

REJOINDER

ON BEHALF OF

THE KAPSI-SAMSTHAN

THE PETITION OF APPEAL

BY

THE KOLHAPUR DURBAR

TO

THE SECRETARY OF STATE FOR INDIA IN COUNCIL,

AGAINST

THE DECISION OF THE GOVERNMENT OF BOMBAY,

DATED THE 5TH JUNE 1889,

IN

CIVIL APPEAL No. CXX OF 1887,

re

THE CLAIMS OF KAPSI AGAINST KOLHAPUR.

BOMBAY.

PRINTED AT THE NATIVE OPINION PRESS.

1891.

V 2 3144 : 13. M9

C1

To, 84075

THE RIGHT HONOURABLE,

CHARLES ASSETON VISCOUNT CROSS,

HER BRITANIC MAJESTY'S SECRETARY OF
STATE FOR INDIA, IN COUNCIL,

LONDON.

SPECIAL APPEAL No. 1891.

The Council of Administration of the Kolhapur Durbar, (S. M. Country), *Appellant*.

versus.

Santajirao Ghorpaday Senapati, Chief of Kapsi, deceased, by his widows, }
Ambikabai Saheb and Gopikabai Saheb Ghorpaday Senapati ... } *Respondents.*

Rejoinder of the Kapsi Sansthan to the petition of appeal, preferred by the Council of Administration, Kolhapur, from the decision of the Government of Bombay in Civil Appeal No. CXX. of 1887, dated the 5th June 1889, submitted in accordance with the desire of the Political Agent, Kolhapur and S. M. Country, conveyed to the Karbhari of Kapsi by the Council of Administration, Kolhapur, by a yadi, miscellaneous, outward No. 308, dated the 23rd February 1891, with which was sent a printed copy of the petition of appeal without date.

It will be convenient, in view of certain questions to be hereinafter dealt with, to give at the outset a brief account of the origin, status and revenue of the Kapsi Sansthan, its relations with Kolhapur, and of the circumstances giving rise to the dispute, the subject of the appeal.

2. The house of the Ghorpadays to which the Chiefs of Kapsi belong is one of the oldest and most renowned in the annals of Indian History. They came from Oodepur during the reign of the great Moguls, acquired *Patilki* and *Deshmukhi* Vatahs of certain villages from the emperors of Delhi, and enjoyed the same for four or five generations. They signalized themselves as principal Mahratta Chiefs at a very early period of the Bijapur Dynasty. The title of *Amir-ul-Umrao* was conferred on one of the members of the family. They entered early the service of Shivaji, the founder of the Mahratta Empire, and his son Sambhaji invested Mhaloji, a member of the family, with the title of *Sarnobat*. Rajaram also was greatly pleased with the exploits of the three sons of this Mhaloji, the eldest of whom, Santaji, the founder of the Kapsi family, was invested with the title of *Mamal-Kat-Madar* (centre of

Kingdom). Santaji in 1688 A. D. was made the Senapati of the Maratha Empire, which title has all along been retained by his descendants. On the partition of the Mahratta Empire between the Rajas of Satara and Kolhapur, Santaji transferred his allegiance to Kolhapur; and he and his descendants have been since then hereditary Senapatis of that State. The possessions now held by the Kapsi family have been held even from the time of the Bijapur Kings, and received large additions from time to time. But subsequent political changes and alienations the Kapsi Chiefs have again cut down these to a comparatively narrow compass. Throughout their service under Kolhapur, the Chiefs of Kapsi have exercised independent jurisdiction (Vide Major D.C. Graham's Statistical Report on Kolhapur, page 2) and have been in possession of all the rights and powers enjoyed by the great feudal barons of the Mahratta Empire. Their rank at the Court has been the second amongst the Ashta Pradhans (eight ministers) and they are on a par with Vishalgad and Bowdich.

3. The services rendered by the Ghorpadays of Kapsi are thus succinctly noticed by Major D. C. Graham at p. 492 of his Statistical Report on Kolhapur:—

"The distinguished families of Ghorpaday, the Chawan, and the Gaikwad, the Powar, the Bhosalay, all had their representatives among the hundred feudatory barons of Kolhapur, who enjoyed their large fiefs entirely for military service, and preserved their rights and privileges with equally zealous care, but who nevertheless joined heart and hand with their prince on pressing emergency, and who during a period of 80 years struggled most manfully for independence of their country."

4. Mr. W. Lee-Warner, the Political Agent and President of the Council of Administration, Kolhapur, now Secretary to Government, Political Department, Bombay, at the time when this matter was before the Council thus notices the family in his minute:—

"There are few families in India whose title is better, and whose services to their Suzerors have been so distinguished. Seven families of importance have branched off from this stock. Patilgeray, Hasur, Nagnur, Galgale, Nowlihal &c. Santajirao was killed in battle in 1714. Another Senapati was killed at the battle of Halkarni in 1723. A third was killed in an engagement with the Chief of Nipani in 1813, while the fourth victim was the founder of the family. * * I know of no Sovereign State in India which can with political safety ignore claims of this sort on its protection. It must also be remembered, that the late Chief, Ramchandrarao, who died on May 27th 1857, enjoyed civil and criminal Jurisdiction." (Ap. B of the Durbar's appeal pp. 7-8).

5. These vital services rendered to Kolhapur by the Chiefs of Kapsi were duly recognised by the Maharajas of Kolhapur in sanads given by the latter to the former. A sanad of 1692 A. D. (Ex. 3 Appendix C of Kapsi's Appeal.) mentions detail as follows:—

"When Rajashri Chhatrapati Swami (master) went to Karnatic, he kept Rajashri Santaji bin Mhaloji Ghorpaday Senapati-Laskar in this district. At that time there were disturbances by the enemy throughout this district and all the country and fortresses had been taken hold of by the enemy. There remained nothing in the kingdom. All the Mahrattas forsaking their honesty, joined the enemy. This person remained true to his honor and devotion towards Rajashri the king and mustering soldiers destroyed Shekh Nizam, Sarjakhan, Ranamastkhan and Jan-arkhan, young and brave. He besieged the enemies in several places and destroyed them and thus liberated the country. He made uncommon exertions for the protection of the Kingdom, and became a terror to Aurangzeb. Afterwards on several occasions he has shown his spirit for the sake of the Swami."

6. Notwithstanding all this, the Kapsi Chiefs have not unfrequently had to fight for the preservation of their rights, and encroachments upon their rights were frequently the cause of disturbance and bloodshed. The integrity of the Kapsi State has been secured by the treaty of 1862, and the British Government have given a guarantee to the Chief against foreign encroachments and molestations. But now that quiet reigns all over the country, the Durbar officials, through desire to increase the revenue, have been pursuing a policy of wringing from States like Kapsi what the Maharajas had given as a consideration for the loss of so many brave lives.

7. Kapsi has a direct right to a revenue of Rs. 60,787-5-6 and a contingent right to grants which it has made for maintenance and by way of gift &c., to the extent of about Rs. 89,190-3-10 (*vide* Statement of Revenue submitted before the Bombay Government, Appendix X of this rejoinder). By alienations and assignments the direct revenue of Kapsi as said above was considerably reduced. Among the grants of Kapsi, is the Sansthan of Ichalkaranji which is by itself now a State. Upto 1841 A. D, the Ichalkaranji grant was shown in the Kolhapur accounts under the head of Kapsi *Ilakha* and so were all alienations to Bhaubands. But of late the Kolhapur accounts have ceased to show such an entry.

8. In the year 1875 the late Chief of Kapsi decided as usual within his authority a succession matter relating to the *Patilki Vatan* of Kasba Lat. The Patil, thinking himself aggrieved by the said decision, appealed to the Political Agent, Kolhapur and S.M. Country, who, by his order No. 7 dated the 7th July 1875, asked for the papers in the case to be sent up and directed the Chief of Kapsi to send up all succession matters in future. The Chief of Kapsi by his yadi No. 27 dated the 22nd October 1875 objected to the order of the Political Agent on the strength of his hereditary right and on the ground of the immemorial usage of his own State as well as that of the other States of equal rank. Thereupon the matter was referred to the Duftardar of Kolhapur for opinion who reported that the succession in question was properly decided by the Chief of Kapsi who had a right to decide such matters, but suggested that the *Nazarana* (fine on succession) should be credited to the Kolhapur Durbar, because the *Nazarana*, levied from the Chief of Kapsi by the Kolhapur Durbar at his succession, did not include the *Nazarana* on that alienated revenue. In 1876 the Duftardar was ordered by the Durbar Karbhari to ascertain the practice of the other great feudatories as to whether the service commutation and *Nazarana* on *Kudim* (ancient) Inams in their territories were claimed and received by the Kolhapur Durbar while the Maharaja was ruling in person and while the Chiefs were managing their respective States personally. Thereupon the Duftardar by his M. Vajai No. 1558 of 20th February 1877 asked the above information from the Karbharies of the four feudatory States who reported that the service commutation and *Nazarana* were never received by the Kolhapur Durbar, but were always received by their Chiefs in their own right (*vide*

(Kingdom). Santaji in 1688 A. D. was made the Senapati of the Mahratta Empire, which title has all along been retained by his descendants. On the partition in 1731 of the Mahratta Empire between the Rajas of Satara and Kolhapur, Santaji transferred his allegiance to Kolhapur; and he and his descendants have been since then the hereditary Senapatis of that State. The possessions now held by the Kapsi family have been held even from the time of the Bijapur Kings, and received large accessions from time to time. But subsequent political changes and alienations by Kapsi Chiefs have again cut down these to a comparatively narrow compass. Throughout their service under Kolhapur, the Chiefs of Kapsi have exercised independent jurisdiction (Vide Major D.C. Graham's Statistical Report on Kolhapur, page 2) and have been in possession of all the rights and powers enjoyed by the great feudal barons of the Mahratta Empire. Their rank at the Court has been the second amongst the Ashta Pradhans (eight ministers) and they are on a par with Vishalgad and Bowda.

3. The services rendered by the Ghorpadays of Kapsi are thus succinctly noticed by Major D. C. Graham at p. 492 of his Statistical Report on Kolhapur :—

"The distinguished families of Ghorpaday, the Chawan, and the Gaikwad, the Powar, and the Bhosalay, all had their representatives among the hundred feudatory barons of Kolhapur, who also enjoyed their large fiefs entirely for military service, and preserved their rights and privileges with equally zealous care, but who nevertheless joined heart and hand with their prince on any pressing emergency, and who during a period of 80 years struggled most manfully for the independence of their country."

4. Mr. W. Lee-Warner, the Political Agent and President of the Council of Administration, Kolhapur, now Secretary to Government, Political Department, Bombay, at the time when this matter was before the Council thus notices the family in his minute :—

"There are few families in India whose title is better, and whose services to their Suzerain have been so distinguished. Seven families of importance have branched off from this stock. Pan-geray, Hasur, Nagnur, Galgale, Nowlihal &c. Santajirao was killed in battle in 1714. Another Senapati was killed at the battle of Halkarni in 1723. A third was killed in an engagement with the Chief of Nipani in 1813, while the fourth victim was the founder of the family. * * I know no Sovereign State in India which can with political safety ignore claims of this sort on its protection. It must also be remembered, that the late Chief, Ramchandrarao, who died on May 27th 1857, enjoyed civil and criminal Jurisdiction." (Ap. B of the Durbar's appeal pp. 7-8).

5. These vital services rendered to Kolhapur by the Chiefs of Kapsi were duly recognised by the Maharajas of Kolhapur in sanads given by the latter to the former. A sanad of 1692 A. D. (Ex. 3 Appendix C of Kapsi's Appeal.) mentions in detail as follows :—

"When Rajashri Chhatrapati Swami (master) went to Karnatic, he kept Rajashri Santaji bin Mhaloji Ghorpaday Senapati-Laskar in this district. At that time there were disturbances by the enemy throughout this district and all the country and fortresses had been taken hold of by the enemy. There remained nothing in the kingdom. All the Mahrattas forsaking their honesty, joined the enemy. This person remained true to his honor and devotion towards Rajashri the king and mustering soldiers destroyed Shekh Nizam, Sarjakhan, Ranamastkhan and Jan-arkhan, young and brave. He besieged the enemies in several places and destroyed them and thus liberated the country. He made uncommon exertions for the protection of the Kingdom, and became a terror to Aurangzib. Afterwards on several occasions he has shown his spirit for the sake of the Swami."

6. Notwithstanding all this, the Kapsi Chiefs have not unfrequently had to fight for the preservation of their rights, and encroachments upon their rights were frequently the cause of disturbance and bloodshed. The integrity of the Kapsi State has been secured by the treaty of 1862, and the British Government have given a guarantee to the Chief against foreign encroachments and molestations. But now that quiet reigns all over the country, the Durbar officials, through desire to increase the revenue, have been pursuing a policy of wringing from States like Kapsi what the Maharajas had given as a consideration for the loss of so many brave lives.

7. Kapsi has a direct right to a revenue of Rs. 60,787-5-6 and a contingent right to grants which it has made for maintenance and by way of gift &c., to the extent of about Rs. 89,190-3-10 (*vide* Statement of Revenue submitted before the Bombay Government, Appendix X of this rejoinder). By alienations and assignments the direct revenue of Kapsi as said above was considerably reduced. Among the grants of Kapsi, is the Sansthan of Ichalkaranji which is by itself now a State. Upto 1841 A. D, the Ichalkaranji grant was shown in the Kolhapur accounts under the head of Kapsi *Ilakha* and so were all alienations to Bhaubands. But of late the Kolhapur accounts have ceased to show such an entry.

8. In the year 1875 the late Chief of Kapsi decided as usual within his authority a succession matter relating to the *Patilki Vatan* of Kasba Lat. The Patil, thinking himself aggrieved by the said decision, appealed to the Political Agent, Kolhapur and S.M. Country, who, by his order No. 7 dated the 7th July 1875, asked for the papers in the case to be sent up and directed the Chief of Kapsi to send up all succession matters in future. The Chief of Kapsi by his yadi No. 27 dated the 22nd October 1875 objected to the order of the Political Agent on the strength of his hereditary right and on the ground of the immemorial usage of his own State as well as that of the other States of equal rank. Thereupon the matter was referred to the Duftardar of Kolhapur for opinion who reported that the succession in question was properly decided by the Chief of Kapsi who had a right to decide such matters, but suggested that the *Nazarana* (fine on succession) should be credited to the Kolhapur Durbar, because the *Nazarana*, levied from the Chief of Kapsi by the Kolhapur Durbar at his succession, did not include the *Nazarana* on that alienated revenue. In 1876 the Duftardar was ordered by the Durbar Karbhari to ascertain the practice of the other great feudatories as to whether the service commutation and *Nazarana* on *Kudim* (ancient) Inams in their territories were claimed and received by the Kolhapur Durbar while the Maharaja was ruling in person and while the Chiefs were managing their respective States personally. Thereupon the Duftardar by his M. Vajai No. 1558 of 20th February 1877 asked the above information from the Karbharies of the four feudatory States who reported that the service commutation and *Nazarana* were never received by the Kolhapur Durbar, but were always received by their Chiefs in their own right (*vide*

Exhibit 42 Ap. B of Kapsi's Appeal). Notwithstanding this, the Political Agent, Kolhapur and S. M. Country, passed order No. 108 dated 7th August 1877 to the effect that the *Nazarana* of the *Patilki* of Lat should be credited to Kolhapur. After some correspondence between Kolhapur and Kapsi which lasted till 1878 the Durbar called for a report from the Duftardar regarding the claims of the Kapsi Chief against Kolhapur (*vide* Ap. C of the Durbar's appeal). The Duftardar after a searching investigation into the matter reported in favour of Kapsi on all the points referred to him, (*vide* Exhibit ^K₂ Ap. A of Kapsi's appeal). On receipt of this report the office (presumably that of the Political Agent since the report of the Duftardar was addressed to that officer) endorsed thereon that the disposal of the question may be postponed until the decision of the Kagal case then pending before the Bombay Government. In face however of the above report of the Duftardar and the endorsement thereon, the Durbar continued its aggressive policy and passed several orders adverse to the Kapsi Sansthan in matters which involved the same principle. The Chief of Kapsi protested and resisted, but the Durbar helped itself by attaching the Kapsi Sansthan in 1881-82. In 1882 a Council of Regency was formed in Kolhapur to which the papers of this case were unaccountably transferred, but the matter was apparently shelved until the year 1886, when the Chief of Kapsi with a desire to obtain a speedy termination and disposal of the matter, which had rendered his position highly uncomfortable and even unbearable, pressed for a decision and for the sake of speed agreed to submit the case for the decision of the Council of Administration, although ordinarily according to the treaty of 1862 that Council could not be the judge in the matter as it was a dispute between Kolhapur and a feudatory State.

9. The trying Court, presided over by the Political Agent, after hearing the arguments of the pleader on behalf of the Kapsi State, called upon the Kolhapur Durbar to submit their reply. Accordingly the Chief Revenue officer, the responsible revenue member of the Council of Administration, submitted a reply on behalf of the Durbar and produced evidence from the Kolhapur record in support of the same (*vide* Appendix B of the Durbar's appeal pp. 9-12). Thereupon the trying Court passed their Resolution No. 885 dated 24th and 25th November 1886 (Appendix I of this rejoinder).

10. Dissatisfied with the said Resolution, the Chief of Kapsi appealed to the Government of Bombay who gave their decision on the evidence submitted by both the parties at the original trial and in appeal, on 5th June 1889 in favour of the Chief of Kapsi (*vide* Bombay Government Resolution No. 3919 dated 5th June 1889 and the judgment accompanying it, Appendix A of the Durbar's appeal).

11. Against this decision the Council of Administration simultaneously submitted on or about the 7th May 1890, a petition of review to the Bombay Government

and a petition of appeal to your Lordship in Council, and produced fresh evidence with them. But the Bombay Government ruled that the submission of an appeal and a review at one and the same time was a disrespectful procedure and that the Kolhapur Durbar should choose either of the two. The Council of Administration then withdrew the appeal and proceeded with the petition of review which the Bombay Government rejected on the 6th of January 1891 (Vide Government Resolution No. 41 dated 6th January 1891). The Council of Administration then submitted the present appeal to your Lordship in Council from the original decision of the Bombay Government dated the 5th June 1889.

12. The Kapsi State objects to the appeal first on the ground of limitation. The Judgment of the Bombay Government in the said appeal was given on the 5th of June 1889 and communicated to the parties about the 19th Idem; and the petition of appeal to your Lordship in Council was presented in the office of the Political Agent, Kolhapur and S. M. Country, on the 7th of February 1891, long after the time prescribed for an appeal in Political cases, which is 12 months from the date of the communication of decision appealed against. The Kapsi State would refer on this point to the following rule :—

“ No limit is fixed to the time within which an appeal from an order of the Governments in India must be preferred to the Home Department except in the case of appeals from a Judicial decision in which the Judge is a political officer and in which the appeal ordinarily lies to Government in the Political Department. Such appeals must be preferred within a period of 12 months from the date of communication to the persons concerned of the order to which objection is taken” (Rule 7 of the Memorial rules, Gazette of India 30th March 1878 part 1 pp. 243-244.)

and submit that the Durbar cannot claim any relaxation of this rule and be excused for such an inordinate delay on the ground of their Sovereign position or disinterestedness of the members of the Council as observed by the Bombay Government in their decision on the petition of review (Vide Ap. No. VI. of the Durbar's appeal). Moreover they cannot as a matter of right ask for exclusion of the time occupied by the review (L. L. R. 15, Mad. 81).

13. The new evidence now produced with the appeal is, it is next submitted, inadmissible. The evidence is the same which the Durbar had produced with the petition of review and was not allowed by the Government of Bombay. In the petition of review the Durbar tried to justify the production of this new evidence on the ground that they had no reason to believe that Exhibit I appendix A of Kapsi's appeal would be interpreted and relied on as it had been by that Government. The Durbar finding that plea entirely failing now avail themselves of another expedient to justify the production of the same fresh evidence and say that the non-production of this evidence at the original trial as well as in appeal was due not to any neglect of duty on the part of the Durbar, but to the peculiar constitution of the Court, the manner in which the case was tried and insuffi-

ciency of time. As regards the peculiar constitution of the Court, it was not at all prejudicial to the interests of Kolhapur. The members of the trying Court, already prepossessed in favour of the right of Kolhapur, had passed several orders impugning the claims of Kapsi and were bound to a course of policy which they had all along upheld. As regards their inability to produce evidence at the proper time owing to their peculiar position, the Kapsi State begs to submit that it did not at all come in their way of producing whatever evidence they had if they had chosen to do so. After the case for the Chief of Kapsi was closed, the President of the Council of Administration asked for a reply from the Durbar on the three questions, viz, 1. How such enquiries in Kadim Inams are claimed under the sanads, 2. How claimed under custom and practice in regard to Kapsi, and 3. How claimed in regard to the four larger feudatories, —(Vide Ap. B of the Durbar's appeal p. 8.), and expressly called upon the Durbar to give instances of succession cases in past in which enquiries were made by the Durbar. Thus the express direction of and the questions formulated by the President gave ample notice to the Durbar, and enjoined them to produce whatever evidence they had in support of their own claims and their objections to the claims of the Kapsi State. The chief Revenue Officer, the responsible revenue member of the Durbar on whom the duty of representing the claims of Kolhapur chiefly lay, seems certainly to have been aware of the necessity of producing all the available evidence. He accordingly ransacked the State records, but could cite only one solitary instance of usage in favour of Kolhapur. He candidly admits in his reply (Appendix B of the Durbar's appeal), that it is hard to find out from the record proofs of the receipt of Nazarana from Vatandars in the Kapsi State before the termination of the reign of H. H. the Bowa Saheb Maharaj, but attempts to justify this absence of evidence by sophistical arguments. All the fresh evidence, that the Durbar now try to put in, was, according to their present admission, on the State record at the time of the original trial as well as the appeal. The chief Revenue officer must therefore either have considered that the evidence now put forward was useless to show usage in favour of Kolhapur or he must not have used due diligence in the matter. After the questions by the President, the present plea that because the members of the Council of Administration were well acquainted with the evidence and did not consider it necessary actually to produce it before themselves, cannot hold water for a moment. Nor is it to be overlooked that the Durbar had distinct notice that they were not going to be the final court in the matter, but that in case of adverse decision, the Chief of Kapsi would go before the superior tribunal, who would have to decide the questions raised on the papers in the case and not on any knowledge by way of inspiration. The Durbar now say that it was distinctly the understanding of the Council of Administration that no evidence should be produced before it by the Durbar, and they appeal to the minute of the Chief

Judge in support of this answer. But that minute does not mean it at all, and no casuistical interpretation can make the words mean anything so monstrous. Moreover the Durbar have been strangely silent about this understanding in both of their statements submitted to the Bombay Government. The Chief Judge in his minute regretted that the case was argued before the Council, which being itself a party was not evidently a competent Court, and not before a proper Court. He also in that minute gave reasons for his silence, and the Kapsi Sansthan only wonders that he did not persevere after the decision of the Bombay Government in the same neutral position—a position rendered necessary and becoming on account of the peculiar relations existing between him and the late Chief of Kapsi before the former ascended the Bench.

