APPELLATE CIVIL.

Before Mr. Justice Shah and Mr. Justice Hayward.

AMRIT VAMAN INAMDAR (ORIGINAL PLAINTIFF), APELLANT *v.* HARI GOVIND KULKARNI AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.* 1919. *September* 2.

Bombay Hereditary Offices Act (Bombay Act III of 1874), section 15—Mutalik Desai Vatan—Presumption in grants—In Watans, grant is usually of the soil—In Inams and Saranjams, grant is usually of the royal share of the revenue—Construction of grants.

The village of Rajgoli Khurd was granted to the plaintiff's ancestor in 1734 A. D., by a Maratha Ruler, for maintenance in return of service. The grant was expressed to be "Koolbab and Koolkanoo (i.e., all taxes and assessments) but exclusive of the (Haks of) Hakdars and Inamdars." In 1858, the Inam Commissioner continued the Inam to the grantee's descendants on the same terms. The Inamdar accepted a settlement in 1884 in respect of village lands, agreeing to pay to Government a fixed amount in lieu of service. A question having arisen whether the grant was of the royal share of the revenue or of the soil also :—

Held, that the grant in question was a grant of the soil.

Vasudev Pandit v. *The Collector of Puna*[1], followed.

In the case of watan property the distinction between grants of the royal share of the revenue and grants of the soil which is admissible in the case of Inams and Saranjams cannot be conveniently made without detriment to the statutory restriction on the Vatandar's power of alienation and should not be made unless it is clearly justified by the terms of the settlement.

In the Presidency of Bombay in the case of Inams and Saranjams the ordinary presumption in the absence of any indication to the contrary is in favour of the grant being limited to the royal share of the revenue; and clear words are necessary to indicate a grant of the soil. The words ordinarily used to indicate a grant of the soil are "water, grass, wood (trees), stones, mines and hidden treasures;" but the absence of these words cannot be treated as necessarily establishing that the grant is of the royal share of the revenue only.

Where a whole village is mentioned in a Sanad evidencing a settlement under section 15 of the Bombay Hereditary Offices Act (Bombay Act III of

* Second Appeal No. 830 of 1917.

(1) (1873) 10 Bom. H. C. R. 471.

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1874) it is for the party alleging that a particular survey number of that village is outside the scope of that settlement to prove it.

SECOND appeal from the decision of A. Montgomerie, Assistant Judge of Belgaum, reversing the decree passed by S. R. Koppikar, First Class Subordinate Judge at Belgaum.

Suit to recover possession of land.

The land in dispute was situated in the village of Rajgoli Khurd.

In 1734 A.D., Shambhu Chhatrapati, the Maratha ruler granted the village to an ancestor of the plaintiff as Mutalik Desai Vatan. The grant was made as a reward of the services which the grantee had rendered to the Ruling Chief, and was expressed to be "Koolbab and Koolkanoo (i.e., all taxes and assessments) but exclusive of the (Haks of) Hakdars and Inamdars."

The grant was later referred to in a Letter of Command issued by Balaji Bajirao Pradhan, in the following terms :—

"The said two villages (viz, Rajgoli Budruk and Rajgoli Khurd), Koolbab and Koolkanoo (i.e., all taxes and assessments) excepting (the Haks of) Hakdars and Inamdars have been given (in) Inam Darobust (i.e., all) to Rajeshri Virupax Yemaji by Shimant Maharaj Rajeshri Shambhaji Raje Chhatrapati Swami. In accordance therewith an agreement having been made (this) Letter of Command is sent to you. So you should accept the abovementioned person and continue the entire *amal* (i.e., revenue of the said two villges) as Inam hereditarily according to the King's letter."

In 1858, the Inam Commissioner continued the Inam to the grantee on the same terms.

In 1884, the Inamdar accepted a settlement by agreeing to pay a fixed sum annually in lieu of service.

