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touching matters now substantially and directly in issue between them, *viz.*—whether the defendant is entitled to raise his building beyond the height at which it stood when that consent decree was passed, is *res judicata*. But it does not follow from this that the Court will necessarily grant an injunction as was done in the former suit by consent of parties, for that is a matter personal to the defendant there, and other considerations may now be found warranting the adoption of a different course.

Attorneys for the plaintiff:—*Messrs. Madhowji, Kamdar & Co.*

Attorneys for the defendant:—*Messrs. Edgelow, Gulabchand, Wadia & Co.*

B. N. L.

APPELLATE CIVIL.

Before Mr. Justice Beaman and Mr. Justice Hayward.

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September 4.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL (ORIGINAL DEFENDANT), APPELLANT, *v.* SADASHIV ABAJI BHAT AND THREE OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Survey and Settlement Act (Bom. Act I of 1865), sections 25, 28, 37, 38 (1)*—Land Revenue Code (Bom. Act V of 1879), sections 102, 106—Khoti village in Kolaba District—Survey and settlement—Introduction of "sanctioned" settlement—"Fixed or guaranteed"—Expiration of the period of "sanctioned" settlement—Continuance of the terms of the "sanctioned" settlement after the expiration of the period as still being sanctioned.*

A question having arisen as to whether under the settlement of the khoti village in suit, which was sanctioned in 1863 and introduced in 1865 subject to all the

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* First Appeal No. 98 of 1905.

(1) Sections 25, 28, 37, 38 of the Survey and Settlement Act (Bom. Act I of 1865) are as follows:—

25. It shall be lawful for an officer in charge of a survey to assess to the land revenue, under such general and local rules as may be in force in the survey under his charge, all lands cultivated or uncultivated, and whether hitherto assessed or not, provided that such assessment shall not be levied for more than one year until the sanction of the Governor in Council shall have been obtained thereto, and

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provisions of the Survey and Settlement Act (Bom. Act I of 1865), and thereafter for a fixed period of twenty-seven years, the Government was entitled on the expiration of the said period of twenty-seven years to insist upon the terms imposed upon the Khot as between him and his tenants under the settlement as still being sanctioned,

Held, that in 1892 when the fixed period of the settlement sanctioned in 1863 and introduced in 1865 came to an end, the terms which had been imposed upon the Khot under section 38 of the Survey and Settlement Act (Bom. Act I of 1865), when that settlement was introduced, remained in force, since the settlement itself must be deemed to have been then and still to have been sanctioned and that Government was within its rights in insisting upon the Khot accepting certain clauses in the kabulayat of that year.

FIRST appeal against the decision of R. S. Tipnis, District Judge of Thana, in original Suit No. 39 of 1893.

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provided that it shall not be leviable from any land held and entered in the land registers as wholly or partially exempt from payment of land revenue, except to such amount as is in accordance with previous practice, or any law which has been, or may hereafter be, enacted relating to lands so held.

28. It shall be lawful for the Governor in Council from time to time to lay down rules for the administration of the survey settlements not at variance with any provision of this Act, and to declare existing settlements and all assessments imposed according to sections 25 and 26 of this Act, fixed for any period not exceeding thirty years. The expiration of periods so guaranteed shall from time to time be published by authority of Government in the *Government Gazette*.

37. Whenever, in the Rutnagherry Collectorate and in the Ryghur, Rajpooree and Sanksee talukas of the Thana Collectorate, the survey settlement is introduced into villages or states held by Khots, it shall be competent for the Superintendent of Survey or Settlement Officer, with the sanction of the Governor in Council, to grant the Khot a lease for the full period for which the settlement may be guaranteed in place of the annual agreements under which such villages have hitherto been held; and further, the provisions of section 36 in respect to the right of permanent occupancy at the expiration of a settlement lease shall hold good in regard to those villages or estate.