14. As regards the complaint about insufficiency of time, the Kapsi State respectfully contends that the Durbar had full notice of the nature of the evidence it was necessary for them to produce both as to usage in Kapsi and in the other States of equal rank, and as to the interpretation of Exhibit I Appendix A of Kapsi's appeal, and that they had ample time to produce the whole of their evidence either at the original trial or in appeal. The Durbar have hinted that only a week's time was allowed by the President to put in their reply and that they were not able to produce the whole of their evidence in such a short time. Looking to the peculiar circumstances of the present case Mr. Lee-Warner, the Presiding Judge, was perfectly justified in giving a week's time for putting in their reply. Besides, it appears very strange that the plea was not taken up until now. The Durbar knew or at least ought to have known the importance of the evidence and consistently with their own responsibility should have asked for an extension of time if necessary from the President. The pleader for the Chief of Kapsi had clearly pointed out to the President that the dispute was begun at the latest in the year 1875 and was referred to the Duftardar of Kolhapur for a departmental enquiry, and that the said Duftardar had reported in favour of Kapsi (Vide Exhibit $\frac{K}{2}$ Ap. A of Kapsi's appeal) on the very same questions in reference to which the Durbar's reply was required by the President. The President also knew that in spite of the favourable report of the Duftardar and the office endorsement thereon the Durbar had forced its claims on the Chief of Kapsi by attaching his estate in 1881, and must have naturally believed that the Durbar officials would not go to such lengths unless they had sufficient evidence in support of their contention ready on hand. Besides, the Chief Revenue Officer who ransacked the record did not at all complain about the insufficiency of time. Moreover while this case was pending before the Council at Kolhapur, the Kagal case between Kolhapur and the Chief of Kagal which raised precisely the same questions as the present case, was decided by the Bombay Government in favour of Kagal, and the decision gave full and ample notice to the Kolhapur Durbar of the nature of the evidence required from them in the present case.

15. The appeal of the Kapsi Chief to the Bombay Government was presented on the 4th of March 1887, and the notice, fixing 14th February 1888 as the day of the hearing of the appeal by the Government of Bombay, was served on the parties on or about the 23rd of December 1887 (Ap. V. of this rejoinder). Further, the Resolution of the Bombay Government of the 26th January 1888, framing the issues in appeal, was communicated to the parties on the 31st Idem. The distinct remark of the President of the Council of Administration in his minute that Kolhapur does not disprove or deny the evidence of the Senapati's exercise of his rights, as also the notice of appeal calling upon the Durbar to appear and represent the Kolhapur claims must necessarily have put them on their guard to seek for evidence. The conduct of the Durbar therefore amounts to a clear waiver and has left no room for complaint. It is to be remarked that the Chief of Kapsi submitted his statement of objections on the 10th March 1888, while the Durbar put in their rejoinder to it about the 20th of May 1888. Thus on the whole the Durbar had more than four months to look about themselves and not only a short time as is represented in the petition of appeal. Moreover, the suggestion, that peculiar circumstances led the Council to believe that they were not to be bound by hard and fast rules of procedure, is simply preposterous. It will also be borne in mind that the Bombay Government had never objected to reasonable postponements when asked for by either parties; and the Durbar were allowed to and did actually put in additional evidence at the hearing of the appeal before the Bombay Government.

16. Of the 40 documents now produced by the Durbar there are three documents (Exs. 35,36 and 37) newly framed by the Durbar themselves to explain their own theory as regards Exhibit I Ap. A of Kapsi's appeal, and two others, (Exs. 38 & 39) a genealogical table and history of the Kapsi family, do not at all affect the merits of the case. The copy (Ex.34) of Ex. I Ap. A and the letter (Ex. 14) of the Political Agent, Kolhapur and S. M. Country, in the Kagal case are not new documents, the former had been put in by the Chief of Kapsi before the Duftardar and the latter had been made use of by the Durbar in their statement of reasons and their rejoinder before the Bombay Government. Of the remaining 33 documents, 25 relate to a period between 1813 and 1838 and 8 (Exs. 9,10,11,12a,13,26,27,28,) relate to a decade earlier, but some of these documents appear on the face of them to have come under the observation of the Durbar between 1858 and 1873. It is a well-known fact that the Kolhapur records since 1813 have been systematically arranged; and the Durbar have actually made use of and produced in appeal documents in evidence from the records of the years 1819, 1820, 1827, 1834, and 1841. Hence it is quite impossible to conceive that the Durbar officials should not have come across these documents when they looked for the papers which they produced with the minute of the Chief Revenue officer as remarked above, and with their rejoinder. The only

inference that can be drawn from the above is that either the Durbar Officials were not diligent in their duties or that they thought or were advised that the present evidence was of no avail. Thus it will be seen that the prayer for admission of this evidence in special appeal is simply vexatious being made simply with a view to keep the litigation hanging over for a long time.

17. The observations of the Bombay Government in the Judgment of the 3rd December 1890, accompanying G. R. No. 41 of the 6th January 1891 rejecting the petition of Review, regarding the admission of this fresh evidence, deserve consideration in this connection. They are as follows :—

“ Apart, however, from the question of limitation, there is the question of the admissibility of the evidence newly discovered by the Council. The allegation is that the Council was put on the track of this new evidence by a document obtained from the Desai of Vantmuri. As all the documents have been obtained from the Kolhapur records, there is no doubt but that by reasonable diligence they could have been obtained at an early stage of the case. The Council indeed seem to be aware of this objection to their claim for a review, for they say these documents or many of them would have been produced at the hearing or in the appeal, had they anticipated the inferences drawn by Government from a particular document (of 1803) which was produced. Such an argument would never be admitted in a Civil Court, where parties are expected to produce all they can to support their respective cases. A fresh litigation on every point left unelucidated or unargued would make litigation interminable. The principle applies with no less force to a case like the present. A poor and weak dependency like Kapsi must be ruined by an inordinate prolongation of proceedings. It may, by advice of Counsel, be committed to many prejudicial admissions on a defective presentation of the case of the opposite side, and if the opposite side is then to get the benefit of such concessions and also profit by its own laches through getting evidence admitted after the case has been once disposed of, all regularity, and the equal justice which depends on regularity of procedure, must cease. In the present instance, if Government has been in any way misled through defect of evidence, it has been misled by the fault of the Council, which now asks for a review. The Kapsi family would have a just ground of complaint if after meeting and successfully meeting the case actually made by its powerful opponent, it were now called on to fight the battle anew. When evidence could not (in a reasonable sense) be produced in the course of a trial and appeal, the case ought to be reopened to admit it. Where, as in this case, it could have been produced, the admission of it after judgment would encourage negligence and trickery, and would lead to mischievous confusion and uncertainty.”

18. Succinctly therefore the following are *inter alia* the objections to the admission of the new evidence :—

- (1). The Council of Administration do not state that the new evidence now sought to be produced was not in their possession nor accessible to them at the original trial or in appeal.
- (2). No special cause is shown by the Council of Administration for taking this new evidence out of the ordinary rule.
- (3). No party has a right to take for granted that a Court would construe a certain document in a particular way favourable to him, and such an assumption, if it were allowed, would make all proceedings interminable.
- (4). The particular interpretation, which, it is alleged, has taken the Council by surprise, was, as a matter of fact, put upon the

document by the Kolhapur Duftardar in his report Exhibit $\frac{K}{2}$ Ap. A of Kapsi's appeal made so long ago as 1879 and was expressly dwelt upon in the same light by the late Chief of Kapsi throughout the proceedings.

- (5). The Bombay Government Resolution No. 774, dated the 15th February 1883 in the Kagal case left no room for the Council of Administration being surprised and taken unawares in this case regarding the evidence of usage &c.
- (6). The absence of any instance to support the contention of the Durbar in the matter of the Nazarana &c., was not only relied upon by Kapsi in this case, but it was brought to the notice of the Durbar in the Kagal case and the Durbar had sufficient time and notice to search for and produce instances in support of their contention. Further para. 2 of the Political Agent's letter dated 23rd April 1887 (Ex. 14 Ap. D of the Durbar's appeal) had put the Durbar on their guard as to what was their duty, in any case such as the present one, which might arise between Kolhapur and any other feudatory.
- (7). It was distinctly the duty of the Durbar to produce these instances of usage at the trial, as the burden of proving the same lay upon them.
- (8). Mr. Lee-Warner's call for instances and the failure to produce them, while the case was before the Council, leaves no room whatever for indulgence. The omission to produce the present evidence, supposing that it has any force in it, can only be accounted for by culpable neglect of duty, not deserving of any special grace.
- (9.) The instances of usage in Kapsi as to levy of Nazarana from Kadim Inams by Kolhapur now cited could have been very easily cited before, had the Durbar considered them either forcible or conclusive.

19. A contention made by the Durbar in para. 9 of the petition of appeal may advantageously be disposed of here, as it indirectly bears upon the admissibility or otherwise of fresh evidence. The Durbar complain that they were treated by the Bombay Government as parties to a proceeding and not as a government deciding a political or quasi-administrative case, and try to derive support from the analogy of the position of the British Government, when they decide upon the claims of their subjects in matters where civil Courts have no Jurisdiction. But it should be observed that the treaty of 1862 expressly assigns to the

Kolhapur Durbar the position of a party in a dispute between it and a feudatory State, like Kapsi, and provides an independent Court for the trial of such disputes. This case would naturally have gone to that Court, and there would not have then remained even the shadow of a pretence for the Durbar to say that they were not a party. The mere fact, that the case was tried before the Council of Administration, is now taken advantage of to raise such a plea. But in doing so the Durbar ignore the history of the case. The case came to be tried before the Council of Administration by a peculiar compromise. The Chief of Kapsi agreed to waive the question of Jurisdiction of the trying Court on consideration of the Durbar waiving their paramount position by agreeing not to object to an appeal to the Bombay Government. In thus accepting subjection to the Bombay Government as an appellate Court, the Durbar distinctly admitted the position of a party, and are now estopped from claiming any peculiar exemptions. But apart from this, the simple fact of their being the Kolhapur Government can not support the proposition that an adverse claimant should be harrassed by new positions taken from time to time ; and the argument is, to say the least, disingenuous. This point is well dealt with by the Bombay Government in disposing of the review petition as follows :—

“The personal disinterestedness of the members of the Council and the sovereign position occupied by Kolhapur towards Kapsi are not valid grounds for inordinate delay in asking the British Government to review a decision arrived at on a consideration of all the evidence placed before it as the result of years of litigation. To the Imperial Government, Kolhapur and Kapsi alike are subordinate, and coming to it for final justice, they must accept its judgments on the usual terms. The Imperial power itself stands in a different position, because there is no higher authority to appeal to. It must of necessity rely on its own conscience as informed by those best versed in the subjects that have to be dealt with. This necessity does not go down to the State of Kolhapur.”

Besides the foregoing considerations, the conduct of the Durbar has been such as to disable them from raising this contention. The President in Council treated the two members of the Council, the Diwan and the Chief Revenue officer, as parties representing the Kolhapur Durbar, and cast upon them the two-fold duties of putting in a reply on behalf of Kolhapur to the case made by the pleader for Kapsi, and of expressing their own view as Judges. The members also seem to have accepted these positions, for the Chief Revenue Officer practically put in his reply on behalf of Kolhapur and also gave his opinion in a separate minute as a Judge. Thus it is evident, that the Council of Administration was treated as a party at the original trial, at the same time, that it was allowed to act as Judges ; and when the case went in appeal to the Bombay Government, they were in fact reduced to the position of a party according to the mutual understanding upon which the case was commenced. The Bombay Government treated them as a party, the wording of the Resolution No. 561, dated 26th January 1888, and of the letter of the Political Agent, dated 17th February 1888 (Ap. VIII of this rejoinder) being significant enough; and they on their part without raising any objection submitted their rejoinder. From this it will be quite clear, that the Kolhapur Durbar have been acting as a party

from the beginning and are bound by all ordinary rules of procedure. Moreover the Kapsi State begs to draw your Lordship's attention to the fact, that no such objection was raised by the Durbar either in the petition of review or in their memo. of appeal originally submitted with that petition, and it is only now that the Durbar have chosen to take up this novel position in order to afford some ground for the introduction of fresh evidence which otherwise they could not with justice or propriety claim to be admitted. But it will be very dangerous, if the Court of final appellate Jurisdiction will introduce fresh evidence which the Kapsi State has had no means or opportunity of testing (III Ben L. R. P. C., p. 25), especially as the Durbar had ample opportunity of giving evidence in the Courts below, and elected not to do so. They ought not now to be allowed in special appeal to produce evidence which they could well have produced in the Courts below. (See I. L. R. 9 All, p. 366; and I. L. R. 15 Cal 765). Further it is submitted, that this evidence was produced before the Bombay Government with the petition of review by the Durbar and the petition of review was rejected. The Durbar have not appealed against the said order of rejection, but have appealed only from the original order. They cannot therefore claim to introduce the very same evidence in this appeal to your Lordship. On this point the Kapsi Sansthan begs to refer to the following :—

“ There is a judgment of the full Bench of this Court reported in Vol. 10. W. R. p. 1 that where an application for review has been rejected, the papers relating thereto are not to be sent to England as they do not form a part of the record and on referring to Macpherson's Privy Council Practice, page 123, I find that the Sadar Adalat having decided a cause, an application for review of judgment was made to it and fresh evidence was tendered. The Sadar Adalat refused to grant a review. The original decree was appealed from but not the order refusing a review. The Judicial Committee declined to consider the additional evidence, although it was included in the transcript.” (11 W. R. p. 145 Civil R ; 3 M. I. A., p. 1-7).

20. The Kapsi Sansthan therefore craves leave in order that the record of your Lordship in Council may not be over-burdened, to confine this rejoinder at present to such of the grounds of appeal as go to the essence of the reasoning by which the judgment under appeal is supported, and to reserve the right of answering in detail on the new evidence pending the ruling of your Lordship in Council on its admission.

21. Proceeding to the merits of the case, it would seem from the petition to appeal that the principal grounds of attack against the judgment of the Government of Bombay are :—

- (A) The construction, put by the Bombay Government upon the Sanads produced by the Chief of Kapsi, is erroneous.
- (B) Mere existence of usage of receipt of *nazarana*, &c., by the Chiefs of Kapsi from Kadim Inamdars, does not create any right against Kolhapur.
- (C) The finding, that the usage of Kapsi was proved, is erroneous.

- (D) The finding, that a similar usage of receiving *nazarana*, &c., from Kadim Inams, was proved in the case of the other feudatories, is erroneous; and that even if such a usage existed, it is erroneous to hold that it would affect the claims of Kolhapur.
- (E) The Exhibit I Appendix A has been misconstrued and the word "Eksala" has been misinterpreted.
- (F) The Government of Bombay, having found that the right of ultimate reversion resides where the authority to make enquiry into heirship resides, was wrong in holding that Kapsi was entitled to the reversion of Kadim Inams; and that the Judgment of the Bombay Government has been vitiated by wrong notions about Kadim Inams.



(A)-CONSTRUCTION OF SANADS.

22. It is admitted that the original Sanads are not available. Still the Sanads put forward on behalf of the Kapsi Chief, some of which are granted in renewal, are best calculated to show the nature and extent of the original grant. It need not be here proved in detail, that the custom as to renewal is recognised at all events in this part of India as universal, and a renewal may come into existence either on the loss of the original title deeds or merely as a matter of form. The Sanads in dispute, it will be observed, are the forms observable in India of grants, which give to the grantee the greatest estate. Indeed, if the expression may be allowed, Sanads, in the present form confer upon the grantee the *fee simple* in the estate granted, and are held by the Courts of Law in India invariably to pass by their operation the whole of the rights of the grantor, present or future even in the cases of ordinary petty Inamdars, who have no pretence to the exercise of sovereign powers. That such a grant is equivalent to the absolute conveyance of all the sovereign rights of the grantor, notwithstanding the words "*Kherij Hakdars and Inamdars*" is a well settled rule of Law and construction, appears from the case reported at I. L. R. I. Bombay p. 523 where Westropp C. J. (see the terms set out on pp. 524 and 525) remarked "The District Judge, while admitting that at first sight the terms of this grant convey an absolute proprietorship in the village, has held that the grant is limited by the rights, which are reserved by the words 'excluding Hakdars and Inamdars' or as he has paraphrased those words 'saving the rights of the Hakdars and Inamdars.'" This is precisely what the Kolhapur Durbar urge in the present case. The learned Chief Justice in disposing of the above incorrect interpretation of the District Judge observes:—"Whatever rights (if any) in the village of Nanej, Hakdars and Inamdars may have had, as against the State at the date of the Sanad,

have, no doubt, been saved to them, and even, if they had not been expressly named in the Sanad, would have remained in tact in as much as Government could not have granted away the rights of third parties. This is in accordance with the opinion lately expressed in giving the Judgment in the Kanara Land Revenue Case, with respect to the rights of Ryots holding a proprietary interest in lands (see p. 528)

With respect to the saving in the Sanad of the rights of Hakdars and Inamdars, we would refer to *Vasudeo Pandit. V. the Collector of Poona* (X Bombay H. C. R. p. 471) *where such an exception was held not to prevent the property in the soil, so far as it could be regarded as having been vested in Government, from passing to the Inamdar*" (see p. 530). This decision is an authority for two propositions viz. that Kapsi, under the Sanads, is clothed with all the territorial sovereign rights of the grantor and that there remains nothing in the grantor in spite of the words "excluding Hakdars &c." It is worth noting that this decision was in respect of a similarly worded grant of the Satara Durbar and so far may well be invoked in construing the original grants to the Kapsi Chiefs which were only revived by the Kolhapur Durbar. Indeed the history of the family of the Senapatis which is indicated in the foregoing portion will show that the original grants to the family emanated from the Satara Rajas. The force of this would be no less however, even on the supposition, that the original grants were made by the Kolhapur Durbar themselves. This rule of construction has been all along accepted both by the people and the Courts as binding, and it is now too late for the Kolhapur Durbar to attempt to get it set aside. Numerous instances can easily be multiplied where such grants from the Crown have always been regarded as passing all the rights of the Crown to the grantee; but it will be sufficient to mention only two of them. In the Deccan there are in several Inam villages, certain holders of lands called Mirasdars. These Mirasdars are well known to be the allodial proprietors of the land who date their rights from a period anterior to the Inam grants by the Crown (see the history of Miras tenure given in *Vyankut Bapuji V. the Government of Bombay* XII Bombay H. C. R. Appendix), and who can well be called Kadim holders *par excellence*. Now if any of these Mirasdars happen to die without issue his holding lapses to the Inamdar (*Narayan V. Lazuman* X Bombay H. C. R. p. 324), and not to the Crown as ought to be the case if the contention of the Kolhapur Durbar were correct. This proposition is so obvious that the Durbar may be safely challenged to show if in the Kolhapur territory, in case of Inam Villages, which are held by grantees under Sanads which together with the words trees waters, &c., contain the formula "Kherij Hakdars and Inamdars," on which the Durbar pin their faith, the holding of a Mirasdar dying without issue and intestate lapses to the Kolhapur Durbar and not to the Inamdar of the village in which it is situate. Then there is the Khoti tenure in the Konkan. The Dharekaris

in khoti villages are like the Mirasdars in the Deccan villages and it is an undisputed doctrine that if a Dharekari die intestate without issue, his holding lapses to the Khot and not to Government (Vide Sec. 10, Bombay Act I of 1880 which only embodies the previous custom).