The plaintiff's father mortgaged the lands in dispute to the defendant. In 1910, a decree was passed on the mortgage, which entitled him to remain in possession till 1930. The plaintiff's father died in 1912.

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The plaintiff filed this suit in 1913, alleging that the lands in dispute being Mutalik Desai Vatan, their alienation became null and void on his father's death, under section 5 of the Hereditary Offices Act, 1874.

The trial Court decreed the plaintiff's claim.

On appeal, the lower appellate Court held that the grant in question was not a grant of the soil but only of the royal share of the revenue; and that the alienation in dispute did not offend against section 5 of the Bombay Hereditary Offices Act, 1874. The decree was, therefore, reversed, and the suit was dismissed.

The plaintiff appealed to the High Court.

Jayakar with *K. H. Kelkar*, for the appellant:—The question is whether the grant to the plaintiff's ancestor was a grant of the soil, or of the royal share of the revenue only. The lower appellate Court in construing the grant to be one of the royal share of revenue has relied on *Vaman Janardan Joshi* v. *The Collector of Thana* [1]. But the terms of the grant in that case were entirely different from the terms in this case. There was an additional clause in that grant, viz., that "the village should be continued to him as an Inam grant and the revenue of the said village...should be entered in the Taluka account to the debit of the Joshi on account of Inam". On the strength of this clause it was held in that case that the grant was of the royal share of the revenue only.

The words of the Sanad in this case, viz., दरोबस्त इनाम दिल्हे असत are to be found in *Vasudev Pandit* v. *The Collector of Puna* [2] where they were construed to mean as passing the entirety of the village. The same construction should be put upon the words in this case.

Secondly, the decision of the Inam Commissioner under Act XI of 1852 confers a title. It says that the

[1] (1869) 6 Bom. H. C. R. (A.C.J.) 191. [2] (1873) 10 Bom. H. C. R. 471.

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village of Rajgoli Khurd exclusive of the Hakdars and Inamdars should be continued. There is no reference to the royal share of the revenue. The decision conferred a title to the whole village of Rajgoli Khurd: *Vasudev Pandit* v. *The Collector of Puna*[1].

Thirdly, in 1884, the plaintiff's ancestor accepted a settlement on the lines of the Gordon Settlement in respect of this village, whereby Government issued a Sanad to him and continued the village to him hereditarily. This Settlement which is called a Sanad thus passed the whole village and not merely the royal share of the revenue. After the settlement which was under section 15 of the Watan Act the character of the land remained *watan* as before and it could not be alienated beyond the lifetime of the Vatandar: *Appaji Bapuji* v. *Keshav Shamrav*[2] and *Bhau* v. *Ramchandrarao*[3]. Therefore the mortgage by the plaintiff's father to the defendant became inoperative on the death of the plaintiff's father.

Dhurandhar with *D. R. Manerikar* and *H. G. Kulkarni*, for respondent No. 1:—No doubt in this case there is no express direction to debit the revenue to the grantee as in *Vaman Janardan's case*[4]. But as a matter of fact the revenue was so debited (see Inam Commissioner's decision). Further, the Peishwa's Sanad which confirmed the original grant of Shambhu Chhatrapati expressly refers to the grant of the *revenue* of the village.

Even apart from the above considerations it is submitted (1) that in this Presidency, the ordinary presumption is that a royal grant is limited to the royal share of the revenue: *Krishnarav Ganesh* v. *Rangrav*[5] and (2) that

(1) (1873) 10 Bom. H. C. R. 471.
(2) (1890) 15 Bom. 13.
(3) (1895) 20 Bom. 423.
(4) (1869) 6 Bom. H. C. R. (A.C.J.) 191.
(5) (1867) 4 Bom. H. C. R. (A.C.J.) 1.

in the Sanads by Maratha rulers where the intention is to pass the proprietary interest in the soil, the words जल, तरु, तृण, काष्ठ, पाषाण, निधी, निक्षेप are invaribly to be found: *Ravji Narayan Mandlik* v. *Dadaji Bapuji Desai*[1]; *The Collector of Ratnagiri* v. *Antaji Lakshman*[2]; *Balvant Ramchandra* v. *Secretary of State*[3]; *The Conservator of Forests, Bombay Presidency* v. *Nagardas Saubhagiadas*[4]; *Narayan Dhondbhat Pitre* v. *Trimbak Vithal Thakur*[5] and *The Secretary of State* v. *Haibatrao Hari*[6].