38. It shall also be competent to such officer, with the sanction of the Governor in Council, to fix the demands of the Khot on the tenant at the time of the general survey of a district, and the terms thus fixed shall hold good for the period for which the settlement may be sanctioned. But this limitation of demand on the tenant shall not confer on him any right of transfer by sale, mortgage, or otherwise, where such did not exist before, and shall not affect the right of the Khot to the reversion of all lands resigned by his tenant during the currency of the general lease.

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The facts were as follows :—

The plaintiff Sadashiv Abaji Bhat was the Khot of the village of Ambdoshi situate at Tale Petha in the Kolaba District. The khoti was originally conferred on Krishnaji Mahadev Mehendale, plaintiff's predecessor-in-title, by Peishwa Bajirav I under a grant of the year 1733. The Khots of the village, according to custom, recovered from the tenants *ardhel* (one-half of the crop) in the case of rice lands and *tirdhel* (one-third of the crop) in the case of *varkas* lands, or the rent agreed upon between the Khot and his tenants.

On the 16th June 1863, the Government of Bombay sanctioned survey rates in Tale Petha in which the village of Ambdoshi was situate. As a matter of fact, however, the rates were not actually introduced until 1865-66. On the 25th January 1865 the Survey and Settlement Act (Bom. Act I of 1865) came into force, section 3 of which declared the then existing survey settlements to be in force subject to the provisions of the Act. At the original survey the demands of the Khot were fixed by the Survey Officer purporting to act under section 38 of the Act. The Khot of Ambdoshi was offered a lease under section 37 but he refused the offer and passed to Government annual kabulayats from 1869-70, one of the terms of which was not to exact anything more from his tenants than the rates fixed under section 38 by the Survey Settlement Officers. The main conditions were as follows :—

2. The general assessment of lands has been recorded in the survey papers. In addition to that an additional revenue will be charged at the rate of one anna per rupee on the abovementioned estimated revenue as Local Fund assessment. The amount so assessed will be paid off by instalments as may be decided by the Collector of this District.

* * * * * * *

5. We shall pay the revenue about the general assessment of lands as stated above in the first two items, we shall receive dues from the tenants of the same as detailed below :—

(i) We shall collect the revenue in cash in the fixed number of instalments as the dues must have been entered in the survey papers as assessed from each one of the lessees enjoying fixed fees (Dharekarees).

(ii) Some lands of those now in the charge of the Khots have been recorded as standing in the names of the clients : and in pursuance of section 38 of Act I

of 1865, the assessment of these lands must have been entered in the names of those clients. We shall collect all those items of revenue with profits for the abovementioned years in accordance with the following details :—

(*a*) The tax on the ("khareep") autumnal harvest is rupee one and eight annas for profit : in all one rupee and annas eight : of that for the tax one rupee in cash, and as for the profit half a maund of ("Bhat") rice in the husk or six payalis calculated at the rate of one khandy for twenty rupees. Ten pice will be charged for each maund of the nett revenue and the profit.

(*b*) The whole of the tax on lands of a superior quality in cash, and twelve annas for profit. At this rate the nett revenue will be taken as half a maund or six payalis calculated at the market rate of rupees thirty : one-half of that will be the Naglee corn, and the other Waree. The whole of the tax to be taken out of a rupee in case of profit.

In this way the revenue will be levied from the tenants.

From the Government we shall get a certificate stating how much revenue is due from each ryot ; nothing in excess of that will be taken.

* * * * * * *

7. The due which will be levied from each ryot as stated in details above, will be in quantity exactly what must have been entered as due in the account of each ryot, in the records of the general assessment of lands. We shall also enter in the book of each client what amount is due from him on account of the land assessment, before the instalments begin. We shall receive the revenue exactly as so stated and immediately on the receipt of the due, all corresponding (entry) will be at once made in the book. If on enquiry it be found that we failed to do this, we shall pay to Government the fine which may be inflicted on us, but not exceeding rupees one hundred.

8. If the Dharekaree do not give his land for cultivation for any reasons and is reduced to penury (or absconds) or dies without leaving a rightful claimant, and also if any of the clients of the Khot in charge of the same die and if there be no heirs to him if he absconds, we shall report that to the Mamlatdar. Then we shall make the necessary inquiries for causing the corresponding mutations on the records. We shall enter the land to the account of the Khot. We shall also obey any orders of the Government as to how that land is to be cultivated and how the fixed tax must be paid to the Government. But if the season for cultivation set in before any final orders are received about such lands, due arrangements as stated above will be made until the final orders of disposal are obtained.