23. But in the present case the question of construction of the grants does not arise with reference to a private grantee who has no Civil or Criminal Jurisdiction. The grantee in this case is a sub-king who himself exercised and still exercises Sovereign Jurisdiction more or less limited in the territory granted to him, and this circumstance cannot be lost sight of in construing the grant made to him by the Crown. Surrounding circumstances and common understanding must govern the meaning of grants even from the Crown (Mary Lord, *V. The Commissioner of the City of Sydney*, 12 Moore P. C. Cases 473). The Kapsi fief was styled in the Kolhapur records as Kapsi Ilakha, and the use of this expression always carries to the mind of a person versed in such matters the ideas of superintendence and jurisdiction &c. It is an undisputed fact that all the Chiefs or feudatories, equal in rank to Kapsi in the Kolhapur territory, enjoy under their grants the reversion and the Nazarana from the Kadim holders in their territories and it is noteworthy that the State of Ichalkaranji, which was carved out of the Kapsi State as previously shown, admittedly enjoys these rights. Although now questioned, this matter was never seriously disputed by the Durbar who asserted in their Statement of Reasons as follows :—

“ As regards the practice of the four Feudatories, it depends on the superior *status* of those Chiefs, the large extent of territory they are required to rule, and consequent political considerations which Kapsi, under its present circumstances, cannot claim. ”

Now if other grantees in Kolhapur of like position, who hold their territories under grants not superior in wording to those of Kapsi, do, as a matter of fact, enjoy certain rights without question, and have been always enjoying them for more than a century, it cannot reasonably be argued that the Kapsi grants alone should be given a limited construction. Nay more.—All the Jahagirdars in the Southern Mahratta Country, who hold their fiefs directly under the British Government under grants originally similar in phraseology, do, as of right, enjoy the rights as regards Kadim Inams, claimed by the Kapsi State and awarded to it by the Bombay Government. It thus becomes clear, that grants like the present ones are always construed by the Kolhapur Government, the British Government, the Law Courts and the people generally in a manner favourable to the claims of Kapsi and this overwhelming weight of authority and uniformity cannot be overbalanced by quibbling over words and intentions, the meanings of which have been settled a long time since. And it is in this connection that usage as regards the present question becomes of great importance. The usage put forward by the Kapsi State and relied upon by the Bombay Government

is a factor which assists affirmatively the construction of the original grants, and the Durbar entirely misapprehend or misrepresent the real argument, when they pretend to see the argument of usage not as an argument pointing out the true construction, but as one acting infirmatively—not as an inherent factor in the question of construction but as a factor independent of it and one put forward with the view of obtaining certain rights, not because they are conveyed by the grant, but because they have been earned by prescription. The usage put forward is relied upon by the Kapsi State as showing the real construction of the grant and as such is of the utmost importance. Such usage supplies the place of express and apt words and the Kolhapur Durbar misunderstand the case of Duke of Beaufort. *V. The Mayor of Swansea* 3 Ex. Rep. 413, when they use it for the purpose of showing that in the absence of express words usage would be of no importance. That case, as a matter of fact, lays down exactly the opposite and strongly supports the proposition that in construing grants from the Crown usage of enjoyment is a most important guide. The evidence of usage is admissible on the principle that the parties have not set down on paper the whole of their contract in all its terms, leaving to implication and tacit understanding all those general and unvarying incidents, which a uniform usage would annex and according to which they must in reason be understood to contract unless they expressly exclude them (7 E. & B. 278, 279). The above cases will serve to show that these principles apply equally in the case of Crown grants as in those of grants by subjects.

24. The foregoing remarks, it is submitted, sufficiently cover the contentions in the petition of appeal by the Durbar about the peculiar way of construing grants from the Crown, the necessity of the presence of express words and about want of express reservations in those grants. In this case the express words employed have been always held to pass the whole of the right of the crown and the only reservation that appears viz “Kherij Hakdars and Inamdars” has been also authoritatively construed to mean, not any reservation in favour of the Crown, but only a reservation in favour of the interests excepted.

25. Another circumstance of great importance in this part of the case may advantageously be referred to in this connection. According to the Durbar the expression “Kherij Hakdars and Inamdars” expressly reserves to the Kolhapur State all rights over Kadim Inamdars. This will be seen to be quite inconsistent with the admission made by the Durbar in their petition of appeal that the Kapsi State receives by right under the grant the *Judi* or *quit rent* paid by these Kadim grantees. If, under the grant, the Kolhapur State had reserved to itself the Kadim grantees, then the *Judi* ought to have been claimed by Kolhapur and not recognised to be given to Kapsi. This very fact shows, that this exception in favour of the Kadim Hakdars and Inamdars did not reserve anything to the grantor. It only saved the excepted persons

from the grantee, who, however, was vested with whatever rights present or future the grantor possessed against them, and that, as far as the grantor was concerned, he had parted with all his rights over the territory granted. While a Hakdar existed the only right which the Crown had over him was the levy of the *Judi*, and this was admittedly conveyed by the Sanad to the grantee. The question then arises that, if it is admitted that the grantee was to receive the *Judi* from the excepted persons, why was he not to receive the *Nazarana* from them at the time of their succession and why was he not the owner of the reversion? *Judi* and the other rights stand or fall together and it cannot be reasonably contended that a grant which conveys the one does not pass the other also. The possible explanation that the *Judi* is granted by the words "hallipatti and pestarpatti" &c., cannot be of any avail, as according to the contention of the Durbar the exception of Hakdars and Inamdars is an exception to the whole grant and not to any particular clause in it. The Durbar, no doubt, say, that *Nazarana* is not a cess and therefore not granted. But it is submitted that the words of the grant "Kulbab Kulkanu" &c., cover every sort of interest and they import an absolute conveyance of every conceivable interest of the grantor and are quite ample to cover *Nazaranas* or *finer* imposed on successions. The contention, therefore, that grants by the Crown ought to be strictly construed in favour of the Crown, has no force as no strict construction can override express words which, it is submitted, the Sanads contain. Nor can it override the implied covenants which have been generally understood to be the invariable incidents of such grants even supposing, but not admitting that the words are not sufficiently ample. But apart from this, it must be observed that this theory of strict construction does not apply in this country and has been long exploded even in England. Paragraphs 3 and 4 of the Judgment of the Bombay Government under appeal, and the cases mentioned in them may be referred to here with advantage.

26. The Kapsi Chief has produced Sanads, Exhibits A to E, on the terms on which he bases his claim. Exhibit E dated 1819 grants the whole Saranjam and it appears from the very wording (*viz* according to former practice) of it that it is a confirmatory grant. In order to interpret it properly, it must be seen what the former practice and usage were, as the grant of 1819 refers to it distinctly. The former practice and usage can be ascertained from the evidence of receipt of *Nazarana* &c., which is in the case and from the Sanads of particular villages when they were originally granted. Unfortunately however the Sanads of some of the villages of the Kapsi Ilakha having been destroyed by time are not forthcoming; but from the analogy of the Sanads produced, the phraseology of all others may be inferred. These Sanads therefore are of the utmost importance and the claim of Kapsi depends on the interpretation of them; and it has been already shown that the terms of these grants convey every conceivable interest of the grantor in the soil to

Kapsi. The uniform usage also proved by Kapsi and admitted by the Durbar confirms the interpretation of the grant and removes every doubt, if there be any at all, about any reservation in favour of the grantor.

27. But the Durbar can never mean that this rule of strict interpretation is to be carried, supposing it to apply in full force, to an unreasonable length. With all their argument about the royal prerogative being founded on considerations of high policy, the Durbar forget, that 'honesty is the best policy' and that the rule of strict interpretation is never applied so as to involve an entire ignoring of the natural meaning of words and of their accepted signification. That rule is to be applied only in cases where the meaning of the grant is doubtful, and unless the rule be given a limited scope, high policy itself in the interest of which it is laid down, would disastrously suffer. Indeed the rule is laid down to prevent deception and fraud and has no application where either can have had no existence. But in this particular case there exists a circumstance which would eliminate all these arguments from the discussion. The grants under discussion have not proceeded from mere charity or whim, but are made in consideration of valuable and vital services done in the past and also to be done in the future. An ordinary glance at the history of the Kapsi family would show, that the Kolhapur Rajas and indeed the whole of the Mahratta Confederacy for that matter, once owed much to the family for their very existence. Member after member of the family gave his life on the battle-field either in defending the Government or earning fresh victories for it. The grants to such a family can and ought therefore never to be treated on the same footing as grants made to mere courtiers and it has been authoritatively ruled that such grants ought always to be construed, as far as possible, in favour of the grantee. Valuable consideration is not always monetary consideration and the services which formed the consideration in this case must be held to be simply invaluable. The whole doctrine about the construction of such grants is well laid down in Forsyth's cases and opinions on Constitutional Law pp. 175, 176:—

" In cases of grants, by the Crown, the rule of law has been that they are construed most strongly against the grantees, and that nothing passes by them without clear and determinate words. *Stanhope's case*, Hob 243 Bro. Abr. *Patent Pl.* 62. But this must be taken with the qualification that the words are really doubtful, and when the interpretation in favour of the Crown might be without violation of the apparent object of the grant. In *Molyne's case* 6 Co. 5 it was held that the King's grant should be taken beneficially for the honour of the King and the relief of the subject; and Sir Edward Coke says there, that the ancient sages of the law construed the King's grants beneficially, so as to make any strict or literal construction in subversion of such parts: see also 2 Inst. 497. As to grants by the Crown *ex certa Scientia et mero motu* see a valuable note to *The case of Alton Woods*, 1 Co. 43 b., in the edition by Thomas and Fraser, Vol i P 110. The rule of strict interpretation is said not to apply to royal grants made upon a valuable consideration: Kent's Com. ii. 556.

" At all events whatever may have been the old rule, one consistent with Justice and common sense now prevails, and it has been expressed in a recent case: " Upon a question of the meaning of words the same rules of common sense and Justice must apply, whether the

“subject-matter of construction be a grant from the Crown, or from a subject: it is always a question of intention, to be collected from the language used with reference to the surrounding circumstances:” *Lord V Commissioner of Sydney* 12 Moore P. C. 497.

“All grants from the Crown are matters of public record. “The King cannot grant or take anything but by matter of record.....It hath this sovereign privilege that it is proved by no other but by itself:” 3 Inst. 71. Royal franchises never pass by assignment “without special words in the Crown’s grant (Year Book 30 Edw. I); and it is said that a royal franchise does not pass to the assignee of him to whom it was granted: *Ibid.* As to the necessity of express words to convey property of the Crown by reason of prerogative, see *Duke of Beaufort v Mayor of Swansea* 3 Ex. R. 413, and *Attorney General V Parsons*, 2 C & J. 279. “In the latter case the Court said: “The rules of construction upon grants from the Crown are much more favourable to the grantor than the rules of construction upon grants from ordinary persons.” But this does not mean that a forced construction is to be put upon the word in favour of the Crown, but only that where there is a doubt they shall be interpreted in its favour contrary to the ordinary rule by which *Verba fortius accipiuntur contra proferentem* a rule however, which the Court said in *Lindus V Melrose* 27 L. J. Ex. 329, ought to be applied only “where other rules of construction fail.....”

“In the absence of any reservation to the Crown of any right of killing or taking wild cattle on lands granted or demised in a colony by the Crown such right is included in the grant or demise: *The Falkland Islands Company V The Queen*, 2 Moore P. C (N S) 266. ”

Chitty on Prerogatives of the Crown also has the following (Chap. XVI Section III pp. 393 -94.) :—

“But the rule that grants shall be construed most favourably for the king is subject to many limitations and exceptions.

“In the first place, no strained or extravagant construction is to be made in favour of the King. If the intention be obvious, royal grants are to receive a fair and liberal interpretation accordingly. And, though the general words of a grant may be qualified by the recital; yet if the intent of the Crown be plainly expressed in the granting part, it shall enure accordingly, and shall not be restrained by the recital.

“In the second place, the construction and leaning shall be in favour of the subject if the grant show that it was not made at the solicitation of the grantee, but *ex speciali gratia certa scientia et mero motu regis.* * * * * *

“In the third place, if the King’s grants are upon a valuable consideration they shall be construed strictly for the potentee for the honor of the King.

“So where the King’s grant is capable of two constructions, by the one of which it will be valid and by the other void, it shall receive that interpretation which will give it effect “for that will be more for the benefit of the subject and the honor of the King, which ought to be more regarded than his profit. ”

28. Turning then to the argument of inherent improbability of such a giving away by the Crown to the grantee of its rights of reversion and of *Nazarana* over Kadim Inamdars it will be observed, that it has no scope whatever, when the history and the peculiar constitution of the Mahratta Confederacy are taken into consideration. If general jurisdiction and sovereign rights were given away to and actually exercised by great military Chiefs, it is not improbable that the particular rights now in question should be given away too. If the sovereignty of a large tract of land was given away to be exercised in a practically irresponsible manner, it stands to reason that the

recipients of such great gifts should have been given control over every institution that was necessary for good government and the Kadim Inamdars such as Patils &c., are admitted by the Kolhapur Durbar themselves to be essential for good government.

29. Then as regards the argument of superfluity, it is submitted, that there is again on behalf of the Durbar a conscious or unconscious misapprehension of the judgment of the Bombay Government. No conveyancer will take the objection now taken by the Durbar about there being no necessity for the existence of the clause *Kherij Hakdars and Inamdars &c.*, if it was meant only to indicate, that what was already granted to others was not granted to Kapsi. The argument of superfluity is advanced in the petition of appeal in order to base a suggestion upon it that the expression "*Kherij Hakdars and Inamdars*" is not only a saving clause in favour of the excepted persons, but that it is an express reservation in favour of the grantor. But this argument of superfluity did not strike any body upto this time and that every Civil and Judicial authority has held, that the clause is not superfluous, but is a necessary one, especially looking to the notorious practice of Indian Kings to resume according to their pleasure the most solemn grants even in peaceful times. If the expression were absent, the grantee would well contend that by his grant all previous rights were revoked and nullified. It was to prevent such a consummation that these words were inserted. But it is not correct to say that they reserve anything to the grantor whose every conceivable interest present and future has passed, as has been shown previously.

30. The argument again based upon the words "*Kherij Hakdars and Inamdars*" has already been disposed of authoritatively by the Government of Bombay in the *Kagal* case in Government Resolution No. 774 of 15th February 1883, which says:—

"6. The Governor in Council is of opinion that, as supposed by the Oriental Translator, the rights of the Hakdars and Inamdars, and not the rights of the Kolhapur Maharaja in their connection, were saved by the word "*Kherij*." The whole tenor of the Sanad is in the sense of conferring on the grantee the full rights of Government as regards internal jurisdiction and taxation, which appertained to the Maharaja of Kolhapur. But whereas it was the usage and policy of the Government for the content of an influential class to maintain the Hakdars and Inamdars in the enjoyment of their estates, the grantee of the *Kagal* territory was debarred from interfering with them. In regard to the occasions when right of determining successions and receiving succession duty accrues by usage to superior authority from failure of lineal descent in the family of any Hakdar or Inamdar the Sanad contains no provision reserving such right to the Kolhapur Maharaja, nor has the Kolhapur Maharaja ever acted on the right in the *Kagal* State up to the present day, nor does such right appertain to the British Government, which has succeeded to the Peshwa's Government in the case of the *Jahagirdars* whose relation to that Government is analogous to the relation of the *Kagal* Chief to the Kolhapur Maharaja."

This decision is none the less authoritative although the Durbar say that it is not yet a final decision, as a review of the same case is pending. But as a matter of fact the Bombay Government have already said on this review that they were not

disposed to reopen the case especially as the Chief of Kagal was a minor and the Kolhapur Durbar themselves have accepted the decision by allowing from the date of that decision the Kagal Sansthan to receive *Nazarana &c.*, from Kadim Inamdars without dispute. As to the force and efficacy of the grants in question even Mr. Lée-Warner, the President of the Council of Administration, has said in his minute, that they cannot be shaken; and he never lent himself to the fallacies and farfetched arguments about want of express words &c., now put forward by the Durbar with so much apparent confidence.

31. It may further well be argued that the Sanad of 1819 (Exhibit E) in saying that the grant was to be enjoyed by the grantee *according to former usage* directly incorporated into itself that former usage beginning at all events in 1688 A.D., which the Kapsi Chief admittedly enjoyed the reversions and nazaranas from Kadim Inamdars, &c. The words "according to former usage" therefore are express words which do grant what the Chief of Kapsi claimed; and the Durbar is now estopped by the Sanad from saying that it was not so, even supposing that the original Sanads did not convey these rights. But the case of *The Mayor of Kingston upon Hull versus Horner* (Cowper's Reports Vol. I p. 102) would show, that it must be presumed, that the original Sanads did grant all these rights. The meaning and intention moreover of the Sanads may also be gathered from the Takids issued to the Hakdars and Inamdars to act under the orders of the Kapsi Chiefs from the date of the Sanads. These orders (Exs. T, V, X and Y) show, that the Hakdars and Inamdars were transferred to the grantee with the territory granted by the Sanad, and not that they were reserved by the Kolhapur Durbar for themselves as now contended by them.

32. In this place may be dealt with the analogy of the Vatandars of villages under the Bombay hereditary officer's Act which the Durbar make use of to support their claim to the Nazarana of Kadim Inams. As already pointed out, the Kapsi Sansthan being a great feudal fief cannot in the least be compared to ordinary petty Inamdars who have no Sovereign Jurisdiction. Moreover, it should be remarked, that if the rights of even the petty Inamdars are taken away, they are taken away by express legislation of which there was no necessity, if those rights were not originally vested in them by their grants. Even the Durbar is conscious of the weakness of this argument; and they do not use it any more than by way of analogy. A great distinction has at all times and in all countries been made between the great feudal lords and petty grantees in matters pertaining to the exercise of sovereign functions appropriate to their positions. "There are," says Chitty in his treatise on the Prerogatives of the Crown (Chap. VII, Sect. I, page 81) "various inferior offices inseparably annexed to others of a superior nature and in this case it is an established rule that the superior office must be granted with all its ancient rights and privileges and

appurtenances. The King cannot reserve to himself or grant them to another even though the superior office was vacant at the time." The same view would be clearly emphasised, if regard be had to the ancient system of *Regalias* and *Baronies* in Scotland, where the holders of such dignities or offices although grantees of land were so with almost royal jurisdiction and could not for a moment be placed on a par with petty-fee-holders (*vide* Bell's Principles of the Law of Scotland p. 282 4th Edition). The same authority also at page 262 mentions *Relief* or *Fine* and escheats as some of the incidents of a great military tenure. This will show that the character of both the European and Indian feudal systems is almost identical and that the great Barons in India as well as in the old West were almost sovereigns who under their tenure enjoyed all the incidents of such sovereignty—*Nazarana* or *Fine* as it was termed in the feudal phraseology of the West being one of them. "The local princes," says Mount Stuart Elphinstone, "were the Jahagirdars or owners of Jahagirs which, both in nature and history had a strong resemblance to feudal beneficences" (See P. 58, Official Writings of Mount Stuart Elphinstone edited by G. W. Forrest). To deprive therefore such a feudal lord of this and other rights is nothing less than to derogate from his grant and to say, that the interpretation sought to be put on the grants in this case whereby the Kapsi Sansthan would be deprived of its rights of receiving nazarana &c., from the Kadim Inamdars would not be a derogatory construction, is to thoroughly misunderstand the real nature and history of the Indian feudal tenure and its essential characteristics. Deprivation of the right to receive the nazarana would be deprivation of an important privilege for which mere payment of Judi would be no solace. The Durbar themselves are not unconscious of the fact that difference in status of the grantees does have an effect on the rights and privileges enjoyed by them although the Sanads of all may be similarly worded, and they have distinctly admitted in their Statement of Reasons, that the four Feudatories enjoy the rights now disputed, because of their superior *status*. And in the case of the Kapsi Sansthan its *status* and position have been determined authoritatively by the Bombay Government to be equal to that of the other four feudatory States (Vide para. 14 of the Judgment under appeal). This, the Kolhapur Durbar have not disputed in their petition of appeal.

33. Then with reference to the enjoyment of these rights by the Feudatories of equal position in British territory, the Durbar seek to take away the force of the circumstance by urging that the practice of the British Government is founded upon its liberal policy towards the Jahagirdars. But it is submitted that this explanation is entirely fallacious. The British Government, standing in the relation of conqueror to the conquered, cannot be presumed to be so over-liberal as to forego its just rights over its feudatories. Moreover the fact that the British Government, although familiar with the doctrine of construing Crown grants strictly in favour of the Crown, and

with the maxim *nullum tempus occurit regi* have allowed its Jahagirdars to enjoy the rights in question, conclusively proves, that the Jahagirdars' title to these rights is unassailable. Kapsi does not understand how the Council say, that the cases in which such rights have been given up are few and far between. The British Government has given up its rights in the case of all big Jahagirdars, whose number is certainly much greater than that of the feudatories of Kolhapur.

34. The foregoing considerations will show that it is idle to contend in face of great authority and overwhelming consensus of opinion that the Kolhapur government reserved to itself any interest contingent or reversionary over Kadim Inams—granting that they were held of the Durbar which supposition itself is somewhat absurd since it is a well known fact that these Kadim Inams existed from times immemorial and cannot be said to have been created by Kolhapur. Indeed they came into existence long before the Kolhapur State came into being and that State itself has no rights over them if the contention of the Durbar is correct, viz., that they were reserved by the grantors to themselves. It is a well observed historical fact that the Mahratta empire, although created by conquest, was formally held by grants from the Delhi or Bijapur Kings, and consequently, Kolhapur, unless it is able by positive evidence to show that those grants conveyed the rights of reversion &c., over these Inams to itself, has no right according to its own reasoning to lay any claim to reversion or nazarana respecting them. But as said above, granting that originally these Kadim Inams have been held of Kolhapur it is difficult to see how the inference sought to be drawn in para 20 of the petition of appeal follows. It overlooks an important fact, viz., that by the grant Kolhapur divested itself of all interests over the Kadim Inams and conveyed them to Kapsi. Under these circumstances the propositions, asserted on the authority of William's Real Property, become entirely unmeaning. The whole argument is full of *non-sequiter* and is a good exemplification of the fallacy of arguing in a circle.

