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THE
HEREDITARY OFFICES ACT

BEING

Bombay Act III of 1874 as amended
By V of 1886 & III of 1910

(WITH A SUMMARY OF LAW OF INAM TENURES

BY

H. S. PHADNIS, B.A. LL.B
District Judge, Ratnagiri.

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SECOND EDITION.

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PREFACE

———:o:———

This edition of the Act was long over due, but owing to official duties and other causes, could not be brought out earlier. Since the last edition the Act has been amended in some material points which have been duly noted at their proper places. The most important of them is the amendment made in section 36—the substitution of the ordinary rule of nearest heir by the rule of lineal primogeniture. This has necessitated the quoting of copious extracts from the speeches in the Legislative Council in order to elucidate the object, purpose and scope of the amendment and the formulating of tentative rules with a view to facilitate the correct interpretation of the section—how far the rules will fulfil this object experience only will show.

The book has been thoroughly revised and all the authorities have been brought up to date. The law of Inam Tenures which was very cursorily touched upon in the Introduction of the last edition has been, in view of its importance, treated here much more fully in a separate Appendix. The bare text of the Act is also added for the sake of easy reference. The summary of Hindu Law of adoption and succession which appeared in the last edition has been omitted as being unnecessary.

I am grateful to Government for their having kindly permitted me to make use of the Government Resolutions on the Act, and my thanks are due to Mr. V. V. Pandit B. A. LL. B., Head Clerk, District Court, Ratnagiri and Mr. K. G. Gejji B. A. of the Collector's Account Office, Belgaum, for the valuable assistance they gave me in the preparation of the book as well as in seeing it through the Press.

MIRAJ,
1st August 1911.

H. S. PHADNIS.

PREFACE TO THE FIRST EDITION.

The Bombay Hereditary Offices Act, No. 111 of 1874, commonly called the Watan Act, is an enactment of considerable importance and practical application, building upon its old basis, the native system of village government, and protecting, on grounds of public policy, the interests of a large and influential class of land-holders in the Presidency. Cases under it are very common in the Revenue Courts. And it is one of the Acts specially prescribed for the Lower and Higher Standard Examinations.

In this compilation all the available Government Resolutions and High Court decisions bearing on the subject are noted under different sections. The sections themselves are elucidated by explanatory notes. As a large number of Watan cases coming before the Revenue Officers involve not unfrequently questions of Hindu Law, the leading rules of the Bombay Hindu Law of Adoption, Alienation and Succession are embodied in this compilation for the sake of easy reference. In order to avoid confusion and complexity the subject of the extent of jurisdiction of Civil Courts is treated separately in the Appendix. The history of Watan Law and Tenure is traced in the Introduction.

In the Notes I have dwelt not without diffidence upon a few important points in Watan Law, which seem to be still unsettled or to require further consideration *e.g.*, *vide* pages 16–17, 83–86, 120–121, 205–206, 315. It may not be amiss to humbly throw out a suggestion here that, at the time of the next amendment of the Act, opportunity may profitably be taken to reserve to Government power to submit any important or doubtful point in Watan Law for opinion to the High Court. Such a power can well be utilized in cases like those of Radhabai *v.* Anantrav, 9 Bom. 198, Anantacharya *v.* The Secretary of State, 19 Bom. 581.

BIJAPUR,
August 1896.

H. S. P.

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INTRODUCTION.

Watan tenures are of ancient origin. To understand them properly it is necessary to look into the system of the civil administration of the country before the advent of the British rule.

PART I.

CIVIL ADMINISTRATION UNDER THE PEISHWAS' RULE.

A.—REVENUE SYSTEM.

Constitution of village.

In whatever view we examine the Native Government in the Deccan, the first and most important feature was the division into villages or townships. These communities contained in miniature all the materials of a State within themselves, and were almost sufficient to protect their members, if all other governments were withdrawn. Though probably not compatible with a very good form of government, they were excellent remedy for the imperfections of a bad one, they prevented the bad effects of its negligence and weakness; and even presented some barrier against its tyranny and rapacity. Each village was, so to say, a self-constituted corporation. It was, indeed, a most complete little common-wealth held together, independent of the outside world, by the individual interests of its inhabitants. It had within itself the means of supplying all its wants and necessities. It had its hereditary succession of office-bearers and artizans. It had a portion of ground attached to it, which was committed to the management of the inhabitants. The boundaries were carefully marked, and jealously guarded. They were divided into fields, the limits of which were exactly known, even when the cultivation

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* This Introduction is based principally on the Hon'ble Mountstuart Elphinstone's *Report on the Territories conquered from the Peishwa*, Col. Ethridge's *Narrative of the Bombay Inam Commission* (Government Selections, No. CXXXII—New series), the Proceedings of the Bombay Legislative Council, and the Law Reports of the Bombay High Court.

of it had long been abandoned. The villagers were almost entirely cultivators of the ground, with the addition of the few traders and artizans that were required to supply their wants. The head of each village was the Patel, who had under him an assistant, called a Chaugala. There were generally 12 village officers, who were known by the name of the *Bara Balutedars*.

Bara Balutedars.

These were: (1) the *Patel*, or head revenue and police officer, (2) the *Kulkarni*, or accountant and registrar, (3) the *Sutar*, or carpenter, (4) the *Lohar*, or blacksmith, (5) the *Chambhar*, or worker in leather, (6) the *Kumbhar*, or potter, (7) the *Nhavi*, or barber, (8) the *Parit*, or washerman, (9) the *Joshi*, or astrologer, (10) the *Gurawa*, or priest, (11) the *Sonar*, or goldsmith, (12) the *Mhar*, or watchman. They varied, however, in different localities both in name and number, but *bara*, or 12, was considered the proper number of effective officers, *balutedars*, for each village. The only ones, however, concerned in the administration of government were the Patil, Chaugala, Kulkarni, Sonar, who was both silver-smith and assayer of money, and the Mhar. Each of these classes consisted of one or more individuals, according as their original families had branched out. The Mhars were seldom fewer than four or five, and there were besides very frequently Ramosees, employed also as watchmen, but performing none of the other duties of the Mhar.

The Patels were the most important functionaries in the villages and perhaps the most important class in the country. They held their office by a grant from the Government (generally from that of the Moguls), were entitled in virtue of it to lands and fees, and had various little privileges and distinctions, of which they were as tenacious as of their land. Their office and emoluments were hereditary, and saleable with the consent of the Government, but were seldom sold, except in cases of extreme necessity, though a partner was sometimes admitted with a careful reservation of the superiority of the old possessor. The Patel was head of the Police and of the administration of justice in his village; but he need be mentioned here as an officer of revenue. In that capacity he performed on a small scale what a Mamlatdar did on a large; he allotted the lands to such cultivators as had no landed property of their own, and fixed the rent which each had to pay; he collected the revenue for Government from all the ryots; conducted all its

Patel.

arrangements with them, and exerted himself to promote the cultivation and prosperity of the village. Though originally the agent of the Government, he was, as time passed on, regarded as equally representative of the ryots, and was not less useful in executing the orders of the Government, than in asserting the rights, or at least in making known the wrongs, of the people.

Kulkarni

The Kulkarni kept the numerous records and accounts of the village. The most important were: *1st*, the general measurement and description of all the village lands: *2nd*, the list of fields, with the name, size, and quantity of each, the terms by which it was held, the name of the tenant, the rent for which he had agreed, and the highest rent ever produced by the field: *3rd*, the list of all the inhabitants, whether cultivators or otherwise, with a statement of the dues from each, to Government; and the receipt and balance in the account of each: *4th*, the general statement of the instalments of revenue which had been realized: *5th*, the detailed account where each branch of revenue was shown under a separate head, with the receipts and balance on each. Besides the public records, he generally kept the accounts of all the cultivators with each other, and with their creditors,—acted as a notary public, in drawing up all their agreements, and even conducted any private correspondence they might have to carry on. He had lands, but oftener had fees allotted to him by Government from which he held his appointment.

Chaugala, Mhar and Sonar

The Chaugala acted under the orders of the Patel and assisted him in his duties; he also had the care of the Kulkarni's records. The most important revenue duty of the Mhar was to watch over the boundaries, both of the village lands and of each individual's field; to see that they were not encroached upon; to give evidence in cases where they were disputed; he watched over crops, whether cut or growing, as long as they were in the fields. He was also the public messenger and guide, and a most important actor in the Police. The Sonar or Potdar, besides being the village silversmith, assayed all money, paid either to Government or to individuals.

Mirasis and Upris.

With the few exceptions already mentioned, all the villagers were cultivators; and these, as there were few labourers, were distinguished by their tenures into two classes, that of *Mirasis* or landed proprietors, and

that of *Upris* or farmers. All the land which did not belong to the *Mirasis*, belonged to Government, or those to whom Government had assigned it. The cultivated land belonging to Government, except some parts which it kept in its own hands, was always let out to *Upris*, who had a lease; with the expiration of which their claim and dues expired. These were all the tenures on which land was held, as far as regards the property of the soil. The assignments by Government, of its revenue, or share of the produce, will be mentioned hereafter.

Village expenses.

Such were the component parts of a village. Its transactions with Government will be explained hereafter; but there are some of its internal affairs still to be mentioned. The maintenance of the Village Temple; its fixed and authorised pensions, and annual charities; its ceremonies and religious charities; its alms to beggars, and entertainments to guests; its occasional amusements; its nazars to superiors; its offers to the Patel and other village officers; the expenses of the Patel on the public affairs; all these entailed a number of expenses on the community, which, unless allowed for from the Government revenue (which was very rare), were defrayed by a tax on the village. In general these expenses were in the proportion of one-tenth, or from that to one-fifth, to the public revenue. In addition to these, were occasional expenses, such as repairs of the village walls, the necessity of entertaining *Shibandis* for defence, or of paying an enemy. In this case, the village contracted a public debt which was gradually paid by an annual assessment, and sometimes provided for by mortgages or grants of land on the part of villagers. These grants were called *Gaum-nisbat Inams*. If they were so small as to be admitted by Government, no rent was charged on them; but if they were too large to be agreed to by Government the revenue was paid by all the other ryots, the creditor still enjoying them rent free.

Deshmukh and Deshpande.

The next division was a *Turuf*, composed of an indefinite number of villages, with perhaps an addition of uninhabited mountain and forest land (there being no other land not included in some village or other). A *Turuf* was under no particular officers; several of them made a *Perganna*, which was under a Deshmukh who performed the same functions towards the *Perganna* as a Patel towards the village. He

was assisted by a Deshpande, who answered to the kulkarni, and a Desha-Chaugula. The Deshmukh and Desh-chaugula, like the patel and chaugula, were Marathas; the Deshpande and kulkarni were Brahmins. Above these officers there appear to have formerly been Sir-Deshmukhs and Sir-Deshpandes; but this class of officers had become obsolete at the time of the introduction of the British rule. It is generally believed that the Deshmukhs and Deshpandes were all officers appointed by some ruling Government. It seems probable that they were the Revenue Officers of the old Hindu Governments, that these officers, being hereditary, like most others under the native Government, were in possession of too much knowledge and influence to be dispossessed by the Mahomedans, who though they appointed District Officers, availed themselves of the experience of these Zamindars, and allowed them to settle with the patels, explaining their proceedings to the more immediate Officer of Government. The Mahomedans even often farmed out the whole *Perganna* to the Deshmukhs, who by this means acquired so much authority in some parts of the country, as to be able, on the decline of the Mahomedan kingdoms in the Deccan, to maintain themselves, for a time, in independence. The Maratha Government was led by this conduct, and by their embezzlements of the public revenue, almost to set aside the employment of the Zamindars. Long after the zamindars ceased to be the principal Agents, they were still made use of as a check on the Mamlatdar; and no accounts were passed unless corroborated by corresponding accounts from them; but even this practice ceased upon the introduction of the farming system, except in the distant provinces of Guzerath and the Carnatic. These officers still held the lands and fees that were originally assigned them as remuneration. They were, even after the introduction of the British rule, considered as servants of the Government; but the only duty they were latterly performing was to produce their old Records, when required; to settle disputes about land, by a reference to those Records, and to keep a Register of all new grants and transfers of property, either by the Government or by individuals. However, this Register was probably very incomplete, as no man was required to record his deed unless he chose. The Deshmukh's profits were very great; generally, it is said, above five per cent not only on the revenue, but on the land. The allowances of the Deshpande were about a half of those of the Deshmukh. The allowances of the patel and kulkarni were exactly of the same

Watans.

nature, but much smaller. All these fees were levied by the owners, distinct from the Government revenue. All these officers sold their land or fees (or watan, as both were called); but none of them pretended to any property in the rest of the lands. It was thought that they could not even sell their offices (though patels and kulkarnis could), and it was even doubtful if they could sell their fees, though they might pawn them. Their land they could certainly sell.