The words जल, तरु, &c., are not to be found in the Sanad in this case; therefore it is not a grant of the soil.

The case of *Vasudev Pandit* v. *The Collector of Puna*[7] has no application here. It was concerned with the construction of the Inam Commissioner's decision, whereas here the Sanads of the old Maratha rulers have to be construed. The judgment in the case admits the distinction and says that in the case of the construction of Sanads the rule in *Krishnarav Ganesh* v. *Rangrav*[8] will have to be observed.

The decisions of the Inam Commissioner are only intended to determine questions as to exemption from payment of revenue: see preamble to Act XI of 1852 and the rules issued by Government as to the powers of the Inam Commissioner printed in Col. Ethridge's Report of the Inam Commission at page 4. In this case in particular, the Inam Commissioner's Report distinctly says that "it is only meant to show how long the village is to be continued as free from the payment of revenue". It does not even purport to confer any independent title.

(1) (1875) 1 Bom. 523.
(2) (1888) 12 Bom. 534 at p. 544.
(3) (1905) 29 Bom. 480 at p. 486.
(4) (1875) P. J. 330.
(5) (1881) P. J. 276.
(6) (1903) 28 Bom. 276.
(7) (1873) 10 Bom. H. C. R. 471.
(8) (1867) 4 Bom. H. C. R. (A.C.J.) 1.

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The Gordon Settlement only effects a commutation of service into a money payment. It is not intended to confer any fresh title. If the original Sanad granted only the revenue the commutation settlement could not and did not grant the soil of the village. If the terms of the Settlement are carefully examined it will be found that in the column headed "Lands to continue as Watan", no lands are mentioned, only the revenue assessment is given. That clearly shows that it concerned itself only with the revenue. The person who was responsible for filling in the columns was aware of the Inam Commissioner's decision to which he refers, and it is not possible that he would in the face of that decision pass also the soil of the village to the Vatandar. Again, if he had really wanted to do so he would have entered the words "the entire village" under the heading "Lands to continue as Watan". But he has done no such thing. Therefore the commutation settlement gives the Vatandars no higher right than the original Sanad.

Jayaker, in reply:—The Privy Council has now held that no presumption can be raised in favour of a grant being limited to the royal share of the revenue: *Suryanarayana* v. *Patanna* [1]

Dhurandhar:—*Suryanarayana's case* [1] does not overrule *Krishnarav Ganesh* v. *Rangrav* [2]. The observations of the Privy Council in that case are confined to a case where the original grant is not forthcoming.

C. A. V.

SHAH, J.:—The plaintiff in this case sued to recover possession of a part of Survey No. 45 in the village of Rajgoli Khurd with Rs. 100 as profits for one year from defendant No. 1 and his tenants. He alleged that the property was Watan property, and that the alienation

[1](1918) L. R 45 I.A. 209 at p. 218. [2] (1867) 4 Bom. H. C. R. (A. C. J.) 1.

thereof effected by his father in favour of defendant No. 1 was not valid beyond his life-time under section 5 of the Hereditary Offices Act, that his father died in January 1912, and that he was entitled to the possession of the land.

The defendant No. 1 resisted the claim on the ground that under the decree on an award in Suit No. 253 of 1910 obtained by him against the plaintiff's father, he was entitled to retain possession of the land in suit until the Shake year 1852 (1930-31 A. D.), that it was not Watan property and that the plaintiff's father had authority to effect the alienation in his favour.