(B) *USAGE NOT AFFECTING KOLHAPUR CLAIMS.*

35. Although it is set out in the foregoing paragraphs, that the usage, relied upon by Kapsi and by the Bombay Government, is used for the purpose of showing the understanding of the parties and pointing out the true construction of the grants in question, and not for the purpose of setting up a title in favour of Kapsi on the ground of prescription; yet the Kapsi Sansthan may well substantiate its claims against the Durbar even upon prescription and laches on the part of Kolhapur. And the maxim of *nullum tempus &c.*, will not prevent such a contention being successfully maintained. In the first place the maxim is a special doctrine of English Law and is opposed to general Jurisprudence as drawn from the Roman Law, which holds, that the conventional non-observance or desuetude even of a law

or statute may be considered to be equivalent to its formal repeal, and that, after a certain interval of such desuetude,—60 years, according to some authorities, and 100, according to others—the Law or statute in question may not be revived.

“The Civil Law, unlike the Law of Nations, which changes only with the progress of civilization and that of Nature, which is immutable, was liable to be altered by new enactments, or by conventional disuse.” (Manual of Civil Law by E. R. Humphreys, 3rd Ed, p. 25)

And the English Law has also materially modified this obsolete rule of *nullum tempus* by special legislation (Statute 9 Geo. 3, c. 16).

“In suits relating to landed property, the lapse of 60 years and adverse possession for that period operate as a bar even against the prerogative, in derogation of the above maxim, that is, provided the acts relied upon as showing adverse possession are acts of ownership done in the assertion of a right, and not mere acts of trespass not acquiesced in on the part of the Crown.” (Broom’s Legal Maxims, p. 62, 6th Edition.) “To high constitutional questions involving the prerogative, the maxim under our notice doubtless be applied with much caution, for it would be dangerous and absurd to hold that a power which has once been exercised by the Crown—no matter at how remote soever an epoch—has necessarily remained inherent in it, and we might vainly attempt to argue in support of so general a proposition”. (p. 63 *ibid*).

The same English Courts, that are aware of the maxim, have admitted the general principle by asserting that existing possession and enjoyment to be the best title that can be supposed when such possession is traced back to a certain period. (*Vide Parker V Baldwin*, 11 East 488); and the Indian Courts have come to the conclusion that the maxim *nullum tempus &c.*, should be applied with caution and is limited in operation by express legislation. The old law of prescription obtaining in this Presidency was Regulation V of 1827, and that has been adopted in Kolhapur since 1848. But this would only be necessary to appeal to, if the prior possession of the Kapsi Sansthan since 1702 had been or could be questioned (Exhibits $\frac{G}{2}$ and S). Exhibit S shows affirmatively the exercise by Kapsi of the right of granting villages to Mahali Hakdars in 1728. (For prescription against the Crown see 10 Bom. H. C. Reports p. 216; 12 B. H. C. R. p. 225; I. L. R. IX. Mad. p. 175; and I.L. Rep. XIV. Bom. p. 213.) Further, the Inam rules framed about the year 1873 by the Political Agent, Kolhapur and S.M. Country, in pursuance of the rules framed by the British Government about succession and continuation of service Inams and invariably followed in all *Vajai* cases by the Durbar preclude entirely any scope for the present contention of the Durbar; and these rules bind Kolhapur so as not to leave the Durbar any option in the matter (See Bombay Government Resolution No. 1236 dated 13th March 1882, Political Department, creating the Council of Regency at Kolhapur, Bombay Government Gazette, part 1, pp. 200-201:), and clearly shew that the Durbar cannot claim against the prescriptive title derived from enjoyment for a certain period. Even at the time of the conquest of the territories of the Peshawa by the British Government, they respected the prescriptive title of the Jahgirdars (Colonel Etheridge’s List of Saranjams p.4). Mr. Elphinstone

remarks, that in the cases of the families of those Chiefs who had held their Jahagirs from the time of the Mogul Emperors or the Rajas of Satara, their maintenance in their possession was recommended in the belief that the holders were entitled of right to a hereditary tenure, not (in general) by express grants but by length of possession.

(C) USAGE IN KAPSI.

36. The Kolhapur Durbar in their petition of appeal dispute the factum of the usage of Kapsi of receiving *Nazarana* and service commutation and escheats &c, from Kadim Inams. In the first place, it is a finding of fact arrived at by the Bombay Government upon the evidence in the case which cannot be disputed in special appeal (I. L.R. Cal. Vol. XVIII. p 23), and in the second place, as a matter of fact, all the evidence hitherto on the record points only in one way. The President of the Council, Mr. Lee-Warner, has actually in his minute admitted the usage and has expressed his opinion that the Durbar have not been able to show any evidence to the contrary. The single infirmative particular instance of 1854, which is now paraded by the Durbar, apparently failed to satisfy Mr. Lee-Warner, as it failed to satisfy the Bombay Government, about there being no such usage. It may be mentioned in passing, that this instance was never upto now brought to the notice of the Kapsi Chief or his representatives by the other side. It was never put forward in the Statement of Reasons submitted by the Durbar to the Bombay Government, nor did it appear in their Rejoinder to the statement of objections filed on behalf of the Kapsi State. The Kapsi State had, therefore, no opportunity of knowing that this instance was relied upon by the Durbar. Even now it is only mentioned by name and year, but the document embodying it is not in the case; and the Kapsi State is unable to reply to it on this account. Probably this single instance was never considered to possess any intrinsic value by the Durbar themselves and, therefore, it was scrupulously kept in the dark. Had the Kapsi Sansthan obtained a copy of the minutes of the Court of the first instance, it would have come to know of this instance. But, notwithstanding repeated attempts on behalf of Kapsi to get at the minutes, it failed to obtain them (*vide* App. VI. and VII. of this Rejoinder).

37. Apart from this circumstance Exhibits K to $\frac{U}{2}$ Ap. A and No. 2 Ap. B. of Kapsi's appeal establish, beyond the shadow of a doubt, Kapsi's uninterrupted usage of receiving *Nazarana* &c. The additional evidence now sought to be put in by the Durbar, ought not to be held admissible for reasons already given, and the Sansthan begs, that it be allowed to reserve its right of reply on that evidence, either by production of expla-

natory and counter-evidence, or otherwise. But, for the present, it is quite sufficient to say, that these additional instances will be found upon examination to be utterly valueless. Notwithstanding that the Durbar was repeatedly challenged to do so by the Kapsi Sansthan and by the President, Mr. Lee-Warner, the Durbar would not produce any evidence to the contrary, except this solitary one which, even admitting it to be correct and genuine, cannot counterbalance the chain on the other side. The Durbar attack Ex. Q which embodies an instance of the receipt of *nazarana* by a Chief of Kapsi, and the fault found with it is that it represents Santajirao as dead before the 23th of January 1795, whereas they say that on the authority of Exhibits 38 and 39, Appendix D of this petition of appeal,—which by the bye are two of the new documents that are now put forward—that he was alive upto the end of March 1795. As against this it must be noticed that both these documents are merely oral statements reduced to writing and, however correct in the main, cannot be so implicitly relied upon for their accuracy about minute particulars; and even if the matter rested between these three documents, a presumption against the genuineness of Exhibit Q which is a written document on the strength of the other two which are merely oral statements made out of memory would be unjustifiable especially when on their face they show that the compilers of them do not always give exact dates. But there is already on the record of this case a document, Ex. 46 Ap. B of Kapsi's appeal, the genuineness of which is unimpeachable and has never been disputed, and which entirely contradicts Exs. 38 and 39, Appendix D, and strongly supports Exhibit Q inasmuch as it shows that Santajirao must have died before the 14th of November 1794, because it mentions in express terms that Santajirao, the father of Ramchandrarao (the writer of Exhibit Q) was dead. This paper was not translated before, but now its translation is appended with this as Ap. XI. The great weight of the evidence in favour of the usage is admitted by the Durbar, when they try to seek refuge under the plea that the burden of proof ought to have been thrown upon Kapsi. The Durbar is wrong in saying that the burden of proof lies on Kapsi. It is an admitted fact, that the Chiefs of Kapsi were exercising all these rights now claimed by Kolhapur till 1875, when the Durbar claimed the fines &c., on succession to Kadim Inams. It is a well-known rule of evidence, that a party who seeks to enforce certain rights against another must adduce evidence, in support of them. The Kolhapur State must therefore adduce clear and sufficient evidence in support of its claims showing that the rights in question were reserved by the Durbar to themselves.

38. The excuse now brought forward about the chaotic condition of the records also sounds very hollow. Whatever the disturbances in the country, it is a characteristic of the Marathi Daftar, that the land and revenue record is.

always complete. But, at all events, the excuse of chaos has no existence since the year 1844, and the fact that no instances could be found even after that year is very significant. The Durbar, then, refer as an infirmative circumstance to the cases of villages granted for maintenance as appanages to the cadets of the Kapsi family and try to use them as instances of lapses of Kadim Inams to Kolhapur, alleging that the Chiefs of Kapsi allowed their lapsing to Kolhapur without any protest. But this again is a misrepresentation pure and simple. As a matter of fact these grants to the cadets are all Jadid grants—grants made not before the Kapsi Saranjam came into existence, but made by the Chiefs out of their own estate after the said Saranjam was created. That these are all Jadid Inams is also clearly shown by Exhibit I Appendix A of Kapsi's appeal, and that they have been admitted to be such by the Durbar, since they have said that when the *Nazirana* was taken in 1803 from the Chief of Kapsi it included only the Chief's income and his Jadid Inams and was exclusive of Kadim Inams. The Durbar seem to hint that these Jadid Inams became Kadim in 1819. It has already been shown that Exhibit E, the grant of 1819, is merely confirmatory and refers to old Sanads, and there is no reason to believe or, at least the words of the Sanad do not warrant any body in believing, that the bulk of the Saranjam was reduced and that these villages were taken out of the Kapsi Ilakha in 1819. The statement that Kolhapur has granted these villages and that they have lapsed to Kolhapur without any protest from the Chief of Kapsi is entirely wrong and is not supported by any evidence. The Chief of Kapsi did make several protests against this highhanded policy of the Durbar. However, after the resolution of the Council of Administration by which the claims of Kapsi were admitted as regards Jadid Inams there is no room to contend that the instances relating to these villages have any bearing on the questions in dispute in this appeal which is only concerned with Kadim Inams, i. e. Inams granted by the Crown before the Saranjam of Kapsi was created. And the Inams, created by the Chiefs of Kapsi for which *Bahadari patras* (guarantees) were given by Kolhapur, are not the less Jadid. It is well known that :—

“If the sub-grant lapses on failure of heirs, it lapses not to the sovereign power, but to the original holder of the grant. If on the other hand the original grant lapses to the sovereign power, the sub-grant also ceases to exist, unless it has been recognized and confirmed by the sovereign power.” G. R., May 9, 1856 (Nairne's Revenue Hand Book, p. 495, para 17, 3rd edition.) :

and this matter has not been disputed in the present petition of appeal. But apart from this question, the cases of villages granted to *Bhaubands* (Kinsmen) for maintenance serve well to demonstrate how the Durbar have been inconsistent in their contentions and how they are changing from time to time. They at one place admit these Inams to be Jadid and now they say that they are Kadim. Taking them at their own statement, but not admitting its correctness, if these Inams to Bhaubands are Kadim grants, the whole case for

Kolhapur falls to the ground, because by their own admission the Chief of Kapsi on his succession in 1803 was charged with Nazarana for these villages. This circumstance becomes therefore an additional instance of the acknowledgment by Kolhapur of the claims of Kapsi over Kadim Inams. It is again submitted that some of the villages in this Sansthan (7 out of 11 now under the Chief's direct control) were mere waste in 1702 A. D. (*vide* Exhibit $\frac{6}{2}$ Appendix A, of Kapsi's appeal), and have been peopled and cultivated by his family, and it is very difficult to believe that there were any Kadim Inamdars in them.

(D) USAGE IN OTHER FEUDATORY STATES.

39. After trying to contend, that usage, as relied upon by the Kapsi Sansthan, did not exist in Kapsi, the Durbar next proceed to assert that such a usage did not exist in favour of the other Feudatory States. In making this assertion the Durbar perform a complete summer-sault. Originally the Durbar did, as a matter of fact, admit the usage to exist in favour of the other four Feudatory States and tried to differentiate the case of Kapsi from them on the ground that the other Feudatories occupied quite a different and a higher status. When such an admission was made, the Chief of Kapsi did not think it necessary to prove as fully as he might have done what was admitted, and contented himself by showing that his status and position was fully equal to those of the other Feudatories about whom the admission was made, and went more fully into the evidence of usage in Kapsi. It is therefore submitted, that the Durbar could not be allowed now to effect a complete change of front and to dispute what they themselves distinctly admitted. In the same way they are now precluded from tendering any fresh evidence on the point. This portion of the fresh evidence is therefore open to several other objections in addition to those already mentioned in connection with the whole of the additional evidence referred to beforehand, and ought to be entirely shut out; and the Kapsi Sansthan begs leave to pass over it at present on the same conditions as are prayed for with respect to the other evidence. It will however be seen that the evidence now tendered on this point, even if genuine and correct, is inconclusive, and unless the surrounding circumstances of each case are shown with each instance, it cannot serve as the basis of any logical inference. Eliminating therefore the question of fresh evidence and apart from the admission of Kolhapur as to the existence of this usage, there is the admission of Rao Bahadur Yeshwant Moreshwar Kelkar (then Karbhari of the Kolhapur State, now Oriental Translator to Government, Bombay) in the Kagal case, where he distinctly stated in clear and unambiguous terms that the Kolhapur State had never asserted its rights over the Kadim Inamdars in its Feudatory States. There is again the admission of the Chief Revenue Officer to the same effect. It may however be mentioned that the Chief of Kapsi, while the appeal was pending before the Bombay

Government, applied for certain papers to the Kolhapur Durbar in order to produce them for the purpose of showing the usage of the other Feudatory States; but the Durbar refused his application on the ground that that evidence was not relevant (Vide Ap. IV. of this Rejoinder). The Durbar, being in charge of the other States on account of the minority of the Chiefs had control over their records, and the refusal of his application placed the Kapsi Chief into a very false position: But at the same time it must be remembered that even as it is, there is satisfactory evidence of this usage on the record of the case. (Ex. $\frac{K}{2}$ Ap. A, and Ex. 42 Ap. B, of Kapsi's appeal).

40. The Durbar have attempted to vitiate the proceeding before the Kolhapur Duftardar, by alleging that the report of that officer was an *ex parte* one. But the Durbar cannot seriously mean what they say, when it is said, that the Duftardar's report was made for the information of the Political Agent representing the Kolhapur Durbar who wanted to know how the case for the Chief of Kapsi stood on his own showing. It could not be that the Chief of Kapsi could not afford to engage the services of a competent counsel, and that the Political Agent favoured the Chief by lending him the services of an officer of the Kolhapur Durbar to put forth his case. In this case the Duftardar did what is often done even in British India. A party having claims against Government is referred to a subordinate officer such as a Collector or a Commissioner, and the officer is asked to report on his case. In fact, it is his duty to look to the genuineness and relevency of the documentary evidence tendered by the party and to ascertain whether the case made out by the claimant is substantiated or contradicted by documentary evidence in the Government record, and then to give his opinion. He thus weighs the evidence on both the sides and finally gives his own opinion thereon. Precisely the same duties were cast on the Duftardar. Most of the documents produced before him by the Chief of Kapsi were more than thirty years old and were produced from proper custody. They were not of a character to suggest that they were fabricated or falsified, and the Duftardar was justified in admitting them as genuine. Even the Council of Administration did not whisper a single word against the genuineness and authenticity of any of these documents when the case was argued before them. The reply of the Chief Revenue Officer to the several arguments addressed to the Council of administration by the Chief of Kapsi, and the minutes of the President and other members of the Council also do not contain any allegation to that effect. A perusal of the Duftardar's report itself will clearly show that he not only examined the genuineness of those documents, but actually ascertained whether the claim set up by Kapsi was substantiated by the records of Kolhapur. Not only this, but he even went over to Inchalkaranji and verified the statements made by the Chief of Kapsi that Inchalkaranji Saranja'n was formed out of the Kapsi estate.

After such endeavours of the Duftardar to get at the truth, the Durbar cannot now turn round and say that he did not properly weigh the evidence on both the sides. The Durbar are wrong in finding fault with the Duftardar for not producing the evidence now produced by them in this appeal, forgetting that they themselves did not produce it when the case was before the Council, and before the Bombay Government in appeal. The Durbar contend that usage of the Feudatories, however long, cannot give any right against them to the Feudatories, that it is not so uniform as alleged by the Bombay Government, and that the Kagal Case is not a safe precedent to follow. The Kapsi State begs to observe that the doctrine *nulium tempus occurit regi* has been already answered; and that in the absence of new evidence which is inadmissible, the usage is admittedly proved. The Kagal Case above alluded to is decided by the Bombay Government and that decision stands unreversed. The fact that Kagal is getting all the benefits accruing from the decision even after the Political Agent's letter above alluded to, shows that it is a safe precedent to follow. The Kapsi Sansthan is at a loss to understand how the case of Nawalgund favours the claims of Kolhapur. Just as the fact, that the Chief of Torgul was not held entitled to the reversion of Kadim Inams of Nawalgund, remains on the record, so the fact, that Kolhapur too did not get them, remains uncontradicted. The truth seems to be that the case referred to was decided on political considerations, and does not furnish any precedent. If it is to be a precedent, it will lay down a principle, that all Kadim grants in the territory of a Feudatory State of Kolhapur will lapse to the British Government, and neither Kolhapur nor the Feudatory State has any right to their reversion or escheat.

(E) *INTERPRETATION OF EXHIBIT I AP. A; AND THE MEANING OF "EKSALA".*

41. The next ground of attack against the judgment of the Bombay Government is the interpretation of Ex. I, Appendix A, of Kapsi's appeal and a large space is devoted to this ground. This Exhibit is treated by the Durbar as if it is the only document which shows that the Kapsi Sansthan has been receiving *nazarana* from the Kadim Inamdars. But it is not the only evidence in the case. There are besides this document other documents demonstrating such receipts by Kapsi from Kadim Inamdars, and it is noteworthy that the Durbar have not a word to say with respect to them. In dealing with Exhibit I. the Durbar also forget that the calculation of *nazarana* to be taken on succession of Chiefs like those of Kapsi is not made on a correct mathematical calculation of all its revenue, but is always a rough *fine* imposed, having regard to the circumstances existing on each occasion according to the pleasure of the Sovereign.

"The payment of Naz rana is in conformity with ancient and established usage; it is associated with the confirmation of hereditary claims, and as a tax it is peculiarly appropriate to the actual conditions and feelings of a number of the inhabitants of the provinces which have recently become subject to British rule in this quarter of India."—Sir John Malcolm (Nairne's Revenue Hand-book, p. 493, para 9, 3rd Edition).

The amounts of the *nazarana* taken from Kapsi in 1819 and 1835, clearly demonstrate that the imposition is not always on a correct estimate of the whole revenue. It is therefore idle to bring mathematical calculations to bear upon the items mentioned in Ex. I, Appendix A, in order to prove that the whole revenues of particular villages were not entered in it. The sums that stand against the villages in this document are never put in as showing the exact revenue. They are rough distributions of the whole amount of the *nazarana* which is itself settled as a lump sum without much regard to the exact revenue; and the bold assertion in the petition of appeal that in Ex. I. Ap. A. nothing but the mere *judi* of the Kadim Inamdars is taken into calculation is a statement which, even if correct, would be useless to show that the rest of the income of the Kadim Inamdars was purposely excluded. That the distribution of the *nazarana* did not take account of the whole income of the persons over whom it was distributed is best shown by the instance of the Ichalkaranji State referred to in Ex. I, Ap. A. Although the revenue of that State, which is a grant of Kapsi, was admittedly more than Rs. 50,000 at that time, only Rs. 8,750 are shown against the name of the Ichalkaranji Chief, Narayanrao Vyankatesh Ghorpaday. But this cannot mean that the rest of the revenue was purposely excluded, because Kolhapur had a right to *nazarana* over it and not Kapsi. The omission, therefore, of the whole incomes of the Mahali Hakdars, either in the villages mentioned or in the villages not mentioned, would not necessarily mean that the portions of the incomes so omitted were not liable to the payment of the *nazarana* to Kapsi and that they were omitted on purpose because of the rights of Kolhapur. The Durbar now put in fresh evidence to show that this statement is a correct suggestion. But even on the new evidence it may be confidently suggested that it will be very difficult for the Durbar to make out their case. Some of the documents put in in support of this theory are not old documents already existing, but are misleading statements of accounts now prepared by the Durbar for the express purpose of supporting their theory. But for considerations already submitted the Kapsi Sansthan would reserve its reply on this new evidence which can be easily shown to be of no evidentiary force. Next it is to be remarked, that at all events where the villages given to Bhaubands are mentioned, their whole incomes are mentioned. Even now, the falsity of the inference sought to be raised from this evidence could have been well demonstrated, if the Kapsi Sansthan had access to its own record of that time which is now in possession of the Durbar as

“Nagnur record.” This access was applied for, but refused by the Political Agent, Kolhapur and S. M. Country. (Vide Ap. IX. of this Rejoinder.) The Nazarana of Rs. 50,000 was agreed to be paid upon certain villages in the possession of the Senapati and amongst others upon certain other villages in possession of the Senapati's Bhaubands but over which the Senapati had an admitted right. In para 11 of this Exhibit *Fut gaums*—part villages (*i. e.* in possession of several persons of less note) are spoken of. These must have been the same villages which the Durbar wish to prove to have been excluded from the calculation of Nazarana. On a reference again to the last para of the memorandum, it will be seen that the Mahali Inamdars had to contribute to the Nazarana agreed to be paid to the Maharaja by the Chief of Kapsi on his succession, and if they paid the contribution to the Nazarana, *i. e.* Eksala direct to the Maharaja, so much deduction was to be allowed to the Senapati. It is therefore beyond question that the amount agreed to be paid covered the income of Mahali or Kadim Inamdars. The omission of the villages of Mahali Vatandars does not save all the Kadim Vatandars, for a few of them only have got villages. With respect to the latter the Council know full well that they have got vatans in every village mentioned in the memorandum and that their revenue from those vatans was much greater than the revenues of a village or two that they have got. It has been shown above that the fixing of Nazarana always depended upon the pleasure of the Suzerain and the circumstances of the Chief or Vatandar. It is quite possible that the Raja might not have charged nazarana on those villages considering that the major portion of the Mahali Hakdars' incomes was included in the villages in the memorandum. The mention however of the “Eksala” from the Kadim Inamdars does include their incomes for one year, for “Eksala” was but a *fine* equal in value theoretically to one year's income.