Peishwa's Officers.

A number of *Pergannas* formerly composed a *Sircar*, but this division was latterly completely disused; and that into *Pergannas* and *Turufs*, though still kept up in records, was not always the real Revenue division under the system of the Maratha Government. That system was that, in general, each Revenue division was under an officer, who in a large district was called *Mamlatdar*, and in a smaller one *Kamawisdar*; under these *Turufdars* or Karkoons, who had charge of a considerable number of villages; and under them *Shaikdars*, who had four or five villages. The nomination of the Mamlatdars rested with the Government; that of the inferior agents, with the Mamlatdar. There were, however, in every division permanent Officers called *Daraldars*, appointed by Government, and generally hereditary, whose signature was necessary to all papers; and who were bound to give information of all mal-practices of the Mamlatdars. These Officers were the Dewan, who was the deputy to the Mamlatdar, the Faranvis, or keeper of registers, the Potnavis, or cash accountant, &c. In some provinces, especially in remote ones, such as Khandesh, Guzerath and the Carnatic, there was an officer between the Mamlatdars and the Government, who was called *Sir Subhedar*; his powers and duties varied. In the Carnatic he was answerable for the revenue, and appointed his own Mamlatdars; but in Khandesh he had only a general superintendence, every Mamlatdar giving in his own accounts, and making his payments direct to Government.

Their remuneration.

The allowances of these officers were not very clearly fixed; before the introduction of the farming system, a considerable Mamlatdar had Rs. 5,000 or 6,000 a year, generally about one per cent on the revenue, besides an undefined allowance for his expenses. He also made large unauthorised profits, often with the connivance of Government. He was reckoned reasonable, if his whole profits did not exceed five per cent. on the net revenue.

Revenue system.

Every Mamlatdar, on his appointment, or at the commencement of the year, received from the Government an estimate of the revenue of his district; with a list of all the authorised charges, including Shibandis, pensions, religious expenses, salaries, &c. It was his duty to send in the balance to Government; and a portion of it, generally a half, was paid immediately, the rest was paid by instalments, but always in advance. The Mamlatdar then proceeded to his district, and moved about to superintend his offices, and to redress grievances; he kept a Vakil at Poona to receive all orders, and answer all complaints. Complaints are said to have been readily heard; but as all was done by the Prince or his Prime Minister, that must have depended on their leisure and patience. At the end of the year the Mamlatdar presented his accounts of the collections, confirmed by the accounts signed by the Zamindars, and the receipts and expenditure in his own office, drawn up by the Faranvis and signed by the other Darakdars. These were carefully revised; all unauthorised charges were struck out; and often reductions were made on account of supposed embezzlements. The admitted balance (against Government) was carried on in account from year to year; was sometimes compromised by partial payments, by grants of annuities, &c., but was seldom fully paid. On the other hand, all balances due to Government were exacted; though the Mamlatdar was not bound to pay the sum inserted in his estimate, if the receipts fell short of it. If the defalcation was owing to corruption on his part, he was obliged to refund; and if to his negligence, he was removed from his office. The great source of the Mamlatdar's profits was an extra assessment above the revenue, called *Sauder Varrid Patti* It was levied to pay expenses of the district not provided for by Government, and naturally afforded a great field for peculation; one of the chief of the expenses was called *Durbar Kharch* or *Antast.* This was originally applied secretly to bribe the Ministers and auditors. By degrees, their bribes became established fees, and the account was audited like the rest; as the auditors did not search minutely these delicate transactions, the Mamlatdar generally collected much more for himself than he did for his patrons.

Revenue settlement.

The following was the manner in which the Mamlatdar raised the revenue from his district At the beginning of the rains, he sent for the patel; gave him a general assurance that he should take no more than was

usual; the patel giving a written engagement specifying the quantity of cultivated land, the quantity of waste, that granted at a just rent to new settlers, and promising to realise the revenue. He then went to his village, encouraged the ryots to cultivate, procured them loans or forbearance from former creditors, promised to get them *taccavi*, and prevailed on them to undertake the ploughing of new lands. *Taccavi* was given by the Mamlatdar, not by the Government; it was payable in 2 or 3 years, with interest, and security was given by the patel or several of the ryots. About the end of the year, when the principal harvest was nearly ready to be cut, the Mamlatdar moved into his district and was attended by the patels of villages, with their kulkarnis, who laid before him the papers already enumerated. The whole country had been surveyed, and each field classed and assessed according to its circumstances and quality. The assessment thus fixed was called *Tankha*. But the whole amount thus assessed was never actually realised in some villages, while in others a greater revenue was collected. This gave rise to another rate, being the highest ever paid, which was called the *Kamál A'kár*, and was considered more applicable to practical purposes than the Tankha; that of the last year, or of any recent year, was called the *Wassúla A'kár*. All these rates were contained in the Kulkarni's papers. The Mamlatdar was enabled, by the intimate knowledge of the village possessed by his Shaikdars, to judge of the accuracy of these papers, and he proceeded to settle the revenue of the ensuing season, on a consideration of the amount paid in former years, combined with a regard to the actual state of things. The patel represented any ground there was for relaxation in the terms in which he expected the support of the Deshmukh and Deshpande; all hereditary officers being considered as connected with the ryots. These discussions generally ended in a second more particular agreement, on which the Patel interchanged with the Mamlatdar an engagement, fixing the revenue: that of the Mamlatdar was called *Jamabandi Patti*, and that of the patel, *Kabula Kitba*. The Patel had generally settled with the ryots the share which each was to bear, before he came to make the settlement; and if any thing unexpected was proposed so as to derange the distribution agreed on, he returned to his village to consult the ryots anew. When the patel continued obstinately to reject the terms offered by the Mamlatdar, a special officer was sent to the spot to examine the fields, and if no other means succeeded in effecting an adjustment, the Mamlatdar would offer what seems to have been the original

principles in all settlements, namely, for Government to take half, and leave half to the cultivator. This plan was termed *Bhuttye*. It was generally adopted in the Konkan, but seldom resorted to above the Ghauts, until the final settlement was made, the crops in many parts of the country were kept in charge of Havildars on behalf of Government, who allowed them to be carried off as soon as the settlement was completed.

Mode of collection of revenue

When the time for payment arrived, a Shibandi was sent by the Shaikdar to assist the patel. The Mhar summoned the ryots, who paid their rent to the patel, in the presence of the potdar, who assayed and stamped the money, and of the Kulkarni who granted a receipt. When all was collected, the patel sent it by the Mhar, with a letter to the Deshmukh and another to the Kamawisdar, under charge of the chaugula, and received a receipt from the Mamlatdar. If a ryot refused or was unable to pay his revenue, the Shibandi pressed him for payment, confined him in the village chauki, put a heavy stone on his head, and prevented his eating and drinking until he paid. If this did not succeed, he was carried to the Mamlatdar, his cattle were sold, and himself thrown into prison. This rigorous treatment was seldom necessary for the regular revenue; it was more employed in exacting extraordinary taxes; and under the farming system the practice of it was frequent and severe. If a whole village resisted, these severities fell on the patel; but previous to that extremity, a horseman was billeted on the village, or a fine levied, to induce it to submit. The payments were by three instalments; there was frequently another at the end of the year to recover all outstanding balances. The above relates to the regular rent or tax on the land; for it may be considered as rent with regard to the Upris, and as a tax with regard to the Mirasdars; it was called *Ayen Jamma* or proper collections. Another regular source of revenue levied partly on the ryots and partly on the other inhabitants was termed *Sawai Jamma* (or extra collections); these taxes varied in different villages. They were *Dukule Patti*, a tax of one year's revenue in ten, on the lands of Deshmukh and Deshpande, *Hak chauthai*, a fourth of the fees, levied every year; *Mhar Mharki*, a particular tax on the inams of the Mhars; *Inam Tijai*, a payment of Inamdars, of a third of the Government share of their lands yearly, &c.; these fell chiefly on the ryots. Other taxes were on

Sources of revenue.

traders alone; these were *Mohterfa*, a tax on shop-keepers varying with their means, in fact, an income tax. There were other taxes which fell indiscriminately on both classes, such as *Ghar Patti*, a house-tax levied from all except Brahmins and village officers, *Laggan Takka*, a tax on marriages. All these taxes were collected by the patel in small villages, though in towns there was a separate officer to levy those most connected with the land. In addition to all these taxes, there were occasional impositions on extraordinary emergencies, which were called *Jasti Patti*, and *Yeksali Patti*. If these happened to be continued for several years they ceased to be considered as occasional impositions, and fell into the regular *Sawai Jamma*; but until the introduction of the farming system, they are said to have been as rare as the occasions which furnished the pretext for them.

The Farming system.

The changes introduced by the farming system were in fact rather aggravations of the evils of the ancient system, than any complete innovations. The office of Mamlatdar, instead of being conferred as a favour on a person of experience and probity, who could be punished by removal if his conduct did not give satisfaction, was put to auction among the Peishwa's attendants who were encouraged to bid high. Next year the same operation was renewed, and the district was generally transferred to the highest bidder. The Mamlatdar thus constituted had no time for inquiry, and no motive for forbearance; he let his district out at an enhanced rate to under-farmers, who repeated the operation until it reached the patel. If one of these officers farmed his own village, he became absolute master of every one in it. No complaints were listened to, and the Mamlatdar, who was formerly a check on the patel, as the Government was on the Mamlatdar, now afforded him an excuse for tyranny of bearing the blame of his exactions. If the patel refused to farm the village at the rate proposed, the case was perhaps worse, as the Mamlatdar's own officers undertook to levy the sum determined upon, with less knowledge and less mercy than the patel; in either case, the actual state of cultivation was in essentials entirely disregarded. A man's means of payment, not the land he occupied, were the scale on which he was assessed. No moderation was shown in levying the sum fixed; every means of rigor and confiscation were employed to squeeze the utmost out of the people, before the arrival of the day when the Mamlatdar was to give up his charge. Amidst

all this rigor a regular account was prepared, as if the settlement had been made in the most deliberate manner. This account was of course fictitious, and the collections were always under-rated, as it enabled the patel to impose on the next Mamlatdar, and the Mamlatdar to deceive the Government. The next Mamlatdar pretended to be deceived, but when the crops were on the ground, or when the end of his period drew near, he threw off the mask, and plundered like his predecessor, for he had a fixed sum to complete, and if the collections fell short of it, he portioned out the balance among the villages, and imposed a *Jasti patti*, or extra assessment, to pay it, and left the patels to extort it by whatever means they thought proper. Some places, no doubt, escaped the oppression of the farming system. Where a village belonged to a man of influence, the assessment fell light on him, and he gained by the immigration of ryots occasioned by the misfortunes of his neighbours.

Customs &c.

The above sources of revenue were collected by the village establishment. Customs, forest and town duties, nazars on succession, &c, were collected by distinct officers directly under the Government. Abkari did not yield above Rs. 10,000. The use of spirituous liquors was forbidden at Poona, and discouraged everywhere else; the effect of this system on the sobriety of the people was very conspicuous.

Changes introduced by Hon Mr. Elphinstone.