* * * * * * *

10. All the trees that may be standing in the lands of the Dharekarees, other than timber and blackwood and those mentioned in the 9th item above, where the same are owned by them, must be admitted to be of their ownership. All the other trees are owned by us as has been conceded by the Government. Where in any year, those trees of timber and blackwood be felled, after the wages are deducted, if the trees be from the ownership of the Dharekarees, one-third share of the other proceeds should be had by the Dharekarees, and where

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the trees are not owned by the Dharekarees, the aforesaid one-third share will be given to us.

* * * * * * * *

15. At present an appeal (a case) is being prosecuted about the khoti in the High Court. The management of our village should be conducted according to what may be decided there. Till then we have agreed to carry on the management in accordance with the conditions stated in paras. 1 to 14 above.

On the 10th February 1870 the Collector of the District issued a proclamation declaring that the survey rates of Ambdoshi had been fixed and that they would continue for a period of twenty-seven years from the year 1865-66 to the year 1891-92. On the 15th March 1875 the Government published a notification under section 28 of the Act. The period of twenty-seven years guaranteed expired on the 31st May 1892. The Khot was, thereupon, required to execute an annual kabulayat in the usual form, but he objected to the clause relating to rent and refused to pass the kabulayat. An order for attachment of the village was, in consequence, issued on the 9th December 1892; but on the next day the plaintiff passed under protest a kabulayat in the usual form. On the 28th November 1893 the plaintiff filed the present suit against the Secretary of State for India in Council praying for a declaration that (1) the terms which the defendant unauthorizedly compelled the plaintiff to insert in the kabulayat for 1892-93 being so entered under coersion the kabulayat was illegal, invalid and not binding on the plaintiff and (2) the plaintiff could not be compelled to pass such a kabulayat and the defendant was not competent to attach the plaintiff's village. He further prayed for an order that the defendant should not fix as between the plaintiff and his tenants the rents to be levied by the Khot from his tenants and claimed Rs. 400 for damages.

The defendant answered *inter alia* that under section 11 of the Revenue Jurisdiction Act (Bom. Act X of 1876) the suit could not be entertained until the plaintiff had shown that he had preferred all such appeals allowed him by the law in force, namely, sections 203 and 204 of the Land Revenue Code (Bom. Act V of 1879), as it was possible for him to present within the time allowed by law for the suit; that the

plaintiff was not the owner of the village and not having accepted the lease tendered under section 37 of the Survey and Settlement Act (Bom. Act I of 1865) had no permanent interest in the village in suit, nor any interest beyond that of revocable agency; that Government had recognized the plaintiff's preferential right to officiate as Khot on an undertaking to perform the duties attached thereto by Government and Government could not be compelled to retain any person therein unless satisfied that such person was prepared to perform the duties required; that Government was justified in requiring, before re-admitting the plaintiff to the office, to fulfil the specified duties; that the plaintiff was bound under section 38 of the Survey and Settlement Act (Bom. Act I of 1865) by such terms as may be fixed by the superior officer as to his demand on tenants and the terms of the kabulayat objected to by him were consistent with the imperative requirement of the law; that the plaintiff had not sustained a loss of Rs. 400 and that the plaintiff was liable to forfeit his office on refusal to carry out the duties thereof.

The suit was originally heard by Mr. Beaman, who was then the District Judge of Thana, and he dismissed it with costs holding, on the first issue, that the plaintiff had not exhausted his remedies before bringing the suit.