42. Another point made in the petition of appeal in this connection is the interpretation of the word “Eksala.” The Durbar have impeached the translation of the word given by the late Rao Saheb V. N. Mandlik as that of a partisan and have adopted the translation of Mr. Flynn, late Chief Translator to the High Court, which gives that word the meaning of a regular cess. But the learning, accuracy and the independence of Mr. Mandlik were certainly not less than those of Mr. Flynn, whose translation has no authority to support it, while the rendering of Mr. Mandlik is based on books of unquestioned authority. If “Eksala” was an yearly cess, it would certainly have appeared in the list of cesses given at page 75 of Graham's Statistical Report on Kolhapur, which is an exhaustive enumeration; while Wilson's Glossary of Indian terms gives “an occasional impost, but for one year” as the meaning of the word “Eksala.” Mr. Elphinstone, whose knowledge of the Maharashtra was unrivalled, mentions “Eksala” as an occasional

impost in extraordinary emergencies. The statement, therefore, that "Eksala" is an yearly cess like *judi*, &c., and not an occasional impost or fine is certainly opposed to all authority, and cannot be accepted merely on the *ipse dixit* of Mr. Flynn who is at best a paid expert. The appeal made to Exhibit V, Ap. A, of Kapsi's appeal in support of Mr. Flynn's translation does not also serve the required purpose and, even if it does not expressly give us the meaning of the word, it is not inconsistent with the word being interpreted as a *Nazarana* or a fine imposed on extraordinary emergencies. It will be noted that Exhibit V is dated 1835 about which time Ramchandrao II succeeded Santajirao, III; and it quite stands to reason that "Eksala" should be levied from the Kadim Inamdars on the succession of their superior over-lord. And it is not necessary in accepting the interpretation of the word given by Mr. Mandlik to suppose the absurdity of all the Kadim Inamdars having succeeded simultaneously to their *vatars*. "Eksala" is not the fine taken on their own successions from the Kadim Inamdars. That fine is called *Nazarana proper*. But it is the fine imposed upon the Kadim Inamdars or for that matter upon all the sub-holders on the succession of their over-lord. There is nothing strange or absurd in this circumstance; and it will be seen that a similar phenomenon existed in Europe:—

"The land is subject to arbitrary fines—the *finances* of old French law—and that a sum of money is therefore payable to the lord of the manor every time a copyholder dies or sells his land, and every time the lord dies, a similar sum must be paid to his successor. These *arbitrary* fines were once really arbitrary, but the King's Court long ago declared that (save in some very exceptional cases) they must be reasonable and must not exceed two years' value of the land. The consequence, however, is that every time any one in a series of hereditary copyhold tenants (father son or grandson) dies, and every time a death occurs in a similar series of lords of the manor, two years' value of the land must be paid." (H. S. Maine's *Early Law and Customs* pp. 308-309).

Then again it will be seen that this "Eksala" is not a yearly cess, for if it had been one it would have appeared in the ordinary revenue, which is not the case as will be seen from the *Akarbands* now produced by the Durbar. The words *देत जात* and *देत जाणे* "have been giving and be giving" in Exhibit V are used as a direction to pay for all times, but are only called into exercise when occasion arises. No doubt they signify a repetition of action, but as the "Eksala" was repeated on every succession, the verbs signifying that action are used. To avoid repetition, Kapsi State would respectfully refer your Lordship in Council to paras 64 and 65 of Kapsi's memorial, dated 10th March 1888, and para 22 of Ap. II of this Rejoinder.

(F) THEORY AS TO ULTIMATE REVERSION AND THE RIGHT TO DETERMINE SUCCESSIONS GOING TOGETHER AND WRONG NOTIONS ABOUT KADIM INAMS.

43. This point in the petition of appeal is due to a curious misunderstanding of the judgment of the Bombay Government either intentional or otherwise. The Durbar, stating first what is stated in the judgment, that both the parties have ad-

mitted that the authority to make succession inquiries co-exists with the right to ultimate reversion, claim that according to the admission of the parties, Kolhapur ought to be declared the owner of the reversion of Kadim Inams, because the Duftardar has held in his report Ex. $\frac{K}{2}$ that final orders in heirship inquiries regarding Kadim Inams have always been made by Kolhapur. But a perusal of that document will clearly show that it does not warrant the assertion of the Durbar that all succession enquiries were decided by them. It was simply during the minority of the Chief of Kapsi and other Feudatory Chiefs that the succession cases of the Kadim Inamdars were submitted to the Durbar for final disposal by the Karbharis of the respective States who exercised limited jurisdiction in the matter. Exhibit $\frac{K}{2}$ does not allude to a single instance, where a Chief being himself a major and invested with full powers over his State submitted such questions to the Durbar for final orders. The fact is that all such cases were decided by the Chiefs of the respective States within their own authority, without any reference whatsoever to the Durbar. The late Chief of Kapsi himself, who was invested with the management of his State, used to decide all such cases within his own authority without any reference to the Durbar. It was only by accident that the Durbar asked the Chief to send the proceedings of the succession enquiry of the Patil of Lat. The Patil of Lat was ordered by the Chief to pay *nazarana* twice in 10 years—(1st on succession of his father and 2ndly on his own succession) contrary to the rules framed for Kolhapore proper which are not binding on the Feudatory Chiefs. The Patil thereupon appealed to the Political Agent for the remission of the *nazarana*, who then asked the Chief to send up the matter and directed him to send up all succession cases in future. This will clearly show that if the Patil had not appealed, the present dispute would not have arisen at all. The dispute having arisen in 1875, whatever procedure was followed after that year, was really forced upon the Chief and would not be binding upon him. However, supposing for the sake of argument, but not admitting what the Durbar say about the report of the Duftardar to be correct, there is no absurdity or inconsistency in the judgment of the Bombay Government—because it cannot be denied that Kolhapur is the owner of the *ultimate reversion* of Kadim Inams since although so long as the fief of Kapsi exists, such Kadim Inams as might lapse in its territory, will revert to Kapsi in the first place, yet these will ultimately revert to Kolhapur with the whole of the Kapsi Ilakha on the lapse of the Kapsi Saranjam itself. As a matter of fact the Government of Bombay in their judgment started with the principle recognised by the parties as a state of circumstances which existed even in Europe at an early stage of political advancement. It held that as a matter of fact Kapsi did enjoy the right of holding succession inquiries regarding Kadim Inams, but in view of a growing political advancement, necessita-

ting certain changes in matters of Jurisdiction, it also held that it would be more convenient that the Kolhapur State, since it was after all the owner of the *ultimate reversion*, should immediately exercise its jurisdiction in the matter of determining succession to Kadim Inams, rather than wait and allow Kapsi to exercise its jurisdiction. This recommendation is admittedly made solely on the ground of what may be called *expediency* and refers to succession inquiries only and has no bearing on the question of reversion of Kadim Inams, Kapsi's rights to which in the first instance are fully recognised. It is made moreover to save Kolhapur from fraudulent dealing with Kadim Inams by a Feudatory, whereby the sub-State might so decide a succession matter as to declare such an Inam not to have lapsed when it may have really lapsed and thereby cause damage to Kolhapur by keeping the Kadim alienation alive even after the sub-State has lapsed. But in making this recommendation the Government of Bombay do recognise that Kapsi has had the right to make these inquiries, which they are taking away, and they take care to provide that whatever Kapsi may lose in jurisdiction, it should be saved from any material loss by declaring that the interests of the Senapati should be guarded against any grievous injury by the protection of the Political Agent under article 8 of the treaty of 1862. It is rather difficult to suppose how all this should have been misunderstood by the Darbar. The matter is too plainly put in the judgment to justify the assumption that this misunderstanding is not intentional. The suggestion in the petition of appeal that the Bombay Government did not even understand the distinction between Jadid and Kadim Inams and decided the matter wrongly chiefly on account of this confusion of ideas is also of a piece with the foregoing. Even a cursory perusal of the judgment of the Bombay Government, would make it clear that that Government was fully aware of the distinction between these two alienations and when that judgment speaks of Kadim grants as quasi-permanent alienations dependent on a Saranjam estate or carved out of it, it does not mean that they were created by the Saranjamdar and not brought into existence before his Saranjam was created. The argument in the petition of appeal based upon this expression in judgment, is merely a quibbling of words. The point really to be seen is whether Government gave the right of reversion to Kapsi although it was aware that Kadim Inams existed long before the existence of the Kapsi Saranjam, that they did not necessarily lapse with the Saranjam and that both the parties claimed the reversion. The several expressions such as "antecedent or Kadim Inams" "interests previously created" and "pre-existing interests" clearly show that Government is fully aware that the Kadim Inams did exist long before the grant of Kapsi by Satara Maharajas to the Ghorpaday family, and the expression "quasi-permanent alienations" and the proposal of the two courses in the same

para of the Judgment clearly show that the Government was also aware that these Inams would not lapse with the Saranjam. No ghost is required to tell that the Government knows that both parties claimed the reversion. The expression "carved out" does not necessarily mean carved out subsequently to the grant but means carved out of the territories at a previous time. The expression "petty terminable estates" does not necessarily mean that the estates (*i. e.* Kadim Inams) would lapse with the saranjam; it simply means that the estates "Kadim Inams" are not interminable.

CONCLUSION.

44. In conclusion it is submitted that your Lordship in Council will be pleased to confirm the judgment of the Bombay Government. The Durbar have said that the Bombay Government decided all points except that of Kadim Inams in favour of Kolhapur. This statement, although not exactly an *expressio vere* is yet a *false suggestio*. The original dispute argued before the Council of Administration went upon not only Kadim Inams, but on Jadid Inams also together with other points such as jurisdiction, &c., &c., and the point of Jadid Inams was decided in favour of the Kapsi Sansthan by the Council. The Senapati appealed and in appeal the Durbar showed as if they disputed even the point of Jadid Inams already decided in favour of Kapsi, regarding which the Durbar made, before the Bombay Government, a curious distinction and tried to make out that Jadid Inams which were guaranteed by the Kolhapur Rajas were not Jadid, but were Kadim. This contention was negatived and it was decided that Jadid Inams even, if guaranteed by Kolhapur, were Jadid. This, as has been stated before, has not been disputed in the petition of appeal, and the dispute now before your Lordship is solely confined to Kadim Inams *i. e.* Inams created before the Kapsi Sansthan came into existence. The other questions as to jurisdiction, &c., have been decided by the Bombay Government in the manner they deemed best and the Kapsi Sansthan has not preferred any cross appeal owing to the death of the Chier of Kapsi before the decision of the Bombay Government, and the Sansthan being practically under the management of Kolhapur. This is again a reason why the attempt of Kolhapur to produce fresh evidence, ought, it is submitted, not to be allowed to succeed, as Kapsi would labour under peculiar difficulties in producing counter evidence. Much of such evidence moreover would be under the control of Kolhapur and the Durbar would, as previous experience has shown, refuse to furnish it to Kapsi. Practically it will be a case, where the evidence of one party would be under the control of its opponent, whose choice alone would govern its production or otherwise. What has happened already about the Nagnur record would happen again as regards other evidence, and Kolhapur, by a simple denial to produce or by a declaration of irrelavency, would prevent Kapsi taking advantage of the best

evidence to meet the new case now attempted to be made. The Kapsi Sansthan, therefore, craves leave to submit that your Lordship will not allow any indulgence to Kolhapur. If the Maharaja is a minor, the Chief of Kapsi is also dead, and his heir would be a minor too. There are his widows, but they are at best mere trustees representing their deceased husband.

Kapsi, *May 1891.* }

Karbhari Sansthan Kapsi.

V23144:13.M9

C1

84075

APPENDICES.

(Printed from a Printed copy)

APPENDIX I.

COPY OF THE RESOLUTION.

No. 885, dated $\frac{24}{25}$ th November 1886, passed by the Council of Administration.

885.—Resolved on the claims of the Senapati of Kapshi argued by Mr. Yashwant Vasudeo Athalye on behalf of Senapati before the Council on 26th and 27th October, 1886, as follows :—

1st.—That the Senapati having submitted his case to the jurisdiction of the President in Council distinctly reserving an appeal to Government, if necessary, no decision is necessary on the question of jurisdiction raised in issue No. 1. The President in Council, however, thinks that the case should have been disposed of under the treaty by a Joint Court.

2ndly.—That with reference to the second issue (*Varasachaukashi* cases) the Senapati be allowed to conduct, without any previous reference to Kolhapur, inquiries in *Varasachaukashi* cases in all *Jadid Inams* and required to forward to the Durbar inquiries and report which concern *Kadim Inams*. Kolhapur should only receive the *Nazaranas* or commutations, or escheats of the *Kadim Inams*.

3rdly.—That in regard to the 3rd issue the claim of Kapshi to have its authority symbolized on the stamp be refused, and the present arrangement continued undisturbed.

4thly.—That in regard to control over village officials the Senapati be invested with the powers of a District Officer in that respect, and that the fines inflicted by him should go to the Kapshi Treasury.

5thly.—That the above decision be embodied in a polite vernacular communication to the Senapati which should express the intention of the Council of Administration to uphold his legitimate rights and dignity.

(True extract furnished to the Senapati of Kapshi on his application.)

(Signed) M. KUVARJI,
Divan, Kolhapur.

KOLHAPUR, DIVAN'S OFFICE,
6th January 1887.

(Printed from a printed copy.)

APPENDIX I.

Civil Appeal No. CXX. of 1887.

Kolhapur and S. M. Country (Claims of Kapsi).

To,

HIS EXCELLENCY THE RIGHT HON'BLE

THE GOVERNOR AND PRESIDENT IN COUNCIL,

BOMBAY.

The humble Memorial of Santajirao
Ghorpaday, Chief of Kapsi, in the
territory of Kolhapur.

RESPECTFULLY SHEWETH,

That your Memorialist has been supplied by the Kolhapur Durbar with a statement without date, which is headed as a rejoinder to your Memorialist's statement, dated 10th March 1888, and which reached him on or about the 25th May 1888.

2. That except for the reasons which your Memorialist begs briefly to give, your Memorialist would not have troubled the Government with any further memorial.

3. The Kolhapur Durbar has unwarrantedly attacked your Memorialist's statement of the 10th March 1888, chiefly on two points—1st, as regards the origin and position of the jahagir of Kapsi, and secondly, as regards the evidence adduced to prove the immemorial usage of Kapsi and the other feudatories in reference to Nazarana, escheats, &c., &c.,

4. As regards the origin and position of the jahagir of Kapsi, the vague assertions made by the Durbar in the rejoinder will be dispelled by a reference to Appendix I. wherein your Memorialist has given a few condensed remarks on the subject.

5. The object for which the reference to the partition between Kolhapur and Satara was made by your Memorialist was simply to prove the antiquity of Kapsi; and this is abundantly proved by the following facts which still subsist :—

1. The admitted creation of Ichalkaranji by the Kapsi Chief in 1713
A. C. (see *Graham's Statistical Report of Kolhapur*, p. 552)

2. The proof of actual possession of Kapsi afforded by the old documents appended to your Memorialist's statement of the 10th March 1888. and also by certified copies of documents lately obtained from the Poona Duftar, and referred to in Appendix I.

6. That Ichalkaranji is a fief of Kapsi is not denied. But although the alienations to Ichalkaranji are admitted to be from Kapsi and in 1713, yet Kapsi is considered non-existent by Kolhapur at the time it is assigning part of its territory? Again in paragraph 22, sub-para. (a) of the rejoinder it is said: "The assignments of jahagir to the Senapati's kinsmen had not at that time been disintegrated from Kapsi, although their holders owed no allegiance to Kapsi and acted as independent feudatories." This is a process of reasoning which your Memorialist fails to understand; but it indicates the direction of the wind and shows the spirit in which this last memorandum has been penned.

7. Your Memorialist submits that he will not enter into an examination of all the papers and facts now attacked, as they have been already scrutinized by the Duftardar under the orders of the Karbhari and the Political Agent, and by the Joint Court which heard the case; but he begs to state that he is prepared to give the fullest explanation whenever called upon to do so.

8. In regard to the evidence of usage of Kapsi and the other feudatories, your Memorialist begs to refer to Appendix II. wherein your Memorialist has tried to answer the contentions of the Durbar on the subject. Your Memorialist further begs to state that in the Resolution of the trying Court, of which Mr. Lee-Warner, the then Political Agent of Kolhapur, was President, and which is dated $\frac{21}{25}$ th November 1886, there is not one adverse word in regard either to the relevancy or genuineness of the evidence which was adduced before, and severely examined and scrutinized by the Kolhapur Duftardar under the instructions of the Political Agent, and also examined by the Political Agent with the full knowledge of the then State Karbharis of Kolhapur. The inquiry into your Memorialist's papers by the Duftardar was ordered in this very case which is now on appeal before Government, as may be seen from a reference to the papers noted in the mar-

1. Communication of the Political Agent to the Senapati, No. 7, dated 7th July, 1875.

2. Thaili from the Senapati to the Political Agent, No. 27, of 22nd October 1875.

3. Political Agent's order No. 265, dated 31st December 1875, to the Duftardar of Kolhapur.

gin. All the papers now attacked were accepted and found proved and reported upon by the Duftardar of Kolhapur who was appointed as it were a Commissioner for the purpose

Moreover, not one question about this was raised during the trial at Kolhapur. The new papers now handed over to your Memorialist by the Diwan, and the vague innuendoes introduced into the present rejoinder are therefore, he submits, too lat

and the Durbar is estopped at this stage from raising these futile objections. If your Excellency in Council be pleased to inquire of the Political Agent, all the steps of the inquiry will be made apparent, as they were before the trying Court presided over by Mr. Lee-Warner, the then Political Agent. It now appears that whenever the Durbar finds the documentary evidence of your Memorialist unanswerable, their only refuse is to raise some fanciful objection either as to its genuineness or relevancy. The Durbar in their rejoinder remark that the inquiry of the Kolhapur Duftardar regarding the said evidence cannot be looked upon as a judicial one, yet they pray in the last paragraph that "the case may not be dealt with as a purely civil matter," &c. These inconsistent statements are not penned by those who heard the case.

9. Again, as to usage, the Durbar only repeat every time that your Memorialist's contention is opposed to the usage of Kolhapur, but the Durbar have not shown during the trial a single instance (before the present dispute arose) where according to that usage the Kolhapur Durbar have received *Nazarana* from *jadid* and *kadim* grantees or have obtained by escheats either of them either in Kapsi or in the other feudatory States. As a matter of fact all the usage is in favour of your Memorialist as will be seen from the evidence in the case, and the replies of the Karbhari of Vishalgad, Bavda, Kagal and Ichalkaranji (*vide* Exhibit 42, Appendix B., pp. 6-8). It is also noteworthy that the Karbhari have made those statements in answer to a question by the Acting Karbhari of Kolhapur, through the Duftardar of Kolhapur, who asked them to state the usage in this matter when the Kolhapur Rajas and the rulers of those States were majors and were carrying on the affairs of the States themselves. The exact translation of the question runs thus :—

"Information is required whether the service allowance or *Nazarana* from the *Mahali* (district) Hakdars, Desai, Despande, &c., of Ichalkaranji, Bavda, Kagal and Vishalgad *Sanshtans* (States) was received by the Kolhapur *Sarkar* at the time of Shriman Maharaj Chhatrapati, and while he was ruling in person and while the owners of these respective *Sanshtans* (States) were managing their *Sanshtans* personally. Therefore the above information of a period before the [division of Kolhapur into] *petas* (or talukas) regarding the aforesaid four States should be kindly sent after enquiry."

The Council in their present rejoinder make light of the above by remarking that "in some cases while the States were under the direct management of the Political Agent, orders were passed by that Officer on the *ex parte* reports and representations of the Karbhari of those States." But a glance over the Yadi Exhibit 42, will show that that was not so.