The leading principles of the Revenue system adopted on the introduction of the British rule were to abolish farming, but otherwise to maintain the Native system; to levy the revenue according to the actual cultivation; to make the assessments light; to impose no new taxes; to do none away, unless obvious and unjust; and to make no innovations. The country was divided into roughly equal districts; the chief authority (the Collector) now resided in the district, and devoted his whole time to its affairs. Under him were placed Mamlatdars whose powers were much limited, and the system of fixed pay and no perquisites was firmly introduced. Lighter assessments were imposed, and were much more uniform and clearly defined. Faith was kept with the ryot, and his complaints found a readier hearing and redress. More forms and more strictness were enforced. The power of the Patel was weakened by the greater interference of the Mamlatdars. His emoluments were lessened by the abolition of *Saudir Waurid*. The duties of the Mamlatdars were to superintend the collection of the revenue, to manage the Police, to receive

civil and criminal complaints, referring the former to Panchayets and sending up the latter to the Collector. *Jasti Patti* and other unnecessary impositions were abolished. The foundation for the assessment was the amount paid by each village in times when the people considered themselves to have been well governed. Deductions were made from this in proportion to diminution of the cultivation, or on any other good grounds. The amount to be paid was partitioned among the ryots by the village officers, and if all were satisfied puttas were given, and the settlement completed.

B.— POLICE AND CRIMINAL JUSTICE.

Village Police

The patel was responsible for the Police of his village. He was aided by his kulkarni and chaugula, and when occasion required it, by all the inhabitants. His great and responsible assistant in matters of Police was the village watchman, called the Talwar in the Carnatic, the Mhar in the Maratha country, and the Jagla in Khandeish; in the first-named district he was by caste a Bedar, in the second a Dheda, and in the third a Bheel. Though there was only an allowance for one watchman in a village, the family had generally branched out into several numbers, who relieved and aided one another in the duties. The duties were to keep watch at night, to find out all arrivals and departures, to observe all strangers, and to report all suspicious persons to the patel The watchman was likewise bound to know the character of each man in the village; and in the event of a theft committed within the village-bounds, it was his duty to detect the thief. He was enabled to do this by his early habits of inquisitiveness and observation, as well as by the nature of his allowance which being partly a small share of the grain and similar property belonging to each house, he was kept always on the watch to ascertain his fees, and always in motion to collect them. When a theft or robbery happened, the watchman commenced his inquiries; it was very common for him to track a thief by his footsteps; and if he did this to another village so as to satisfy the watchman there or if he otherwise traced the property to an adjoining village his responsibility ended, and it was the duty of the watchman of the new village to take the pursuit. The last village to which the thief had been traced became answerable for the property stolen, which would otherwise fall on the village where the robbery was committed. The watchman was obliged to make up this amount as far as his means went, and the remainder was levied on the whole village. Neglect or connivance

was punished by transferring the inam of the patel or watchman to his nearest relation, by fine, by imprisonment, or by corporeal punishment. This responsibility was necessary, as, besides the temptation to neglect, the watchman was often himself a thief, and the patel disposed to harbour thieves. Gross negligence in cases of other crimes too was punished by Government. Besides the regular village watchmen, others were often entertained to assist in repelling open force, to aid in the apprehension of all offenders, but chiefly to prevent depradations by plundering tribes.

District Police.

The Patel, as a Police officer, was under the same authority, that he was as a Revenue one,—the Mamlatdar, who employed the same agents in this department as in the other. The Mamlatdar saw that all villagers acted in concert and with proper activity; and when there was a Sir Subhedar, he kept the same superintendence over the Mamlatdars. These officers had also considerable establishments to maintain the tranquillity of their districts. These were the Shibandis, or irregular infantry, and the small parties of horse, which were kept in every district; they were, however, employed to oppose violence, and to support the village Police, not to discover offenders. With the Mamlatdar also rested all general arrangements with the chiefs of Bheels or other predatory tribes, either for forbearing from plunder themselves or for assisting to check it in others. The Mamlatdar had great discretionary powers; and even a patel would not hesitate to secure a suspected person, or to take any measure that seemed necessary to maintain the Police of his village, for which he was answerable. This was the plan of the Police upto the time of Bajirao II, and is said to have succeeded in preserving great security and order. The confusion and weakness of Bajirao II's government greatly deranged the system of Police, and to remedy the disorders into which it fell an office was instituted under the name of *Tapasanavis* the special duty of which was to discover and seize offenders. The Tapasanavises had districts of different extent, not corresponding with the usual revenue districts and only comprehending those portions of the country where the services of such officers were thought to be most required. They had a jurisdiction entirely independent of the Mamlatdars, and had a body of horse and foot, which was the principal instrument of their administration. The detection of the offender however they seem to have left in general to the ordinary village Police; they often-

seized the patel and the watchmen and demanded the thief or the property stolen or the fine they thought proper to impose. Such a violent proceeding could not fail to clash with the existing institutions, and accordingly there were loud complaints by the Mamlatdars and villages, that the Tapasanavises were only active in extorting money under false accusations and that robbers rather flourished under their protection. Great abuses, it must be mentioned, are stated to have at all times existed, even under the regular system. Criminals found refuge in one district, when chased out of another ; some zamindars made a trade of harbouring robbers ; and an offender, it is said, could purchase his release, if he had money enough to pay for it. False accusations were likewise made a cloak to exaction from the innocent. There cannot be a stronger proof of the great abuses to which the Police was liable, than is furnished by the familiar story of the notorious Ghasiram Kotwal.

Criminal Courts and their powers

The power of administering criminal justice, under the Maratha Government, was vested in the Revenue officers, and varied with their rank, from the patel who could only put a man for a few days in the village Chowki to the Sir Subhedar who in the latter days had the power of life and death. Formerly this power was confined to persons invested with the full powers of Government, by being entrusted with the Mutaliki seal, and to great Military Chiefs in their own armies or their own jaghirs. The right of inflicting punishment was, however, extremely undefined, and was exercised by each man more according to his power and influence than to his office. One patel would flog and fine, and put in the stocks for many weeks; and another would not even venture to imprison. Most Mamlatdars would hang a Ramosi or Mang robber without a reference; and those at a distance would exercise their power without any scruple, while the highest civil officers, if at Poona, would pay the Peishwa the attention of applying for his sanction in a capital case. A Chief was thought to have authority over his own troops and servants, wherever he was.

Trial of cases.

There was no prescribed form of trial. A principal rebel, or a head of banditti, would be executed at once, on the ground of notoriety; any Bheel, caught in a part of the country where the Bheels were plundering the road, would be hanged immediately. In doubtful cases,

the chief authority would order some of the people about him to inquire into the affair. The prisoner was examined, and if suspicions were strong, he was flogged to make him confess. Witnesses were examined, and a summary of their evidence, and of the statement of the accused, were always taken down in writing. They were sometimes confronted with the accused, in hope of shaming or perplexing the party whose statement was false; but this was by no means necessary to the regularity of the proceedings. The chief authority would generally consult his officers, or perhaps employ a committee of them to conduct the enquiry, but it is doubtful whether Panchayets were ever generally employed in criminal trials. In crimes against the State, the Prince made such inquiries or directed his ministers to make such, as seemed requisite for his own safety, and gave such orders regarding the accused as their case seemed to require. Torture was employed to compel confession and disclosure of accomplices. Trials of this sort were naturally considered as above all law, but even in common criminal trials no law seems ever to be referred to, except in cases connected with religion where Shastris were sometimes consulted; the only rule seems to have been the custom of the country and the magistrate's notice of expediency. The Hindu law in its criminal side was quite disused.

Punishments.

The following were the customary punishments. Murder, unless attended with peculiar atrocity, appears never to have been capital, and was usually punished by fine. Highway robbery was generally punished with death, because it was generally committed by low people; for a greater distinction was made in the punishment, on account of the caste of the criminal, than on account of the nature of the crime. A man of tolerable caste was seldom put to death, except for offences against the State, in which cases birth seems to have been no protection. Trampling to death by an elephant, blowing away by a gun, hanging, beheading, cutting to pieces with swords, cutting the head with a mallet, were some of the forms of punishment inflicted. Punishments, though public, were always executed with little ceremony or form. Brahmin prisoners, who could not be executed, were poisoned, or made away with by deleterious food; bread made of equal parts of flour and salt, was one of those. Women were never put to death; long confinement and cutting off of the nose, ears and breast, were the severest punishments inflicted on them. Mutilation was very common, and the person who had his

hand, foot, ears or nose, cut off, was turned loose as soon as the sentence was executed, and left to his fate. Imprisonment in hill-forts, and in dungeons, was common ; and the prisoners, unless they were persons of consideration, were always neglected, and sometimes allowed to starve. Prisoners for theft were often whipped at intervals to make them discover where the stolen property was hidden. Hard labour, in building fortifications especially, was not unknown, but like most ignominious punishments was confined to the lower orders. Branding with a hot iron was seldom, if at all, practised. Flogging with a martingale was very common in trifling offences, such as petty thefts, &c. But the commonest of all punishments was fine and confiscation of goods. No other punishment, it may be averred, was inflicted on a man who could afford to pay a fine.

General remarks.

On the whole, the criminal system was in the last state of disorder and corruption. In spite of this deplorable system of criminal justice and Police, crimes were not so numerous as might have been expected. This rarity of crimes was due to many causes. First, the people were few compared to the quantity of arable land. They were hardy, warlike, and always armed ; the situation of the lower orders was very comfortable, and that of the upper, prosperous. There was abundance of employment in the domestic establishments and foreign conquests of the nation. The ancient system of Police was maintained ; all the powers of the State were united in the same hands, and their vigour was not checked by any suspicions on the part of the Government. In cases that threatened the peace of society, apprehension was sudden and arbitrary, trial summary, and punishment prompt and severe. The innocent might sometimes suffer, but the guilty could scarcely ever escape. As the magistrates were natives, they readily understood the real state of a case submitted to them. In their lax system, men knew that if they were right in substance, they would not be questioned about the form ; and they perhaps likewise knew that if they did not protect themselves, they could not always expect protection from the magistrate, whose business was rather to keep down great disorder, than to afford assistance in cases that might be settled without his aid. The Mamlatdars were themselves considerable persons, and there were men of property and consideration in every neighbourhood : Inamdars, Jaghirdars, or old zamindars. These men associated with the ranks above and below them, and kept up the chain of society to the Prince ; by this means the higher orders were kept informed of the

situation of the lower, and as there was scarcely any man without a patron, men might be exposed to oppression, but could scarcely suffer from neglect.

Changes introduced by Hon. Mr Elphinstone.

On the introduction of the British rule the then existing system of village Police was in substance kept up. The Patel's respectability and influence in his village was preserved by allowing him some latitude in the expenditure of the village expenses, and in restraining petty disorders within his village, as his zealous co-operation was as essential to the collection of the revenue as to the Police administration. Care was also taken of the condition of the village watchman, whose allowance, if not sufficient to support him and keep him out of temptation to thieve, was increased but not so high as to make him independent of the community; it was also continued, as formerly, to be derived in part from contributions so as to compel him to go his rounds among the villagers and keep himself informed up to date. The pay of the Mamlatdar was increased to render him more respectable and more above temptation. Closer superintendence and prohibition of the indefinite confinement of suspected persons by the Patel and Mamlatdar were enforced. The power of punishing was taken from the Patel and greatly curtailed in the case of the Mamlatdar. The Collector was given extensive powers short of inflicting capital punishment. His manner of exercising them was altogether changed. According to the new practice introduced a prisoner was formally and publicly brought to trial; he was asked whether he was guilty; if he admitted it, pains were taken to ascertain that his confession was voluntary; if he denied it, witnesses were examined in the presence of the accused who was allowed to cross-examine them, and to call witnesses in his defence; if there was any doubt, on the conclusion of the trial, he was acquitted; if he was clearly guilty, Shastris were called on to declare the Hindu law; when the law inclined on the side of severity it was modified, when on the side of mercy it was acquiesced in. The law officers were always present at these trials. In Khandeish a regular jury was generally assembled, who questioned the witnesses and pronounced on the guilt of the accused. The punishments awarded by the Shastris were death in cases of murder and sometimes of robbery, mutilation which was commuted into imprisonment rigorous or simple. Women were never put to death; nor Brahmins, except in cases of treason. Other customary punishments were modified, and jails were established

C.—CIVIL JUSTICE.

Civil Courts.

