PRIVY COUNCIL.*

SECRETARY OF STATE FOR INDIA IN COUNCIL, DEFENDANT, *v.* BAI RAJBAI (PLAINTIFF) AND CROSS APPEALS.

[On appeal from the High Court of Judicature at Bombay.]

P. C.* 1915. *April* 16, 20, 21, 22, 23. *June* 3.

Kasbatis—History and status of Kasbatis in Gujerat—Ahmedabad Taluqdars' Act (Bombay Act VI of 1862)—Gujerat Taluqdars' Act (Bombay Act VI of 1888)—Bombay Land Revenue Code (Bombay Act V of 1879), sections 68, 73—Rights of Kasbatis after cession to and annexation by British Government—Rights of Lessees from Bombay Government—Onus of proof on claimant of rights of permanent tenure—Lease implies no obligation to renew at end of term—Obligation to give up possession at end of lease.

In this case their Lordships of the Judicial Committee held (reversing the judgments of the Courts below) that the respondent, the descendant of a family of Kasbatis who were in possession of a village called Charodi in the district of Ahmedabad in Gujerat at the date of the cession of that district by the Peishwa to the British Government, and whose predecessors-in-title held thereafter under leases from the Government, were mere lessees of the Government of Bombay, bound to give up, at the end of each term of lease, possession of the village, and were never legally entitled as each lease terminated to have a new lease granted to the last lessee or representative, and therefore never acquired permanent possession of the village.

The only legal enforceable right the Kasbatis could have as against the British Government were those, and those only, which that Government by agreement, express or implied, or by legislation chose to confer upon them. The relation in which they stood to their native sovereign, and the consideration of the existence, nature, and extent of their rights before the cession were only relevant matters for the purpose of determining whether and to what extent the British Sovereign had recognized their ante-cession rights, and had elected or agreed to be bound by them. The burden of proving that they had any such rights which the Bombay Government consented to their continuing to enjoy rested upon the respondent.

The principle laid down in *The Secretary of State in Council of India* v. *Kamachee Boye Sahaba* (1) and *Cook* v. *Sprigg* (2), followed.

* *Present*:—Lord Atkinson, Sir George Farwell, Sir John Edge and Mr. Amir Ali.

(1) (1859) 7 Moo. I. A. 476. (2) [1899] A. C. 572.

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The just and reasonable inferences to be drawn from the evidence were that the respondent had failed to discharge the onus on her; that the Bombay Government had never by agreement express or implied conferred upon her or any of her ancestors the proprietary rights in, or ownership of, the village claimed by her; they never conferred upon any of the lessees of the village a legal right to insist, at the termination of the lease, upon a new lease being granted; they were never under a legal obligation to grant any lease of the village, and the granting or withholding of a lease rested solely in their discretion.

The mere repetition of acts of grace by the Government could not *per se* create a legal right to their continuance.

Prima facie a lease for a term does not import any right to a renewal of it: on the contrary it *prima facie* implies that the lessees' right to the premises ends with the term.

There was no analogy between holdings of the Grassias and the Kasbatis; they and the Mewassies were clearly distinguishable from the Kasbatis. The Ahmedabad Taluqdars Act (Bombay Act VI of 1862) did not apply to Kasbati lessees. They never were Ahmedabad Taluqdars in the true sense: they did not lose their ancient rights of ownership of land by taking leases as did the Grassias and therefore did not suffer the injustice which the statute was designed to remedy.

The effect of sections 68 and 73 of the Bombay Land Revenue Code (Bombay Act V of 1879) read with the Gujerat Taluqdars' Act (Bombay Act VI of 1888) is that a lessee whether a true Taluqdar, or a Thakur, Mewassie, Kasbati, or Naik, is bound by the terms of his lease, one term of which is that he shall only occupy for the term of years for which a lease for years is granted, and *prima facie* no longer.

APPEAL 34 of 1914, being three consolidated appeals from judgments and decrees (16th April 1909 and 11th April 1911) of the High Court at Bombay, which varied and affirmed a decree (30th November 1907) of the District Judge of Ahmedabad.

The question for determination in this appeal was as to the nature of the tenure upon which a village called Charodi in the Ahmedabad district was held by the plaintiffs (Bai Nandbai and Bai Rajbai) in the suit out of which the appeal arose. Bai Nandbai died pending the suit, and Bai Rajbai claimed to be her heir, and to

represent the interest of both of them in these appeals, in one of which Bai Rajbai is the respondent, and in the other the appellant.

Bai Nandbai was the widow of one Fatumiya who died about 1891 without issue; and Bai Rajbai was the only daughter of one Bapabhai Fatumiya's brother's son who died about 1893-1894. Fatumiya and Bapabhai belonged to a class of Mahomedans known in the district as Kasbatis [residents of the Kasba (city or town)] and they and their lineal ancestors had been in possession and management of the village of Charodi intermittently for several generations. The plaintiffs claimed to be entitled to the permanent possession and management of the village subject only to the right of the Government to levy jamabandi or revenue assessment upon certain terms. The Government of Bombay on the other hand (as represented by the defendant) denied that the plaintiffs had any permanent right to the village, and claimed that they were entitled to resume it.

The series of transactions between the Government and the Kasbatis commenced soon after the cession of the Pargana of Viramgam in the northern part of the Ahmedabad district to the East India Company by the then Gaekwar of Baroda. That was in 1817, and there were then seventeen Kasbati villages in that Pargana, of which the village Charodi, and two other villages called Karla and Lea were held by the ancestor of Bapabhai and Fatumiya. All the seventeen villages were, pending the consideration of the Kasbatis' claims, managed by the British Government until 1823, when with the sanction of Government an arrangement was entered into by Mr. Williamson, the Assistant Collector in charge of the district, with all the Kasbatis by which eight of the seventeen villages were to be permanently retained by Government, and the remaining nine handed back to the

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Kasbatis (one to each set of claimants), upon the conditions contained in certain pattas or leases subsequently issued to them by the Collector. Under that arrangement the village of Charodi was made over to one Jehangirbhai, the father of Fatumiya, and the paternal grandfather of Bapabhai. The original patta was not produced but from the Government Records it appears it was dated 17th May 1823, that the rent was Rs. 100 per annum and that it was for a term of seven years at the end of which period the village was to be handed over to Government.

On 31st August 1833 a new patta for the village for a further period of seven years from the expiration of the previous term was granted by the Collector on behalf of the Government to Bapabhai and Miyabhai, the heirs of Jehangirbhai, the original grantee, at an annual rent of Rs. 142 subject to more detailed and stringent conditions. In 1838 a third patta for a similar term appears to have been granted but of which neither the original nor any copy was forthcoming.

On the expiration of the last named patta, in 1845, it was proposed by the Collector to increase the rental of all the nine villages, but the Kasbatis refused to agree, and claimed that the arrangement made in 1823 with Mr. Williamson was a permanent one: and all the villages including Charodi were therefore taken again under Government management for some years. The proposal of the Collector was, however, eventually endorsed by the Government notwithstanding the objections of the Kasbatis, and orders were made that new pattas should be granted to them for a further period of seven years at an enhanced rent, and reserving the right of the Government to raise the rent at any future time.

This arrangement was accepted by Bapuji and by Fatumiya and on 4th September 1849 a new patta of

the village Charodi was granted to them at an annual rent of Rs. 144-1-9 for the seven years from 1844 to 1851 for which they gave a formal acknowledgment. On the expiration of that patta no new one was granted, but the Kasbatis continued to hold upon the same terms until 1860, when a fresh patta was granted for one year. In 1861 another patta for one year was granted to Fatumiya and Bapabhai at a rental of Rs. 160 and other similar pattas were granted to them in 1862 and 1865. From 1866 to 1870 settlement proceedings were taking place in the Ahmedabad district, and no new lease is recorded as having been issued for Charodi, though the then existing lease appears to have been renewed from year to year and the rent sometimes increased.