10. Again, your Memorialist further submits that the inquiry into the corresponding usage of the other feudatories was made at the request of the Durbar by

the local Duftardar for the purposes of the present case, and before the present investigation was completed ; so that it is now idle to ignore a solemn proceeding of this kind. The slight cast upon the statement of the Parasnis is uncalled for and utterly undeserved, and the Durbar forget that he (the Parasnis) has produced a Bakhar from which he gave his information.

11. The Durbar avail themselves of another expedient to meet instances of usage, &c., fatal to their contention, by putting forth that the said cases occurred when the Kolhapur Durbar was not a party, or that Kolhapur claims were not properly represented.

With regard to such remarks on your Memorialist's evidence in the present rejoinder by the Durbar, your Memorialist submits :—

(a) That they are too late and out of order ;

(b) That your Memorialist is ready and willing whenever called upon to completely refute and expose all the allegations now ventured upon ; and

(c) That all the documents now attacked have stood the test of a searching investigation at Kolhapur, and not a word was whispered against them before the trying Court.

12. As regards the claim of Kolhapur to escheats and Nazarana, &c, as Suzerein of Kapsi, the Durbar's contention is entirely untenable. The expression "*Kherij Hakdars and Inamdars, &c.*" is not peculiar to Kolhapur, but is one which is common to the whole country forming the Mahratta Empire, of which Kolhapur and its dependencies form a very small part, and the decisions cited by your Memorialist which proceed upon general principles of law and justice, though they may not be absolutely binding on Kolhapur are, he submits, proper precedents to follow, unless their soundness can be impugned either on general principles or the special usages of Kolhapur, which have not been alleged or substantiated. That Kolhapur itself is guided by British Indian laws and customs is apparent from the laws and regulations which have been in use in Kolhapur since 1848, and from the present rejoinder itself which quotes so largely from *Broom's Legal Maxims, &c., &c.*

13. Your Memorialist ventures to submit that the Divan's present memorandum is seeking to overshoot the mark. In paragraph 20, Kapsi is alleged to be a jahagir from year to year, and in the very next paragraph the alienation of territory by Kapsi to Ichalkaranji is admitted, and the alienee, a jahagirdar, is considered a feudatory by Kolhapur.

14. The Kagal case alluded to by your Memorialist has been decided by the Bombay Government, and that decision stands unreversed, and is therefore in your Memorialist's favour. No amount of mere writing can undo that decision. The

Government Resolution, dated the 9th May 1856, quoted from *Nairne's Revenue Hand-Book* in the memorial of the 10th March 1838 disproves the novel position now assumed by the Durbar—that when a grantee of Kapsi obtains a confirmation of the grant from Kolhapur, that confirmation by itself converts the *jadid* or a new inam into a *kadim* or an ancient inam. A flat denial to the usage alleged by the Durbar is given by the fact that the Kolhapur Durbar has not given a single instance of Kolhapur having independently received *Nazarana*, &c. &c., of such grants from Kapsi or the other feudatories before the present dispute arose.

15. Your Memorialist would also solicit attention to the inconsistent and palpably sophistical contention of the Kolhapur Durbar regarding the capacity in which the Political Agent has acted on various occasions. Whenever his action is prejudicial to their case, they ignore his being the guardian of the Kolhapur Raja, and say that he acted without consulting the interests of Kolhapur, while where his actions suit them, they adopt them as their own, although all along that officer has been guardian of the Raja, as well as the representative of the British Government at Kolhapur. For instance, with reference to control over village-officers, the Durbar in para. 30 of the rejoinder says:—

“The advice in Revenue matters (Political Superintendent's letter No. 80 of 2nd April 1855) relied on, was issued by the Political Superintendent in his capacity of guardian of his Highness the Maharaja and is to all intents and purposes the order of his Highness the Raja himself.”

While as regards the crediting of the *Nazars* in para. 23 of the rejoinder they remark:—

“It appears that in some cases, as in the Kapsi Jahagir, while the said states were under the direct management of the Political Superintendent or Agent orders were issued by that officer on the *ex-parte* reports and representations of the Karbharias of those states to credit the same to those states, but the said orders were, it must be pointed out, passed during the minority of his Highness the Maharaja whose interests and Seignorial rights were not brought to the notice of the Political Agent or Political Superintendent in any single case, as in fact the question of the Raja's seignorial rights and sovereign prerogatives was never raised, discussed and decided upon. Therefore such *ex-parte* orders cannot be admitted as any Judicial decisions and any action taken upon them as binding precedents.”

Similar other inconsistencies will be found in para. 22, sub para. 12 of the rejoinder and elsewhere.

16. As regards the question of jurisdiction, customs, excise revenue, &c., your Memorialist repeats what he has stated already in his memorials that these are matters foreign to the present inquiry which only concerns the *kadim* and *jadid* inams, and require separate hearing and investigation.

17. Your Memorialist humbly, but earnestly, prays that his case may be patiently investigated, and he may be declared entitled to carry on the succession inquiries into *kadim* inams, and to have all advantages as to escheats, succession, *Nazarana* and service commutation in reference to these, as well as the *vataus* within the Kolhapur Principality, and that the Durbar may be ordered to make good to your Memorialist whatever loss has been caused to him by unjustifiable encroachments.

And your Memorialist, as in duty bound, shall ever pray.

(Sd.) V. N. MANDLIK, .

Pleader, High Court,

On behalf of the Memorialist.

Bombay, 5th November 1888.

APPENDIX I.

(Replies to paragraphs 1, 2 and 16 of the Rejoinder of the
Kolhapur Durbar.)

HISTORY OF THE SENAPATI AND ORIGIN AND STATUS OF KAPSI.

The Council of Administration at Kolhapur has tried to show that the Chiefs of Kapsi owed their *jahagir* and title of Senapati to the Rájas of Kolhapur. They have quoted some extracts from Grant Duff's History of the Marathas in support of their assertion. It must, however, be borne in mind in connection with this that the great historian was writing the history of the whole Maratha empire, and not of the family of the Ghorpades, the Senapati, and hence it is that all the minute particulars about the Ghorpades are not noticed by him. If the Council of Administration had taken the trouble of referring to the old records of the Kolhapur State itself (which of course are more authoritative than the compiler's assertions), it would not have made such blunders. On referring to the Ferist No. 4 Kapsi, of 1098 *Fasli* era, viz., 1688 A. D., and other old records about the Kapsi State, it will be seen that Santajirao I. was invested with the title of Senapati on the 5th day of the 1st half of Shravan in the year called *Vibhava* Shak year 1610 (1688 A. D.) by H. H. Rájárám (*vide* also *Graham's Statistical Report of Kolhapur*, p. 308. "Lives of Sambhaji and Rajaram," by Malhar Ramrao Chitnis, published in the "*Kavyetihás-Sangraha*"* in 1882, p. 77, and "*Vividha Dnyana-Vistara*" (a Marathi periodical) Book 19, p. 201, September No., 1887. On referring to pp. 579-80. of Elphinstone's "India," 3rd edition, it will be seen that Sambhaji was a prisoner with Aurangzib since his capture in 1688 till his death in August 1689; and Rajaram must have therefore come in power immediately on Sambhaji's capture, and therefore the statement that Rajaram granted the Senapatiship to Santajirao I. in 1688 is quite consistent with facts. Dhanaji Jadhav was also a competitor for the office at this time. Afterwards in the Raj era 19 *shake* 1615, i. e., 1693 A. D., Dhanaji, through the favour of Rajaram, got the title of Senapati; but the *jahagir* of Santajirao I., whatever he had at that time, was never transferred to Dhanaji. Santajirao was also using the title of Senapati (*vide* Exhibit 2, Appendix B, p. 1) and trying to regain the office through the exertions of Naro Mahadeo, the founder of the Ichalkaraji family; but on account of the constant disturbances by the Moguls, nothing was settled. In 1707 Shahu being released from prison claimed the sovereignty of the Maratha empire from Shivaji and Tarabai; and a civil war ensued between them. Thus there were actually two kings of the Maratha empire from 1707 to 1731, the year of partition, or at least to 1728. On the death of Dhanaji in 1710, the Chiefs of Kapsi were in succession proclaimed Senapatís of the Maratha empire by Shivaji and Tarabai and his successors, while Chandrasen and others were declared to be

* A Marathi magazine publishing old poetical and historical works.

Senapatis by Shahu; and so up to 1728 there were actually two Senapatis of the Maratha empire, as neither Shahu nor Sambhaji was acknowledged as the sole sovereign of that empire. On the death of Santajirao I., his son Piraji inherited the *saranjam* and was invested with the title of Senapati, and on his death his son Ranoji succeeded him. These facts fully support the remarks in para. 5 of the memorial of the 10th March 1883. The so-called restoration of the Senapatiship to your Memorialist's family in 1710 by Shivaji and Tarabai cannot be said to be an act of a Kolhapur Raja, because till 1731, or at all events till 1728, both Shahu as well as Shivaji claimed to be and acted as the Rajas of the Satara empire. It has already been remarked that jahagir of Santajirao I. was never transferred to Dhanaji Jadav. The following extract from the manuscript copy of the notes taken by Professor Balaji Prabhakar Modak, of the Rajaram College, Kolhapur, from the old records of Kolhapur about the year 1882, by permission of the Durbar authorities with a view to write a separate history of the Chiefs of Kapsi fully and correctly corroborates the above statement:—

“उयांपाशीं तुझा सेनापतीपद मागूं इच्छतां त्यांशींच युद्ध करणें निदान आमच्या* तरी मते योग्य नव्हे. महाराज या समर्थी औरंगजेबावर औरंगाबादेस स्वारी करित आहेत आणि तुझा सारख्या-च्या परिक्षेकरितांच ही चालून संधि आलेली आहे तीत आपले शौर्य गाजवून महाराजांस खुष करावे ह्मणजे सेनापतीपदाची वस्त्रे मिळण्यास तुझास उशीर लागणार नाही आणि त्याजवद्दल आपणही मग महाराजांस सुचविण्यास कमी करणार नाही तोपर्यंत तरी वस्त्रे मिळालीं नाहीत तरी तुझाकडे जे जे प्रांत चालत आहेत त्यांस कोणाकडूनही हरकत होणार नाही.” This is said to Santajirao I. when the title of Senapati was transferred to Dhanaji. The above extract is marked as a quotation in the notes above referred to. The concluding portion, when translated, runs thus:—

“Though, till then, honorary dress (of the Senapati) would not be got, still no one would disturb your possession of the territories that have been with you.” Besides there is nothing to show that the transfer of the title was accompanied by the transfer of the jahagir as put forth by the Kolhapur Council, while there were too many changes in the office of Senapati to admit of the transfer of jahagir at each time. These changes will be seen from the table below.

Hambirao Mohite	1674-87.
Santajirao Ghorpaday	1688.
Mahadaji Pansambalkar	1688-90.
Santajirao	1690-98.
Dhan-ji Jadhav	1693-1710.

And further on (from 1710-31).

Chandrasen and others, on one side.	The Chiefs of Kapsi in succession on the other side.
--	---

The uninterrupted possession of the jahagir from 1688 to 1731 by Kapsi Chiefs has been proved by the following documents:—

1. Exhibit 2, Appendix B, p. 1, being a sanad by Santajirao Ghorpaday, Senapati to Naik, Desai, and Daskanis, dated 1695, granting a taluka to Govindrao Tirmal.

* पंतआमाल्य, नाते च्यंबक प्रधान प्रतिनिध, संडो बहाक चिटणीस, व रघुनाथराव हणमंत.

2. Exhibit ^a/₂ Appendix A, p. 35, *dehazada* of 1702, of villages in the Kapsi pargana.
3. Exhibit S, Appendix A, p. 21, sanad of A. D. 1728 to Desai by Piraji Ghorpaday, Senapati granting one village in exchange for another.
4. Exhibit 4, Appendix B (not translated), yadi, dated 1731, of villages in the possession of Kapsi from of old;

If the jahagir, as supposed by the Durbar, had been transferred to Dhanaji it was impossible that the Chiefs of Kapsi could have made the above grants. It is also noteworthy that the jahagir of Ichalkaranji was conferred upon the founder of the Ichalkaranji family in the year 1713 by your Memorialist's family (*vide* p. 552, *Graham's Statistical Report of Kolhapur*).

That the *saranjam* remained with Santaji and his heirs and was not resumed according to the theory of the Durbar is also most clearly proved by documents in the Poona Duftar (certified copies of which were given to your Memorialist on the 17th ultimo by G. R. No. 6250 of 18th September 1883) which show that Kapsi and other villages were held in *saranjam* by Piraji Ghorpaday and his son Ranoji in the years 1703-4, 6-7 and 1730-31 A. D. These documents entirely prove the principal point in the case, viz., that the *saranjam*, including Kapsi *Karyat*, remained with our Memorialist's ancestors and never left the family. They also corroborate your Memorialist's contention as regards the *dehazada* of 1702, and the other evidence relating to possession.

Your Memorialist prays that your Excellency will be pleased to call for the documents above referred to from the Poona Duftar for inspection as per following list :—

- 1 and 2. *saranjam* accounts for the year 1703-4, shewing the entries of jahagir, mahals, and mokasas, &c., held by Piraji Ghorpaday.
3. A yadi of *saranjam* held by Piraji, Hindurao, and Krishnaji Ghorpaday, dated A. D. 1706-7.
4. A yadi showing the *saranjam*, &c., held by Ranoji Ghorpaday from H. H. Shahu, dated 1730-31.

Your Memorialist is prepared, if necessary, to produce the certified copies of the above papers supplied to him from the Poona Duftar.

APPENDIX II.

(Replies to the Remarks in the Rejoinder of the Kolhapur Durbar,
excepting Paras. 1, 2, and 16.)

(N. B.—Numbers to the left denote the paragraphs of the Rejoinder of the Durbar.)

3. The sanad A is relied upon by the Memorialist for the purpose of showing by analogy the nature of the title he originally possessed to his jahagir, which, coupled with the prescriptive possession extending over a period of more than 183 years, fully supports his contention about all sorts of grants, *kadim* as well as *jadid*. The inference that Senapatiship was a grant from Kolhapur, and not from Satara, sought to be derived from the use of the simple words "Ghorpaday and the omission of "Senapati" is, in the face of the facts and documents referred to in Appendix I quite absurd. The suggestion that the grant arose from pure charitable motives is gratuitous. The document of 1730-31 referred to in Appendix I, speaks of a *saranjam* from Shahu, the Satara Raja, for military service.

4. The statement in para. 6 of the memorial of the 10th March 1888, the correctness of which is challenged, is quite accurate, and is fully supported by the Duftardar's report (Ex $\frac{K}{2}$, Appendix A). The *dehazadas* referred to not being produced, nothing can be said in regard to them. But even supposing that Ichalkaranji is separately shown as described, the fact becomes immaterial when it is admitted that the bulk of that jahagir is derived from Kapsi. It thus being admitted that Ichalkaranji is a fief of Kapsi, the grantor, viz., the Senapati, must have all the rights and privileges which the grantee, viz., the Chief of Ichalkaranji, enjoys.

5 and 6. The statement of revenue in para. 7 of the memorial of the 10th March is based on documents furnished to the Memorialist by the Kolhapur Durbar prepared for fixing the amount of *dustpatti* to be paid to Kolhapur by Kapsi in 1880. He is not aware of any deductions, if any, which the Kolhapur Durbar might have chosen to show in the accounts of 1886-87. If there be any, your Memorialist has had no notice of them, and it is perhaps due to a desire for preparing evidence at this stage. Besides, para. 5 ignores the additional income of Rs. 11,751 shown at page 3 of the memorial of 10th March. As to the remarks about Valki and Pangera, these two villages have not gone out of your Memorialist's hands after 1880 (whatever may be the nature of the manner in which they are alleged to have gone away), and therefore there is no reason why the deduction should now be shown. With all deductions and explanations made in the Kolhapur accounts from time to time, the Kolhapur Council cannot but admit that Kapsi has a direct right to a revenue of about Rs. 60,787-5-6, and a contingent right to grants which it has made for maintenance and by way of gifts, &c., to the extent of about Rs. 89,190-3-10.

7. The Council of Administration admits that the Chief of Kapsi is one of the Ashtapradhans, but it chooses to rank him fifth among them. On referring to the "*Kamti Japta*" of Shivaji the Great, Ferist No. 4 Fasli era 1128, *i.e.*, 1718 A. D. of the Kolhapur record, printed at pages 157 and 160 of the "History of Kolhapur and S. M. States," vol. II. part I, by Professor B. P. Modak, of the Rajaram College, Kolhapur, it could have at once been seen that the Senapati ranks second, and is at least on a par with Pant Amatya. "Graham's Report," p. 594, and Grant Duff's History," p. 118, simply enumerate the names of the Ashtapradhans without referring to their respective rank. It is therefore wrong to compare the Senapati with Panditrao, Sumant and others who are admittedly inferior to him in point of status, &c., and are no longer in existence. It is noteworthy that nothing has been said about the status of Kapsi as compared with Ichalkarnji, which is admittedly inferior. The fact that Sumant and Panditrao have no more powers than ordinary inamdars is quit beside the present question. What is to be seen is whether as a matter of fact the Senapati has exercised higher powers; and it cannot be denied that he has done so from time immemorial. At Kolhapure the Pratinidhi is considered as the 1st Pradhan (*vide p. 547 of Graham's Report of Kolhapur*),

8 to 12. The remarks in paras. 8 to 12 are quite immaterial, as there was no distinct issue raised at the trial about the civil and criminal powers of the Senapati, nor did he make it a ground of his appeal. The Council has totally misunderstood the spirit of para. 12 sub-para XIV., of the memorial of the 10th March. The real question at issue was about the jadid and kadim grants and control over the village officers. The extracts from "Graham's Report," the Treaty of 1862, and the statement of the Parasnis, all are quoted to show that the Senapati has been treated on an equal footing with the other principal feudatories in point of revenue matters. The Durbar has also admitted in its statement of reasons that the Senapati exercised unlimited power over the village officers. The use of the Political Superintendent's letters, Nos. 9 and 12, has been entirely misunderstood. They were produced to show that the Senapati was entitled to receive the stamp duties independently of Kolhapur. However, if Government is inclined to decide the question of civil and criminal jurisdiction of Senapati he is ready to show by ample evidence that his powers were inherent with the *saranjam*, and that his ancestors have enjoyed them like the other principal feudatories (*see Graham's Report of Kolhapur p. 557*). A reference may also be made with advantage to *Aitchison's Treaties*, vol. V., pp. 339, to 342 where it appears that the British Government has recognised the possession of such powers by the other branches of the family. Any limitation placed afterwards in these matters is *ultra vires*: any recent deprivation or disputed diminution cannot affect his rights. As regards the statement of the Parasnis, it is supported by documentary evidence. The Durbar is quoting it without producing it. If Government refers to that it will be seen that he has produced a *bakhar* in support of his statement.

13 and 14. If paras. 16 and 17 be read with para. 42 of the memorial of the 10th March, a complete answer would be found to the Council's contention, as it is a mere repetition of the remarks in the statement of reasons. Moreover, as the question about the origin of the Senapati's jahagir is already disposed of in Appendix I, it only remains to point out that, according to the authorities cited in paras. 29, 31, 56, 69 and 70 of the memorial of the 10th March, all rever- sionary rights in *kadim* grants are given by the sanads to the grantee. If the usage of Kolhapur in construing the grants had been otherwise, the Durbar ought to have shown some cases in which it received such *nazars*; but the absence of any such instances, and Exhibit 42, Appendix B. pp. 6-8, the replies of the karbhari of the four Sansthans in the matter, entirely disprove the alleged im- memorial usage.

15. With regard to the quotation from the Political Agent's *thaili*, No. 296, your Memorialist begs to submit that the Council could have easily known why the Political Agent wrote in that manner if they had referred to paras. 18, 20, and 21 of the Kolhapur Karbhari's Report to the Political Agent No. 56 of 1858, on which that *thaili* was based. On referring to those paras., it will be seen that Rs. 11,489 and Rs. 1,850 only were reported to have been taken as *nazarana* on the occasion of the succession of your Memorialist's grandfather and father respectively, and Rs. 5,000 only from the Chief of Torgal. It was but natural under such circumstances that the Political Agent might think that the guardian mother of your Memorialist would consider the amount of Rs. 13,950-9-4 as excessive, especially because the State of Kapsi was then heavily indebted; besides, the usage of fixing the *nazarana* varied according to circumstances. With regard to the Durbar's assertion that the amounts of *nazars* paid by the Senapati before 1860 cannot be always inclusive of *kadim* grants, as the amounts of 11,849 and 1,850 fall too short of the gross revenue of Kapsi, your memorialist would submit that the amounts of *nazarana* paid by the Senapatis from time to time before 1860 were fixed according to the pleasure of the Kolhapur Raja and the then existing cir- cumstances of the Kapsi State, and that it covered the whole gross revenue, including the *kadim* and *jadid* grants, the last *nazar* being fixed by order of the British Government in 1860. Similar instances as to the *nazarana* not being dependent upon the amount of the gross revenue may be shown, if necessary, from Bavda, Vishalgad, and Torgal.

17 and 20. The sanads in para. 20 of the memorial of the 10th March are all to the point, and support your Memorialist's contention, as they all refer to पूर्ववर्तमान (former practice), the character of which is determined by the analogy of sanads A to E (*vide* also para. 51 of the memorial of the 10th March.)