The authorities by whom Civil Justice was administered were the following: in the country, the Patel, over him the Mamlatdar, and Sir Subhedar and above all, the Peishwa, or his Minister. Jaghirdars administered justice in their own lands; the great ones with little or no interference on the part of the Government. In some towns there was a Judicial Officer, called the *Nyayadhisha*, who tried causes under the Peishwa's authority, and any person whom the Peishwa pleased to authorize, might conduct an investigation, subject to His Highness's confirmation. If a complaint was made to a patel, he would send for the person complained of, and, if the debt was admitted, would interfere partly as a friend to settle the mode and time of payment. If the debt were disputed, and he and his kulkarni could not, by their own influence or sagacity, effect a settlement to the satisfaction of both the parties, the patel assembled a *Panchayet* of inhabitants of the village, who inquired into the matter, with very little form, and decided as they thought best; but this decision could not take place without the previous consent of the parties. If the complainant were refused a Panchayet, or disapproved of the decision, or if he thought proper not to apply to the patel, he went to the Mamlatdar, who proceeded nearly in the same manner as the patel, with this addition, that he could compel the party complained of, to submit to a Panchayet, or else make satisfaction of the complaint. Where there was a Sir Subhedar, the same process might be repeated with him or at Court, but in all this there was no regular appeal: the superior authority would not revise the decision of the inferior, unless there had been some gross injustice, or reason to suspect corruption: in cases of less purity, that is in almost all cases, the superior was influenced in receiving the appeal by the consideration of the profit promised as a compensation for the trouble. Though the Government Officer endeavoured himself to settle the dispute, and though it rested with him to decide whether or not the case required a Panchayet, yet it was reckoned gross injustice to refuse one on a question at all doubtful, and it was always reckoned a sufficient ground for ordering a new investigation, when there had been no Panchayet.

Panchayets.

The Panchayet may, therefore, be considered as the great instrument in the administration of Civil Justice. The members of a Panchayet were generally selected by the Officers of Government, by whom it was granted

with the approbation of the parties, and often at their suggestion; sometimes the parties chose an equal number each, and the Officer named an umpire. A person on the part of Government not unfrequently presided at Panchayets, especially at Poona, and directed their operations. In affairs where Government was concerned, it ordered some of its own Officers to investigate the matter, but they were expected to be people not objected to by the other party. The members were people of the same situation in life as the parties, or people likely to understand the subject in discussion, as bankers in a matter of account, Deshmukhs and Deshpandes when the suit was about land. Their number was never less than five, and was required to be odd. It generally met at the house of the Officer who summoned it. In villages the patel got some of the most intelligent and impartial ryots to sit under a tree, or in a temple, or chowdi, nobody attended on the part of Government, and as the submission of the parties was voluntary, their wishes were of course more attended to than elsewhere. The consent of the members, however, was everywhere reckoned essential to a Panchayet, and the first act of the meeting was to take a rajinama, or acknowledgment of such a consent, security was also not unfrequently taken for the parties complying with the award of the Panchayet. It might be expected that so burdensome a duty would not be willingly undertaken, especially as there was no authorized fee to be gained by it; but besides the compliment of being selected by the parties, there was the hope of presents from one or both, which it was not disgraceful to take, unless to promote injustice. It was moreover reckoned disgracefully selfish to refuse to serve on a Panchayet. It was more difficult to procure their regular attendance when appointed, and this was generally effected by the entreaties of the parties interested. The magistrate also sent peons and injunctions to compel the presence of a person who had once agreed to become a member; and although he would receive a reasonable excuse, yet if he were really anxious for the speedy decision of the cause, he seldom failed in procuring attendance. Besides there was no precision about the number of members required to attend, so long as the parties were satisfied all was thought to be regular enough; when an absent member returned, the past proceedings could be explained to him and any further inquiry he desired carried on.

Mode of Trial.

When the Panchayet assembled, if the defendant failed to attend, the Panchayet applied to the Officer under whose authority it sat, to summon him; or the plaintiff, by constant demand and other modes of importunity, wearied him into a submission. When the Officer of Government had to compel his attendance, he sent a summons, or if that failed, placed a peon over him, whom he was obliged to maintain, and imposed a fine of a certain sum a day, till he appeared. The plaintiff's complaint was then read, and the defendant's answer received; a replication and a rejoinder were sometimes added, and the parties were cross-questioned by the Panchayet, as long as they thought it necessary; at that time the parties were kept at a distance from their friends; but afterwards the friends might assist them as much as they chose. A man might, if it might be inconvenient for him to attend, send a Karkun in his service, or a relation; but the profession of Vakil was not known. Accounts and other written evidence were called for, after the examination of the parties, and likewise oral evidence, when written failed; but a great preference was given to the evidence of written documents. The witnesses seem to have been examined and cross-examined with great care, but the substance only of their evidence was taken down briefly without the questions, and generally in their own hands if they could write. The Panchayet generally allowed no more credit to a witness than his situation and character and connection with the case entitled him; they also laid great stress on his manner and appearance while giving his testimony. Oaths were seldom imposed, unless there were reason to suspect the veracity of the witness, and then great pains were taken to make them solemn. When this examination was concluded, the Panchayet, after debating on the case, drew up an award (which was termed *Saransha* or summary), in which they gave the substance of the complaint and answer, an abstract of each of the documents presented, a summary of the oral evidence, and their own decision on the whole. A copy of the award was given to the successful party, and to the loser, if he required it; another copy was deposited with the Officer of Government. In villages where there was much less form observed, the Panchayet was often conducted in the way of conversation, and nothing was written but the decision, and sometimes not even that. In important cases, however, all the usual writing was performed by the Kulkarni. Throughout the whole proceedings, the Panchayets appeared to have

Decree.

been guided by their own notion of justice, founded no doubt on the Hindu law, and modified by the custom of the country. They consulted no books, and it was only on particular points immediately connected with the Hindu law, such as marriage or succession, that they referred to a Shastri for his opinion.

Appeal.

On the report of the Panchayet, the Officer of Government proceeded to confirm and enforce its decree; the Panchayet having no executive powers of its own. From this cause frequent reference to the magistrate was required, and he was given a considerable influence on the progress of the trial. If either party objected at this stage, and showed good reasons why the award should be set aside, the Officer under whose authority it sat, might require it to revise its sentence, or even grant a new Panchayet; but this was not reckoned proper, unless corruption was strongly suspected. No other notice was taken of corruption. Even after an award was confirmed, an appeal lay to a higher authority, and a new Panchayet might be granted; even a new Mamlatdar might revise the proceedings under his predecessor; this was probably a stretch of power; but every thing under the Marathas being irregular and arbitrary, the limits of just authority can, with difficulty, be traced.

Enforcement of decree.

In enforcing the decision, much of course depended on the power of the Magistrate. If a patel found the party who gained the cause, could not recover his due by the modes of private compulsion, hereafter to be described, he applied to the Mamlatdar to interpose his authority, and in cases where that was insufficient the Mamlatdar applied to Government.

Ordeals.

It was in this manner that ordinary disputes were settled. Those about boundaries were settled by a Panchayet, composed of Deshmukhs, Deshpandes, Patels and Kulkarnis, assisted by the Mhars of the disputing villages, who were the established guardians of land-marks and boundaries. They were also very frequently adjusted by ordeals. Ordeals were not uncommon in other cases, as well as in boundary disputes, but chiefly when other means of ascertaining the truth had failed. One mode of ordeal was for the patel to walk along the disputed boundary, bearing on his head a clod composed of soil of both villages, kneaded up with various strange ingredients, and

consecrated by many superstitious ceremonies; if it held together, the justice of his claim was established, and if it broke, he lost his cause. Many other sorts of ordeal were also performed with boiling oil, or by taking an oath and imprecating certain curses if it should be false. Disputes about caste were settled by the caste, unless when a complaint of unjust expulsion took place, when the Government ordered a Panchayet of respectable persons of the caste, from an unprejudiced part of the country. The great objects of litigation were boundary disputes, division of property on the separation of families, inheritance to land, and debts.

The Nyayadhish Courts.

As the Panchayets had no power of their own, and were moreover somewhat inert, it is necessary to examine the machinery by which they were kept in motion, and their resolutions carried into effect. It has been observed that in the country the Mamlatdars and the Patels under their authority performed that duty. In some towns there also were, as already observed, officers of Justice called *Nyayadhish*. The proceedings of all these officers were of course very irregular, but the model may be learned by observing the proceedings of Ram Shastri, the Nyayadhish of Poona. On receiving a complaint, a peon or karkun from Ram Shastri or from Nana Fadanavis, according to the consequence of the person, was sent to summon or to invite him to attend at Ram Shastri's. If this were refused, positive orders were repeated by Nana Fadanavis, and in the event of obstinate non-attendance, the house or lands of the defendant would be sequestrated till he appeared. In case of non-appearance from absence, trial, after many indulgent delays, went on, and the absence of the party was recorded, that he might have a new trial on his return, if he accounted for his absence; in cases of land, no decision was final in a man's absence. Evidence was summoned in the same form as the defendant, and if the witness were poor, the person who summoned him paid his expenses. If the witness lived at a distance, or if his attendance were inconvenient, a deputation from the Court with some person from the parties was sent to take his evidence, and the Mamlatdar gave his aid to the process; or if the witness lived very far off, a letter was written requesting him to state the facts required. When the witness was a man of rank, a deputation would be sent to him from Government, accompanied by parties who went as supplicants for his aid, rather than as checks on his mis-statement, and he was solicited to relate what he knew, which was repeated in the Court. Even if the witness were

not of such rank as to prevent his coming to the Court, still, if he were a man of any consequence, he was received as a visitor, and the questions were put to him in the way of conversation, and with all the usual forms of civility. Where persons of this character were the defendants, instead of summoning them to the Nyayadhish, a letter was written by Nana Fadanavis desiring them to settle the complaint. If this did not succeed, their Vakils were spoken to; and ultimately they experienced the displeasure of Government, or part of their land was made over to the creditor. Generally, however, great favour was shown to men of rank. If the plaintiff was also a man of rank, a Panchayet of men of the same condition would be appointed, if all other means failed. The proceedings were the same as those already mentioned to have been practised in the districts, but more was done in writing than elsewhere. The Panchayets were more frequently named by the parties than the Judge, but Ram Shastri and his deputies seem frequently to have presided at the trial, the Panchayet performing nearly the same functions as a Jury in England. A good deal of the investigation seems to have been entrusted to Ram Shastri's karkoons who reported to him and the Panchayet, and in the decree the names of the members of the Panchayet were not mentioned, even when it was merely a repetition of their award. The decision was always in the Peishwa's name, and in all cases of magnitude required his signature. all cases relating to land were of this description, and the same held all over the country, where claims to land were considered more immediately under the superintendence of Government. It was not unusual, in the country, as well as in Poona, for a Government officer to receive the complaint and answer with the documents, and the written evidence of witnesses, and lay the whole in this shape before the Panchayet, who could call for more evidence, if they required it. Much time must have been saved by this arrangement, but it gave the officer of Government considerable opportunities of imposing on the Panchayet.

Costs.

The members of the Panchayet received no fee, but when they had much trouble, the winner of the suit made them openly a present for their pains. A sum of money was likewise levied for the Government from the winner, under the name of *Kerki* which means congratulatory offering, and from the loser, under the name of a *Gonaghari* or fine, These fines varied with the means of litigants. The plaintiff losing his

cause was obliged to pay the expenses of the defendant, if the latter was poor. No regular monthly or other returns of causes decided were made out. When a cause was decided against the defendant, the Court settled the mode of payment, with reference to his circumstances.

Execution of decree.

When a matter had once come to a trial it was also expected that Government should enforce the decision; but with the irregularity of the Marathas, the plaintiff was often permitted to enforce the decision himself; and this was effected by means of the system called *Tukkaza*, which, though it strictly means only dunning, was here employed for everything from simple importunity upto placing a guard over a man, preventing his eating, tying his neck and heels, or making him stand on one leg, with a heavy stone on his head, under a vertical sun. When Government enforced the debt, it used nearly the same severities as individuals; it also seized and sold the property of the debtor; but generally spared his house, and took care not to reduce him entirely to ruin. It likewise often fixed instalments by which his debt was gradually to be liquidated. People were never put in any public prison for private debt, though sometimes confined or tormented by the creditor at his house. Fair bankrupts seem to have been let off easily; fraudulent ones were made to pay when discovered, notwithstanding previous release.