In 1874 there was a failure of issue of the Kasbati lessees of the villages of Karla and Lea (two of the nine villages above referred to) and they were resumed under a resolution of Government of 27th November, it being declared that their tenure was merely leasehold and that "on failure of heirs" (meaning apparently direct male heirs) the villages lapsed to the Government. Karla was claimed by Fatumiya as being the nearest collateral heir of the last holder, and his claim was eventually referred to the Secretary of State for India who decided the matter on 5th July 1877, agreeing with the decision of the Government of India that the Kasbatis were not proprietors but merely leaseholders, and consequently rejected the claim. Fatumiya and Bapabhai thereupon instituted in 1878 a suit in the District Court of Ahmedabad against the Secretary of State for India in Council claiming to be entitled to the village (Karla) as heirs of the last holder and founding their claim on an alleged sanad or grant in or about 1693 from one of the Mogul Emperors to one of their ancestors. The District Judge, however, held the document to be forged, found that the last holder

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of the village through whom Fatumiya and Bapabhai claimed was only a leaseholder, and not a proprietor, and dismissed the suit with costs.

The question of the renewal of the Kasbati leases had come again before the Government in July 1877, who affirmed the view that on the expiration of such leases the tenants held only "at the pleasure of Government," but decided that such leases should (except in cases where the family of the original grantee had become extinct) be renewed for a period of seven years at a nominal increase of rent. In August 1877 the Charodi tenants applied for a lease of Shahpur, another of the nine villages, in respect of which a similar failure of issue had occurred as in the cases of Karla and Lea above referred to, on the ground that they were collateral heirs of the last holder, but the application for renewal of the lease in their favour was rejected by Government, the applicants not being direct heirs. In 1878 a form of lease was prepared under the directions of Government to be adopted in respect of all Kasbati villages, in which it was provided that the lessee should, on the expiration of the term of the lease, make over possession to the Government; and on 22nd December 1879 a lease in this form was granted to Fatumiya and Bapabhai and was signed by them, but they alleged in the present litigation that their signatures "were not made by them of their free will and pleasure," and Government for that reason did not rely on that lease in this suit.

In 1896 the claims of the present plaintiffs to a renewal of the Charodi lease came again before Government and it was then decided in accordance with the principle above accepted by the Secretary of State that renewals could be granted only to direct male heirs, and the claims were consequently disallowed subject, however, to any proposal that might be made as to life

pensions to the claimants. On a petition in May 1897 for a consideration of their claims on the strength of the alleged sanad of 1693 which had previously been held to be a forgery further investigation of the matter was made; but in December 1897 the Government being satisfied that the sanad was not genuine re-affirmed their previous decision, and refused to renew the lease of Charodi to the plaintiffs and ordered them to hand over the management of the village to the Government on 31st July 1898, whereupon after due notice to the defendant the present suit was instituted for a declaration that the plaintiffs were entitled to the possession and management of the village. They did not refer to the leases above mentioned, nor rely upon the sanad of 1693; but their claim was based on alleged ownership and possession for more than two hundred years.

The defendant denied the right of ownership alleged by the plaintiffs and (having decided not to rely upon the lease of 1879 for the reason above stated) pleaded the previous leases by which he contended the plaintiffs were estopped.

The issues settled were—(1) Is it shown that plaintiffs and their predecessors held the village as lessees and not as proprietors? (2) If so, is defendant not entitled to resume the village? (3) Are the several leases relied on by defendant, or is any of them, inadmissible for want of registration? (4) Are plaintiffs estopped from denying defendant's title to the village in suit? (5) Is the suit barred by limitation? (6) To what relief, if any, are plaintiffs entitled?

The District Judge as to the first issue held that the onus of proving it was on the defendant, and that he had not discharged it; and that issue and issues 2, 4 and 5 were accordingly decided against the defendant. On the 3rd issue he held that the leases did not require

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registration; and on issue 6 that the plaintiffs were entitled to the declaration prayed for, but subject to the right of Government to revise the jamabandi (which was not disputed); and a decree was made to that effect.

After going at great length into the origin and history of the Kasbati holdings, and considering the numerous documents in evidence, the District Judge summed up his conclusions as follows:—

"(1) The history of the settlement of 1823 leads to no other conclusion than that the villages left to the plaintiffs' ancestors were intended to be kept by them permanently though it was open to the Government to revise the jama.

"(2) The patta (in exhibit 143) so far as it contained any words capable of a different meaning was a nullity.

"(3) Mr. Cruikshank in 1825 and Mr. Rogers in 1851 classed the plaintiffs' ancestors among Taluqdars.

"(4) Numerous other officers also addressed them as Taluqdars.

"(5) Even the President in Council in 1862 referred to one of the Viramgaum Kasbatis as a Taluqdar.

"(6) The incidents of the tenure were those of a Taluqdari one. The plaintiffs' ancestros' lands descended from father to son, and the jama was a percentage of the assessment. Mr. Peile says that the Kasbatis were allowed 30 per cent. The owners also mortgaged their lands and decrees were obtained against them as if they were private property.

"(7) In the Government registers the plaintiffs' lands were never entered as Khalsa. They were entered as Kasbati to distinguish them from *Gameti* and not because they were not held on a Taluqdari tenure.

"(8) Mr. Peile's statements and maps show the Kasbatis' villages as Taluqdari.

"(9) As these villages were Taluqdari, the Ahmedabad Taluqdars' Act (Bombay Act VI of 1862) was applicable to them and the Gujarat Taluqdars' Act (Bombay Act VI of 1888) is expressly applicable to them.

"(10) The plaintiffs have been in possession certainly since 1823 and the onus being on the defendant to show that he can eject them, that onus has not been discharged."

An appeal by the defendant to the High Court came before CHANDAVARKAR and HEATON JJ. who in an interlocutary judgment substantially affirmed the decree of the District Judge, but found that the plaintiffs' right to hold the village permanently was subject to conditions, and remanded the suit to the District Court for the conditions to be ascertained. The conclusions of the High Court were summed up as follows :—

"The tenure of the Kasbatis must be determined by the circumstances attending the restoration to their possession of nine villages and the subsequent negotiations and agreements between them and the Government. The initial circumstances suggest very clearly that the restoration was not of a temporary but of a permanent character. But there are words in the earliest of the pattas, which literally interpreted would mean that the restoration was of a purely temporary character. Nevertheless these words are easily capable of a different interpretation, and a different interpretation is indicated by the circumstances in which they were used. . . .

"The subsequent events show with perfect clearness that the Kasbatis understood that the restoration was permanent and that the Government, if they had any real doubt as to that matter which is uncertain, never expressed their doubt to the Kasbatis. The latter have continued to hold for now more than eighty years and from the very earliest period of their holding nothing has been said to them or done by Government in relation to them, to indicate to them that they had anything but a permanent holding in the nine villages, that is until the notice to quit was given which has led to this suit. On the other hand much has been said and done to assure the Kasbatis that they held permanently.

