of rendering an alienation by the limited owner binding on the reversion. The presumption of a lawful origin drawn from long possession and enjoyment is not sufficient, without more, to establish that the alienation by the widow or other limited owner was legally effective to convey an absolute interest, for such possession and enjoyment would have been quite lawful and proper even if the alienation was valid only during her own lifetime.

It may save the alienee from an adverse inference arising from the scanty nature of the evidence adduced by him. It will allow presumption to fill in details in the evidence which have been obliterated by time. It will supply a few missing links in the evidence. But lapse of time cannot conjure up a chain consisting entirely of missing links. The burden of proof is not altered nor is evidence of justifying necessity, direct or circumstantial, positive or presumptive, dispensed with by mere lapse of time."

As at present advised, we think that the Madras case lays down the correct principle.

[The rest of the judgment is not material to the report. The order of the lower Court was ultimately confirmed with the modification that the recovery of possession by the plaintiff was made conditional upon his paying the sum of Rs. 379-4-3 to defendants nos. 1 to 9 and an equal sum to defendants nos. 10 to 15.].

Decree modified.

M. W. P.

APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice.

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HASANSAHEB NABISAHEB BAGAWAN, APPLICANT (ORIGINAL DEBTOR NO. 3) *v.* VIRUPAXAPPA MAHANTAPPA TAPASHETTI AND OTHERS (ORIGINAL CREDITORS), OPPONENTS.*

Bombay Agricultural Debtors' Relief Act (XXVIII of 1947) s. 17 (1) (b)—"Total amount of debts due on the date of the application," meaning of.

In an application made under the Bombay Agricultural Debtors' Relief Act, 1947, for adjustment of his debts the applicant contended that although there were decrees passed against him the aggregate amount of which exceeded Rs. 15,000 some of the decrees were payable by instalments and that if the instalments which had not fallen due on the date of the application were not taken into account, his debts would amount to less than Rs. 15,000 on the date of his application.

Held, that the expression "total amount of debts due on the date of the application" occurring in s. 17 (*1*) (*b*) of the Act means debts which

* Civil Revision Application No. 1445 of 1957.

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are in existence on that date, notwithstanding that they are not payable on that date, and that therefore, the applicant was not a debtor under the Act.

A "debt due" means that a particular debt is in existence. The word "due" does not emphasise the moment of time when the liability is to be discharged; it emphasises the existence of the debt and not the time when that debt is to be discharged.

Civil Revision Application from the decision of N. S. Shrikhande, District Judge, Bijapur confirming the decision of M. V. Tettinmani, Joint Civil Judge at Bagalkot.

The facts are set out in the judgment.

K. G. Datar, for the petitioner.

G. R. Madhbhavi for opponent No. 4.

V. V. Albal and *G. N. Vaidya*, for opponent No. 7.

CHAGLA C. J. The question that arises in this revision application is as to the proper interpretation to be put upon the expression used in s. 17 of the B. A. D. R. Act, viz. "total amount of debts due from the person making an application under s. 4." Mr. Datar's contention is that what has got to be taken into consideration is the amount of debts which are payable or recoverable on the date when the application is made. In this particular case it is not disputed that the petitioner's debts were more than Rs. 15,000, there were decrees passed against him, the aggregate amount of which exceeded Rs. 15,000, but some of the decrees were payable by instalments, and if the test were to be applied as to what amount under these decrees was payable by the petitioner on the date of the application then the amount would have been less than Rs. 15,000. Both the Courts below have held that the petitioner does not satisfy the test laid down in s. 17, viz. that his total amount of debts does not exceed Rs. 15,000.

Now, a debt is a liability and a liability may have to be discharged in the present or in future, and "a debt due" means that a particular liability is in existence. "Due" does not emphasise the moment of time when that liability is to be discharged. It emphasises the existence of the debt and not the time when that debt is to be discharged. "Debt due" is not the same as "debt recoverable" or "debt payable". A debt may be due and yet the time when it has got to be paid or when the creditor can recover it may be postponed to a future date. Mr. Datar has drawn my attention to s. 4 (*3*) and s. 5 (*1*) (*b*). S. 4 (*3*) provides that when an application by a debtor is made

