff had attained his majority, the previous possession till then under the lease was not adverse, and that the plaintiff had twelve years from the date of his discovering its invalidity before he could be barred by article 144. The effect, however, of acquiescence in the defendant's assertion of title was discussed rather with reference to the question whether the plaintiff had ratified, or estopped himself from disputing, the lease (*vide* page 11 of the judgment) than with reference to the question whether defendant's possession

(1) (1892) P. J. p. 39.
(2) (1896) 21 Bom. 509, pp. 514-515.
(3) (1885) 9 Mad. 244.
(4) (1896) 22 Bom. 1.

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in asserting it was adverse. But the case of *Vithalbowa* v. *Narayan* (1) shows that a tenant's possession in the assertion of a claim to be a permanent tenant would be none the less adverse to the owner during years when there was no manager at all to represent the owner. *A fortiori* it would be none the less adverse because of the existence of a manager or guardian who was capable of representing the owner, and who knew of the assertion of such title, and his inaction or acquiescence would not prevent the possession from being adverse. It is the knowledge of the owner or of one representing the owner, of the assertion of such title, which causes time to run: *Gangabai* v. *Kalapa* (2) and compare the cases cited above of *Shaikh Nuzmoddeen, Raja Saheb Prahlad Sen* and *Madhava* v. *Narayana*. No doubt in some of the cases cited above, following *Dinomoney's case*, the plea of adverse possession was admitted on the ground that the defendant, if not a tenant from year to year, was a trespasser throughout. And it is urged that the defendant in this case cannot be regarded as a trespasser throughout inasmuch as having entered under a void lease, a tenancy from year to year must be presumed. That this rule applies in India so as to exclude all evidence that the person entering into possession asserted and maintained any other ground of title has not been supported by the citation of any authority. The passages cited from Woodfall on Landlord and Tenant no doubt show that if a man entered under a void lease he is not a disseisor, but a tenant-at-will under the terms of the lease in all other respects except the duration of time, and when he pays or agrees to pay any of the rent therein reserved, he becomes a tenant from year to year upon the terms of the void lease, so far as they are applicable to and not inconsistent with a yearly tenancy (Woodfall, 15th Edition, pages 93, 143, 231, 232, 358, where the tenancy from year to year is spoken of as implied by law from the payment and acceptance of rent or other circumstances, 364, 376). The leading case cited is *Doe* d. *Rigge* v. *Bell*.(3) In *Doe* d. *Rigge* v. *Bell* (3) the defendant had paid rent. Both that case and *Clayton* v. *Blakey* (4) were decided under the Statute of Frauds, which contained express provision that a lease for more

(1) (1893) 18 Bom. 507, p. 511.
(2) (1885) 9 Bom. 419.
(3) (1794) 2 Sm. L. C. 116; 2 R. R. 642.
(4) (1798) 8 T. R. 3.

than three years not reduced into writing should operate only as a tenancy-at-will. There is no similar provision in the Indian Statute Book. Nor, on the authority of Lord Chelmsford, Lord Chancellor, in *Attorney General* v. *Davey*,(1) is there any case in which possession taken under a void lease, as in that case, has ever been dealt with in equity as a lease from year to year. The case there dealt with was one of a lease with rent reserved, apparently void under 13 Eliz., c. 10. Section 116 of the Evidence Act precludes a tenant from denying that his landlord has a title at the beginning of the tenancy. But the authorities show that a tenant in India is not precluded by an admission of tenancy from showing that the nature of the tenancy asserted by him to the knowledge of the landlord has been for the period prescribed by the Limitation Act *pro tanto* adverse to the right to evict either at will or on notice given. The question then is, not what was the right which actually existed at the beginning of the tenancy, but what was the right which he has openly enjoyed to the knowledge of the owner or his representative for the time being. A manifest assertion by the tenant to the knowledge of the person representing the landlord's interests of a right inconsistent with that claimed by the landlord to treat him as a tenant-at-will or from year to year, would be a disclaimer of the landlord's title under the ruling in *Vivian* v. *Moat* (2). But then it is urged that though the disclaimer would work a forfeiture it would still be at the election of the landlord to determine the tenancy or to waive the forfeiture, and the waiver would operate only in respect of each successive year. Thus it is contended that until the landlord demanded and the tenant refused surrender, there would be no determination of the original tenancy-at-will or from year to year, and the possession of the tenant could never become adverse. This position has not been supported by citation of authorities and appears to be fully answered by the considerations set forth in the judgment of the Court of Appeal (James, Cotton and Thesiger, L. JJ.) in *Governors of Magdalen Hospital* v. *Knotts*,(3) The contention might be sustainable in a case of express waiver of forfeiture restoring the

(1) (1859) 4 De Gex. & J. 136. (2) (1881) 16 Ch. D. 730.