"I use the word 'permanent' throughout as contrasted with the word 'temporary' and not in the sense of 'perpetual,' for it is perfectly clear that though the Kasbatis held permanently in the sense which I mean, they did not hold unconditionally and the Government undoubtedly have taken power to themselves, and the kasbatis, at any rate, in 1849, accepted the existence of this power, to resume the villages, if the conditions imposed were not fulfilled. One of these conditions has consistently been that the Kasbatis should not alienate their interest in the management of the villages. Besides this and other expressed conditions, there may have been others, which were only implied. And it is this possibility which led the Advocate General, in appeal, to advance a contention, which had never been advanced in the Court below. He said, even if we assume that the holding was permanent, yet the evidence

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shows beyond doubt that it was to be permanent only with the Kasbatis; that they were left in management of the villages for their maintenance and the support of their dignity; and that it cannot possibly have been the intention of Government, or part of the terms on which the villages were restored to their management, that they should ever pass away from the Kasbatis. And, he says, the moment that the management is continued to female heirs—and the plaintiffs are female heirs—there arises the possibility of the villages passing into the hands of those who are not Kasbatis. The solution of the difficulty here suggested depends upon determining whether there was an implied condition that the villages should not descend to females, or if females were allowed to hold, to their heirs or descendants, who might not be Kasbatis. The existence or non-existence of such an implied condition can only be determined by a scrutiny of evidence adduced for the purpose of proving or disproving such a condition. And the evidence adduced in the lower Court was not directed to that object. In that Court the attitude taken, and throughout maintained, by the defendant was, not that they had a right to put an end to the possession of the plaintiffs, because of the breach of some condition on which the Kasbatis held the village, but that they had an absolute, unconditional right to put an end to their possession.

"On the case so presented, the defendant has failed, and it seems to me that we ought not now to determine this suit on a contention never raised in the Court below, and one to which the adducing of evidence has never been directed. And therefore I do not propose to say anything, one way or the other, as to whether the evidence, which is on the record, does or does not go to establish such a condition."

The District Judge on the remand under the preliminary decree of the High Court, after recording statements from both parties as to the conditions on which the village was held, and some additional evidence, delivered judgment to the effect that "all the conditions and restrictions which the Government had thought fit to retain had already been imposed by express legislation," and that no condition need therefore be embodied in the final decree to be passed on the appeal.

The defendant filed objections to the findings and judgment of the District Judge on remand and the matter came again before the same two judges of the High Court who set aside the findings of the District Judge and held that the conditions ought to be deter-

mined and embodied in the decree and they accordingly proceeded to determine such of the conditions as were still in dispute between the parties, and eventually a final decree was drawn up declaring that the plaintiff Bai Rajbai was entitled to the possession and management of the village on the conditions set out in that decree.

Both parties appealed both from the preliminary decree of the High Court and from the decree made after remand.

On these appeals,

Sir H. Erle Richards K. C., and *G. R. Lowndes* for the Secretary of State for India contended that the tenure of the village of Charodi by the plaintiffs and their predecessors in title, and their rights therein had been of a leasehold nature only, and they had no right of ownership in the village or its revenues. They sued to enforce a proprietary right in the village, existing prior to British rule which they alleged they had derived through their ancestors who received leases from the Mogul, which were subsequently renewed by the Mahrattas, and after the British conquest were continued by the British Government. But the only right that could be enforced in this suit (if any) is that given by the British Government in 1823. All other rights were swept away on annexation by the British Government: see *Cook* v. *Sprigg*.[1] Even the provisions of a treaty would not bind the Crown. If the Government renewed leases it was only done as a favour: the Government, it was submitted, was never bound to renew. The leases were given for the up-keep of particular families, and the wish and intention of the Government was that the leases should terminate when a family died out, that is, on the death of the last

(1) [1899] A. C. 572 at p. 578.

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male heir in the direct line. It seemed reasonable that the Government should, on the termination of the male line of a family, have the right to resume the village, a right which they were willing not to exercise if there were a widow or daughter who could temporarily retain the village. The main point was that the Government should be entitled to resume when a family died out. In three cases, on the termination of the male line, the villages were resumed; that was with respect to the villages of Karla, Lea, and Shapur in 1874. The Kasbatis, it was contended, were leaseholders "at the pleasure of the Government:" they held temporary leases at the will of the Government in whom the right of renewal was vested. In the first patta it was stated that there was no right of renewal, and in none of the other pattas was there any provision for its renewal, when its term expired; and from the absence of any such provision it must, it was submitted, be inferred that the right of renewal was never given to the plaintiffs' predecessors. Reference was made to the "Account of the Talukdars of Ahmedabad Zillas, and the measures adopted for their restoration under and in connexion with the Ahmedabad Taluqdars Act (Bombay Act VI of 1862)," by J. B. Peile, C. S. Taluqdari Settlement Officer (Ed. 1867, Bombay), and to his "Memorandum on the Kasbatis of Ahmedabad Zillas." They were never, it was submitted, "Taluqdars," to whom Bombay Act VI of 1862, or the Gujerat Taluqdars Act (Bombay Act VI of 1888) was applicable, though that name had been applied to them by Mr. Peile: used in a general sense the word "Taluqdar" meant "anybody who paid revenue to Government:" see Wilson's Glossary. If they were Taluqdars under those Acts they were only "tenants at will," as in the recital. Bombay Act VI of 1862, Preamble, and section 20, and Bombay Act VI of 1888, sections 26 and 34 were referred to: there was no section in the Act of 1888 similar

to section 20 of the Act of 1862. Reference was made to *Waghela Rajsanji* v. *Shekh Masludin*[1] which it was contended only applied to Taluqdars. In construing the pattas between the plaintiffs and the Government the Courts below had adopted methods of investigation to ascertain the intentions of the parties to those agreements which, it was submitted, were not open to them to employ. For their interpretation the terms of the pattas should be strictly adhered to, all extrinsic evidence being excluded by the provisions of section 92 of the Evidence Act (I of 1872); see *Balkishen Das* v. *Legge*[2]. "Patta," invariably meant a lease, and if so, the nature of the plaintiffs' tenure was "leasehold," and that being so, it was submitted that they could not, being lessees of the Government, deny the title of the Government as their lessors; and reference was made to the Evidence Act, section 116, and, for the definition of "lease" to the Transfer of Property Act (IV of 1882), section 105. The predecessors in title of the plaintiffs had accepted leases of the village in suit or of its revenues from the defendant, and his predecessors in title, and had continued in possession and paid rent under such leases, and were estopped from denying his title. Under the circumstances proved in the case the defendant was entitled to resume the possession and management of the village.

De Gruyther K. C. and *J. M. Parikh* for the plaintiff Bai Rajbai contended that she had established her title to the village in suit anterior to the British occupation; a title by arrangement with and recognition by the British Government; and also a title by statute. On annexation, all land belonged in theory to the Government. The first act of the Government was to make settlements of it. In doing so pre-existing rights were always recognised; that was so even after

(1) (1887) 11 Bom. 551 : L. R. 14 I. A. 89.
(2) (1899) 22 All. 149 : L. R. 27 I. A. 58.

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the confiscations of land in Oudh. "Patta" was a term used in several senses: in parts of Bombay the ryot is the actual proprietor of the soil, cultivating it with proprietary rights. Taluqdars were persons who are proprietors of the land, but not cultivators of the soil. The first patta in this case was not the origin of the plaintiffs' title. "Kasbati" tenure was not one "at the pleasure of Government." The plaintiff's ancestors were classed with and considered to be Taluqdars, as is shown by the documentary evidence on the record of the case. Mr. Elphinstone in his minutes in 1821 says he had "no doubt the Kasbatis should be included in the class of Taluqdars." See Mr. Elphinstone's minutes, pages 469, 470, 481 (paras. 25, 27, 30); 484 (para. 34). Mr. Peile's Report on the Ahmedabad Zillas, and memorandum on the Kasbatis was cited to the same effect. Legislation applicable to Taluqdars was made applicable to Kasbatis; and extracts of proceedings in the Legislative Council on the Ahmedabad Taluqdars' Act (Bom. Act VI of 1862) were referred to, to show this. The District Judge in his judgment in the case after remand says, "The whole law on the subject of Taluqdars' holdings was modified in 1888, by the Gujerat Taluqdars' Act (Bom. Act VI of 1888) when the whole of the Bombay Land Revenue Code (Bom. Act V of 1879) was applied to them. Kasbatis were then held to be Taluqdars, and section 2 makes the whole law applicable to them." Reference was made to Bom. Act VI of 1888, preamble sections 1, 2 (1), 4 (1), 10, 22, 23, 24, 31, 33 and by section 29A the whole Act; Bom. Act V of 1879, sections 3 and 73; and Bombay Regulation XVII of 1827. Preamble sections 7, 8 (1) and section 20, as legislative enactments which had been so made applicable. The cases of *Kooldeep Narain Singh* v. *The Government*[1]; *Collector*