The trial Court found that the property was Watan property and that the plaintiff's father had no power to alienate it beyond the term of his natural life. It passed a decree in favour of the plaintiff for possession and mesne profits.

The defendant appealed to the District Court, and the learned Assistant Judge who heard the appeal found that the original grant was not a grant of the soil but merely of the royal share of the revenue of the village, and that there was nothing to show that the land in suit was not held by the original Inamdar at the time of his grant as his private property. Accordingly he allowed the appeal and dismissed the plaintiff's suit with costs.

The plaintiff has appealed to this Court, and it is urged in support of the appeal that the conclusions reached by the lower appellate Court are erroneous. In order to appreciate the rival contentions of the parties in this appeal, it is necessary to state briefly the history of the grant of the village of Rajgoli Khurd, of which the land in suit forms a part.

The earliest document relating to the grant of this village is the order issued by the then Maratha Ruler,

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Shambhu Chhatrapati, to the Mukadam of Mouje Rajgoli Budruk and Mouje Rajgoli Khurd in the year 1734 A.D. The grant is in these terms:—"The respected Virupaksha Yamaji of Gotra Gautama, who is the most devoted servant of the Swami (King), has been rendering service (to the Swami) with singleness of purpose and therefore it is necessary for the Swami to provide for his maintenance by the grant of an Inam to him. Therefore the Swami is now graciously pleased to grant to him as new Inam the whole of the aforesaid two villages Koolbab and Koolkanoo (i. e. all taxes and assessments) but exclusive of the (Haks of) Hakdars and Inamdars. You should therefore acting in obedience to this order continue the said Inam to him, his sons, grandsons and so on from generation to generation." The material words in Marathi are:—"नुतन इनाम कुलबाब कुलकानू खेरीज हकदार व इनामदार करून सदरहू दोन्ही गांव दरोबस्त इनाम दिल्हे असत." Some years later in a letter written by Balaji Bajirao Pradhan the grant is referred to in the same terms, and there is a command that the entire *amal* of the two villages should be continued as Inam hereditarily according to the King's letter, the Marathi word for "entire" being *darobasta* (दरोबस्त). In 1858, the Inam Commissioner examined the history of this grant and decided under Act XI of 1852 as follows:—"It seems proper and it is ordered that the village of Mouje Rajgoli Khurd exclusive of the Hakdars and Inamdars must under Appendix II, section 2 of Act XI of 1852 be continued as long as the line represented by the sons, grandsons and so on born of the original acquirer Virupaksha Yemaji the greatgrandfather of the claimant Yamajipant continues"..... "This Faisalnama is only meant to show how long the village is to be continued as Mafi (free from the payment of revenue)." In the reasons for the decision the village is referred to as standing at the time in the

name of Yamajipant bin Virupakshapant Mutalik Desai as service Inam in the records of the Collector.

In 1884, the Inamdar accepted the settlement in respect of various lands including the village of Rajgoli Khurd in lieu of service on the conditions mentioned in the Sanad. The terms of the Sanad are these :—

" Whereas in the Zilla of Belgaum certain lands and cash allowances are entered in the Government accounts of the year 1862-63 as held on service tenure, as follows :—

Name of the Watan.	Lands assessed at.	Cash allowances.	Total emoluments (after deducting Mamool Joodee).
Mootalik Desai	1189-4-7	20-8-0	1209-12-7

Note.—The details are given below.*

and whereas the holders thereof have agreed to pay to Government a fixed annual payment in lieu of service,

It is hereby declared that the said lands and cash allowances shall be continued hereditarily by the British Government, on the following conditions : that is to say, that the said holders and their heirs shall continue faithful subjects of the British Government, and shall render to the same the following fixed yearly dues :—

		Rs.	a.	p.
Mamool Joodee	...	0	0	0
In lieu of service	...	230	11	0
Total	...	230	11	0

At 5 annas in the Rupee .. 9 13 0

At 3 annas in the Rupee...220 14 0

Two hundred and thirty and annas eleven only.