Advantages and disadvantages of the system pointed out.

The judicial system above described is evidently open to great objections. There was no regular administration of justice; no certain means of filing a suit; no fixed rules of proceeding after it had been filed. It rested with the officer of Government applied to, to receive a complaint, or to neglect it altogether. The reception of an appeal from his injustice, equally depended on the arbitrary will of his superior. The other occupations of these officers rendered it difficult for them to attend to judicial affairs. The power of the local officer must also have had a tendency to check appeals, and even to restrain the demand for Panchayets, in cases where he was desirous of deciding in person. The Panchayets themselves were open to corruption and partiality, and when free from those stains, were still slow and feeble in their motions, and uncertain in their resolutions. They had no sufficient powers to secure attendance of defendants and witnesses; and their decree, when given, remained with the local officer to enforce or neglects

he chose. No decision was final; a new Mamlatdar or a new Minister, might take up a cause his predecessor had decided; the same man might revise his own decisions from corrupt motives. The farming system rendered the administration of civil justice still worse. The farmer was generally the most unprincipled man about the Court. His whole time and thoughts were occupied in realising his revenue. Justice was openly sold, and except as a marketable commodity, it was never thought of. The advantages of the system counterbalancing its obvious defects originated mainly in the fact, that the Government, although it did little to obtain justice for the people, left them the means of procuring it for themselves. The advantage of this was particularly felt among the lower orders, who were most out of reach of their rulers, and most apt to be neglected under all Governments. By means of the Panchayet, they were enabled to effect a tolerable dispensation of justice among themselves, and most of the objections above stated to that institution did not apply in their case. A patel was restrained from exercising oppression both by the fear of the Mamlatdar and by the inconvenience of offending the society in which he lived. A Panchayet could scarcely be perplexed in the simple causes that arose under its own eyes, nor could it easily give a corrupt decision when all the neighbours knew the merits of the case. Defendants, witnesses and members were all within the narrow compass of a village, and where all were kept from earning their daily bread during the discussion, there was not likely to be much affected delay. This system was therefore excellent for the settlement of the disputes of the ryots among themselves, but of no use in protecting them from the oppression of their superiors. But here another principle came into operation. The whole of the Government revenue being derived from the ryot, it was the obvious interest of Government and its agents to protect him, and prevent his being exposed to any exactions but their own. Their exactions were limited in good times by the conviction, that the best way to enrich itself was to spare the ryots; and those of its agents, by the common interest of Government and the ryots in restraining their depradations. By these principles, while the Government was good, its ryots were tolerably protected both from injustice of their neighbours and tyranny of their superiors. It was in the class above this, that the defects of the system were most felt, and even there it had some advantages. As the great fault of Government was its inertness, people were at least secure from its over-activity. An

officer, even when bribed, could not do much more than harass the individual, for the right to demand a Panchayet was a bar to arbitrary decrees. The inertness of Government was counteracted by various expedients which, though objectionable in themselves, supplied the place of better principles. These were *private redress*, *patronage*, and *presents*. The first was called *Tukkaza*, which has been already referred to as one of the modes of enforcing a decree. It was also made use of in bringing on a trial. If a man had a demand from his inferior or equal, he placed him under restraint, and prevented his leaving his house and even eating, until he came to some accommodation. If the debtor were a superior, the creditor had first recourse to supplications and appeals to the honor and sense of shame of the other party; he laid himself on his threshold, he would even sit down and fast also. It was a point of honor not to disturb the author of these importunities, so long as they were just, and some satisfaction was generally procured by means of these. If they were unjust, the party thus harassed naturally concurred with the plaintiff in the wish for a Panchayet, and thus an object was obtained which might not have been gained from the indolence of the magistrate. Similar means were employed to extort justice from the ruling power. The next means of obtaining justice was by patronage. If a poor man had a master, a landlord, a great neighbour, or any great connection, &c., he could interest him in his favour, and procure his friendly intercession with the debtor, or finally with the public authority to obtain justice for his client. Both sides in a cause were thus brought nearly equal. If this resource failed, a present or the promise of a present to the public authority, or those who had weight with him, would be efficacious. Number of persons who could grant Panchayets also expedited the business. Besides the Nyayadhish and the Mamlatdars and Jaghirdars many people of consequence could hold Panchayets under the express or implied authority of the Peishwa; and every Chief settled the disputes of his own retainers, whether among themselves or with others of the lower and middle classes. A great number of disputes were also settled by private arbitration; and their proceedings, in the event of an appeal, were treated by the Government with the

Tukkaza, patronage and presents.

Private arbitration.

same considerations as those of Panchayets held under its own authority.

General remarks.

Simple causes were, on the whole, speedily decided, and complicated ones very slowly. Panchayets appear generally to have given just decision but men in power could obstruct a reference to them, and could prevent the execution of their decrees. That justice was often denied, or injustice committed, appears from the frequency of *Thalli*, which is a term for robbery, arson, and even murder, committed to oblige a village or Government officer to satisfy the claims of the perpetrator. With regard to the effect of this judicial system on the character of the people, the ryots seem to have been in most respects simple and honest, but there was no regard for truth, or respect for an oath; and forgery, intrigue and deceit were carried to a high pitch among the patels and kulkarnis, and all who had much opportunity of practising those iniquities. There was no punishment for perjury or forgery. Litigiousness does not seem to have been at all prevalent, unless the obstinacy with which people adhered to any claims to landed property can be brought under that head.

Changes introduced by Hon. Mr. Elphinstone.

On the introduction of the British rule, the native system was still preserved and means were taken to remove its abuses and revive its energy. The Panchayet continued as before to be the principal instrument of dispensing civil justice, practically exempt from complicated forms. The Patel was encouraged to settle disputes amicably if he could, and otherwise to refer them to Panchayets on the old model. When a Patel refused to grant a Panchayet, the Mamlatdar might, on complaint, direct him to afford one or himself order a Panchayet and if either party was dissatisfied with the arrangement proposed by the Mamlatdar, the case was to be referred to the Collector. Appeals from village Panchayets were made to the Collector. In large towns the superintendence of the Panchayets being too much for the Mamlatdar to undertake, separate officers called *Amins* were appointed expressly for the administration of justice. In cases tried by the Amin alone an appeal lay to the Collector.

A short review of the process of development of our present enlightened and elaborate systems of Revenue, and Criminal and Civil Justice would be interesting, but being beyond the scope of this book would be out of place here.

Position of Watandars just before advent of British rule

We are now in a position to fairly appreciate the exact position occupied by Watandars in the system of Government just before the introduction of the British rule. The Patel, the Kulkarni, the Chaugula and the Walikar, the Mhar, and the Sonar had each direct and active share in the village administration; the other *Bara Balutedars* had none. The District Watandars, though they had lost much of the authority and importance they once possessed, retained still some recognised position in the administration. They were made use of as a check on the Mamlatdars, no accounts being passed unless corroborated by corresponding accounts from them (page v). They were expected to support the Patel in his negotiations with the Mamlatdar in the settlement of the village revenue (page viii). By their associating with the ranks above and below them, and thus keeping up the chain of society to the Prince, they were in a position to keep Government and Official class informed of the situation of the subjects, and were instrumental in palliating the defects of the administration of Criminal Justice (page xvi). They discharged valuable functions in Civil Justice by acting as members on Panchayets (page xxi). All the Watandars were in full enjoyment of their service lands and emoluments.

Their present position.

The subsequent transition of the Watandars to their present position may be traced in a very few words. The village officers named above (except the Sonar), though bereft of the plenary powers which the chief of them, the Patel, formerly exercised, have all along continued to be the principal agents in the government of villages in the Departments of Revenue, Police, Criminal Justice and Sanitation. They are the only *hereditary* officers under the British Government now. The other *Bara-balutedars* had and they and the Sonar have now no place in the system of Government. The District Watandars were for some time allowed to retain their indirect connection with the Government of the country; the duties they performed being minor ones, namely, the production of old Records in their possession, the settlement of disputes about land by a reference to those Records, and the keeping of Registers of new grants and transfer of property either by Government or by individuals. These duties they performed either personally or through deputies. Even this last vestige of their share in Government disappeared about 40 years ago on the completion of commutation settlements of their watans. Except that they are styled Watandars and enjoy their watan holdings subject,

generally speaking, to special rules of alienation and succession, they do not now differ from the ordinary subjects of the Crown as far as political and office rights are concerned. The settlement of the holdings of all the Watandars and other Inamdars has a history of its own and will be reviewed in the next part of the Introduction.

PART II.

SETTLEMENTS OF INAM INCLUDING WATAN HOLDINGS.

After the tumults consequent on the conquest of the Peishwa's territory had ceased, the British Government set to the task of investigating into the title and validity of alienations of State land and revenue made under the Native rule. This investigation, a protracted one it was, finally resulted in the issuing of new Sanads to the holders of alienated State land and revenue, and forms an important and interesting chapter in the history of British administration.

The term *Inam* considered.

Before proceeding further, it will be necessary to clear our ground by explaining the meaning of that much perplexing and vague word, *Inam*, which often occurs in sanads. *Inam* is a term of Arabic origin. In its primary sense it means *gift*; in its derived or secondary sense, *grant*. In the meaning of grant the word would necessarily include every species of grant, made as well by individuals as by the ruling power. But it is to grants by the latter that we need only refer here. Grants from the State are ordinarily grants of the land-revenue. Grants of land-revenue were made either directly in land or constructively so, in grain and kind, or cash. By the common law of the country every acre of land was liable to the payment of assessment to the ruling power *pro bono publico*, and the right to receive that assessment might be transferred to any individual whatsoever, or conferred for the maintenance of any secular or religious office. If to an individual, it was perhaps for service rendered by himself or ancestors, or granted, it might be, out of mere favour. Grants of this kind might be free from conditions. Conditional grants were those in which civil or military service was exacted by the ited Starect, or certain duties had to be

performed by the office-bearers in a village for the sake of the inhabitants, in revenue, police, or domestic concerns; also religious grants for the maintenance of worship in the village temples or mosques, or in shrines situated not actually in the village boundaries, with the revenue of which they were, nevertheless, endowed. In each of these cases the granting power parted only with its own right, which, in the case of occupied soil, would be that of receiving assessment.

In most cases, however, the occupancy would follow the grant, that is, the Government cultivator before the grant would become the grantee's cultivator after the grant It was only in instances in which the land was held by a stronger title that provision was made in royal grants for non-interference with the occupant and limit of the grant to the revenue assessment; and the grants usually contained except, perhaps, when waste villages or lands were bestowed, a proviso that the pre-existing rights of occupants, or otherwise, were on no account to be interfered with by the grantee, who was simply in the case of occupied soil created landlord in the place of the Government or granting power. An indirect grant of public revenue was an assignment in kind, as so many measures of grain, &c. The official remuneration of the village staff, as well as hereditary district officers, was also partly made up of perquisites in kind. The grantee in these cases collected his dues from the cultivators direct. Lastly, the grant in cash was the land revenue collected by the officers of Government at the public expense into the local treasuries, and then paid away by the head of the village, district or province. The cash payments consisted of fees to officials for service to the village or to the State, according to either a fixed or fluctuating rate on the land revenue; of dues on the occasion of religious festivals and amusements, and village expenses of all kinds; and of allowances to individuals useful to the community or otherwise.

Meaning of *Inam*.