[1] (1871) 14 Moo. I. A. 247 at p. 256.

of Trichinopoly v. *Lekkamani*[2] and *Waghela Rajsanji* v. *Shekh Masludin*[3] were referred to, as to the recognition by the Government of the rights of the Taluqdars and others, and the evidence of the existence of proprietary rights derived from long possession and receipt of rent, by persons paying revenue to Government or holding estates descended for generations from father to son; the contention being that the Kasbatis had by reason of the legislation referred to obtained rights which gave them a heritable and transferable tenure of the property. It was submitted that the Government had failed to show any right to eject the plaintiff. In none of the pattas was there any provision that the lessee should deliver up possession at the end of the lease. The inference from the absence of such a provision was that the lessee had a legal right to continue in possession after the term of the lease had expired. The settlement in 1822 with the plaintiff's ancestors of the village on which the amount of jama was fixed, gave a permanent tenure of it with a right to manage it and was inconsistent with the grant of the pattas, unless the latter could be said to have dealt not with the tenure, but only with the jama and mode of management of the village which it was submitted was the case. On the plaintiff's appeal it was contended that she was entitled to retain possession without any conditions or restrictions other than those imposed by statute. The High Court had erred in inserting in the decree conditions and restrictions which were not warranted by the statutes governing the plaintiff's rights, or by any other law. As to the decree which should be made the Bombay Land Revenue Code (Bombay Act V of 1879) section 70 was referred to.

(2) (1874) L. R. 1 I. A. 282 at pp. 306, 313.

(3) (1887) 11 Bom. 551 at pp. 562, 563: L. R. 14 I. A. 89 at pp. 97, 98.

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Sir H. Erle Richards K. C. replied referring to Bombay Acts V of 1879 and VI of 1888 as giving no title to land; the latter Act made no change in the condition of the holders of land. See section 2 (1) (definition of Taluqdar), 31, 33 *m*, 34 and 38*a*; Bombay Act V of 1879, section 3 (4), (11), (13), 68 and 73; and Peile's Report on Taluqdars in connection with Bombay Act VI of 1862, pages 11, 14, 25, 36 (4) and (7), 40, 41, which made it clear that the Kasbatis were merely tenants at will. Reference was made to *Administrator General of Bengal* v. *Premlal Mullick*[1] in which it was held that the objects and reasons for an Act of the Legislature were not admissible as evidence on a question of the construction of the Act.

1915 June 3rd.—The judgment of their Lordships was delivered by

LORD ATKINSON:—These are consolidated appeals from preliminary and final decrees of the High Court of Judicature of Bombay, dated respectively the 16th of April 1909, and 11th of April 1911, modifying a decree of the District Judge of Ahmedabad, dated the 30th of November 1907, in Suit No. 7 of 1898 in his Court.

The question in issue in the action for an injunction, out of which these appeals have arisen, is whether the plaintiff, like her male ancestors, is not entitled to the continued possession, management, and enjoyment of a certain village called Charodi, about 2,200 acres in extent, situated in the pargana Viramgam, in the district of Ahmedabad in the province of Gujarat. In her plaint she bases her right on her absolute ownership of this village. In argument before this Board and in the judgments of the Courts below her right has been also based apparently upon the following title, namely

(1) (1895) 22 Cal. 788: L. R. 22 I. A. 107.

this, that though her ancestors took from time to time several leases of this village from the Bombay Government, each for a term of years, they were not, as the appellant contends, mere lessees bound to give up to their lessors at the end of each term the possession of the demised village: but were legally entitled, as each lease terminated, to have a new lease granted to the last lessee or his representative. Either title, if possessed by her, would enable her to succeed in this action. In order to arrive at a conclusion on the issue thus in dispute between the parties it is necessary to examine briefly the history of this district of Ahmedabad before its cession by the Gaekwar, with the concurrence of the Peishwa, to the British Government in the year 1817, and to examine more in detail the dealings of the Bombay Government after that date with a certain class of its inhabitants, Mahomedans in religion, said to have originally come from Delhi under the Great Mogul, and styled indifferently Casbatees and Kasbatis, and especially their dealings with the ancestors of the respondent, who belonged to that class, touching this village of Charodi.

The ancestor of the respondent in possession of this village at the time of this cession was one Jehangirbhai *alias* Bapuji. One Fatumyia, his grandson, died in the year 1891 childless, leaving him surviving his widow, Nandbai, one of the plaintiffs in the action, who has died during the course of the litigation. One Bapuji, the brother of Fatumyia, died some years ago, leaving his son, Bapabhai, his only issue him surviving, and Bapabhai himself died in the year 1893, leaving his daughter, Bai Rajbai, the other plaintiff, his only child him surviving. This lady, who subsequently married and was left a widow, has thus become the sole surviving descendant of the member of the Kasbatis class who was in possession of this village of Charodi at the date

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of the aforesaid cession.' The term Kasbatis, it is not disputed, was used to designate dwellers in towns whose lands were cultivated not directly by themselves but by ryots, to whom they let them, receiving therefor a rent in cash or in kind. They were, in addition, apparently invested with certain powers of government over their villages, including the management of village affairs. At the time of the cession the Kasbatis were possessed of seventeen villages within the pargana of which Charodi was one. The settlement of the territories ceded was not practically undertaken till the year 1822-1823.

In the interval an accredited public official of the Company was put in charge, duly authorised to investigate the local conditions, and make suggestions and recommendations for the carrying through of this work. In the conduct of this business and in discharge of these duties he made reports to his superiors in which he sketched the history of the Kasbatis, the Grassias, and other classes or families amongst the inhabitants, and purported to describe the rights they had theretofore respectively acquired as against the ceding Sovereign, the Gaekwar, to the land of which they were in possession, and the villages over which they exercised some primitive powers of management and control. Some of these reports have been received in evidence apparently without objection. On two of them, sent by Mr. Williamson, described as the Assistant Collector in charge, the first bearing date the 3rd of August 1822, to the Secretary of the Government of Bombay, and the second bearing date the 28th of May 1823, referring to the first, to the Collector of Ahmedabad, much reliance has, naturally, been placed. In the first he reports, amongst other things, that there were seventeen villages in the Viramgam pargana, held for a considerable number of years by several families of

Kasbatis under a peculiar kind of tenure; that their possession had been frequently interrupted, and had not therefore been sufficiently continuous to found prescriptive rights; that as soldiers of some property, family, and character, they had acquired a partial influence in the affairs of the pargana, and often had obtained from the local managers leases of villages on favourable terms, in the granting of which nothing further had been intended than that the villages should remain in their temporary charge; that after the grant of the farm of Ahmedabad by the Peishwa to the Gaekwar, the Kasbatis had enjoyed the produce of some of these villages for twenty-five or thirty years on a revenue which was increased or lowered according to the pleasure of the local managers; that in 1804 they were dispossessed of these latter by one Babaji Appaji, a manager of the Peishwa, who demanded a higher jumma than the Kasbatis would consent to pay, but were restored to possession ten years later; that thus by a train of circumstances of such an undefined nature that it was difficult to describe them, the class had acquired a sort of claim to the villages of which they were found in possession when the country was delivered to the Bombay Government; that since the authority of that Government had been established at Ahmedabad revenue settlements had been made with them, except where they refused to pay an adequate jumma,

"but being men of ignorance or bad circumstances and of very indolent habits,"

they were altogether incompetent to conduct village concerns; that their villages were of vast extent and capable of much improvement; that they were well aware of the precarious tenure by which they held their villages (as they were merely what might be called lease-holders), and that he had every reason to believe they would be well satisfied with an arrangement which would secure to them permanent possession of a portion of their villages.