In consideration of the fulfilment of which conditions—

1st.—The said lands and cash allowances shall be continued without demand of service, and without increase of Land Tax over the above fixed amounts : and without objection or question on the part of Government as to the rights of any holders thereof, so long as any male heir to the Watan, lineal, collateral, or adopted, within the limits of the Watandar-family, shall be in existence.

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2nd.—No Nuzzerana or other demand on the part of Government will imposed on account of the succession of heirs, lineal, collateral, or adopted within limits of the Watandar-family, and permission to make such adoptions need not hereafter be obtained from Government.

3rd.—When all the sharers of the Watan agree to request it, then the general privilege of adopting at any time any person (without restriction as to family) who can be legally adopted, will be granted by Government to the Watan, on the payment from that time forward in perpetuity of an annual Nuzzerana of one anna in each Rupee of the above total emoluments of the Watan.

Details of lands and Cash allowances.

Name of the Taluka.	Name of the Village.	Lands to continue (as Watan). Nos. of the fields.	Acres.	Revenue Assessment.	Cash allowances.	Total Rupees.	Mamool Joodee Rupees.	
			A. g.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs a. p.	
Belgaum.	Those about which there is a Tharao (Settlement) Inam Committee Resolution No. 3101, dated the 30th of April 1858 A. D. in respect of the whole village Mouje Rajgoli Khurd.			738 0 7	0 0 0	738 0 7		On the gross income watan settlement judi at 3 annas in the rupee amounting to Rs.138-6-0
								"

This settlement is on the lines on the Gordon Settlement; and the lands including the village of Rajgoli Khurd are assigned on certain terms in lieu of service. There is no provision in the Sanad giving to the Watandar any right to alienate the Watan beyond his life-time and the Watan is mentioned as the Mutalik Desai Watan. There are other documents of minor importance, which need not be referred to.

In 1910, the defendant No. 1 obtained a decree on an award against the plaintiff's father for a certain claim and the possession of the land in suit, which is referred to in the decree as Watan land, was to be retained by the defendant for a certain number of years. The terms of this decree have not been referred to in detail in the argument before us. But the decree is accepted by both the parties as effecting an alienation by the plaintiff's father for a certain number of years. The land in suit forms part of the village lands.

It is clear from these facts that the settlement effected in 1884, is referable to section 15 of the Hereditary Offices Act, and is binding upon the parties. According to that settlement the village of Rajgoli Khurd is Watan property. Under section 5 of the Act no Watandar can mortgage, charge, alienate or lease for a period beyond the term of his natural life any Watan or any part thereof to any person who is not a Watandar of the same Watan, without the sanction of Government; and this provision applies to any Watan in respect of which a service commutation settlement has been effected under section 15 of the Act, unless the right of alienating the Watan without the sanction of Government is conferred upon the Watandars by the terms of the settlement. The defendant No. 1 is not a Watandar of the same Watan and no such right of alienation has been conferred by the terms of the settlement. The Sanad in this case is in the usual form

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adapted to the Gordon Settlement, and it is clear on the terms of the section as also on the decisions of this Court relating to the Gordon Settlement in *Appaji Bapuji* v. *Keshav Shamrav*[1] and *Bhau* v. *Ramchandrarao*[2] that in the absence of a sanction of the Government any alienation of the Watan-property beyond the term of the Watandar's natural life is inoperative. The village of Rajgoli Khurd is Watan property having regard to the definitions of "Watan property" and "Hereditary Office" in the Hereditary Offices Act. If the land in question forms part of the Watan property the alienation thereof could not be valid after the death of the plaintiff's father.