(3) (1878) 8 Ch. D. 709 at pp. 718—723.

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parties to the *status quo ante*, and thus implying the re-establishment of the landlord's claims. But it would be inconsistent with the decided cases and especially with that of *Gopalrao* v. *Mahadeorao* (1) to hold that a landlord, merely by receiving rent from his tenant, could preserve his right to other claims continuously denied by the tenant. In such a case section 23 of the Limitation Act could not apply. The relation of landlord and tenant may be continued by the admissions of the parties. But such admission cannot create, preserve or revive as undisputed conditions of its continuance rights in conflict with claims openly asserted and not withdrawn by the tenant who is suffered to continue in possession. In such circumstances the continuance of the defendant in possession evidences not a mere waiver of forfeiture for disclaimer, but an admission *pro tempore* at least of the conditions insisted on. The plaintiff's Counsel contends that in such a case as the present the tenant may think he has a lease, but his thinking so does not make his possession adverse. And this no doubt is indisputable. If the tenant does no more than think he has an adverse title, the bare belief could avail him nothing unless he could show that it was intentionally induced by the owner so as to bring into operation section 115 of the Evidence Act relating to estoppel. And I think a bare knowledge of the owner that a tenant *proposes* to rely on the assertion of a certain title would not in itself render the tenant's possession adverse. The owner in such case might well await actual resistance to or infringement of the rights claimed by him and till then would be under no necessity of taking action. But I also think if the tenant not only openly asserts to the knowledge of the owner an adverse interest, but proceeds to enjoy benefits claimable only on the basis of that interest, his possession at once becomes adverse and limitation begins to run against the owner from that time.

The fact that such assertion and enjoyment are not challenged does not change their adverse character, when once the necessity for challenging it has arisen. And in this case it seems impossible to close one's eyes to the fact that the adverse interest was openly asserted and so far enjoyed as to give full notice

(1) (1895) 21 Bom. 394.

of the nature of the tenancy claimed. For as the lower Court observes, Dr. Pollen (Exhibit 44) states that the fact that the defendant "held the lands as a permanent tenant was notorious" (page 13 of printed book). No suggestion has been made that this statement is not correct. Exhibit 67 deposes to the possession taken by the defendant on the basis of the Waste Land Rules. And indeed Exhibits 93 and 94 appear practically to admit that this was the nature of the tenancy which the defendant professed to hold. Exhibit 97 points to the same fact.

It has not been suggested that his possession was not held throughout on those terms (Exhibits 132, 133, page 80; Exhibit 134, page 82; Exhibits 135, 136). And the whole tenour of the correspondence and evidence recorded shows, I think, that the defendant from first to last claimed and enjoyed the benefits ordinarily granted under the Waste Land Rules. Among these benefits was the right to occupy for the first five years without payment of any rent at all. And it is not pretended that the defendant did not claim and enjoy that advantage which is certainly inconsistent with the position that he entered into possession as a yearly tenant. But the case of *Attorney General* v. *Davey* (1) already cited and that of *Attorney General* v. *Payne* (2) appear to show that in equity the circumstance that rent has been reserved by or been paid under a void lease, does not preclude the tenant who has entered into possession thereunder from setting up the plea of adverse possession as to a limited interest. And the assertion and enjoyment by him of rights only claimable in pursuance of the conditions of the lease was perfectly well known to the Collector who as manager represented the plaintiff's interest. The case of *Lalla Gopee Chand* v. *Saikh Liakut* (3) has been cited for respondent to show that an unregistered document when followed up by delivering of possession may be used as evidence of that possession. The case does not, so far as I can discover, appear to have been followed in any other authoritative decision. On the other hand, no case to contrary effect has been cited. A document inadmissible under section 49 could not, I think, be used as evidence of delivery of possession. For

(1) (1854) 19 Beav. 521. (2) (1859) 27 Beav. 168.
(3) (1876) 25 W. R. 211.