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Mr. Williamson then proposed for the consideration of the Government a plan to this effect: to give to each Kasbati one, or according to the circumstances and claim of the particular person, two, of the smaller villages on a jumma less than that which they had hitherto paid, thereby keeping up their name and respectability as landowners, and enabling them to devote their whole attention to cultivating and improving their properties, while the small amount of revenue levied on the villages remaining in their hands would compensate them for the loss of those surrendered to the Government.

This plan was not approved of by the Government. On the contrary, the Government Secretary wrote to the assistant in charge of the collectorate of Ahmedabad (presumably this same Mr. Williamson, as he so described himself) a letter bearing date the 22nd of November 1822, acknowledging the receipt of the latter's letter of the 3rd of August previous, and informing him that though the plan he suggested might be agreeable to the Kasbatis, the Governor in Council doubted whether it would afford any permanent relief; that it was considered that a more desirable arrangement would be to give to the Kasbatis pensions, to be fixed by the Government, for a life or a number of lives, but that if these latter should be unwilling to accept pensions Mr. Williamson's plan should be adopted. The Kasbatis refused to accept pensions, but Mr. Williamson's plan, though adopted in part, was not adopted in its entirety. One of its provisions of vital bearing on the present controversy was not adhered to. He had suggested that the Kasbatis should be secured in permanent possession of such of their seventeen villages as should be left to them. Whereas on the 28th of May 1823 he wrote to the Collector of Ahmedabad informing him that he (Williamson)

"had concluded an arrangement with the Kasbatis of Viramgam by which they are to retain, during the pleasure of the Government, nine of the villages found under their management when the Pergunna fell into our possession."

He proceeded to point out that by this arrangement the interference of the Kasbatis would be removed from eight of their villages, the produce of which was valued at Rs. 13,800, while that of those remaining with them was only valued at Rs. 5,300, but that the jumma in respect of these latter was so small, namely, Rs. 1,925, that there would remain for their maintenance Rs. 3,375, a sum differing but little from that of Rs. 3,820, which, according to his calculation, was all that would have been available for their maintenance had they continued in possession of their seventeen villages. Then follows this passage:—

"The lease being granted for seven years affords the Kasbatis an opportunity of availing themselves of these capabilities (*i.e.*, the capabilities of their villages of improvement). The condition of the villages and the rules respecting leases laid down by Government guided me in fixing the term."

On the 23rd of June 1823 the Secretary of the Government of Bombay wrote to the Collector of Ahmedabad informing him that the Governor in Council approved of Mr. Williamson having made an—

"agreement with the Kasbatis by which they are to retain during the pleasure of Government nine of the villages found under their management when the Pergunna fell into our possession."

The expression "at the pleasure of Government" is not very happily chosen. Since leases for terms of seven years were to be given to the Kasbatis, it obviously could not have meant that they were to hold these nine villages merely as tenants at will of the Government. What it must, in their Lordship's view, have meant in this connection was that they should receive at once leases for a term of seven years, and that after the termination of these leases the Government would be free to deal with them as it pleased,

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to renew their leases or to permit them to continue in possession without leases, or to dispossess them altogether, as the Government might in its discretion think fit. If that be so, then there could not have been on the part of the Government a more emphatic assertion of their resolve that the lessees should not have any legal right, as against it, to a renewal of their leases or the permanent possession of their villages.

Before dealing with the action which the Government of Bombay took in reference to this village of Charodi on receipt of these reports it is essential to consider what was the precise relation in which the Kasbatis stood to the Bombay Government the moment the cession of their territory took effect, and what were the legal rights enforceable in the tribunals of their new Sovereign, of which they were thereafter possessed. The relation in which they stood to their native Sovereigns before this cession, and the legal rights they enjoyed under them, are, save in one respect, entirely irrelevant matters. They could not carry in under the new *regime* the legal rights, if any, which they might have enjoyed under the old. The only legal enforceable rights they could have as against their new Sovereign were those, and only those, which that new Sovereign, by agreement expressed or implied or by legislation, chose to confer upon them. Of course this implied agreement might be proved by circumstantial evidence, such as the mode of dealing with them which the new Sovereign adopted, his recognition of their old rights, and express or implied election to respect them and be bound by them, and it is only for the purpose of determining whether and to what extent the new Sovereign has recognised these ante-cession rights of the Kasbatis, and has elected or agreed to be bound by them, that the consideration of the existence, nature, or extent of these rights become

relevant subjects for inquiry in this case. This principle is well established, though it scarcely seems to have been kept steadily in view in the lower Courts in the present case. It is only necessary to refer to two authorities on the point, namely, the case of *The Secretary of State in Council of India* v. *Kamachee Boye Sahaba*[1] decided in the year 1859, and *Cook* v. *Sprigg*[2] decided in the year 1899.

In the first this Board had to deal with the action of the East India Company in seizing in exercise of their Sovereign power, in trust for the British Government, the Raj of Tanjore, and the whole property of the deceased Rajah, as an escheat, on the ground that, by reason of the failure of the male heirs of the latter the dignity of the Raj was extinct, and that the property of the Rajah had thereby lapsed to the British Government. Lord Kingsdown, delivering the judgment of the Board, is, at page 540, reported to have expressed himself thus :—

"The result, in their Lordships' opinion, is that the property now claimed by the respondent has been seized by the British Government, acting as a Sovereign power, through its delegate the East India Company ; and that the act so done, with its consequences, is an act of State over which the Supreme Court of Madras has no jurisdiction. Of the propriety or justice of that act, neither the Court below nor the Judicial Committee have the means of forming, or the right of expressing, if they had formed, any opinion. It may have been just or unjust, politic or impolitic, beneficial or injurious, taken as a whole, to those whose interests are affected. These are considerations into which their Lordships cannot enter. It is sufficient to say that, even if a wrong has been done, it is a wrong for which no Municipal Court of justice can afford a remedy."

Now, in that case the act complained of was of a tortious character.

In the second case the Judicial Committee had to deal with a concession given by the ceding Sovereign

(1) (1859) 7 Moo. I. A. 476. (2) [1899] A. C. 572

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the paramount chief of Pongoland. The appellants sought to enforce in a Court of law their rights under this concession against the English Government to which the territory over which the concession had been given was ceded by this chief. The decision in the first-mentioned case was followed, the above quoted passage from the judgment of Lord Kingsdown approved of, and it was held that the annexation of territory was an act of State, and that any obligation assumed under a treaty either to the ceding Sovereign or to individuals is not one which Municipal Courts are authorised to enforce. As far, therefore, as the legal rights of the Kasbatis, enforceable against the Indian Government in Indian Courts, are concerned, the above-mentioned cession of territory must be taken as a new point of departure. Mr. Williamson's conclusions as to the positions, rights, and interests of the Kasbatis may have been quite erroneous. The Kasbatis may have been absolute owners of their villages, as the respondent contends, and yet the consideration of their ante-cession rights is beside the point, save so far as it can be shown that the Bombay Government consented to their continuing to enjoy those rights under its own *regime*.

