Privy Council Appeal No. 34 *of* 1914.

The Secretary of State for India in Council *Appellant,*

v.

Bai Rajbai - - - - - - *Respondent.*

Bai Rajbai - - - - - - *Appellant,*

v.

The Secretary of State for India in Council *Respondent.*

(*Consolidated Appeals*)

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 3RD JUNE, 1915.

Present at the Hearing.

LORD ATKINSON. SIR JOHN EDGE.
SIR GEORGE FARWELL. MR. AMEER ALI.

[*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

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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 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 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 17 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 17 villages in the Viramgam pargana, held for a considerable number of years by several families of Casbatees or 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 25 or 30 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 posses-

sion 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.

Mr. Williamson then proposed for the consideration of the Government a plan to this effect: to give to each Casbatee 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 Casbatees, 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 Casbatees 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 Casbatees 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 (Willliamson)

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

He proceeded to point out that by this arrangement the interference of the Casbatees would be removed from eight of their villages, the produce of which was valued at 13,800 rupees, while that of those remaining with them was only valued at 5,300 rupees, but that the jumma in respect of these latter was so small, namely, 1,925 rupees, that there would remain for their maintenance 3,375 rupees, a sum differing but little from that of 3,820 rupees, 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 "Cusbatees 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 Cusbatees 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 Lordships' 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, 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 *régime* 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 anti-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 for India* v. *Kamachee Boye Sahaba*

(7 Moore's Indian Appeals, p. 476) decided in the year 1859, and *Cook* v. *Sprigg* (1899, A.C. 572), 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 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, 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 *régime*.

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 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 putta or kabulyat 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 putta then granted to the Kasbatis then in possession of the nine villages retained by them, including this village of Charodi. According to these records a putta of the village was then given to Bapabhai, the father of Fatumyia, for a term of seven years, at a jamabandi of 100 rupees, with a covenant by the lessee that he should not sell or mortgage the village, or give, or allow anyone 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 putta 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 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 puttas granted to them is any provision to be found to the effect, that upon its expiration a new putta is to be granted to the lessees or their representatives or successors, while the very first of these puttas contained a clause expressly negativing the existence of such a right. The reasonable and proper inference to be drawn from the silence of the puttas on this important point is, Sir Erle Richards, on behalf of the appellants, contends, that the legal right to obtain renewals of the puttas 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 putta 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 putta, 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 puttas 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 putta 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 puttas the contents of which are satisfactorily proved.

First, then, as to the puttas granted on the 31st of August 1833. In the year 1827, during the currency of the first lease a report was made to the Talukdari 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 puttas 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 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 142 rupees, 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 putta, 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 putta 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 matter, and if

they should find that the village would be spoiled if allowed to remain in the hands of the lessees the putta 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 putta for seven years was part of the arrangement made with Mr. Williamson, and that the putta 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 puttas 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 putta was apparently granted for seven years, but neither the original nor any copy of it was forthcoming at at the trial. On the expiration of this term in the year 1845, the Collector forwarded to the Revenue Commission 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 Govern-

ment. 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 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 Casbatees 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 withhold 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 putta of the village, bearing date the 4th of September 1849, was granted to Fatumyia 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 rupees 144–1–9, payable by five instalments on the days therein named. The lease is executed by the lessees. It will be found at p. 68 of the Record. 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 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 putta 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 putta to the lessees

on the agreement thereinbefore set out, and that if they did not act accordingly to the agreement the putta should be void.

The existence of the statement that the putta 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 left 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 putta 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. *Primâ facie* a lease for a term does not import any right to a renewal of it. On the contrary, it *primâ 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 putta was granted in 1851. The lessees continued to hold possession and to pay the rent till 1860. Fresh puttas 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 Williamson's settlement, namely, the villages of Keela 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 Goverment 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 Bapuji, 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 continued 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.

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 Rajpoot 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 "Taluk" was first applied to these Rajpoot 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, Tulukdari Settlement Officer of the Talukdari of Ahmedabad Zilla, and the measures adopted for their restoration under and in connection with the Act 6 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 Tulukdari 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 6 of 1862, for the reasons given in the abovementioned publication of Mr. Peile, does not apply to Kasbati lessees at all. They never were Talukdaris of Ahmedabad in the true sense. They did not lose their ancient right of ownership of their 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

Ahmedahad, &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 Talukdar is defined to include " a thakur mewassies 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 Talukdar 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 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 " Taluq- " dars 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 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," " 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 *primâ 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 " putta, but it is to be inferred from the nature of the " management and from the fact that the putta 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."

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.

In the Privy Council.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL

v.

BAI RAJBAI.

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v.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL.

DELIVERED BY

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