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that would be to use it as evidence of the transaction itself. But seeing that the Legislature has advisedly rejected in the more recent Acts the phrases which made such unregistered documents absolutely incapable of being received in evidence at all, and has very guardedly stated the purposes for which they shall not be received, I think in the absence of authority to the contrary an unregistered document inadmissible for the purpose of affecting immoveable property or of any transaction affecting such property may yet be looked to, not in any way as creating a title, or as showing a transaction that affected the property, but merely as containing a clear and exhaustive statement of the adverse possession which was set up by a person whose claims were admittedly limited to the rights enumerated in such document. Viewed from this point, the document is only an explanatory statement that may conveniently be used as showing what is meant by, and virtually included in, oral or other evidence referring to such document as containing an exhaustive and accurate list of the claims set up by the defendant. A document used for this purpose does not affect the property at all any more than would a glossary referred to for the purpose of showing the full meaning of the words used in evidence. The document is still treated as absolutely inoperative. It is the adverse possession alone which affects the property. And the document does not evidence or affect that. Nor is the document used as evidence of any transaction affecting the property. For the transaction which is relied on as affecting the property is not a transaction to which the document refers, but the adverse possession extending over twelve years. Of that transaction or series of transactions the document does not even purport to contain any evidence. It proves nothing itself, but is a bare list *in extenso* of details compendiously stated by reference in evidence which proves transactions totally different in character and effect from that referred to in the document. The document so used is not even corroborative of the evidence as to the twelve years possession relied on as affecting the property, and adds nothing to that evidence which is not implicitly contained therein. In case of leases by parol for more than three years void under the Statute of Frauds, the

tenancy was in every respect other than that of duration regulated by the terms of the void agreements: *Doe* d. *Rigge* v. *Bell* (1). In such cases the lease was treated as evidence that the party consented to be tenant from year to year upon all the terms of the agreement not inconsistent with such a tenancy. A document inadmissible under section 49 of the Registration Act could not be used for the purpose of showing what were the terms *consented to* or as evidence of any *implied transaction* affecting the property. But if it is allowable for the defendant to plead adverse possession of a limited interest, and if independent evidence proves that adverse possession has been enjoyed, not of an absolute interest but of an interest limited by definite conditions, those conditions form an inseparable part of the adverse possession proved. And if the conditions are described in terms which are definite in themselves, but which distinctly specify the conditions to be those contained in a certain book, enactment, set of rules or other document, such document must, I think, be looked to, not for the purpose of making it operative, but to show explicitly what was really included in the language used to describe those conditions. And thus if the defendant had proved possession in the assertion of claims identical with those of an occupant under the Bombay Land Revenue Code, there would have been nothing to prevent the Court from looking at that Code to see what was meant by the evidence. To do so would not make the Code affect the property or evidence any transaction. Here defendant appears from the evidence unquestionably to have held throughout in the assertion of claims identified as those which might have been set up by a person holding under the Waste Land Rules or the documents put in as Exhibits 59, 60 and 61. And I think those documents must be looked to, not to show that defendant had rights under any such rules or documents, but to show what is meant by the evidence describing the tenure which he claimed. This seems indeed absolutely necessary in order to ascertain what are the obligations towards the plaintiff which the defendant is, by reason of the admittedly

(1) (1794) 2 Sm. L. C. 116 ; 2 R. R. 642.

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limited interest asserted, still bound to observe. The next question that arises is whether notwithstanding adverse possession by the defendant of the limited interest asserted by him, the plaintiff can claim that his suit is within time under Article 139 or 120. But article 139 can only apply where the tenancy is proved to have determined and can have no application to a case where it is not terminable: *Ram Chunder Singh* v. *Madho Kumari*(1) where the Privy Council held article 144 the only provision applicable (*vide* page 493), and the only question was therefore whether a definite assertion of an adverse right had been made twelve years prior to suit. Their Lordships' finding was that no question of title or conflicting right had arisen prior to 1875, each of the parties consenting to go on as before, *i.e.*, in the undisputed recognition of a tenancy which till 1875 had never been asserted to be anything but a tenancy-at-will. In the present case, the occupation of the defendant in assertion of a right under the lease which involved a tenure rent-free for five years, gave full notice from the first of his claims to hold under the conditions of that lease and therefore it seems impossible to assume that the parties had consented to the continuance of a tenancy-at-will or a tenancy from year to year not set up by the one or admitted by the other.