In their Lordships' view, putting aside legislation for the moment, the burden of proving that the Bombay Government did so consent to any, and if so, to what extent, rests, in this case, upon the respondent. The Kasbatis were not in a position in 1822 to reject Mr. Williamson's proposal, however they might have disliked it, or to stand upon their ancient rights. Those rights had for all the purposes of litigation ceased to exist, and the only choice, in point of law, left to them was to accept his terms or be dispossessed. There is nothing, therefore, to support the contention that they never would have accepted Williamson's

terms had the permanent possession of their villages not been promised to them. It may well be that the Bombay Government did not intend to disturb them, and even intended, if all things went well, to grant to them, as acts of grace, new leases as the old leases expired, and it may also well be that the Kasbatis fully believed and trusted that this would be done, as indeed for many years it was done. From these facts, if they existed, moral obligations (with which this Board is not concerned) may arise, but the mere repetition of such acts of grace cannot *per se* create legal right to their continuance.

Though notice was served on the two plaintiffs to produce all documents in their possession touching the issues raised in the suit, no patta or kabulayat, executed in 1823, was produced or given in evidence, but two Government records of that year were produced as secondary evidence of the contents of a patta granted to the Kasbatis then in possession of the nine villages retained by them, including this village of Charodi. According to these records a pattta of the village was then given to Bapabhai, the father of Fatumyia, for a term of seven years, at a jamabandi of Rs. 100, with a covenant by the lessee that he should not sell or mortgage the village, or give, or allow any one to give any land of the village in Pasayta, or keep any debt upon the village, but should make it prosperous, and should hand it over to the Government in the year 1831. If these be the true contents of the patta they absolutely negative the existence of any legal right enforceable in an Indian tribunal, either to have the leases of the village from time to time renewed, or to continue in possession of it after the leases had expired.

As to this village of Charodi, one must start then on the inquiry as to what rights were granted by the

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Bombay Government to the respondent's ancestors, with this admitted fact, that in the sixty-eight years which have elapsed between the year 1822 and the institution of this present suit, not even in one of the several pattas granted to them is any provision to be found to the effect, that upon its expiration a new patta is to be granted to the lessees or their representatives or successors, while the very first of these pattas contained a clause expressly negativing the existence of such a right. The reasonable and proper inference to be drawn from the silence of the pattas on this important point is, Sir Erle Richards on behalf of the appellants contends, that the legal right to obtain renewals of the pattas was never conferred upon the respondent's ancestors. And, no doubt, if the draftsmen of these instruments had even a rudimentary knowledge of their business, one would have expected that such an important matter as that would have been provided for, but, unfortunately for this contention, those experts have drawn these instruments in language so obscure that the instruments could scarcely have been more obscure, had obscurity been aimed at, and have resolutely omitted from every patta but the first the ordinary provision to be found in every properly-drawn lease, that the lessee shall deliver up possession at the end of the term. Mr. De Gruyther, on behalf of the respondent, on his side not unnaturally contends that the inference to be drawn from the continued omission of such a provision is that the lessees had a legal right to continue in possession after the patta, or lease, had terminated. He puts forward, moreover, as their Lordships understood him, this additional contention, namely, that in 1822 a settlement was made with the ancestor of the respondent then in possession of this village of Charodi, in which the amount of the jumma was fixed; that the effect of such a settlement is that the person in possession by

whom the jumma is to be paid, was fixed or settled permanently in the possession, at all events, of this village, with a right to manage it, that the pattas could not have been designed to take away the rights thus conferred, and that the only way of reconciling the grant of them with the relation created by the settlement is to hold that the patta only dealt with the jumma and the mode of management of the village, not with the tenure of it, if that term may be used. To determine which, if any, of these contentions is well founded, it is necessary to examine in detail the provisions of those pattas the contents of which are satisfactorily proved.

First, then, as to the pattas granted on the 31st of August 1833. In the year 1827, during the currency of the first lease a report was made to the Taluqdari Settlement officer by Lieutenant Melville, of the 7th Regiment, in which he described the Kasbatis of Viramgam as proprietors of certain villages. He apparently was not aware that they then actually held under pattas for terms of years granted to them by the Bombay Government. No importance can therefore be attached to his use of the word "proprietors." In July 1831 the question of the increase of the jumma fixed by the first batch of leases was under consideration. Several Kasbatis presented a petition to the Government insisting that the jumma fixed in 1822 was then fixed permanently, and should not be increased, also asserting that it was part of the arrangement made by Williamson that the eight villages taken from them in the first instance should, at the end of the seven years, be restored to them, and claiming that this arrangement should be carried into effect. The reply of the Government to this petition, dated 16th September 1831, was to the effect that the order made by the Government on the 16th of November 1822 could not be set

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aside. Sometime thereafter the above-mentioned lease was granted to Bapabhai, the father of Fatumyia, and his brother, Miabhai, as the lessees. It is endorsed as having been delivered to the latter. The jumma is increased to Rs. 142, payable in eight instalments, at different times, and in unequal amounts. The term is seven years, commencing in the year 1830-31 and terminating in the year 1836-37.

By the second clause of the lease it is provided that on failure to pay any instalment on the day named, the Government are to "take back" the patta, and cause the revenue of the village to be collected by other hands, the lessees being responsible for any deficit in the year in which the patta is taken over, and that at the end of that particular year the Government

"would if it so pleases give the village to some person other than the lessees, who it was asserted shall not get it,"

but should be held liable for any loss which might accrue to the Government during the remainder of the term.

The seventeenth clause provides that if the Government should find that the lessees were spoiling the village, or did not abide by the clauses of the lease, the Government would send arbitrators to inquire into the matters, and if they should find that the village would be spoiled if allowed to remain in the hands of the lessees the patta would be taken back from them, and they would have to pay such a penalty as the Government might choose to impose.

The facts that the granting of a patta for seven years was part of the arrangement made with Mr. Williamson, and that the patta then granted contained a clause that the village should be given up to the Government at the end of the term, coupled with the clauses of the lease of 1833, providing for the

transfer of the village in certain events to persons other than the lessees, are quite destructive of the theory that these pattas merely regulated the amount of the jumma but not the tenure, and that independently of them altogether this family of Kasbatis was fixed in permanent possession of this village of Charodi. In the year 1838 a new patta was apparently granted for seven years, but neither the original nor any copy of it was forthcoming at the trial. On the expiration of this term in the year 1845, the Collector forwarded to the Revenue Commissioner of Ahmedabad a report, dated the 8th of September 1845, proposing, amongst other things, to increase the jumma of this village. In it he sets forth in paragraph 5 that the Kasbatis being sent for in order to enter into a fresh settlement, declared that the settlement made by Mr. Williamson was permanent and that the jumma was not to be increased. They were unwilling to take leases, on any terms other than the original. The Collector thereupon refused to renew the leases and limited the privileges of the Kasbatis to the receipt of 20 per cent. on the revenue pending the pleasure of Government. In the 10th paragraph of the report he proceeds to add:

> "This long enjoyment of the villages at the same rental has increased their (*i.e.*, the Kasbatis) real or feigned impression that the original settlement was permanent, which it certainly was not."

He then proposed that the rent of the villages should be slightly increased, and that if the Kasbatis did not accept the leases offered, the villages should continue under the direct management of the Government, and the Kasbatis should be allowed 20 per cent. of the revenue.

It will be observed that both parties to this dispute took their stand respectively on Mr. Williamson's

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arrangement. They only differed as to its terms. The Kasbatis insisted that according to it the eight villages taken from them were to be restored to them at the end of the term of the first lease, and that the rent should not be increased, while the Government insisted that the grant of any lease after the first was entirely a matter at their discretion.