To come back to the meaning of the word *Inam*. Whatever might have been the value set upon the word in its native soil of Arabia, it has acquired in India a modified, if not a new, sense. Although in its literal and generic sense of *gift* or *grant* it must embrace every kind of grant, it has more especially a local habitation itself as a *land* tenure. Thus we find that many large acquisitions of territor by the East India Company in the last century were by grant

in *Inam* under sanads by the Emperor of Delhi. Local usage, however, does not designate all grantees as Inamdars simply without more. On the contrary particular names denote particular holdings and at once tell the object of the grant, such as, *Saranjamdar, Watandar, Pujari, &c.*, though any or all of these may also be called Inamdars. "Inam" Wilson says "is a gift, a benefaction in general, a gift by a superior to an inferior. In India, and especially in the south and amongst the Marathas, the term was especially applied to grants of land held rent-free, and in hereditary and perpetual obligation; the tenure came in time to be qualified by the reservation of a portion of the assessable revenue, or by the exaction of all proceeds exceeding the intended value of the original assignment; the term was also vaguely applied to grants of rent-free lands, without reference to perpetuity or any specified conditions. The grants are also distinguishable by their origin from the ruling authorities, or from the village communities, and are again distinguishable by peculiar reservations. or by their being applicable to different objects." The word *Inam*, in short, is a generic term applied indiscriminately to alienated holdings, but is not sufficient in itself without the addition of some further specifying adjective to fix the nature and incidents of those holdings.

Inams classified.

Grants originating from the State, Wilson styles, "Sanadi Inams," those from the village community he styles "Gaon-nisbat Inams." It is, however, more convenient for our present purpose to divide inams (including both lands and cash allowances) originating from the State into two principal kinds, *viz.*, (1) those which are designated *Chakeria* and held on the condition of performing some office or service, or discharging some obligation or trust, and which, if the duty or trust to be fulfilled be charitable or religious, are frequently described as *Khairat*; and (2) those which are not encumbered by any such burden, condition or liability. The first kind may be divided into three classes :—(I) Religious Endowments, (II) Service Inams, (III) Saranjams and other political tenures; and the second kind may be termed for brevity's sake as (IV) Personal Inams.

We shall now proceed to consider how these four classes of alienated holdings have been dealt with and settled by the British Government.

Origin and history of Inam Commission.

It was the Hon'ble Mr. Elphinstone under whose auspices Reg. XVII of 1827, bearing upon the subject of rent-free tenures, was considered and passed. In the second section of that Reg. the fundamental law of the land revenue of the Presidency is declared. It says, that *all* land is liable to pay assessment according to its kind, but that, if a title to exemption from that payment can be set up, under certain rules, it shall be respected, provided that such title to exemption shall under no circumstances bar the inherent right of Government to assess even the exempt lands in times of exigencies. The Inam tenure, as such, is nowhere defined, nor even mentioned, notwithstanding that a list of tenures which were to be considered exempt, as being so recognised by the custom of the country, is given. It is quite clear from the omission that inam land was not private property in any such absolute sense as to exclude it from the general scope of the Reg. It might be that opinions on the subject of this tenure were so conflicting, its privileges and limits so indistinctly marked, that it was considered safer at that time not authoritatively to pronounce upon it, but rather leave it to Collectors and Judges to deal with according to local acceptation as cases arose. In this way the Collectors and Judges in the older territory namely the Konkan and Guzerath (to which only the above Reg. applied) were left since 1827, as before, to set their own interpretation on the word inam; and necessarily their decisions were very much conflicting. Some regarded inam property as private free-hold in the fullest sense of the te m, and thus interpreted the word inam in the sense of absolute gift; while others thought differently, and were not satisfied, in the absence of deeds, that an inam tenure necessarily meant even an hereditary one, still less a permanently exempt tenure. Consequently, public interests suffered by such conflicting opinions Thus, then, all things pointed towards the necessity for constituting a special tribunal for regular inquiry into the vast amount of alienations with which the Presidency was burdened with a view to confirm just titles at their worth and to recover the wrongfully with-held revenues. For in the Konkan and Guzerath, as remarked above, the Collectors and Judges had done very much as they liked both before and after 1827, under the Reg.; and in the newly-acquired districts, not subject to that Reg., a few rules by Mr. Elphinstone issued in 1819, from time to time amended and enlarged, had sufficed as guide. But as in the older provinces so in the new, no general plan of operations had been devised. This

was, perhaps, mainly to be attributed to the one serious deficiency, that of want of evidence. It became necessary wholly to trust to the assertions of interested persons, supported, if at all, by accounts lately given in by them, and but little had been done in the disposal of land alienations and cash allowances until 1841, when the alienation question once more came prominently forward through the energy of Mr. Goldsmith. That gentleman had been appointed Superintendent of the revised revenue survey in the S. M. Country, and in course of his operations naturally became startled at the enormous proportion of land held in alienation from the State in the two collectorates of Dharwar and Belgaum. He at once set himself to the task of investigating the origin of this extraordinary state of things. It was not long before he was able to collect information and accounts, which showed that many of the alleged inams in that province were surreptitious holdings, and being aware of the immense importance of the Poona Dufter as evidence on this subject he suggested to Government in 1841 the expediency of taking additional measures for the proper preservation of that Dufter. Government assented to the suggestion and subsequently deputed him to collect and make arrangements for the safe custody of the records relating to the S. M. Country, a duty which he completed by the end of 1842. Being in possession of these important records, and so far prepared to investigate the numerous claims for inams in Dharwar and Belgaum, he addressed the Government to that effect, and the result was the appointment in 1843 of a Committee composed of himself and Moro Pant, Principal Sudder Amin of Poona, for the purpose of investigating the titles of persons holding villages and lands as inam in the two districts. Such then is a brief sketch of the circumstances which led to the formation of the first Committee, for the purpose of investigating the titles of persons holding lands as inam. The inquiry was at first authorised as a tentative measure in the Talukas of Hubli and Navalgund. It was soon extended to the other Talukas, and in 1844-46 to all inams in the S. M. Country, to which was added the duty of reporting on the emoluments, &c., of village and district hereditary officers. And thus the inquiry progressed until 1852 when Act XI, 1852, was passed giving statutory existence to the Inam Commission and defining its duties, powers and procedure. This Act related to the new provinces only; namely, the Deccan, Khandesh and S. M. Country. Meanwhile, in the old provinces of Guzerat and Konkan, which were subject to Regs. XVII 1827, and VI, 1833, things remained much as before. Indeed, these

provinces remained for the most part in *status quo* for the next 11 years, until the conversion of the Inam Commission into the present Alienation Department and the promulgation of the Summary Settlement Acts in 1863. But during these 11 years the Inam Commission had been steadily pursuing the even tenor of its way in Khandesh, the Deccan, and S. M. Country. It may be mentioned that Act XI, 1852, was merely the embodiment in judicial form of the rules, with improvments, which had guided the Inam Committee from the beginning and constituted the Inam Code of 1842. Concurrently with these rules for land were those framed for the adjudication of cash and grain allowances; and these latter rules were issued in an amended form after the promulgation of Act XI, 1852, as the *Amended Rules of 1842*.

Alienation Department.

Having thus described the origin of the Inam Commission and the laws (Act XI of 1852 and the Amended Rules of 1842) under which it worked, its subsequent history may be disposed of in a few words. It dealt with and settled personal inams, acting on the principle laid down in the Act that all land under sanad declaring it to be hereditary shall be continued according to the terms of the sanad. The next class of holdings settled were those for the support of religious establishments, as temples, mosques, &c. The Legislature applied the word *permanent* to these, so that if the investigating officer came across a grant for religious purposes which did not contain words expressive of its permanent character, such a character was implied as the very essence of the grant. A third class of holdings consisted of Inams granted for the performance of service to the village as contradistinguished from service to the State These were official tenures, and by local usage were hereditary, for they formed an integral element of the village constitution (*vide* page ii). Whether or not a grant had words introduced into it of hereditary import the holdings were, nevertheless, so treated. These holdings were settled *permanently* as official emoluments. The Inam Commission also settled watans and jaghirs, which will presently be referred to in more detail.

Inam Commission settlement.

The Commission had one great defect. It was not calculated within a reasonable time to attain the end for which it was designed. It was too slow. Sufficient progress had not been made in the adjudication of

Summary Settlements.

titles during the eighteen years that it had been in force, and a multitude of cases still remained for decision. Accordingly, a more summary mode of settlement was projected, and the operations which followed thereon may be considered the *second part* of the alienation inquiry, the working of the Inam Commission being, so to speak, the *first part* of that inquiry. Upto this time inam property had only been considered private property in the restricted sense that the Inamdar could do what he liked with his own so long as it was his own, that is, no escheat could take place so long as the original grantee had descendants; but the State never lost its reversionary right in case of the extinction of the family of the grantee. Now, however, the time had arrived when all restriction was to be done away; all personal inams were to become transferable free-hold, alike those which had not been adjudicated and those which had been, an equivalent to the State for the right of reversion foregone being secured by the imposition of partial assessment. The Summary Settlement Act under which this system was brought about are Nos. II and VII of 1863, the former relating to the new provinces, that is, the Deccan, Khandesh and S. M. Country, and the latter to the old, that is, Guzerat and Konkan. These Acts provide that all personal Inams already formally adjudicated to be exempt wholly or partially free from payment of land-revenue hereditarily in perpetuity, may, at the option of the holder, acquire an enlarged tenure and become heritable and transferable free-hold, on payment of certain specified nazarana &c. All temple and official holdings already formally adjudicated to be permanently continuable and not transferable would be so continued according to the terms of the decision. To cure defect of title in the case of all unadjudicated lands a quit-rent was imopsed. Such of these lands as were held on personal tenure also became heritable and transferable free-hold. In no case were lands other than personal allowed to become personal property. Holders were free to elect formal adjudication in preference if they chose, but this alternative was seldom resorted to. Neither of these Acts, however, made any provision for inams already formally adjudicated to be *not* continuable hereditarily, in other words, for *terminable* inams, so already adjudicated. A special measure of relief was extended to this class of holdings by Government letter No. 2900, August 1, 1864, containing instructions as to their settlement. This settlement was called *The Terminable Inam Settlement.* The object of this settlement was to enfranchise the only class of

Inamdars to whom the advantages of the Summary Settlement could not be extended, and thus complete the enfranchisement of all.

Rates perpetual.

All the rates imposed under any of the aforesaid settlements were fixed in perpetuity and not liable to increase or decrease on any new assessment except in the case of lands which had not been already assessed by the revenue survey then in progress.

Thus, then, is the history of the land settlement with which the Alienation Department was *directly* concerned. There were, however, certain classes of political, service, and official holders excluded from the above settlements, with whom the Alienation Department was only *indirectly* concerned, as their holdings were expressly exempted from the provisions of Act XI, 1852, and the Summary Settlement Acts. They may be classified as follows: I—Village officers, *i. e.*, Government officers, (*a*) useful to Government and village, (*b*) useful to village only, and (*c*) useless alike to Government and village; II—Hereditary district officers; III—Saranjamdars and Jaghirdars. Their holdings were settled in the following manner.

Settlement of holdings of useless servants.

In the new provinces the class of village servants who were useless to both Government and the community consisted of those whose offices had become obsolete, such as Mahajan, Beldar &c. The principle was adopted of continuing permanently one half of the emoluments as transferable free holds, the other half becoming a permanent lapse to the State. Untaxed land was subjected to one-half of the ordinary assessment, taxed land was subjected to assessment to the extent of a moiety of the difference. The few cases adjudicated by the Inam Commission in former years have been similarly treated under G. R No. 2786 of 1867. In the old provinces the lands of this class have been fully assessed, and the holders have become in all respects Government ryots.

Ditto of servants useful to community only

The class of village servants who are now only of use to the community, *e. g.* Kazi, Joshi, &c., consists of those who, though performing no service to Government, are still of use to the village. The holdings of this class are subject to local service, and are not transferable. In the new provinces they were assessed at one-fourth of the proceeds to cure defect of title. The few cases adjudicated

by the Inam Commission in former years have been treated under G. R. No 2735 of 1867. In the old provinces these services were continued subject to a deduction of ¼ or ½ of their proceeds according as the service to be performed was more or less useful to the community.

Ditto of inferior village servants.

The holdings of inferior village servants, such as Mhars, Talwars, &c., who are useful alike to Government and the village have been mostly settled in both the old and new provinces. These holdings are generally small, and being for the most part already heavily burdened with quit-rent, required no settlement other than their continuance in their existing state. The amount raised by the levy of assessment on holdings of obsolete village servants referred to above has been partly applied to the payment in some cases of increased remuneration to this class of village servants

Ditto of village officers.