From that decision the plaintiff preferred an Appeal No. 158 of 1895, to the High Court which, on the 18th November 1896, reversed the decree and remanded the suit for re-trial on the merits. After the remand the case was finally heard by Mr. R. S. Tipnis, the District Judge, who after a very protracted inquiry found that the plaintiff was the *purâtan sanadi* Khot but not *vatandar* Khot and his predecessors-in-title were *purâtan sanadi* Khots of Ambdoshi; that the plaintiff was not the absolute owner of the khoti village of Ambdoshi but his interest in the said village was of limited proprietorship; that the plaintiff had an interest in the khoti village beyond that of a mere officer, agent or farmer; that the right of the plaintiff to manage the khoti was not conditional but was dependent on the fulfilment by him of the duties in connection with his

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khotship and his right to the khotship was not forfeited by his refusal to undertake the duties of the Khot in any year; that there was a provision in the Survey and Settlement Act (Bom. Act I of 1865) for fixing, on certain conditions and for a certain term, the Khot's demands on the tenant, but the insertion of the obligation in that behalf in the required kabulayat for 1892-93 went beyond the provisions of the law and consequently gave to the plaintiff a cause of action to claim damages and not injunction, and defendant did not acquire any right to interfere between plaintiff and his tenants simply by virtue of his having registered tenant's names in the survey record; that the defendant was not estopped from denying plaintiff's claim by his conduct or by any valid agreement; that the plaintiff had a right to revert to the *Mamul vahivat*, though it might be inconsistent with that prescribed in section 38 of the Survey and Settlement Act (Bom. Act I of 1865), on the expiry of the period of settlement, which period did expire in 1891-92, and the system adopted by Government for fixing the Khot's demands on the tenant at the survey was, when in force, inconsistent with the *Mamul vahivat*; that the plaintiff was entitled to Rs. 400 for damages claimed in the suit and that the plaintiff was not bound to execute the required kabulayat for 1892-93 containing the objectionable parts of clauses 5, 7, 8, 10, 15, and by his refusal to execute the same, the plaintiff did not forfeit all his rights to the khotship of or interest in the village of Ambdoshi.

On the strength of the above findings the District Judge passed a decree in the following terms :—

1. That the annual kabulayat for 1892-93 executed under protest by plaintiff is not binding on him with regard to clauses 5, 7, 8, 10, 15 inserted therein, that is to say :—

Clause 5 is objectionable as in (sub-clause 2) 1892-93 plaintiff was entitled to revert to the practice of recovering customary rents (*Mamul vahivat*) from tenants of *khot nisbat* lands, and was not bound to restrict his demands on the tenants to specified amounts as laid down in sub-clause 2;

Clause 7 is objectionable and requires verbal alteration inasmuch as according to *Mamul vahivat*, assessment is recoverable from dharekaris and not khoti tenants;

Clause 8 is objectionable because according to *Mamul vahivat, khot nisbat* lands lapse to the Khot without any special order in that behalf from the Collector;

Clause 10 is objectionable because plaintiff is entitled to the benefit of Mr. Dunlop's proclamation in respect of trees growing on *khoti khasgi* lands;

Clause 15 is objectionable because it is in the interest of the plaintiff and he does not want it to be inserted.

2. That the plaintiff should not have been, in 1892-93, compelled to pass the annual kabulayat containing the aforesaid objectionable clauses without his free consent.

3. That the plaintiff is not liable to pass an annual kabulayat containing the aforesaid objectionable clauses 5, 7, 8 after 1891-92, until Government in its executive capacity conforms to the provisions of the law now in force, *viz.*, section 38 of Bom. Act I of 1865, and legally exercises the power conferred upon it by the aforesaid section of the aforesaid Act.

4. That the plaintiff's khoti village of Ambdoshi is not liable to attachment by Government should plaintiff refuse to pass any such aforesaid kabulayat in any year after 1891-92 on account of the insertion therein of the aforesaid objectionable clauses 5, 7, 8, unless and until Government legally conforms to the provisions of section 38 of Bom. Act I of 1865 or any other law in force at the time.

5. That in the state of law and rules having the force of law as existing in 1892-93 Government were not entitled to restrict plaintiff (the Khot) to specified demands on the khoti tenants of Ambdoshi.

This Court further orders that plaintiff do recover from defendant Rs. 400 as damages claimed in the plaint, and that each party should bear its own costs.

11th March 1905.