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it shall contain the amounts and particulars of all debts specified in that section due by the debtor. According to Mr. Datar, although under this sub-section the debtor has got to show all his debts, when you come to s. 17 for the purpose of the preliminary issue what the Court has got to ascertain is the debts actually payable or recoverable at the date when the application was made. I am not prepared to accept that contention. The scheme of the Act is that all debts which were in existence at the date when the application was made by the debtor should be adjusted under the B. A. D. R. Act. But the Legislature laid down a limit as to the extent of the debts. If a man had debts exceeding Rs. 15,000 then he could not avail himself of the benefit of the B. A. D. R. Act, and therefore the adjustment of the debts and the trial of the preliminary issue are based upon the same consideration. According to Mr. Datar, although a man's debts may be more than Rs. 15,000 and they might all be adjusted under the Act, still for the purposes of the preliminary issue he may come within the purview of the Act if he can show that on the date when he made the application his liability to pay the debts did not exceed Rs. 15,000. In my opinion that contention is contrary both to the scheme of the Act and to the plain meaning of the English expression "debts due." The same is the position with regard to s. 5 (*1*) (*b*). There also a debtor is called upon to make a true and correct statement of all the debts owed by him when a notice is served upon him under that section. I do not understand why the meaning of the word "debts owed" used in s. 5 (*1*) (*b*) and the meaning of the word "debts owed" in s. 4 (*3*) should be different to the meaning of the same words used in s. 17 (*b*). Mr. Datar concedes that as far as s. 4 (*3*) is concerned and s. 5 (*1*) (*b*) is concerned, "debts due" there mean not debts payable or recoverable, but debts in existence. If that be so, I see no reason whatsoever why the meaning of that expression should be changed when we come to s. 17 (b). The only answer that Mr. Datar can give is that as s. 17 (*b*) speaks of "debts due on the date of the application" we must construe that expression to mean "debts payable and recoverable on the date of the application." But I do not see why the qualifying phrase "on the date of the application" should necessarily change the meaning of the words "debts due." All that the Legislature intended by using the expression "on the date of the application" is that you must not consider the amount of the debts after the date of the application or prior to the date of the application, but

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take the date of the application as the relevant point of time and on that date determine what are the debts in existence due by the debtor. If those debts are less than Rs. 15,000 he is a debtor within the Bombay Agricultural Debtors' Relief Act. If they are not, then he is not entitled to the protection of the Bombay Agricultural Debtors' Relief Act. In my opinion, therefore, the learned Judge below was right in the view that he took.

Application fails. Rule discharged with costs.

Rule discharged.

K. B. S.

APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice, and Mr. Justice Bhagwati.

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SAMBHAJI BALAJI SOLANKAR *v.* THE STATE OF BOMBAY.*

Bombay Land Revenue Code (Bom. V of 1879), s. 211—Order of Prant Officer sanctioning grant of occupancy rights in certain land—Issue of sanad pursuant to order—Power of Government to cancel sanad under its revisional power on ground of misrepresentation by grantee—Government ordering restoration of possession of land on ex parte *inquiry—Application to quash order—Constitution of India, arts. 31 (1), 19 (f).*

The powers of the Government under s. 211 of the Bombay Land Revenue Code, 1879, are very wide, and to the extent that an order is passed by any revenue officer, the Government can revise that order and set it aside. But when the order has resulted in a solemn agreement being entered into between the Government and the subject, it is not open to the Government under the section to set aside or cancel the agreement on the ground that it was obtained by the subject by misrepresentations. The proper course for the Government to follow in such a case is to file a suit for avoiding the contract, so that the question whether the contract was induced by misrepresentation may be judicially determined.

Government of Bombay v. *Ahmedabad Sarangpur Mills Co. Ltd.*[1]; *Government of Bombay* v. *Mathurdas Laljibhai*[2]; *Province of Bombay* v. *Hormusji Manekji*[3]; and *Secretary of State* v. *Anant Nulkar*,[4] referred to.

On July 4, 1951, certain pieces of land were granted on an impartible tenure to the petitioner and a sanad in Form F (*1*) was issued to him by the District Deputy Collector. Subsequently on an *ex parte* inquiry

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* Civil Application No. 487 of 1952.

(1) (1943) 46 Bom. L. R. 413.
(2) (1941) 44 Bom. L. R. 405.
(3) (1947) 50 Bom. L. R. 524.
(4) (1933) 36 Bom. L. R. 242.