The question, whether there was a terminable tenancy to which article 139 could apply, depends upon the question whether the plaintiff is or is not barred by article 144 from claiming possession in pursuance of such a tenancy, and thus in such a case the bar alleged to have arisen under article 144 is interposed before article 139 can apply. With regard to other articles of the schedule in the Limitation Act, the learned Counsel has throughout contended that the leases were void *ab initio* and there was therefore no necessity to set them aside, and article 91 being inapplicable, the only article which remains for consideration is article 120 in relation to the plaintiff's claim to a decree declaratory of his right. The declaration sought is that the plaintiff is not bound by the leases. But plaintiff, though not bound by the leases, is bound by the adverse possession of the defendant. The possession of defendant noto-

(1) (1885) 12 Cal. 484.

riously holding as a permanent tenant was *pro tanto* adverse from the first. The cause of action having accrued during the plaintiff's minority, the plaintiff had, I think, at most three years from the date of his attaining his majority in which to recover possession, and no authority has been cited to show that in such a case, time having once begun to run, anything that has since occurred could stop it or give the plaintiff a new starting point. The defendant was unquestionably in possession of a very large area of land which he had notoriously converted from barren and worthless jungle into an apparently thriving colony, supplied with houses, shops, fire-engine and water-cisterns, dispensary, hospital, school and post office. There could have been no reasonable ground at any time for supposing that the defendant had done all this as a yearly tenant or as a tenant-at-will. Nor is there any suggestion that he ever claimed to hold on any terms other than those which he set up from the first. There could have been no question that his possession was adverse to the right now claimed by the plaintiff, and no ground has been shown for holding in these circumstances that the plaintiff, on the cessation of his disability, could claim any extension of the three years allowed by section 7 of the Limitation Act as the period within which he could bring his suit.

The question, whether the terms of the leases which the Collector purported to grant were advantageous to the minor, is not one which it is necessary here to discuss. It is not alleged in the plaint that they were disadvantageous, or that better terms could have been obtained, but only that they were inoperative and not binding as against the plaintiff and void as beyond the powers of the Collector as administrator. Practically the only other objection taken in arguments was the sentimental objection of the plaintiff to the establishment on his estate of a permanent tenant on any terms in lieu of cultivators liable to eviction at short notice. The evidence indicates that till the land had been rendered by the defendant fit for cultivation, tenancies from year to year would have been out of the question. And having regard to the original condition of the land and to the expenditure of labour and capital incurred for more than twelve years on its improvement, it seems difficult to understand how the plaintiff could set up the contention that the defendant had been holding

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on a yearly tenancy. The permanent nature of the tenure which he claimed had been manifest or, as the Commissioner says, notorious from the first and throughout, and the plaintiff, if he wished to disturb his possession, could only do so by action brought within three years at most of his attaining majority. The plaintiff, it is to be hoped, will realize the permanent benefit conferred on his estate and will appreciate the superiority of his position as the overlord of an enterprising capitalist as compared with the precarious advantages he could have derived from the yearly tenancies of cotters. I do not think that there can be any doubt that the defendant has asserted his position as a permanent tenant on terms embodied in the leases of 1881 to 1884 ever since he entered into possession, and in these circumstances I hold that the plaintiff's claim, not having been brought within three years of the cessation of his disability, is time-barred. On these grounds I would confirm the decree of the lower Court and reject the claim with costs throughout.

The judgment of my learned colleague, Mr. Justice Starling, has been already delivered by me in accordance with consent given on behalf of the parties by their pleaders, before Mr. Justice Starling vacated his seat on the Bench.