The defendant appealed.

Strangman (Advocate-General) with *G. S. Rao* (Government Pleader) for the appellant (defendant):—The principal question involved in the case is whether the rights of the plaintiff to levy assessment from his tenants are limited by the rates fixed under section 38 of the Survey and Settlement Act. If this point is decided in our favour there is an end of the case. The decision of the point depends upon the admissions of the parties, certain known facts and some provisions of law.

The village of Ambdoshi is in Rajpuri Taluka referred to in section 37 of the survey and settlement Act. That section empowers Government to introduce survey settlement, that is, to fix the rates as between Government and the Khot. The guarantee for the rates is fixed for a period not exceeding

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thirty years under section 28 of the said Act. That section corresponds with section 102 of the Land Revenue Code. Under section 37 a lease can be granted to a Khot for a period not exceeding thirty years. It is optional with the Khot to accept or not to accept the lease.

After the expiry of the period of guarantee, there is nothing in the Survey and Settlement Act or the Land Revenue Code which makes it obligatory on Government to make a fresh survey. If Government do not re-survey or re-assess, they can go on recovering the same rates as fixed at the original survey. The period guaranteed is guaranteed in favour of the Khot. Government can go on levying the same rates. There being no re-survey Government were entitled to call upon the Khot to pay the assessment fixed in 1865, which Government did by calling upon him to execute a kabulayat. The Khot objected to certain clauses in the kabulayat; he did not object to pay the sum of Rs. 707-12 fixed in 1863 and introduced in 1865-66. The word in section 38 is "sanctioned" and not "guaranteed." So long as Government levied nothing more than what was fixed under section 27, the Khot had no right to levy anything more from the tenants than what was fixed under the section.

The District Judge was of opinion that "sanctioned" meant "guaranteed." His view was erroneous. There is nothing in the law as to how sanction should be evidenced. In the present case sanction was clearly evidenced by the demand of Government on the Khot to execute a kabulayat as usual in 1892-93. This was a clear, definite sanction.

We submit that the period of settlement must be deemed as sanctioned so long as Government goes on calling upon the Khot to pay at the previous rates, that is, to execute a kabulayat: see section 102 of the Land Revenue Code and sections 25, 28, 37 and 38 of the Survey and Settlement Act. Under section 25 when once the rates are sanctioned they may go on for ever subject to a guarantee that Government will not enhance the rates for a period of thirty years.

We contend, first, that no sanction was required at all and, secondly, if any sanction was required, Government's demand

to execute a kabulayat as usual with a threat was a sufficient sanction.

The construction put by the District Judge upon the sections of the Survey and Settlement Act was not correct.

D. A. Khare for the respondent (plaintiff) :—The proclamation issued in 1870 notified that the restriction was to hold good for twenty-seven years. The word in the proclamation is *tharav*, that is, agreement, settlement. Under section 38 of the Survey and Settlement Act some period has to be fixed for which the rates are to be limited.

"Sanction" means two things: one, sanctioning the settlement, and the other, sanctioning the period. Sanction for a further period nowhere appears. For want of sanction Government had to issue a confidential resolution in 1895.

Section 38 requires an express declaration fixing the period of years. It requires an express sanction for the limitation of the Khot's demand on the tenant. The period in section 38 must be the period in section 37.

The question still remains whether the Survey Officers have any power to limit the Khot's demands on his tenants.

The Khot's undertaking to be bound by the terms of the usual kabulayat, clause 15 in the kabulayat, had no meaning since the decision of Ambegaum suit. By passing the kabulayat the Khot did not accept the right of Government to interfere with the Khot's right as against his tenants-at-will. Government have no right to do that under section 38 of the Survey Settlement Act.

Government are estopped from pressing the Khot to pass kabulayats as they want.