The Government refused to yield. The position they took up clearly appears from a letter dated 24th February 1847, addressed by the direction of the Governor in Council to the Revenue Commissioner of this district, Mr. A. Blane, pointing out that the Kasbatis did not appear from the former proceedings connected with the settlements previously made with them to have any valid title to

"a permanent continuance of the terms upon which they have hitherto held their villages,"

and suggesting that the jumma should be increased by 5 per cent., that if they consented to this their term might be renewed for seven years, but that the Governor in Council desired that a distinct reservation should be inserted in the new lease endorsing the right of the Government to raise the rent if circumstances should show it to be expedient, and that if they refused to consent to this the villages should be retained under Government management, an allowance being made to the Kasbatis during pleasure to an amount equal to the profit which Mr. Williamson settled would have been left them. There could scarcely be an assertion more absolute than this of the power of the Government to alter the terms of any leases they might make to the Kasbatis as they themselves should deem fit, to give or withold such leases at will, and to dispossess the Kasbatis and take the management of these villages into Government hands.

The existence, however, in the Bombay Government of the power and right which they assert in this letter of the 24th of February 1847 belonged to them, is equally inconsistent with the existence in the respondent or her ancestors either of the absolute ownership of this village or of the right to have the leases of it perpetually renewed. The Government terms were ultimately accepted, and a new patta of the village, bearing date the 4th of September 1849, was granted to Fatumiya and Bapuji, his brother (the respondent's grandfather), to hold for a term of seven years from (1844-45) to (1850-51) at the increased yearly rent of Rs. 144-1-9, payable by five instalments on the days therein named. The lease is executed by the lessees. Had not the draftsman of this instrument been, like his predecessor, almost enamoured of obscurity, one would have expected that he would have laid at rest all matters of dispute on this point by simply inserting in this lease the proper and usual provision that at its termination the lessees would deliver up possession of the demised premises to the lessor. Through ignorance or carelessness he resolutely abstained from doing this. He did, however, insert some clauses which merit attention. It is provided first, that if the instalments of the rent be not paid when due, attachment will be levied on the village by the Government, and "the management" will be carried on, presumably, by the Government. Secondly, that the lessees shall not alienate or pledge the village or the land composing it to anyone. Thirdly, that the lease was granted out of kind consideration for the lessees' maintenance, that they, the lessees, should therefore make good arrangements for the prevention of crime in the village, or otherwise the (tharav) settlement would be cancelled. Fourthly, that if an attachment for arrears of rent were levied by the Collector, or if a creditor by an application to the

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Courts caused an attachment to issue against the village, the management of the village would be taken out of the hands of the lessees and carried on by the Government, the (tharav) settlements would be cancelled, and the whole income of the village to be taken charge of by the Government.

Then follows a clause, No. 10, inconsistent to some extent with the succeeding clause, No. 11, but evidently introduced to put an end for the future to all controversy touching the increase of the jumma. It provides that the village is given to the lessees on patta according to the settlement or agreement thereinbefore set out, that when the lease expired the lessees should hold charge of all income and produce of the village, and should agree to the payment of the amount of the revenue which the Government might fix, and that if they failed to pay this the income should be taken charge of by the Government. The eleventh clause provided that the village was given on patta to the lessees on the agreement thereinbefore set out, and that if they did not act accordingly to the agreement the patta should be void.

The existence of the statement that the patta was granted out of kind consideration for the maintenance of the lessees is due to this, that during the dispute about the increase of the rent, the two lessees and another person had presented a petition to the Revenue Commissioner stating that they were in very indigent circumstances, that attachments had gone out against their villages, and that they had not in their houses corn for their sustenance or any wearing apparel.

If the evidence of the case stopped here it would, in face of this lease, in their Lordships' opinion, be quite impossible to contend that the patta merely fixed the amount of the rent, and that by the settlements the

lessees or their ancestors had acquired as against the Bombay Government a right to the property in, or to the permanent possession of, this village of Charodi. The granting of a lease was part of the original settlement or agreement, and these leases are treated in several places as the instruments by which the estate or interest in the village is conveyed to the lessees.

This clause 10 is the only piece of written evidence produced, indicating even in the most remote way that the lessees were entitled at the end of each lease to have a renewal of it granted to them. *Prima facie* a lease for a term does not import any right to a renewal of it. On the contrary, it *prima facie* implies that the lessee's right to the premises demised ends with the term. In order that the respondent should succeed, therefore, on this point, she must find sufficient evidence, apart from legislation, of an agreement, express or implied, with the Bombay Government imposing on them a legal obligation to renew for all time, if required, these leases as they terminate, and conferring on each lessee the correlative legal right to demand that renewal. In their Lordships' view it would require something much more clear, plain, and explicit than this confused, and almost unintelligible clause, to be treated as, in effect, a covenant by the lessor for a perpetual renewal of the lease of this village.

No new patta was granted in 1851. The lessees continued to hold possession and to pay the rent till 1860. Fresh pattas for one year each were given in the years 1860 and 1861, at an increased rent of 160 rupees, and again from 1862 to 1865; between 1860 and 1870 yearly renewals appear to have been granted, the rent being sometimes increased. In the year 1874 there was a failure of issue in the case of the holders of two of the nine villages retained by the Kasbatis under Mr. Williamson's settlement, namely, the villages of Keela

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and Leah, or Lea. The said Fatumyia claimed the former village as the nearest collateral heir of the last holder. The Revenue Commissioner reported upon this matter to the Government of Bombay, and the Governor in Council passed a resolution, dated the 27th November 1874, by which it was declared that the tenure of the Kasbatis was merely leasehold, and that their villages lapsed to the Government on failure of heirs. He accordingly directed that this village of Keela should be resumed by the Government.

This direction was on the 5th of July 1877 approved of by the Secretary of State. But Fatumyia and Bapuji, unwilling to submit to this decision, instituted in the year 1878 a suit against the Secretary of State for India in Council claiming to be entitled to this village as heirs of the last holder, and they supported their claim by a document purporting to be a sanad granted by one of the Mogul Emperors some centuries earlier. The District Judge who heard the suit decided that this sanad was a forgery, and that the last holder, through whom the plaintiffs claimed, was a mere leaseholder, and dismissed the action with costs. The plaintiffs acquiesced in that decision. They never sought to question it in any Court of law. The question of the renewal of the leases of the Kasbati tenants was brought before the Government of Bombay about this time by the Revenue Commissioner, and a formal resolution was on the 25th of July 1877 passed by that Government to the effect that it appeared all the leases had expired, that there was no necessity to make any change, it being quite clear that the villages were held on leasehold tenure at the pleasure of the Government; that it was desirable to renew for periods of seven years the leases which had expired, a very slight nominal increase of rent being made in each case, to show that the Government maintained their rights and would continue

so to do, and directed that words should be inserted in the new leases making this perfectly clear. This resolution was carried out. A form of lease in the English language was drawn up, and on the 7th of October 1878 approved of by the Bombay Government. It contained, amongst others, clauses restraining alienation and at last providing that on the termination or sooner determination of the lease, the lessee should, without objection or obstruction, yield up the village demised unless the Secretary of State in Council should then be pleased to renew the lease, and also a condition of re-entry on the breach of any of the provisions of the lease.

A lease in this form on the 22nd of December 1879 was granted to Fatumyia and Bapabhai, the respondent's father. The kabulyat was signed by them, but, as they subsequently asserted that they did not sign the document of their own free will and pleasure, the appellant does not therefore desire to treat them as bound by it. It can only be looked at as containing a renewed expression of the view consistently entertained by the Government in reference to the true position and rights of the Kasbatis. No further leases were granted. The lessees and those who succeeded them continue to pay the rent reserved, notice was served in 1898 upon the two ladies, Bai Nandbai and Bai Rajbai requiring them to quit and deliver up possession of the village of Charodi on the 31st of July following. It was not disputed that if these ladies had by the continued payment of their rent become tenants of this village from year to year, this notice was adequate and sufficient to determine that tenancy. Up to this the evidence touching the administrative dealings of the Bombay Government and its accredited officials with the Kasbatis and their villages, including that of Charodi, has alone been dealt with.