STARLING, J.—One Dipsangji, the Thakore of Kanjeri in the Panch Mahâls, died on the 7th August, 1877, leaving him surviving the plaintiff Fatesingji, who was born on the 8th December, 1874. The Panch Mahâls had been ceded by Scindia to the British Government in 1861, but by Act XV of 1874, Act XX of 1864, the Bombay Minors' Act, had been declared not to be applicable to that district. Act XV of 1874 came into force on the 8th December, 1874. On the 29th August, 1877, the Government of Bombay sanctioned the attachment of all the property of the plaintiff's deceased father and appointed Mr. Wilson, the Extra Assistant Collector of the Panch Mahâls, to manage the estate during the minority of the heir (see Exhibit 106), and from that time the plaintiff's estate was under the management of the Collector for the time being of the Panch Mahâls. Before 1881 the defendant had been applying for a lease to him of certain waste lands in the plaintiff's estate, and in June and December, 1881, and February, 1884, three leases (Exhibits 59,

60 and 61) were granted to the defendant of portions of such land by the Collector purporting to act on behalf of Government, but no specific sanction of Government was obtained to the leases. These three leases were not registered. The Bombay Minors' Act came into force in the Panch Mahâls in 1885, and in 1886 the Collector obtained a certificate of administration to the plaintiff's property under that Act. The plaintiff came of age on the 8th December, 1895, but the administrator did not hand over his property to him on that day. On the contrary the then Collector, by his own order dated the 20th November, 1895 (Exhibit 142), and without the sanction of any superior authority, directed that the attachment of the estate was not to be removed for the present, and in fact it continued until the plaintiff received charge of his property on the 16th January, 1897. In the meantime, *viz.*, on 30th May, 1896, the Collector executed a consolidated lease of the lands comprised in Exhibits 59, 60 and 61 to the defendant without any sanction from the Government or the District Court by which he had in the first instance been granted a certificate of administration (Exhibit 62). This lease was duly registered. In January, 1900, the plaintiff informally required the defendant to give up possession of the lands he was then in possession of (Exhibit 140), and on the 13th January the defendant claimed to hold the lands under Exhibit 62, and on the 15th January, 1900, the plaintiff brought the present suit to have it declared that the defendant was only a cultivator and to be put in possession of the lands. In his written statement the defendant rested his claim on the lease, Exhibit 62. Subsequently, however, in case that might be held to be inoperative he fell back upon the leases, Exhibits 59, 60 and 61. It is admitted now that the defendant cannot shelter himself under Exhibit 62 as one granted by the duly constituted administrator of the plaintiff's estate, because it was passed by one who although he had been an administrator of the plaintiff's estate had become *functus officio* at the time he executed it by reason of the plaintiff having before that time attained his majority. The defendant, however contended that since the plaintiff came of age he had ratified it. I am of opinion that this document is one capable of ratification by the plaintiff. Mr. Inverarity pressed upon the Court the

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language used by Lord Russell in *Marsh* v. *Joseph* (1): "the acts must have been done for and *in the name* of the supposed principal," and argued that the lease ought to have actually been made in the name of the plaintiff. I find, however, that in *Bird* v. *Brown* (2) Rolfe B. in dealing with the same point says: "If A. B. unauthorised by me makes a contract on my behalf with J. S., which I afterwards recognize and adopt, there is no difficulty in dealing with it as having originally been made by my authority." I think Mr. Inverarity is putting too literal an interpretation on the words of Lord Russell, and that all that is required is that the act should be done on behalf of the supposed principal, and in my opinion Exhibit 62 shews on the face of it that it was executed on behalf of the plaintiff. Has the plaintiff then ratified that lease? In order that ratification should be imputed to him he must in the first place have had a knowledge not merely of the existence of some lease, but of its terms also so that he might know what he was ratifying. The plaintiff knew of some lease in English having been granted in May, 1897, (Exhibit 111), no copy of it having been handed over to him on the 16th January, 1897, when charge of the estate was given him (Exhibit 117). He then wrote for a copy. He again applied for a copy by Exhibit 95, and subsequently by Exhibits 94 and 93 on the 16th December, 1897, and the 17th May, 1898, respectively, but he did not get one till the 16th September, 1898, (see endorsements on Exhibit 93). The only evidence there is of ratification subsequent to that date is the receipt of two instalments of rent in February and March, 1899, for the rent of the year 1898-99. These two instalments were not paid to the plaintiff himself but to his talati who would naturally receive them without any specific communication with the plaintiff. There is no receipt in respect of them put in evidence to shew how they were received, and there is no evidence given to shew that they were described when paid as being in fulfilment of any particular contract. Much less is there any evidence the plaintiff knew that these sums were about to be, or had been, paid in. The defendant was admittedly a tenant of some kind, and as such