BEAMAN, J. :—This case has assumed very large proportions, but we think it can be disposed of in few words. We think, however, that we ought not to dismiss it without paying a tribute to the great thoroughness and ability with which the learned Judge, who tried this suit, has dealt with the enormous mass of materials laid before him. In the argument before us it has become only too clear that an undue and quite an

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unnecessary strain was put upon that learned Judge, owing to the course taken by the litigation below. The whole of his learned and elaborate enquiry into the character of this particular khoti, is for our present purposes entirely irrelevant. So too is much else in that judgment, which, however, may not prove to be labour in vain, since it will always be useful for purposes of reference when kindred questions arise.

The point before us, however, is extremely simple, and turns upon the construction of sections 25, 28, 37 and 38 of Bombay Act I of 1865, and sections 102—106 of the Land Revenue Code (Bombay Act V of 1879). Briefly put, it amounts to this: Whether under the settlement of this khoti village, which was sanctioned in 1863 and introduced in 1865, subject to all the provisions of Act I of that year, and thereafter fixed for a period of 27 years, the Government was entitled on the expiration of the said period of 27 years to insist upon the terms imposed upon the Khot as between him and his tenants under the settlement as still being sanctioned.

In the Court below the learned Judge has discussed this point very elaborately; but we cannot help thinking that he has entirely overlooked the intention of the Legislature in using in certain sections the words "fixed or guaranteed" and in other sections the word "sanctioned." In his opinion "sanctioned" at the conclusion of section 38 of Bombay Act I of 1865 is synonymous with "guaranteed or fixed"; and if this interpretation be correct, it would follow that the terms imposed by the settlement of 1863 upon the Khot ceased to be in force at the expiration of the term for which that settlement was fixed or guaranteed. That would be in the year 1892, so that in his view the plaintiff-respondent was justified in refusing to renew kabulayats including those terms after that year. We think, however, that the contention of the learned Advocate-General on behalf of Government is clearly right and must prevail. If we look to the effect of all the sections we have mentioned, taken as a whole, it appears to us that there can be no serious doubt but that the construction placed upon the concluding words of section 38 by the Advocate-

General is not only the natural and right construction, but also is essentially equitable and in conformity with the plain policy of Government. The various steps taken under these sections may be thus briefly described.

The officer entrusted with preparing a survey settlement proposed his rates to Government and these rates were only enforceable as assessment for one year until they were sanctioned by Government. When they were so sanctioned, the settlement became a sanctioned settlement within the meaning of the clear words of section 38, and that meant no more than that Government had accepted the various rates of the assessment proposed by the Survey Settlement Officer. Such a sanctioned settlement might remain in force for one year or for 50 years. But in order to give some fixity to tenure, for those holding under it, the law provided that Government might in their interests fix or guarantee those rates for a definite period, not exceeding, under Bombay Act I of 1865, 30 years. That was clearly intended to be in the interests of those paying assessment and holding under the settlement. Section 38 of the same Act together with section 37 appear to have exclusive reference to khoti villages. It was further enacted that at the time of the general survey the Settlement Officer might limit the rent to be taken by the Khot from his tenants. And the section goes on to say that all the terms so imposed shall hold good during the period for which the settlement may be sanctioned.

Now section 37 of the same Act provides for fixing the dues to be paid by the Khot to the Government. There we find a provision made for guaranteeing or fixing the period of such sanctioned settlement. And it is very important to discriminate in all these sections between the carefully and no doubt advisedly made choice of the words "sanctioned" on the one hand and "fixed or guaranteed" on the other.

If we turn to section 25 of the Act, we shall find that it provides for the sanctioning of the settlement. If we turn to section 28 of the Act, we shall find that it provides for fixing or guaranteeing the period of that settlement up to a term not

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exceeding 30 years. So again in the later Act, Land Revenue Code (Bombay Act V of 1879), in section 102 we find in the first sentence provision made for sanctioning the rates proposed by the Settlement Officer, which is tantamount to sanctioning the settlement within the meaning of section 25 of Bombay Act I of 1865. And the section then goes on to provide for fixing the period of the settlement which is tantamount to re-enacting what was provided in section 28 of Bombay Act I of 1865. Thus we think that there is a very fair distinction between "fixing" a period during which a sanctioned settlement is to continue in force unmodified, and "sanctioning" a settlement which goes no further than accepting the rates proposed by the Settlement Officer.