For the plaintiff it is urged that the burden of showing that the land in suit is not a part of the Watan property is on the defendant, that he has failed to discharge that burden, that the distinction between a grant of the royal share of the revenue and a grant of the soil which is recognised in this Presidency with reference to Inams and Saranjams cannot be and has never been extended to Watans, and that the presumption in favour of a grant being limited to the royal share of the revenue even in the case of Inams and Saranjams cannot be made in view of the observations of their Lordships of the Privy Council in *Suryanarayana* v. *Patanna*[3]. Further it is contended that on the terms of the grant in this case it ought to be held that the grant was of the soil and not merely of the royal share of the revenue of the village.

It is urged for the defendant that the plaintiff has failed to show that the land in suit forms part of the Watan property, that the Watan property here only means the royal share of the revenue and not the soil of the village of Rajgoli Khurd according to the terms

(1) (1890) 15 Bom. 13. (2) (1895) 20 Bom. 423.
(3) (1918) L. R. 45 I. A. 209 at p. 218.

of the Sanad, that even according to the terms of the original grant confirmed by the Inam Commissioner it is limited to the royal share of the revenue and does not extend to the soil, and that this distinction is well recognised in this Presidency and ought to be accepted in this case in spite of the decision in *Suryanarayana's case*[a].

In the absence of any clear proof that the occupancy right in the survey number in suit was vested in the plaintiff's ancestor independently of the grant and that the land in suit was outside the lands dealt with in the Settlement of 1884, I think that it must be held to be Watan property like the village itself. "Watan property" according to the Act means moveable and immoveable property held, acquired or assigned for providing remuneration for the performance of the duty appertaining to an "Hereditary Office" which expression includes such office even where the services originally appertaining to it have ceased to be demanded. It is difficult to treat the village mentioned in the Sanad as referring to the royal share of the revenue only. The Sanad refers to the lands and where the whole village is referred to the lands of the village are not referred to in detail by their survey numbers. Thus where the whole village is mentioned in a Sanad evidencing a settlement under section 15 of the Hereditary Offices Act, it is for the party alleging that a particular survey number of that village is outside the scope of the settlement to prove it. In the present case there is no such evidence. The lower appellate Court observes that there is nothing on the record to show that the land in dispute was not held by the original Inamdar as his private property at the date of the first grant. But at the same time there is nothing to show that it was so held. No document is referred to before us as

[a] (1918) L. R. 45 I. A. 209 at p. 218.

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showing that the survey number in question was held at any time otherwise than as part of the Watan property. This conclusion is strengthened by the fact that in the decree in the suit of 1910 it is described as Watan land. In the case of Watan property the distinction between grants of the royal share of the revenue and grants of the soil which is admissible in the case of Inams and Saranjams cannot be conveniently made without detriment to the statutory restriction on the Watandar's power of alienation and should not be made unless it is clearly justified by the terms of the settlement. The statutory restriction would be limited in its scope if such a distinction were made. The terms of the Sanad in the present case do not justify such a construction of the grant under the settlement of 1884. I do not say that such a distinction can never be made in the case of Watans. It is sufficient for the purpose of this case to observe that no basis for such a distinction has been made out on the terms of the settlement of 1884 with reference to the land in suit.

So far my conclusion is based upon the terms of the Sanad of 1884, and is independent of the terms of the grant in 1734 as confirmed in 1858 by the Inam Commissioner. It is by no means clear on the terms of the original grant of 1734 that it is limited to the royal share of the revenue. It is quite true as contended by the defendant that in this Presidency in the case of Inams and Saranjams the ordinary presumption in the absence of any indication to the contrary is in favour of the grant being limited to the royal share of the revenue and that clear words are necessary to indicate a grant of the soil: see *Krishnarav Ganesh* v. *Rangrav*[1]; *Ramchandra* v. *Venkatrao*[2]; *Rajya* v. *Balkrishna Gangadhar*[3]. It is also true that the words

(1) (1867) 4 Bom. H. C. R. (A.C. J.) 1.

(2) (1882) 6 Bom. 598 at pp. 602, 603.