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Their Lordships are of opinion that the just and reasonable inferences to be drawn from it when properly considered are, that not only has the respondent failed to discharge the burden which, as already stated, rests upon her, but that the Bombay Government never departed from the position in which they were left by Mr. Williamson's arrangement; that they never by an agreement, express or implied, conferred upon the respondent or any of her ancestors the proprietary rights in, or ownership of, the village of Charodi claimed by her; that they never recognised or admitted the existence of such rights, or of any rights analogous to them, in them or her; that the only rights in this village which the Government conferred upon her ancestors were those conferred by the leases which the Government from time to time, at their own will and pleasure, chose to grant to them (save such rights as are conferred by the creation of a tenancy from year to year in manner already mentioned); that this Government never conferred upon any of the lessees of the said village a legal right to insist, at the termination of his lease, upon a new lease of the village being granted to him; in other words, that the Bombay Government never were under any legal obligation to grant any lease of this village; and that the granting or withholding of a lease of it rested from the first solely in their discretion.

It was contended, however, on behalf of the respondent that her case is much strengthened by a consideration of the Bombay Government's dealings with the Grassias. They were ancient Rajput proprietors, and before the cession of the Ahmedabad Zilla, stood to their native sovereigns in that relation, their lands being cultivated by ryot tenants from year to year and at will. They and the Mewassies were clearly distinguishable from the Kasbatis. The last-named held their lands by

contract, neither by sanad nor by defiance, and Colonel Walker, the first official appointed to deal with this district, was well aware that there was no analogy between the holdings of the Grassias and those of the Kasbatis. The word "Taluq" was first applied to these Rajput proprietors by the British themselves. Notwithstanding the ancient proprietary rights of the Grassias, they took leases of their lands from the Bombay Government, and thenceforward their legal rights were, in accordance with the principle laid down in the authorities already quoted, determined entirely by the contract which they had made with that Government, altogether irrespective of what their position and rights may have been before the cession of their territory.

All this is stated at length in the account by J. Peile, Taluqdari Settlement Officer of the Taluqdari of Ahmedabad Zilla, and the measures adopted for their restoration under and in connection with the Act VI of 1862 of the Bombay Legislature, published in 1867, pages 7, 9, 14, 42, 43-47, 64 and 67. Indeed in the preamble of that Statute it is recited that these Talukdari estates are only held on leasehold tenure determinable at the pleasure of the Government. So that the case of the Grassias makes against the case of the respondent instead of in her favour, inasmuch as it shows clearly that after the cession of territory to a new Sovereign, when it comes to be a question of legal right the contract with the new Sovereign is conclusive and the rights against the old Sovereign avail nothing.

It only remains to consider the effect of any of the legislation of the Bombay Government on the question in issue on this appeal. Act VI of 1862, for the reasons given in the abovementioned publication of Mr. Peile, does not apply to Kasbati lessees at all. They never were Taluqdars of Ahmedabad in the true sense. They did not lose their ancient right of ownership of their

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land by taking leases, as did the Grassias, and therefore did not suffer the injustice which the Statute was designed to remedy.

The Statute of 1888 is entitled an Act to provide for the revenue administration of estates held by superior landlords in the districts of Ahmedabad, &c. In the preamble it is recited that it is expedient to remove doubts as to the applicability of certain portions of the Bombay Land Revenue Code of 1879 to estates held by certain superior landlords in the above-mentioned districts, and to make special provision for the administration of the said estates and for the partition thereof. In the first section a Taluqdar is defined to include "a thakur, mehwassi, kasbati, and naik." Section 23 provides that nothing in the Act shall be deemed to affect the validity of any agreement entered into before the passing of the Act by or with a Taluqdar and still in force as to the amount of his jumma, nor of any settlement of the amount of jumma made by or under the orders of Government for a term of years and still in force. Every such agreement and settlement is to have effect as if the Act had not been passed. And section 33 enacts that certain sections of the Bombay Land Revenue Code of 1879 are not to apply to the estates to which this Act applies. By section 33 it is also provided that the word "Taluqdar" shall be substituted for the word "occupant," the words "registered Taluqdar" for the words "registered occupant," and the words "Taluqdars holding," or such words to that effect as the word occupancy when applying this Code of 1879 to the estates to which this Statute of 1888 applies. The seventy-third section of the Code provides that "the right of occupancy" shall, subject to the provisions contained in section 56, and to any conditions lawfully annexed to the occupancy, save as shall be otherwise prescribed, be deemed to be a hereditable and transferable property.

It is seriously contended, as their Lordships understood, that the effect of this substitution of the words "the right of occupancy" for the words "the right or the interest of a Taluqdar" in or to his holding, is that a Kasbati's interest in a leasehold held for a term of years is changed in its nature and becomes a hereditable and transferable property, notwithstanding that by the very conditions of the lease his interest is limited to a term, and he is restrained from alienation: and notwithstanding also that by section 68 of this Code it is enacted that an occupant is entitled to the use and occupation of his land for the period, if any, to which his occupancy is limited. These two sections, in their Lordships' view, plainly mean that a lessee, whether a true "Taluqdar" or a "thakur," "mehwassi," "kasbati," or "naik," is bound by the terms of his lease, one term of which is that he shall only occupy for the term of years for which a lease for years is granted and *prima facie* no longer. Section 73 was amended by the Act of 1901, but the amendment is immaterial on this point.

Their Lordships are clearly of opinion that these Statutes do not bear in any way on the issue raised in this case. They think that the decree of the High Court cannot be sustained, and that the decision of the District Judge is equally erroneous. The fallacy underlying the former on the point as to the right of the respondent to occupy permanently is clearly revealed in the passage printed at page 496 of the Record in which the High Court deals with the lease of 1833:—

"There are no other provisions for forfeiture of the management. There is no provision for renewal of the patta, but it is to be inferred from the nature of the management and from the fact that the patta was for a term, that renewal was contemplated. This inference is supported by both previous and subsequent events: by previous events, because in 1823 permanent possession by the Kasbatis was contemplated: by subsequent events, because the renewal did, in fact, take place."

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Their Lordships, dealing with the legal rights of the parties alone, are clearly of opinion that the decrees of both Courts are erroneous and should be reversed, that the main appeal, that of the Secretary of State, should be allowed and the cross-appeal dismissed, and that judgment should be entered for the Secretary of State, dismissing the respondent's action. And they will humbly advise His Majesty accordingly.

The respondent must pay the costs here and below.

Solicitors for the Secretary of State for India in Council:—*The Solicitor, India Office.*

Solicitors for Bai Rajbai :—*Messrs. T. L. Wilson & Co.*

Appeal allowed.

Cross-appeal dismissed.

J. V. W.

PRIVY COUNCIL.*

P. C.* 1915. *June* 9, 10, 11, 29.

MERWANJI MUNCHERJI CAMA AND ANOTHER, PLAINTIFFS, *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL DEFENDANT.

[On appeal from the High Court of Judicature at Bomby.]

Bombay City Land Revenue Act (Bombay Act II of 1876) sections 30, 35, 39, 40—Certified extracts of Rent Roll of "quit and ground rent" land—Office of Collector of Bombay—Statements therein as to nature of tenure of land—Suit by mortgagee relying on such extracts and advancing money on title there disclosed against Secretary of State—Act only for administration and collection of revenue—No estoppel created in matters of title—"Sanadi" tenure.

The Bombay City Land Revenue Act (Bombay Act II of 1876) makes provision for the administration and collection of land revenue in the city of Bombay. It is for this purpose only that it sets up machinery, namely, to ascertain who is liable to pay revenue. The Collector is a revenue official,

* *Present* :—Viscount Haldane, Lord Shaw, Sir George Farwell, Sir John Edge and Mr, Ameer Ali,