We have then to consider what the effect of section 38 of Bombay Act I of 1865 is when a settlement has been sanctioned and a period has been fixed and that period has expired. That is what has happened here. The settlement was, as we have said, sanctioned in 1863. It was introduced in 1865 and a period of 27 years from that day was fixed. During that period the plaintiff-respondent does not deny that he was bound under section 38 to comply with all the terms regulating his right to levy rent from his tenants proposed under the sanctioned settlement. But his contention is that when the period fixed expired, those terms no longer remained in force, since section 38 says that they shall only hold good during the period for which such settlement may be sanctioned. But what is the effect of the fixed period terminating before any revised settlement has been introduced? Surely it can be no other than to continue the sanctioned settlement relieved from the quality of fixity. That is to say, that the position of those holding under it is, until interfered with, precisely the same as it was at the commencement of the fixed period, but less secure since at any day Government might intervene, revise the settlement and enhance the rates and assessment. So long, however, as it does not do so, we must presume that the settlement originally sanctioned continues to be sanctioned, and we think, therefore, that the Advocate-General is right in saying that no proof is needed, even of any implied sanction on the part of Government, so long

as the other side can show nothing to the contrary. Were, however, any proof of implied sanction necessary, the Advocate-General points out that it is to be found in the fact that immediately upon the expiration of the fixed period Government demanded the assessment from the Khot on the same terms as before, and this, it is said, is convincing proof of the implied intention of Government to continue the sanction given to the assessment in 1863, pending the introduction of any new and revised settlement which might later be found necessary.

On both these lines of argument we are disposed to agree with the learned Advocate-General. We think too that in adopting them we are giving effect to the real equity of the case and the intended policy of Government. For, if we were not to do so, the effect would be that since no revised settlement has been introduced, the Khot would be able to retain the benefit of the low rate of assessment fixed upon him in 1863, while he would be at liberty to exact from his tenants, as indeed he wishes to do now, up to half the actual produce of their cultivable lands. That, we feel sure, never could have been the intention of Government, nor do we think that the words used in the Legislative enactments compel us to any such conclusion. Rather we are clearly of opinion that the actual words used, when all the sections are read together, naturally do bear the meaning and construction which we have been invited to put upon them by the learned Advocate-General.

We, therefore, hold that in 1892, when the fixed period of the settlement sanctioned in 1863 and introduced in 1865 came to an end, the terms which had been imposed upon the Khot under section 38 of Bombay Act I of 1865, when that settlement was introduced, remained in force, since the settlement itself must be deemed to have been then and still to be sanctioned: and that Government was within its rights in insisting upon the Khot accepting clauses 5, 7 and 8 in the kabulayat of that year. These are the clauses which are now chiefly in dispute.

As to clause 15 the learned Judge below found that it was in the interest of the plaintiff, and as he did not desire that it

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should be continued, it ought to be struck out of the kabulayat. To that the Advocate-General on behalf of Government has no objection.

As to clause 10, which is the only other clause in the kabulayat in dispute, the Advocate-General on behalf of Government accepts the finding of the learned Judge below as to the plaintiff's rights to trees. That clause, therefore, must be modified in accordance with what has been found by the learned Judge of the first instance.

On behalf of the plaintiff-respondent the only plea taken by Mr. Khare has been that of estoppel, but we are totally unable to find anything in the materials, upon which he has sought to rest his argument, even resembling a legal estoppel; and Mr. Khare himself after very little argument virtually conceded that it was no true case of estoppel, though his client felt that he had some legitimate grievance in the manner in which his petitions and complaints to Government had been dealt with while the Ambdoshi case was under consideration. With that, we think, we have nothing to do in this Court.

The result, therefore, will be that subject to the excision of clause 15 in the kabulayat and the modification indicated in clause 10 the plaintiff's suit in all respects fails and must now be dismissed with all costs throughout, including costs of the appeal and the cross-objections.

The deposit of 400 rupees in the Thana Court may now be refunded to the defendant.

Suit dismissed. Appeal allowed.

G. B. R.