(3) (1905) 29 Bom. 415.

ordinarily used to indicate a grant of the soil are "water, grass, wood (trees), stones, mines and hidden treasures" as pointed out in *Ravji Narayan Mandlik* v. *Dadàji Bapuji Desai*[1]; *The Collector of Ratnagiri* v. *Antaji Lakhsman*[2]; *Balvant Ramchandra* v. *Secretary of State*[3]. But the absence of these words cannot be treated as necessarily establishing that the grant is of the royal share of the revenue only. There is no decision which has gone so far as to lay down that no other expression can indicate a grant of the soil.

Assuming that the nature of the settlement in 1884 must be determined with reference to the terms of the original grant as confirmed by the Inam Commissioner, it is not a matter of presumption but a question of the construction of the words actually used. It is clear from the reference to section 2, Appendix II (Schedule B) of Act XI of 1852 in the decision of the Inam Commissioner that the Inam was then continued according to the terms of the old grant of 1734 A. D. Thus though the word *darobusta* is not used in the decision of the Inam Commissioner it seems to me that by implication the grant is continued in the same terms as the old grant and that in effect the expression used by the Commissioner must be taken to be the expression used in the grant of 1734 A. D. That expression is by no means clear on the question as to whether the grant was only of the royal share of the revenue or of the soil also; and apart from authority I should have found it difficult to construe it as a grant of the soil. The difficulty is increased by the consideration that the usual words (*jala, taru, truna, pashana, nidhi, nikshepa*) indicating a grant of the soil are not used. I find it however difficult to distinguish the grant in

(1) (1875) 1 Bom. 523. (2) (1888) 12 Bom. 534 at p. 544.
(3) (1905) 29 Bom. 480 at p. 486.

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the present case from the grant which was construed by this Court in *Vasudev Pandit* v. *The Collector of Puna*[1]. I think that we ought to follow this decision and hold that the grant in this case was a grant of the soil and not merely of the royal share of revenue. The present case cannot be reasonably distinguished on the ground that the word *darobusta* is not used by the Inam Commissioner in his decision.

I do not say that the use of the word *darobusta* would necessarily indicate a grant of the soil. In the case of *Vaman Janardan Joshi* v. *The Collector of Thana*[2], the grant was held to be limited to the royal share of the revenue. In that case, however, there was a clause to the effect that "the village should be continued to him as an Inam grant and the revenue of the said village, including that of Kasba Chauk should be entered in the Taluka account to the debit of the Joshi, on account of Inam." In the present case we have no such clause. It is not easy to reconcile all the observations in this case with the decision in *Vasudev's case*[1]. But there is no necessary conflict between the two decisions. On the best consideration that I can give to the question, I think that on the terms used in the grant of 1734 and confirmed by the Inam Commissioner in 1858, the grant is of the soil as in *Vasudev's case*[3].

In this view of the matter, it is not necessary to consider the effect of the observations of their Lordships of the Privy Council in *Suryanarayana's case*[4] relied upon by the plaintiff as to the presumption made in this Presidency in favour of a grant being of the royal share of the revenue in the absence of any indication

(1) (1873) 10 Bom. H. C. R. 471.
(2) (1869) 6 Bom. H. C. R., (A C. J.) 191.
(3) (1873) 10 Bom. H. C. R. 471.
(4) (1918) L. R. 45 I. A. 209 at p. 218.