18. The story of the attachment of the jahagir upto 1819 is utterly incorrect and unsupported by any evidence. Only the village of Lat, together with its hamlets, was mortgaged in 1819 in satisfaction of the amount of the *nazarana* then

levied (*vide* para. 53 of the memorial of the 10th March and Exhibit 7, Appendix B. p. 2). It was at this very time that the Naiki Vatan was created by Senapati in favour of Aisaheb Maharaj (*vide* Appendix C. pp. 1-2). The Raja was only asked to continue it to the grantee, as the village was to be in his possession as mortgagee; such a request cannot all be interpreted into a sanction. The existence of the sanad is a hard fact, which cannot be and is not explained away. As to the alleged remission of the (पट्ट) *patti* on that vatan in 1820 by order of the Raja, the statement is not true. It seems that the alleged remission by the Raja is spelt out from the expression "हुजूरनाफी" in the Taleband of 1820. But it is forgotten that in this document the word "Huzur" must necessarily mean the Chief of Kapsi, and not the Raja of Kolhapur. These Talebands were prepared by the village officers, to whom the Chief of Kapsi must necessarily be the Huzur, the village being his *saranjam*. That this construction of the word "Huzur" is the correct one will appear if the whole document, of which the Durbar have produced only an extract, be read, the other entries in it not referred to by the Durbar be referred to. The Taleband remained with the Kolhapur Durbar, as the village was in mortgage in that year; so the theory of remission by Kolhapur, and the inferences, sought to be derived therefrom, fall to the ground.

19. It has been shown (Appendix I) that the Chiefs of Kapsi held their jahagir from the Satara Rajas.

- (1) It may be that the Senapati might have obtained a sanad in 1728 from Shambu before the formal establishment of the Kolhapur State; but the sanad itself, as will be seen from its very wording (दुसवीं देशमुखी तुहारास) is a renewal and restores a part of the Deshmukhi vatan, the whole of which was held by Santaji I. from the Satara Raja (*vide* Appendix C. p. 3; and the *saranjam* accounts of 1703-4 referred to in Appendix I, p. 8.) this sanad cannot therefore be construed as a new grant by Kolhapur, and so is quite consistent with the position contended for by the Memorialist.
- (2) With regard to the sanad of 1730 by Shahu, it is a confirmatory sanad as admitted by the Durbar; and the sanad of 1728 having been disposed of, that of 1730 is quite consistent with your Memorialist's position.
- (3) The *dehzada* of 1702 contains the words "देह झाडा परगणे कापणे," and therefore clearly shows that the villages contained therein must be in the possession of the Chief of Kapasi.
- (4) The Council's remarks with respect to the sanad to Desai by Senapati in 1728 are totally wrong. It is absurd to suppose that Kolhapur sovereignty commences from the capture of Sambhaji by Aurangzib, as nobody imagined even at that time that the Maratha

Empire would be divided into two States. From 1707 to 1731 civil war was going on between the two claimants of the Maratha empire (Satara Raj), and for a time there were as it were actually two kings. The transactions between those years must therefore be looked upon as those of the king of the Maratha Empire. It is a patent and universally acknowledged fact that Sambhaji was considered the founder of the Kolhapur Raj.

- (5) The sanad of 1692 is quite relevant, in as much as the jahagir of Kapsi was never resumed from Santaji I. (*see* Appendix I.)
21. It being admitted that the jahagir of Ichalkaranji is a grant from Kapsi, no further explanation is necessary.

22. (a) *Usage in Kapsi regarding levy of Nazarana—*

- (1) As regards the usage of levying *nazarana* on the whole estate, including kadim as well as jadid grants, the Council of Administration admits in the statement of reasons that the memorandum of *nazarana* in 1803 (Exhibit I, Appendix A, pp. 9-10) includes *jadid* inams and the specific *pattis* due to the Senapati by the holders of "kadim inams" (*vide* Appendix D, p. 7). The question at issue is whether the kadim inams were included in the gross revenue. In all the villages mentioned in the memorandum there are admittedly kadim inams. Your Memorialist does not understand on what grounds the Council thinks that the kadim grants in those villages are not included in the levy of the *nazarana* charged. The omission of the villages of Mahali Vatandars does not save all the kadim inamdars, for a few of them only have got villages. With respect to the latter, the Council knows full well that they have got vatans in every village mentioned in the memorandum, and that their revenue from these vatans was much greater than the revenues of a village or two that they have got. It has also been shown that the fixing of the *nazarana* always depended upon the pleasure of the Rajas of Kolhapur and the circumstances of the Chiefs. It is quite possible therefore that the Raja might not have charged *nazarana* on those villages, considering that the major portion of their (Mahali Hakdars) incomes was included in the villages in the memorandum. Besides, paras. 4 and 7 show that every little item was not required to be charged and mentioned in the memorandum. The Council could have seen that there was not a separate levy of *nazar* on the "*eksala*" (whatever be its meaning), which it admits is due to the Senapati, and included in the gross revenue. The word "कुटाना" (isolated villages) in para. 11 of the memorandum

clearly shows that the villages were included in the levy. Moreover, the documents **K** and **M** prove beyond doubt that all the kadim inamdars contributed to the *nazarana* of Rs. 50,000, and that the *nazarana* taken by Kolhapur covered the gross revenue including the kadim grants. With respect to the meaning of "eksala," *vide* remarks in paras. 64 and 65 of the memorial of the 10th March; the phrases देत जातं and देत जाणे (have been giving and be giving) in document **V** are used for a direction to pay for all time, and is only called into exercise when the occasion arises. No doubt they signify a repetition of action, but as the "eksala" was repeated on every succession, the verbs signifying that action are used. The occurrence of the words in Exhibits **I** and **V** support the contention in the memorial of the 10th March, as in each of those years Kolhapur received *nazarana* from Kapsi; but unless the Durbar shows that this "eksala" was taken every year, these two documents cannot support its contention, and therefore it is not a yearly *patti*, as the Durbar contends; moreover, it is not enumerated in the list of specific *pattis* levied in Kolhapur (*vide Graham's Report*, p. 75.)

- (2) The remarks on Exhibit 7 (Appendix B) have been already answered (*vide* reply to para. 15, p. 11 *ante*.)
- (3) With reference to $\frac{x}{2}$ (*vide* paras. 16 and 17 of the memorial of the 10th March, and reply to para. 15, p. 11 *ante*.)

(b) *Kapsi received Nazars &c., &c.*—

- (1) The remarks on Exhibit **I** have been answered above.
- (2) Exhibit **I5** clearly proves that *japti* income of kadim vatandars was credited to Kapsi, which argues the subordination of vatandars to the Senapati. The Council's remarks are quite unwarranted.
- (3) Exhibit **J** shows that Desai paid *nazar*. It must necessarily be a contribution to the *nazar* paid by Kapsi to Kolhapur in 1835, as the document does not allude to any specific transaction; therefore the Council's guessing is quite preposterous. As to Kolhapur not being a party; it is no argument whatsoever.
- (4) Exhibit **K** clearly shows a contribution by kadim inamdars to the *nazarana* paid by Kapsi in 1803, and determines the meaning of "eksala" in Exhibits **I** and **V** according to the contention of the Memorialist. The document is more than thirty years old, and comes from the Samisthan records of Kapsi. It is in original, and has been admitted as such by the Duftardar in 1879. It may be here observed once for all, that when no answer can be found to certain documents,

the Durbar find a convenient one by questioning the genuineness and relevancy, forgetting that they are estopped from doing so, as no objection was taken at the time when the case was heard at Kolhapur.

- (5) Exhibit L shows that *nazarana* was paid by Nadgauda to the Chief of Kapsi. The very word “नजर” (nazar) in the document strongly corroborates your Memorialist’s contention; it is in original and has been taken from the Nadgauda himself for the purposes of this case. If the Council had raised these objections at the trial it would have been proved by the hand of the Nadgauda himself; moreover the Daftardar never questioned its genuineness.
- (6) EXHIBIT N.—The very word “nazarana” shows that Senapati did receive *nazar* of Rs. 75 from Nadgauda. Supposing, for argument’s sake, that that was the only amount, it cannot in any way go against the contention of your Memorialist. The then Chief of Kapsi might have been satisfied with that sum, considering the circumstances of the the Nadgauda. Unsupported inferences need no reply.
- (7) EXHIBIT M.—“नसतारण” no doubt means settlement, but it was not a settlement of the debt as the Council alleges. The supposition of the Durbar that it was a settlement of a debt is refuted by the very term “दान” (contribution). Moreover, it is absurd to suppose that all the Hakdars conspired to be debtors of Kapsi at one and the same time, and also to pay it off at the same moment. It was an established practice up to a very recent date that the jahagirdars compelled the Mahali Hakdars to contribute to the *nazarana* paid by them to the Kolhapur Raja, and the stipulation in the 11th para. (Exhibit I, Appendix A) is quite consistent with the established practice. This and Exhibit K clearly determine the meaning of the work “eksala,” and show that contributions were actually paid.
- (8-10) EXHIBITS Z, $\frac{A}{2}$, and $\frac{B}{2}$.—From the date of the documents, 1784, it will appear that *eksali aivoj* was nothing but a contribution to the *nazarana* paid by Kapsi in that year on the succession of your Memorialist’s father.
- (11) EXHIBIT $\frac{DB}{2}$.—This statement has been prepared from the old records of the Kapsi State under the supervision of Rao Bahadur Y. M. Kelkar, as desired by the Political Agent for the purposes of this very case. It has been translated by Rao Bahadur, B. N. Joshi, then pleader for Senapati in the present case, and now one of the members of the Council of Kolhapur. They were then found to be correct by the authorities, and cannot now be questioned under any

circumstances. This and Exhibit $\frac{F}{2}$ prove that the Durbar never received anything for varas choukasi of subordinate inamdars; and Exhibits I, K, M, Z, $\frac{A}{2}$ and $\frac{B}{2}$ prove that Senapati exacted contributions from subordinate inamdars to his *nazarana* to be paid to Kolhapur. Thus his twofold contention is corroborated by facts.

- (12) EXHIBIT $\frac{F}{2}$.—For explanation and refutation, see paras. 62, 63, and 67 of the memorial of the 10th March.

(c) *Vatandar's Service under Kapsi.*—

The Council of Administration has admitted (Appendix D, pp. 10-11) that the Senapati had possessed (unlimited) powers over all the village officers, but that they were not derived in pursuance of the original grants. Now in the rejoinder it says that the Senapati's power was limited as far as collection of the revenue was concerned. The limit which the Council now wishes to put is not warranted by any words in any of the orders (P, V, U, X, Y, F, G, H, and 43,) referred to. Besides it has been already shown that not only the revenue, but the soil and all other income has been given to the Senapati (*vide* paras. 44-57 of the memorial of the 10th March). All these orders referred to “*वृत्तव्यवहार*” (old practice) no doubt; but it is absurd to suppose that the village officers were encouraged to consider themselves independent of the chief of Kapsi.

(d) *Renewal by Kapsi of lapsed Vatans.*—

- (13) EXHIBITS 9, 10, 11.—The following extract from the Daftardar's report Ex. $\frac{K}{2}$, Appendix A, will clearly show how your Memorialist came by these papers:—“Abaji Shrinivas Despande Kapsikar has produced, through the Mamletdar of Gad Inlaj, three documents,” in original, (*Vide* also Mamlatdar's Yadi No. 683 of 14th September 1876 to the Daftardar.). No objection was taken as to these at the trial. Abaji is the descendant of the original grantee.

- (4) EXHIBIT 12.—The Council's remarks that a Mahomedan cannot be a recipient of a vatan belonging to *मठ* “Math” simply betrays its ignorance. The Brahamin Deshpandes of certain villages are as a matter of fact owners of the vatans of all the twelve Balutedars, including Mhars even. There is nothing to show in that document that the vatan formerly belonged to a Lingayat. The genuineness of it cannot, as has been already remarked, be questioned at this stage.

(c) *Permission granted for adoption.*—

- (1) EXHIBIT P.—For genuineness, &c., *vide* para. 57 of the memorial of the 10th March.

(f) *Senapati's power to resume and grant Vatan*—

- (1) EXHIBIT Q.—It contains the words तुम्हें बलन सत्कारत जप्त होने, not “गहाण होने,” which speak for themselves that the vatan was attached and not mortgaged. It is quite different from the “*kamat*” that was pledged, probably in satisfaction of the *nazarana* for the release of the “*japti*.” The tenor, and especially the last sentences, fully support the Memorialist's contention.
- (2) EXHIBIT R.—The village of Mangnur referred to in it is upto the present time in the direct possession of Kapsi Chief, and the extract is from the accounts of “Sarkar Rajeshri Senapati.” These two facts show beyond doubt that it was the Senapati who attached the Kulkarn vatan, and released it on receipt of *nazarana*. There seems to be no written agreement entered into by the parties.
- (3-4) For explanation *vide* remarks about Lat in reply to para. 18, p. 11 *ante*, and para. 50 of the memorial of the 10th march.

(g) *Exchange of Vatandar's Villages*—

EXHIBIT 12.—The document now considered untrustworthy for the first time has been admitted to be genuine by the Durbar officials themselves at the time of the Succession inquiry of the Alabadkar Desai. The sanad was produced by the Desai himself in those proceedings, and your Memorialist has produced it from them. Besides, it is now too late to raise such objections.

23. This is again inconsistent with the admission of the Durbar in the statement of reasons that the four feudatories had levied *nazars*, but that depended on the status of those Chiefs and the large extent of territory they possessed (*vide* Appendix D, p. 6.) The usage in Kapsi was just the same as in the other feudatory States (*see* Exhibit 42, Appendix B, pp. 6-8); and as regards the allegation that the acts of the Political Agent were *ex parte*, and that the attention of the Kolhapur Durbar was never drawn to it, it is sufficient to state that at each time the Political Agent decided these matters on reports being received through the Duftardar of Kolhapur. It may also be added that the Political Agent then was guardian both of the particular feudatory Chief and the Kolhapur Raja. Moreover, there are instances of such *nazars* being credited to Kapsi even during the time when H. H. Baba Saheb Maharaj was ruling in person (*vide* Exhibit $\frac{F}{2}$, Appendix A; and para 67 of the memorial of the 10th March). The statement as to the recent crediting of the *nazars* to the Kolhapur State by orders of the Bombay Government, is immaterial for the purposes of the present case, as that arrangement came into existence after the present dispute arose, and is itself a matter in dispute. Moreover, these orders are really *ex parte*, as the

Chief or Chiefs against whom they were made were not called upon to support their claims.

24. The long argument made out of para. 28 of the memorial of the 10th March has simply arisen through utter misunderstanding. The Chief of Kapsi does not deny that he is a vassal of the Raja of Kolhapur. He admits that the Raja is his seignor. All that he has shown is that the Durbar has no right whatever over the soil, &c., granted to him by the Rajas of Satara and continued from time to time by the Rajas of Kolhapure. It has been already shown that the jahagir has been in perpetual enjoyment of the Kapsi family.

He (your Memorialist) further submits that although Kolhapur is his seignor, it cannot have any right of reversion to or *naaxrana* from, kadim inamdars, as all such rights were given to him by his grant, by whomsoever it was made.

25. This para has been sufficiently answered in the memorial of the 10th March (*vide* paras. 29, 30, 31, 56, 68 and 69; and also para. 12 of this memorial).

It may be stated that the Kagal resolution rested upon no circumstances peculiar to that case, as is now wrongly asserted by the Durbar, nor is the Durbar correct when they say that it is not final.

26. Exhibit $\frac{G}{2}$ has been misunderstood. It shows that there can be no kadims or prior grants in the villages that were desolated.

27. The Duftardar was expressly deputed by the Political Agent to examine and report upon the evidence produced before him, and therefore, his report in this respect must be held to be binding. Moreover, no objection as to its admission being taken by the Council at the time when the case was argued at Kolhapur, and it being allowed to be recorded in the case estops the Council from disputing its validity and irrelevancy for the first time at this stage. Any objection then taken would have been easily and satisfactorily answered. As regards Exhibits 12 and P. the remarks already made show the validity of those papers, and their admission in the case by the Duftardar shows no negligence on his part. As regards the sweeping assertion on the entire evidence, *vide* para. 57 of the memorial of the 10th March and paras. 7 and 8 of the present memorial.

28. The remarks in this para have been answered in replies to para. 22 of the rejoinder, (see p. 12 *ante*).

29. The present deprivation of the Memorialist's civil and criminal powers is immaterial. Kapsi Chiefs as a matter of fact have enjoyed these powers without limit, and that is the sole point to be seen in the present case (see p. 10 *ante*).

30. The Senapati never denied that the Raja of Kolhapur was his seignor; but he asserts that Kapsi Chiefs have never been subject to the general

or fiscal laws of the Kolhapur State (see paras. 34, 35, and 72 of the memorial of the 10th March). Your Memorialist cannot understand by what process of reasoning the Durbar argues the entire subordination of Kapsi from stray *adnya-patras* to some disobedient subjects. The advice given by the Political Agent to Senapati in 1855 in revenue and other matters is received from him as the representative of the British Government—a practice confirmed by Article 8 of the Treaty of 1862. See the manner of blowing hot and cold regarding the capacity of the Political Agent taking action either on behalf of or independently of the Kolhapur Rajas, *vide* para. 15 of this memorial, and see p. 17 *ante*. Your Memorialist does not understand how the Political Agent, who is considered by the Darbar to be so alert to watch the interests of the Kolhapur Raja in 1855 failed in their opinion to do so only two years after, by allowing against the interest of his ward, the Kolhapur Raja, the *nazarana* of kadim inams to be credited to the Kapsi treasury (see Exhibits $\frac{DE}{2}$ and $\frac{F}{2}$).

31. The question regarding fiscal laws did not form part of the present proceedings at Kolhapur, and no point was made of it in appeal by your Memorialist. It will have to be considered separately upon taking evidence if necessary; there was no waiver on Memorialist's part.

33. The Council's remarks about stamps have been sufficiently answered in paras. 37 and 71 of the memorial of the 10th March. Your Memorialist begs to submit that his pleader at Kolhapur could not possibly have made any such admission as is alleged by the Council. He is not aware of any such admission being made. As to the status, it cannot be denied that Ichalkaranji at least is inferior to Kapsi.

34. The Resolution of the Council having conceded to the Senapati the full rights as regards *jadid inams*, the attempt by the Council in the statement of reasons and in the present rejoinder to show that the right of Kolhapur to levy *nazar*, &c., in regard to them is futile, as it re-opens a point which has been fully determined in favour of the Senapati (*vide* his petition dated 15th May 1888 and its accompaniments).

As regards the Local cess, there is no reason shown why distinction should be made between the Senapati and the other four Chiefs. His position has been equal to theirs in all matters. The Senapati ought to be allowed to manage his Local cess independently. The reasons given against this are simply arbitrary and not founded upon any real distinction. The statement made in paras. 38 and 39 of the Memorial of the 10th March cannot be shaken by the simple assertion of orders passed after the dispute arose and the validity of which is contested, however an inaccuracy may be pointed out. The Council says that the Local cess was levied by order of the Kolhapur State; but this is wrong, as the Darbar itself cannot impose new taxes without the sanction of the British

Government (*vide*) Government Resolution 1236, dated 13th March 1882 and the Treaty of 1862; the Sanapati himself imposed the cess on finding a similar cess levied in the Kolhapur State, he being desired to do so by the Political Agent as the representative of the British Government. It is also noteworthy to state that by order of the Political Agent, the Local cess on the Naiki vatan of Lat granted by Kapsi to Kolhapur is imposed by your Memorialist and is deducted from the dues he has to pay annually to Kolhapur (*see* Political Agent's order No. 309 of 15th April 1873). If the levy were made under the orders of Kolhapur, then there was no necessity for such a deduction. The recent complaint is not simply limited to the forcible seizure of the Local fund but comprehends the recent deduction of the amount from the *jamabandi* of Kapsi by orders of the Chief Revenue Officer, perhaps with a view to prepare evidence in favour of Kolhapur. Nothing has been said regarding this in the rejoinder.

35, 69.—Mere repetition which does not require any detailed answer, *vide* replies *ante*. However, see the following with reference to a few points.

39 and 48,—As to the remarks that the Kapsi Chiefs being holders of a military fief are unable to make subgrants, the grant of Ichalkaranji Jahagir, and the Naiki Vatan at Lat, &c., are sufficient answers. Moreover, the inference of a “year-to-year grant” from Exhibits F and G is wholly absurd; while Exhibit E, on which Exhibits F and G are based, implies a hereditary grant with all the old incidents.

40—44 AND 64.—Exhibits A to E are produced by the Memorialist to show by analogy the nature of his grant. Exhibits C and D themselves speak of old papers having been lost. The fact that the villages have since gone out of the hands of the Memorialist's family is immaterial in determining the nature of his original grant:

58.—The very heading of Exhibit $\frac{D. E.}{2}$ shows that the *nazars* were taken from the old Vatandars as such. Besides, the suggestion of the Durbar that these *nazars* must have been paid by the Vantmurikar Desai and a Nadgauda for some new grant held under Kapsi has, nothing to support it and is a confession of the weakness of the contention of the Durbar. If the Durbar had cared to notice other entries, such as Nos. 47, 48, 55, &c., in that document, and especially entry No. 66, it could have seen that the *nazaranas* were received on account of the old Vatans.

65.—It being admitted that the Kapsi Chief exercised unlimited jurisdiction, it now remains for the Memorialist to assure the Government that if he be confirmed in those powers, he is prepared to make such arrangements for the exercise of them as will be found entirely satisfactory. (See para. 33 of the memorial of the 10th March).

(Printed from a printed copy.)

APPENDIX III.

THALI No. 2 OF 1886.