(1) (1897) 1 Ch. at p. 246. (2) (1850) 4 Ex. 786 at p. 793.

bound to pay rent. Consequently I am of opinion that though the receipt of rent from him by the plaintiff might have been an acknowledgment of a yearly tenancy (see *Doe* d. *Tucker* v. *Morse*[1] and *Doe* d. *Pennington* v. *Taniere*[2] it is not ratification of the lease of 1896, consequently the defendant cannot rely upon the rights given to him under that lease, but must fall back upon the Exhibits 59, 60 and 61. Whether they are of any good to him depends upon whether there was any Registration Act requiring such documents to be registered in force in the Panch Mahâls in 1881 and 1884. Now there is no doubt that the Registration Act of 1866, Act XX of 1866, extended to the Panch Mahâls, for it was so provided by section 98. If then the Panch Mahâls were part of British India in 1871, Act XX of 1866 was repealed by Act VIII of 1871 and the latter Act substituted in its place and Act III of 1877 in due course repealed Act VIII of 1871 and became law in the Panch Mahâls. If, on the other hand, the definition of British India in the General Clauses Act, 1868, did not include the Panch Mahâls, the repeal of Act XX of 1866 by Act VIII of 1871 did not repeal it in that district and it continued in force in 1881 and 1884. It is conceded that in any event Act III of 1877 by operation of the General Clauses Act, 1897, section 3, clause 7, and section 4 was in force in the Panch Mahâls from and after 11th March, 1897. It is not necessary for me to go into the question as to whether in 1881 and 1884 the Panch Mahâls were British India because there was in those years as just shown some Act in force which required the registration of leases, and Act III of 1877 provides that no document which requires registration and is unregistered shall affect any immoveable property comprised therein or be received in evidence of any transaction affecting such property. The three leases (Exhibits 59, 60 and 61) requiring registration and not being registered cannot be relied upon by the defendant to defend his position as a permanent tenant. What position then does he occupy? His possession had a legal origin, therefore he cannot claim to be in adverse possession as owner contrary to the terms on which he admits he came into possession, which

(1) (1830) 1 B. & Ad. 365. (2) (1848) 12 Q. B. 998.

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were those of tenancy. But a person who gets into possession under an invalid lease becomes a tenant-at-will and when he pays a yearly rent he becomes a yearly tenant. As a yearly tenant he cannot be turned out without a proper notice, *i.e.*, a notice given at a proper time. The notice, Exhibit 140, is not a notice to quit, and that is the only notice proved in the case. Consequently the plaintiff is not in the position which he takes up in this suit entitled to eject the defendant unless the reply of the defendant, Exhibit 40, was such a denial of the plaintiff's title as to entitle him to eject the defendant without notice. In my opinion there was no denial of the plaintiff's title as landlord. The defendant has always admitted he was a tenant, and the contention has been as to what were the terms of the tenancy. I should follow the case of *Ramchandra Shankar* v. *Kashinath Narayan* [1] and there having been no denial of title before suit and the plaintiff having given notice to quit, the plaintiff on his own showing is not entitled to maintain the present suit to eject the defendant from the lands of which he is now in possession.

The question still remains whether the plaintiff is entitled to a declaration that the defendant is only a cultivator, or yearly tenant. I do not think that he is. It is well established that there can be adverse possession of a limited interest in property as well as of the full title as owner. Consequently as it appears that the defendant agreed to go into possession under rules which would give him a permanent tenancy and that he has ever since he went into possession claimed to be in as a permanent tenant, I am of opinion that since 1881 and 1884 he has been in adverse possession as a permanent tenant and that as the plaintiff has not brought this suit within three years of his attaining majority, the defendant by adverse possession has obtained a right to hold these lands as against the plaintiff as a permanent tenant.

The plaintiff's appeal must therefore be dismissed with costs.

Appeal dismissed.

(1) (1896) P. J. p. 451.