that the grant is of the soil, in the case of Inams and Saranjams. In a somewhat similar case their Lordships have referred to these observations and have pointed out that each case must be considered on its own facts and that in order to ascertain the effect of the grant resort must be had to the terms of the grant itself and to the whole circumstances so far as they could be ascertained : see *Upadrashta Venkata Sastrulu* v. *Divi Seetharamudu*[1]. Both these cases were cases of ancient *Agrahara* grants: and the considerations applicable to *Agrahara* grants are naturally different from those applicable to secular grants for service. The question whether these decisions of the Privy Council require that no presumption that a grant is of the royal share of the revenue can be made where there is nothing to indicate that the grant is of the soil, is one of great practical importance; and it will have to be decided hereafter, when it arises. As the point is argued, I do not consider it inappropriate to point out the difficulties in the way of interpreting the observations of their Lordships of the Privy Council in the manner suggested by the plaintiff without expressing any opinion on the point. The presumption is made in this Presidency in favour of a limited grant of the royal share of the revenue in the absence of any words to indicate a grant of the soil, not because the Courts have felt any doubt as to the power of the rulers to make a complete grant of the land, but because the grants by the Crown must be construed strictly so that nothing more may be deemed to have been conveyed than what appears clearly from the words of the grant, and because suitable words are generally used when a complete grant of the soil is intended. This presumption may be only another form of stating the rule that the Crown grants should be construed according to

[1] (1919) L. R. 46 I. A. 123 at p. 128.

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their tenor as stated in section 2 of the Crown Grants Act XV of 1895. The history of the Inams in this Presidency and the words in the preamble of Act XI of 1852 showing that the Act was passed with a view to try and determine without delay the claims against Government on account of Inams and other estates wholly or partially exempt from the payment of land revenue may go to indicate that the grant might be merely of the royal share of the revenue and of nothing more. The meaning of the word "resumption" under that Act as explained by the Government in 1854 and accepted by this Court in *Vishnu Trimbak* v. *Tatia Pant*[1] and in many other later decisions both as to Inams and Saranjams may also show that there are many grants merely of the royal share of the revenue. The observations of their Lordships of the Privy Council in the above cases may not be irreconcilable with the decisions of this Court in which it is pointed out that in the absence of any words indicating a grant of the soil, a grant by the Crown must be taken to be a grant of the royal share of the revenue only.

I would allow the appeal, reverse the decree of the lower appellate Court and restore that of the trial Court with costs here and in the lower appellate Court on the defendant No. 1.

HAYWARD, J. :—I agree. It is simply a question of interpreting the deeds of grant which include two from the time of the Maratha rulers and the Sanad under the Gordon Settlement from the British Government. There is in my opinion no sufficient ground for holding the grant to have been merely a grant of the royal share of the revenue and not a grant of the soil. It is similar to the case of *Vasudev Pandit* v. *The Collector of Puna*[2]. It is of course necessary in interpreting such

(1) (1863) 1 Bom. H. C. R. 22. (2) (1873) 10 Bom. H. C. R. 471.

grants to remember what words were in ordinary use at the time for distinguishing between grants of the royal share of the revenue only and for grants of the soil but it has also to be remembered that this was a grant for service or a Watan grant and not an ordinary Inam or Saranjam grant. There is no authority excluding from consideration these matters. It was merely held that there was no *a priori* presumption that grants were limited to the royal share of the revenue and were not of the soil in the case of *Suryanarayana* v. *Patanna*[1] by their Lordships of the Privy Council.

Decree reversed.

R. R.

(1) (1918) L. R. 45 I. A. 209 at p. 218.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice and Mr. Justice Heaton.

1919. *September* 11.

ADIVEPPA BIN NAGAPPA ARSINGADI (ORIGINAL DEFENDANT No. 1), APPELLANT v. TONTAPPA BIN TIPPANNA RANGANWAR AND OTHERS (ORIGINAL PLAINTIFF AND DEFENDANTS NOS. 2 AND 3), RESPONDENTS *

Hindu Law—Reversioner—Widow's estate—Acceleration—Deed of gift by widow in favour of a daughter—Stipulation for maintenance of the widow for her life time—Nature of the transaction, whether acceleration or alienation.

One S made a gift of her widow's estate to her daughter L, with a condition attached that L was to maintain S till her death. The lower Court held that the gift amounted to a valid acceleration of S's estate. On appeal to the High Court,

Held, that there was no acceleration of S's estate, for any consideration was sufficient to change the nature of the transaction from an acceleration to an alienation.

* Second Appeal No. 38 of 1918.