The superior village servants are the patel and kulkarni. The principle of settlement in their case was to provide adequate remuneration for the member officiating for the time being. The sources of income were generally three: land, for the most part exempt from rent, direct levies in cash or kind from ryots or compensation in lieu thereof, and cash payments from the Government Treasury. The true value of the income derived from these sources was determined and adequate remuneration for the officiator provided from them when sufficient; when insufficient, an assignment from the Treasury made up the deficiency, when more than sufficient the land in excess was assessed at one-half the revised survey rates. This order and mode of calculation secured to the State the benefit of the lapse of cash allowances on the death of the then incumbents which made up to some extent for the extra amount which had to be contributed from the Treasury. Patels and kulkarnis who were not watandars, merely received the remuneration assigned to officiators. The remuneration was fixed according to scales, being a certain percentage on the village revenue.

Ditto of district officers.

Next for consideration come the hereditary district officers. These officers as already mentioned (page xxviii) were in former times the chief instruments for the collection of revenue Their duties were now entirely superseded by the present revenue system of the British Government.

In the earlier part of the British rule, these officers were allowed to perform their customary services either in person or by deputies. But they and the deputies whom they furnished did not prove to be efficient servants in the taluka and district offices, and the general progress of the revenue survey rendered the services which they were capable of performing yearly less and less necessary. The villages and lands enjoyed by these officers being held by them for service, it would naturally follow that, if the State thought fit to dispense with their services, it should resume their villages and lands. But Government were minded to pursue a liberal policy with these ancient zemindar families. A few cases in Belgaum were disposed of by Government upon reports by the Inam Commission to whom the inquiry into this class of holdings also was entrusted (see page xxxiv). But the settlement by means of these long and laborious reports neither progressed well nor expeditiously. For many years the inquiry halted, and it was only in 1863 that Government determined upon appointing a Commission presided over by Mr. Stewart St. John Gordon for the purpose of the settlement of these cases in the Deccan, Konkan and S. M. Country. A corresponding Commission was shortly after appointed for Guzerat, presided over by Mr. W. G. Pedder. These Committees placed themselves in direct communication with the district hereditary officers, and after ascertaining their wishes, recommended certain settlements which were afterwards sanctioned by Government. For the most part, the agreement come to was that, in consideration of the zemindars paying to Government in perpetuity 5 or 6 annas in the rupee of the assessment of their holdings, Government would disclaim all future right to their services. The amount of quit-rent differed in each district, and the terms agreed upon with Gordon's Committee were not the same as those settled by Pedder's Committee. One of the conditions which, at the suggestion of Government, Gordon's Committee offered to the zemindars, was that those who desired it, should be allowed to convert their watans into private property by the annual payment of an additional anna per rupee of assessment as nazarana. But when submitting their report on the Satara District, the first district in which Gordon's Committee worked, they reported that they were doubtful whether the privilege to be purchased by the payment of the one anna nazarana would be considered by all in the light of a boon. In fact some of the principal watandars, they said, anticipat-

Gordon and Pedder Settlements

ed that it would place them more at the mercy of their creditors, and therefore they would not accept it even as a gift; whilst, on the other hand, others indifferently situated seemed to desire it. But in Poona, the next district to which the Committee turned their attention, they found the zemindars wholly disinclined to have their watans converted into private property. Mr. Gordon wrote: "I now beg to add a third clause to the proposed settlement sanad, to which the zemindars of Poona attach the greatest importance, as it provides, for the continuance, in perpetuity, of their watans, without permitting the alienation to strangers of any portion of the estate." The proposed clause was to the effect that on payment of a nazarana of an additional anna, the zemindars should have conceded to them the right of adoption, without restriction as to the family from which the adoption might be made. The terms of the settlement settled for Satara, and Poona were extended to all the districts in which Gordon's Committee worked. It was thus that at the zemindars' own request Government consented that their watans should be inalienable after the settlement as they had been previously. In the districts of Guzerat the case was different. The settlements made in some at least of those districts expressly made the watans transferable private property There were, however, instances in both provinces, in which the abolition of service was not viewed favourably by the zemindars; but these instances were few and occurred in few collectorates; the settlement effected in these cases provided for the continuance of service under certain arrangements. Hence the settlements became known as the *non-service settlement* and the *service settlement*. Subsequently, the *service settlement* was found to work badly, and a *non-service settlement* was substituted. It came into operation in Feb., 1873. The commutation fixed in the case of these watandars represented not only the Government demand for service but the cure for a possible defect in title. The terms of the sanads issued are not one and the same throughout the Presidency, and are not the same in all respects even in the same Division.

Settlements of Saranjams.

The political holdings were a class by themselves and were dealt with separately. There were many large holdings of this description all over the Presidency except in Guzerat. Some involved the performance of military service; some did not. On the settlement of the country by the Hon'ble Mr. Elphinstone after the downfall of the Peishwa

such of the *military saranjams* and *jaghirs* as had not been guaranteed by treaty were ordered for resumption. Some were resumed but many escaped resumption. The guaranteed military holdings have since commuted their service. Of the *saranjams* and *jaghirs* which did not involve the performance of military duty, and in contradiction were designated personal, some were guaranteed by treaty, the remainder were made subject to adjudication of title according to rules expressly drawn up for the purpose. The guaranteed holdings were exempt from inquiry of any sort, and the purport of the guarantee was to uphold the *status quo ante bellum*. The nature of the guarantee in each case will be found in books of treaties. The inquiry of unguaranteed saranjams was one of the most important of the many arduous duties which the Inam Commission was called upon to perform. These holdings were to be found in the Deccan only. The inquiry into the Deccan Saranjams in and before 1847 by the Agent for the Sirdars being imperfect Government handed over the whole of the saranjams for scrutiny to the Inam Commission which in each case made a separate report, applying the principles given below. The history of the manner in which the Deccan *saranjams* were dealt with by the British Government may profitably be referred to here. On the advice of Mr. Mountstuart Elphinstone, it was determined that all *saranjams* granted prior to 1751 should be considered hereditary; this concession was made, not as of right but as an act of grace and state policy; and the Government reserved to itself the power of determining, whenever occasion might arise, the nature and extent of its own bounty. This reservation of the power of Government has been recognised in all the British legislation on the subject. S. 38, Reg. XVII, 1827, provided that land held exempt as *jaghir* shall be liable to resumption and assessment under the general rules at the pleasure of Government; the general rules meant such rules as government might think proper to issue from time to time. Act XI, 1852, after providing for rules for adjudicating upon titles for exemption from payment of land revenue, enacted that the rules would not be necessarily applicable to *saranjams* or other tenures for service to Government, or tenures of a political nature, the title and continuance of which should be determined, as heretofore, under such rules as Government might find it necessary to issue from time to time. Similar reservations were made in Acts II and VII of 1863. The principles according to which the continuance of these holdings was to be re-

gulated were that: (1) all *saranjams* granted prior to 1751, or held in commutation for anything so granted, should be considered hereditary; (2) all *saranjams* granted between 1751 and 1796 should be continued to the holder at the introduction of the British rule and for one generation further, with a pension of half the net proceeds to the third generation; (3) all *saranjams* granted after 1796, that is, all those granted by the last Peishwa Bajee Rao, should be continued to the holder at the introduction of British rule, after his death a pension of half the net proceeds being granted to the next generation. Generally speaking, *saranjams* of which families had been deprived previously to the British rule, were not acknowledged, and those which after being taken away had been again restored previously to the British rule, were held to have been acquired at the date of restoration. Some resumptions, however, were so clearly temporary that it was judged harsh to consider them as having broken the chain of prescription. The word *hereditary* in rule 1 * simply meant, in the first instance, continuance to the occupant at the introduction of the British Government, *the first British grantee*, and his descendants, but it was subsequently allowed to comprise the brothers of the first British grantee and their descendants, though in case of a saranjam being divided among these brothers, or other separate provision having been made for them, each brother would in that case transmit his separate interest to his descendants without the right of cross inheritance in case of the failure of lineal descendants.

Cash allowances

It now remains to describe the cash allowance summary settlements. We have already referred (page xxxiv) to the Amended Rules of 1842 for formal adjudication of cash allowances. These were equally applicable to the old as to the new provinces, though in the former the Civil Court did not consider themselves barred from exercising jurisdiction over Government as defendants in the case of adverse decisions passed under those Rules, on the plea that the Rules had not

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* In Nairne's Revenue Handbook the words "in the male line" are added to rule 1 given above.

the force of law. The Rules, based as they were on the assumption that the Poona Dafter contained copious records forthcoming of former governments, of a nature to test the validity of money claims, and as for the most part this was not the case as regards Guzerat, were not quite adapted to the state of things in Guzerat. In 1861 Mr. Peile submitted to Government an elaborate report proposing rules for the disposal of different kinds of allowances based on their nature and origin. The proposed rules with modifications were sanctioned by Government in G. R. No. 4309, Nov. 27, 1862, and became the authority for the general settlement of cash allowances. The cash allowances in Guzerat differed very essentially from those in any other part of the Presidency. The most important of them had had their origin in violence generated by the disorder of the previous rule. Villages bought off their plunderers who then often became their protectors, and thus a species of unjust imposition sprung up in the shape of *girasia* haks. There were also other haks peculiar to Guzerat. All these haks, and other cash payments, *e. g., devasthan, dharmadav*, &c., which were common to all parts of the Presidency, were settled under the various Rules referred to above. Cash allowances come under the purview of the Pensions Act.

Forms of the more important sanads embodying the terms of all the settlements described above are given in Appendix IV.

The present law of Inam tenures including *Saranjams* will be considered in Appendix VI.

PART III.

HISTORY OF WATAN LAW.

It was the custom of native Governments to remunerate the local revenue officers by means of grants of land, and of certain rights and perquisites. The property thus granted was called "watan," and the members of the family to which any such property belonged were called "watandars." The grants were hereditary and were usually confirmed by sanads; but although this was so, the rulers of that time did not hesitate to confiscate any watan if the watandar misbehaved or acted disloyally—the will and power of the ruler supplying, in such cases, both the law and

thority to dispense it. On the accession of the British rule, the rights of these hereditary officers were duly recognised and respected. And instead of their being subject to the arbitrary will of the ruler for the time being, they gradually came under the sway of written regulations and fixed law. In Reg. XVII, 1827, an entire chapter was devoted to the subject of "Hereditary District and Village Officers," and one of the first sections of that chapter provided that "the allowances of an hereditary officer shall not be subject to alienation," and "shall not leave the family in which the office is vested." The need was, however, felt before many years for an enactment to regulate the services of the hereditary officers, and to secure the due discharge of the duties for the performance of which so large a portion of State property had been assigned to these watandar families. For this purpose Act XI, 1843, was passed. That Act continued in operation for more than 30 years. During that period, the watandar families, under the peaceful security of British rule, rapidly expanded, and systematic procedure, which is the offspring of equitable Government, soon gave rise to a practice of selecting the officiator in hereditary offices by rotation. To some extent, no doubt, this practice prevailed before the passing of Act XI, 1843; but it resulted from the attempts made by Collectors to do justice to all the fit members in each family, who claimed the right of office, and this practice of rotation gradually obtained more and more recognition. At length the number of such claimants grew so great and the disputes between them so numerous and so interminable, that further legislation was loudly called for, for the creation of a system, whereby the rights of the several parties could be once for all ascertained and recorded, and the right to officiate could be determined according to fixed rules. The right of service, although not attended with any great pecuniary profit, was and is highly prized on account of the social dignity it confers, and was therefore sought for by resort to unscrupulous means, to the demoralization of the subordinate revenue officials, and the wasting of time and patience of their superiors.

To remedy these evils a Committee was assembled, consisting of the two Revenue Commissioners and of five experienced Collectors who made certain recommendations for the purpose of regulating the duties and status of all district and hereditary officers. Owing, however, to a subsequent change in the law, namely the commutation arrangements already described, Bill No. II of 1873, restrict-

ed to village officers only, and not extending to district officers also, was introduced into the Legislative Council, and referred to a Select Committee for report. But doubts having arisen whether the settlements of the watans of the district hereditary officers were not liable to be questioned and set aside by the Civil Courts,—there having been no specific statutory enactment legalising these settlements, Acts XI of 1852, and II and VII of 1863 not applying to the said watans,—that Bill was withdrawn, and Bill No. XII of 1873, comprising both kinds of watans, introduced. After several days of discussion the latter Bill became the present Act III of 1874, commonly called "the Watan Act." The settlement of claims and disputes under it made great progress and except in Guzerat, the peculiar circumstances of which necessitated a special measure (Act VII of 1887), the Act worked well. Its provisions, however, being somewhat complicated, it was inevitable that some errors and omissions should, in course of time, be found in it. Accordingly, Bill No II of 1885 was introduced to remedy the defects thus found out, without substantially altering the frame work of the Act, and became Act V of 1886.