TO

W. LEE-WARNER ESQ. M. A. C. S.

ACTING POLITICAL AGENT,

KOLHAPUR AND S. M. C.

*The humble memorial of SANTAJIRAO GHORPADE,
Chief of Kapsi, in the territories of
Kolhapur.*

RESPECTFULLY SHEWETH,

That your memorialist received a communication from Colonel Schneider, the then Political Agent, No. 7 dated 7th July 1875 directing that your memorialist instead of holding himself any *Varas Chaukasi* or enquiry on the death of every holder of an alienation, should send up all succession cases to the Kolhapur Durbar, inasmuch as it was that Durbar that had the right to hold such enquiries and receive the Nuzzrana and other benefits arising out of successions in respect of alienated land or revenue. Your memorialist protested against this order by his *thali* No. 27 dated 22nd October 1875, urging that the right put forward on behalf of the Kolhapur Durbar was not tenable. Your Honor's predecessor, by order No. 265 dated 31st December 1875, called for a report on your memorialist's protest from the Dufterdar of the Kolhapur State. That officer after a full and lengthened investigation forwarded his report to your Honor's predecessor on the 4th November 1879. It is now nearly seven years since the last mentioned date when all the necessary investigation was completed and the matter was ripe for the orders of the Political Agent; and yet strangely enough, the matter still remains undisposed of. What is stanger still is that the Regency have been systematically ignoring your memorialist's protest and the following investigation and the fact that it remains undisposed of, and have passed in quick succession orders which your memorialist will not characterize at present beyond stating that at the best they depend for their validity on an order of the Political Agent which itself was protested against by your memorialist and has been actually under investigation and so sub-judice. Under these circumstances your memorialist prays that your Honor be pleased to direct the matter to be brought on for disposal as early as possible.

2. Your memorialist feels it his duty here to bring to your Honor's notice that the matter has, according to your memorialist's information, been transferred

to the Council of the Regency for disposal. Without meaning the slightest disrespect towards that Administration, and regarding the matter purely from a constitutional point of view, your memorialist ventures to contend that the proper tribunal for the disposal of the said matter is that of the Political Agent of Kolhapur and S. M. C. in his capacity of Representative of British Government and not the Council of Regency. At the time when this matter first began the Political Agent filled two capacities, viz. that of the Representative of British Government and that of the guardian and administrator on behalf of the Maharaja of Kolhapur during minority. Now that the two capacities have been dissociated since the establishment of the Council of Regency, the question as to where the matter will be disposed of presses for a solution before the matter is taken up. Your memorialist respectfully submits that Article 8 of the Kolhapur treaty dated 20th October 1862 is decisive on this point. It runs as follows :—

ARTICLE 8.

“That certain of the higher Jaghiredars, such as the Pratinidhee of Vishalgur, the Punt Amatyia of Bowra, the Chiefs of Kagul, Inchalkurunjee, Kapsee, Torzul, the Sirluskur, Narayen Rao of Kagul, Ruma Bai of Walwa, Himmat Babadoor, should be considered as still in some degree under the supervision of the Political Agent, who should act, as far as circumstances will permit, in co-operation with the Rajah's Government; and that all criminal cases within the Jurisdiction of these Sirdars, involving death or imprisonment beyond seven years should be forwarded for trial before the Political Agent for submission to Government. The supervision proposed to be retained over these Sirdars and the guardianship of such of them as may be minors, by the British Government acting in concert with the Rajah are not intended in any way to infringe the seignorial rights of the Rajah but merely to secure good Government, and to prevent those disputes which in old days were frequently the cause of disturbance and bloodshed.”

(See Aitchinson's Indian treaties Vol. IV. p. 413; Talbot's revised edition 1876.)

This provision has been preserved intact in the Resolution of the Government of Bombay, No. 1236 Political Department dated 13th March 1882 creating the Council of Regency. The twelfth paragraph of the said Resolution runs as follows :—

“The Supervision of the Political Agent over the affairs of the higher Jaghiredars will be maintained according to the terms of Article 8 of the Treaty of 1862.”

Reading both these provisions together, your memorialist maintains that the object of the Bombay Government in framing them was to extend protection to the principal jaghiredars of the Kolhapur State by making them subject to the jurisdiction of the Political Agent for certain purposes. The avowed object of this provision was “to secure good Government and prevent those disputes which in old days were frequently the cause of disturbance and bloodshed.” On the present occasion the cause of complaint which your memori-

alist makes is a certain claim put forward by the Kolhapur Durbar in opposition to that of the Jaghire of Kapshi. Add to this that the Jaghire of Kapshi is distinctly mentioned in Article 8 of the treaty of 1862 as entitled to the protection thereby contemplated, and your memorialist submits that his case will be considered to be clearly within the purview of the said provisions. If the matter is placed before the Council of Regency in this light, it is not unlikely they will disclaim any desire to act the judge in a cause in which they as representing the Kolhapur Durbar are and ought to be highly interested.

3. There is another ground in support of your memorialist's view viz that this is a matter of a date prior to the establishment of the Council of Regency. An exact precedent governing the present case will be found in the late lamented Chief of Kagul having obtained through the Political Agent and the Bombay Government a rejection of *precisely* the same claims of the Kolhapur Durbar against the Jaghire of Kagul. It must further be noted that this took place after the establishment of the Council of Regency (vide Government Resolution No. 774 Political Department dated 15th February 1883). Your memorialist hopes that unless your Honor is satisfied, after hearing your memorialist, that his case can in any wise be satisfactorily distinguished from the abovenamed case, your Honor will not apply to your memorialist a measure of justice different from the one adopted on that occasion.

4. Whatever the conclusion your honor arrives at as to the tribunal which should dispose of this matter, your memorialist confidently hopes your Honor will sympathize with him in his desire to obtain a speedy termination and disposal of a matter which, to speak as little on the subject as possible, has rendered his position highly uncomfortable and even unbearable. Your memorialist extremely regrets to observe that he is beginning to despair of seeing the matter brought on for disposal in its course, unless your Honor be pleased to imperatively expedite it.

5. Your memorialist next prays that your Honor will inform him where and when he will be heard that he may arrange to appear by Counsel duly instructed. The matter which was primarily simple though all-important to the interests of his Jaghire has been so complicated by orders passed since 1881, that your memorialist will be seriously prejudiced if he does not secure the assistance of counsel in representing his case.

And your memorialist as in duty bound will ever pray.

Kapshi, 19th July 1886.

(Sd.) SANTAJI RAO GHORPADE,
Chief of Kapshi.

APPENDIX IV.

Shri (*i. e.* Prosperity.)

To the service of [my] lord, the illustrious Maharaj Chhatrapati Sahib, Sarkar of Karvir.

[I, your] obedient servant Santajirav Ghorpade, Senapati of the Sansthan of Kapshi, present many salutations and represent as follows:—By your Highness's kindness, I your servant am all right upto the 11th day of the month of February 1888 A. C. Further,—I have presented an appeal to the Government of Bombay with referenee to the rights of my State, [and] I beg that the following information and papers relating to the Vishalgad State may be furnished to me, to enable me to put the same in evidence in that matter.

The village of Shembayne in the Vishalgad State was held in Inam by Sabnis, but during the time of Vithal Appaji Sabnis, in the year 1844-45, one-third of the said village was resumed on a charge of [his having raised] a rebellion, and was annexed to the [Vishalgad] State. The revenue of the same is now received by the State. The remaining two-thirds of the village are now held by Mahadaji Shankar Sabnis. Such is the information I have received. Do you be pleased to see the documentary evidence on the subject and furnish me with correct information.

For the same reason as aforesaid, one-sixteenth part of the income out of the income of Narayan Chitko, the Nadgounda of the aforesaid State, was resumed and is credited to the [Vishalgad] State by order of the Government of Bombay. Do you be pleased to see the documentary evidence on the subject and furnish me with information.

The Kulkarni's office of the village of Kapshi in the said State was held by Naro Krishnar Dhavle. But there being no descendant of his left, it lapsed and is annexed to the State, and a Talathi has been appointed for this village on behalf of the [Vishalgad] Sarkar. Do you be pleased to see the documentary evidence on the subject, and furnish me with information.

The Kulkarni having sold to the State the income of the [Kulkarniship] most probably of the village of Wadgav in the said State, the said income is now credited to the State. Do you be pleased to see the documentary evidence on the subject, and furnish me with information.

I learn that that the service portion [*i. e.* service commutation] of Krishnabai Dessai Nikam and of Narayanrao Shinde Jakhlekar Sarchangula and of other persons, although the same former part of ancient grants, is credited to the State. Do

you be pleased to see the documentary evidence on the subject and furnish me with correct information.

The above information should be sent in such a manner that it would reach my Vakil at Bombay before the 14th day of the month of February 1888 A. C. I have therefore sent my Karkun, Shitaram Bhagwant, from here expressly for that purpose. I pray that an order may be passed directing that steps may be quickly taken to furnish him with the above information.

May this be known to your Highness. This is my representation.

SANTAJIRAO GHORPADE,

Senapati.

REPLY TO THE MEHERBAN.

It will have to be considered in the Council whether the information asked for by you ought to be sent for and furnished to you. There is no time to do so. Besides, even if the facts are as you have stated them in detail, it does not appear that the information has any relevancy with the appeal regarding your claims pending before the (Bombay) Government. Consequently the information asked for by you cannot be sent for. Let this be known to the Meherban. Dated 11th. February 1888.

(Signed) M. KUVARJI,
Divan, Karvir Government.

Received, 11-2-88.

APPENDIX V.

(Translated substance of a Vernacular Order.)

Miscellaneous outward No. 202.

Yadi (memorandum) from the Divan Sarkar Karvir to Meherban Santaji-rao Saheb Ghorpade Senapati Kapsikar to the following effect:—An English letter No. 3535 dated the 23rd December 1887 having been received from the Political Agent, Kolhapur and S. M. Country, in the matter of your appeal to the Government of Bombay regarding your claims, against the Kolhapur Durbar, you are hereby informed that the hearing of the said appeal would take place at the Bombay Secretariate Council Hall on the 14th of February 1888, when you should arrange to appear either by a duly instructed pleader or counsel to represent your case. The notice of issues on which arguments will be heard will be sent hereafter. You will please arrange to send four copies of your petition of appeal to the Bombay Government, to the Political Agent's office and three to the Durbar's office. Be this known. Dated the 29th December 1887.

(Signed) M. KUVARJI,

Divan,

Sarkar Karvir.

Dhondo Bachaji,

Chitnis.

APPENDIX VI.

No. 857 of 1888.

From

LIEUT. COLONEL F. M. HUNTER,
Acting Political Agent,
Kolhapur and S.M. Country.

To.

SANTAJIRAO GHORPADE,
Chief of Kapsi.

Kolhapur, 3rd April 1888.

SIR,

With reference to your letter No. 4, dated 2nd instant, I regret to inform you that I am unable to furnish you with the Government Resolution referred to. In the absence of a copy of the communication addressed to you by the Kolhapur Durbar, it is impossible for me to say whether the orders of Government have not been duly communicated to you.

2. You ask for copies of the Minutes of the President and Chief Revenue Officer in your case. These Minutes form part of the official correspondence on the subject of your claim, and are not the *documentary evidence* upon which the Kolhapur Durbar rely and to which Government have authorised me to give you access. I think, therefore, that the Kolhapur Durbar have rightly refused to grant copies of the Minutes in question. You have already been furnished with a statement of the reasons for the Council's decision.

I have the honour to be,

Sir,

Your most obedient servant,

(Signed) F. M. HUNTER,

Acting Political Agent,

Kolhapur and S. M. C.

APPENDIX VII.

No. 94 of 1888.

DIVAN'S OFFICE,
Kolhapur, 16th January 1888.

From

KHAN BAHADUR

MEHERJIBHAI KUVARJIBHAI,

Divan of

Kolhapur.

To

THE HON'BLE

RAO SAHEB

VISHVANATH N. MANDLIK,

High Court Pleader,

Bombay.

SIR,

In reply to your letter, dated the 11th Instant, requesting to be furnished with copies of the judgment of the Council of Administration in the case of the Senapati of Kapsi, I regret that I am unable to comply with your request as the proceedings of the Council have already been transmitted to the Government of Bombay.

I have the honour to be,

Sir,

Your most obedient servant,

M. KUVARJI,

Divan of Kolhapur.

APPENDIX VIII.

(Printed from a certified Copy.)

No. 380 of 1888.

Urgent

Political Agent's Office,

Kolhapur & S. M. C.

From

COLONEL H. N. REEVES,

Political Agent,

Kolhapur & S. M. Country.

To

THE DIVAN OF

KOLHAPUR.

Kolhapur, 17th February 1888.

SIR,

With reference to correspondence ending with your letter No. 214 dated 8th Instant in the Kapsi Chief's case, I have the honor to return the minutes and proceedings relating thereto and to inform the Council of Administration that in consequence of its and the Kapsi Chief's inability to present their case for argument on 14th Instant, Government have adjourned the disposal of it and in view of the alteration of the circumstances caused by this delay, they direct that a statement of its reasons for its decision should be drawn up by the Council of Administration and lodged with Government by the end of this month, a copy being furnished direct to the Chief of Kapsi and the fact reported to me to be certified to Government. The Chief of Kapsi should be asked to similarly lodge his counter-statement with Government by the 10th March and furnish the Kolhapur Council with a copy of it. The Kolhapur State should then prepare and send in its reply by 20th March and furnish as before a copy to the Kapsi Chief. The various statements will then be fully considered by Government.

2. If the Kolhapur State and the Kapsi Chief rely upon documentary evidence, each should have access to the particular papers relied upon by the other, but this access does not imply an unlimited privilege of demanding copies or examining archives. The privilege is *prima facie* confined to the documents expressly relied upon on either side so far and in regard to such parts of them as bear on the case. If any other document is embodied by reference in one relied upon

or so closely connected with it as to be essential for its right comprehension, access should be given to it. In every case, however, the privilege is to be controlled by the discretion of the Head of the Department in whose charge the documents are and who, if he considers the communication of it injurious to the public interests, will withhold it.

3. The Chief of Kapsi has raised in his petition, dated 7th February 1888, an issue in regard to the Watans and emoluments of village officers within his estates, but these privileges, though generally attached to a condition of service, may be deemed to be included within the category of Inams mentioned in Government Resolution, No 561, dated 26th January 1888. Any specific differences will of course justify a separate explanation if that is desired, but it should be connected with the point already raised concerning Inams.

4. I request that the necessary communication may be made to the Chief of Kapsi and copies of the statements and counter-statements furnished for the use of this office in addition to those to be lodged with Government.

I have &c &c.,

(Sd.) H. N. REEVES,

Pol. Agent, Kol. & S. M. C.

True copy,

M. KUVARJI,

Divan, Kolhapur.

(Printed from a Copy.)

APPENDIX IX.

No. 873 of 1891.

Kolhapur, 17th March 1891.

Forwarded with compliments to the Divan of Kolhapur.

2. The alleged Nagnur record now belongs to the Kolhapur State owing to the escheat of the Nagnur Saranjam. None of the documents relating to the Nagnur Estate have been relied on by the Kolhapur Durbar in their appeal to the Secretary of State. No party has the unlimited privilege of searching the records of his opponent and consequently the demand of the Kapsi State to inspect the Nagnur record is inadmissible. The Kapsi Karbhari may therefore be instructed to inform Mr. Khare to the above effect.

3. Exhibits Nos. 1 to 39 translations of which are appended to the Durbar's appeal to the Secretary of State are new documents which have been relied on in appeal by Kolhapur and in the opinion of the Political Agent Kapsi may justly claim to inspect the original documents. An inspection of these may therefore be allowed. The Kapsi Karbhari may be told to inform Mr. Khare that this will be done and that the date of presentation of the appeal to the Secretary of State in this Office was 7th February 1891.

(To be returned please)

(Signed) C. WODEHOUSE,

Colonel,

Political Agent,

Kolhapur & S. M. Country.

No. 652 of 1891.

DIVAN'S OFFICE,

Kolhapur, 18th March 1891.

Forwarded to the Karbhari of Kapsi for information and guidance. An inspection of the vernacular papers of which Exhibits 1 to 39 are translations, will be allowed in this Office to any man whom the Kapsi State will depute for that purpose.

(To be returned.)

(Signed.) M. KUVARJI,

Divan.

Received, 20-3-91.

. B. P. P. .

APPENDIX X.

A detailed statement of the Revenue of the Kapshi Taluk as appearing from the Sansthan accounts.

	Rs. a. p.	Rs. a. p.	Rs. a. p.
Amounts of village and other revenues as already shown in paragraph 7 of the Memorial of 10th March 1888 .....	.....	.....	60,787 5 6
Revenue of villages assigned to bhaubands from the Sansthan for maintenance—			
Mouje Madbihal assigned to Dinkarrao Ghorpade .....	.....	700 0 0	
Villages assigned to Narayanrao Ghorpade—			
Khadakvada	500 0 0		
Shipur	600 0 0		
Belevadi Kalamma.....	400 0 0		
	<hr style="width: 100%;"/>	1,500 0 0	
Villages assigned to Mansingrao Ghorpade, viz., Hasur and Hebbal .....	.....	1,500 0 0	
Mouje Galgale assigned to Bhavanrao Ghorpade .....	.....	700 0 0	
Mouje Galgale and Mouje Navlyal assigned to Jai'amrao Ghorpade, .....	.....	1,500 0 0	
Villages assigned to Sankrojirao Ghorpade—			
Chikalvhal	1,200 0 0		
Bamne	200 0 0		
Pangere	1,100 0 0		
Nandyal.....	500 0 0		
	<hr style="width: 100%;"/>	3,000 0 0	
Villages assigned to Laxmibai Saheb Ghorpade—			
Mouje Nagnur	1,700 0 0		
" Jenyal.....	400 0 0		
" Bolavi.....	500 0 0		
Hasur Khurd.....	500 0 0		
	<hr style="width: 100%;"/>	2,900 0 0	
Grant made to Ichalkaranji as appearing from the Daf-tardar's report		70,066 2 3	
Fractional Inams assigned for charity and service—			
Shri Tatyā Maharaj .....	.....	
Mouje Rampur	1,200 0 0		
Majre Sankanvadi	300 0 0		
	<hr style="width: 100%;"/>	1,500 0 0	
Mohidin Siraj Desai—			
Mouje Alabad	900 0 0		
" Nagargav	100 0 0		
	<hr style="width: 100%;"/>	1,000 0 0	
Shri Swami Jagatguru (in satisfaction of debt)—			
Valki Kasba Lat.....	1,936 12 3		
Akabaisaheb Nimbalkar—			
Hasur.....	500 0 0		
Ramaji Bhagvant Deshpandye—			
Arjunvada	500 0 0		
Shri Goddess Ambabai of Kolhapur—			
Mouje Bhendavde	200 0 0		
Govind Trimbak Nadgauda Belevadi.....	400 0 0		
Tato Shrinivas Balekire (half)	188 0 0		
	<hr style="width: 100%;"/>	7,324 1 7	
		<hr style="width: 100%;"/>	89,190 3 10
			Total Rs. 1,49,977 9 4

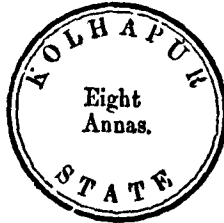
(Translated from Marathi.)

APPENDIX XI.

Daji Waman Nayab

4 Four annas, copying charges.
The..... of April 1891.

Court fee



Kolhapur Stamp
No. 14528 of the
year 1890
Value 8 Annas.

- 1 Application for copy made on the Seventh. 7-4-91 Christian year.
- 1 Copy ready on the Eighteenth 18-4-91.
- 1 Copy delivered on the twenty-first 21st of April 1891.

Damodar Mahipat Chitnis.

The illustrious deity Ganpati.

Christian year 1794.

Received on the 21st Moon of the month of Jamadilaval in the Sur year one thousand one hundred and ninety-five (i. e. 15th December 1794.)

To the respected Ramchandra Rao Ghorpade Senapati (i. e. commander of the army) who is honored by the King, whose adornment consists of all good qualities and who is possessed of immeasurable wealth.

Blessings from his friend Parashram Ramchandra who represents as follows :—

Do you be pleased to know that we are all right here and be pleased to write about your own welfare. Further, the dress of honor appertaining to the title of Senapati (commander of the army) was conferred upon you by the Rajmandal in the current year. As to that, in the meantime, an arrangement was come to through the intervention of Rajashri Dadaji Yashwant, to the effect that Rupees ten thousand should be paid to that Government and that very person has been caused to give an assurance for the same. As to that, the bond in respect thereof which was to arrive from

you has not yet arrived and therefore this letter is written. Do you, therefore, immediately on receipt of this letter, send a bond in my favour for the said (amount of) ten thousand Rupees, so that, payment of the amount will be caused to be made. As to other (matters), Dadaji Yashwant will make arrangements regarding the Mahals (i. e. districts) under you, in the same manner as they were formerly made by Santaji Ghorpade who is now a denizen of paradise. Do not do anything without his knowledge. In short, you are to do that thing which will not bring you into the clutches of creditors. Despatched on the 20th Moon of Ravi-al-akher Sur year one thousand one hundred and ninety-five (i. e. 14th November 1794). What more needs be written. This is my representation.

[Here follows a memo. made by the copyist which is not translated.]

True copy,

M. KUVARJI,

Divan, Kolhapur State.

The 18th day of the month of April 1891.

[On the back of the document there are certain unimportant endorsements and signatures which are not translated.]

Translated

R. G. Deshmukh.

Translator.

26-4-91.