The main object of the recently passed Act III of 1910 is to declare that for the purpose of registration under s. 36, succession by 'lineal', as opposed to 'ordinary', primogeniture should be the recognised rule, in the absence of an established custom to the contrary in the case of any particular watan, and to meet defects shown by experience to exist in the provisions regarding the appointment, removal and punishment of officiators.

PART IV.

SYNOPSIS OF ACT III, 1874.

Broadly speaking, the object sought to be attained by the Watan Act has been to strengthen and build up from their foundations the ancient village forms of Government as they were found to exist in the offices of patel or headman, of kulkarni or accountant, of watchman, and of Mhar or man of all work. The Act has recognised the all important necessity of providing adequate remuneration for the officiator. To this end the most effectual and stringent provision against the alienation of watan property is

made in Part II. After validating the commutations of watans already made and to be made hereafter as circumstances would require, the Act proceeds in Part III to make provision for the enforcement of payment of the watan emoluments which are in certain cases payable in kind or money by persons other than Government. As there may be cases where there is no property attached to an office, or where the watan may have become lapsed on account of the extinction of the watandar family or in some other way, the Act makes provisions in regard to such cases in Part IV. In order that sufficient emoluments should be in the easiest reach of an officiator for the time being, the Act has in Part V cast the duty of making specific assignments for the purpose on the Collector. After making these provisions to secure proper remuneration to the officiator, the Act then proceeds to point out, in Part VI, how the person entitled to officiate as Patel or Kulkarni is to be ascertained, making provision at the same time for the contingencies of adoption by, and death of, the person so ascertained. Part VII regulates the period of service of persons so ascertained. As it is possible that the person having the right of service may be mentally, physically, or morally incompetent to discharge the service of his office, Part VIII deals with the question of these disqualifications, and lays down who should be nominated or selected to officiate, incidentally providing (s. 56) for the recognition of a deputy's right of service as hereditary in certain cases. Part IX specifies the punishments to be meted out to delinquent officiators. Having thus disposed of the case of the superior village officers, the Act proceeds in Part X to make general provisions about the rights and duties of the inferior village officers. Part XI specifies what registers are to be kept, and Part XII refers to miscellaneous matters. Part XIII regulates the procedure and appeals in watan cases, and the jurisdiction of the different authorities who are to carry out the provisions of the Act.

THE

BOMBAY HEREDITARY OFFICES ACT

BEING

BOMBAY ACT No. III of 1874.

(As amended by Bombay Acts Nos. V of 1886 and III of 1910.)

Passed by the Governor of Bombay in Council.

[The assent of the Governor General of India to Act No. III of 1874 was first published by the Governor of Bombay on the 5th February 1875, to Act No. V of 1886 on the 28th January 1887, and to Act No. III of 1910 on the 1st October 1910.]

An Act to amend the Law relating to Hereditary Offices.

Preamble.

Whereas it is expedient to declare and amend the law relating to Hereditary offices; it is enacted as follows :—

PART I.

PRELIMINARY.

Short title.

1. This Act may be called the Bombay Hereditary Offices Act.

It extends to the Regulation Districts and to all villages therein, whether alienated or otherwise, so far as its provisions shall not conflict with the terms on which any such alienated village may have been secured to the holder thereof.

Nothing in this Act shall affect the powers of Government to deal with any watan or parts of watans,

or with profits thereof, respectively, under Act No. XI of 1852, or Bombay Acts Nos. II and VII of 1863, or any other law at present in force with respect thereto.

Originally the section simply declared that this legislation was to extend to the Regulation Districts and to all villages therein, whether alienated or otherwise; but as a great many objections were raised by the different local officers to the effect that the tenures on which alienated villages were held might be interfered with, the section was amended as above. By adopting the amendment, alienated lands allotted for service in a village would in no way be interfered with—(Proceedings of the Legislative Council, August 24, 1874). An example of the application of this provision will be found under s. 70.

The reason for adding the second clause was that in the Acts quoted certain powers were retained by Government, and these Acts were not meant to be interfered with by the present enactment (*ditto*). An example of the exercise of these powers will be found in G. R. No. 5964, August 26, 1899. (*Vide* ss. 8 to 13, *Rul.* 15.)

As to the history of the law, &c., of watan tenures see Introduction.

Some portions of the Bombay Hereditary Offices Act being found to be unsuited to Matadars, the Matadars Act (Bombay Act VI of 1887) was enacted amending the Bombay Hereditary Offices Act and enacting special provisions for the regulation of the service of Matadars in the Districts of Ahmedabad, Kaira, Broach and Surat and those parts of the Panch Mahals District to which the provisions of the Act may be extended.

Regulation Districts.

The term " Regulation Districts " is defined in the Bombay General Clauses Act X of 1866 (recently repealed), and means those parts of the territories subject to the Government of Bombay which have been or shall be brought under the General Regulations of Bombay, and in which the same are now or shall be in force.

2. (*Repealed by Act XII of 1876*).

The section stood thus :—

The enactments mentioned in the schedule hereto annexed shall be repealed to the extent specified in the third column of the said schedule.

Consequences of repeal.

Where the Bombay General Clauses Act, or any Bombay Act made after the commencement of that Act, repeals any enactment hitherto made or thereafter to be made, then, unless a different intention appears the repeal shall not (*a*) revive anything not in force or existing at the time at which the repeal takes effect ; or (*b*) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder ; or (*c*) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed ; or (*d*) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed ; or (*e*) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed. (Bombay General Clauses Act I of 1904).

The Legislature while possessing the power to divest existing rights is not (in construing statutes) to be understood as intending to exercise that power retrospectively to any greater extent than the express terms of, or necessary implication from, its language requires. *Ichharam v. Govindram*, 5 Bom., 653.

Application of Parts VI, VII, VIII & IX.

3. Parts VI, VII, VIII & IX, (*of this Act*) shall not apply to Hereditary Offices of lower degree than Patel or Kulkarni nor to watans appertaining to such offices.

The words in the brackets were repealed by Bombay Act III of 1886.

4. In this Act, unless there be something repugnant in the subject or context,—

Interpretation clause.

"Watan property" means the moveable or immoveable property held, acquired or assigned for providing remuneration for the performance of the duty appertaining to an hereditary office ; it includes a right to levy customary fees or perquisites, in money or in kind, whether at fixed times or otherwise ; it includes cash payments in addition to the original Watan property made voluntarily by Government and subject periodically to modification or withdrawal.

In different parts of the country it was the custom to levy fees and perquisites for service in various ways, sometimes in money and sometimes in kind. Therefore, in order to provide for that custom, the second clause in the above definition was added. The third clause relates to cash emoluments allowed by Government for the remuneration of patels and other officers in villages where the value of the original watan could not be regarded as a sufficient remuneration for the proper performance of their duties. (Proceedings of the Legislative Council, August 24, 1874). *See* Notes under ss. 17 and 23.

Property:—As a general proposition it may be affirmed that everything which possesses any value may be appropriated by an owner, and hence may be called property and made the subject of a transaction between him and other persons. The thing itself, thus called 'property', is not necessarily a tangible object, for incorporeal or intangible things are also capable of being owned. The word property as used here relates to such things as well as to physical objects in the shape of land and goods, and is not used in the sense of ownership or dominion in which it is used elsewhere. (*e. g.*, in the Contract Act, s. 78.)

"Immoveable property" includes land, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth ; "moveable" property means property of every description, except immoveable property. (Bombay General Clauses Act I of 1904.)

Nibandha.

"To the application of the rule—that when the question concerns the rights of Hindus, the term immoveable property may be taken to include whatever the Hindu law classes as immoveable, though not such in the ordinary acceptance of the term—within proper limits, their Lordships see no objection. The question must, in every case, be whether the subject of the suit is in the nature of immoveable property; and if its nature and quality can be only determined by Hindu law and usage, the Hindu law can properly be invoked for the purpose. Thus in the two cases on which the appellant relies Hindu texts were legitimately used to show that in contemplation of Hindu law, hereditary offices in a Hindu community (such as that of *Joshi*) incapable of being held by any person not a Hindu were in the nature of immoveables . .....(But) as the *Toda giras haks* in dispute may pass to and be held and enjoyed by Mahomedans, Parsis and Christians, the applicability of the general statute of limitation must be determined by the nature of the thing sued for and not by the status, race, character, or religion of the parties to the suit. The nature of the *hak* in dispute could not be decided on the principles of Hindu law." *Fatesangji v. Desai Kallianraiji.* 1 I. A. 34; also 10 Bom. H. C. R., 281. *Balute* or *aya* is immoveable property (*nibandha*). *Appana v. Nagia.* 6 Bom., 512. A *nibandha* need not be secured on land. *Collector of Thana v. Hari.* 6 Bom., 559. Though the right to a watan in the Nizam's territory is *nibandha*, and probably ranks as immoveable property for purposes of jurisdiction, money when actually paid out of the Nizam's treasury in respect of such watan becomes personal property in the hands of the person who has received it. *Bajirao v. Krishnarao.* P. J., 1885, 130. The right to receive annually a fixed permanent allowance out of the revenues of a temple is a *nibandh. Laxmandas v. Manohar,* 10 Bom., 149. Toll leviable on paddy exported through a part of the British territory is a *nibandha. Krishnaji v. Gajanan.* 11 Bom. L. R., 352. A right to the assessment of the *dhara* has been regarded as *nibandha* in Hindu law. *Madhavrao v. Kashibai.* 12 Bom. L. R., 9.

The Sanads granted under the Watan settlements do not necessarily give the holder forest rights. Each case should be decided on its own merits, according to the previous rights of the Watandars. G. R., No. 3516, September 16, 1868.

Watan lands which pay absolutely nothing to Government, not being liable even for *judi*, are not lands paying revenue to Government within the meaning of s. 265 of the Civil Procedure Code of 1882. (The corresponding section of the Code of 1908 is 54; it substitutes the words "assessed to the payment of revenue" for the words "paying revenue" in the old s. 265.) If judi is payable the said Section would apparently apply. G. R.. No. 4605, June 19, 1895.

Presents to deities.

Collector: "It has been an hereditary and immemorial custom with the Deshmukhs to take what offerings or presents are made by the pilgrims to the deities. The Deshmukh Watan has now lapsed to Government, and the question is whether these presents form part of the Watan perquisites and whether they should now go to Government. Neither the Deshmukhs nor the village officers have any documentary evidence to prove the title of the Deshmukhs to the income in question. But the continuous enjoyment of this right demonstrates that it must have been sanctioned by the former Government of Satara. In return for this, certain functions in connection with the worship of the deities were in all probability once imposed on the Deshmukhs, the arrangement apparently being made in the interest of the Devasthan or the community, thus not entitling the Deshmukhs to receive the money as part of the emolument of their Watan, a totally different matter. The position of the Deshmukhs in the affair may be likened to that of Joshis or Kazis. It appears, therefore, that Government cannot properly claim the income now. The sums annually received are so trifling as to be not worth the trouble of recovery. I beg, therefore, to propose that the Deshmukhs should be left to share whatever money the faithful may be disposed to pay as offerings at these festivals and that Government should decline all concern with the affair." Approved G. R. No. 4472, July 7, 1903.

The *haks* constituting the remuneration of the village *Mhars* for service were not abolished by Acts XX of 1839 and XIX of 1844.—*Jetinga v. Vitoo.* (Morris' Reports, p. 34).

Easement.

The cultivation of a Watan land as garden land by means of the well in a non-watan land, can confer no legal right in the nature of an easement on the watan land, if the use of the well took place whilst both

lands belonged to one and the same person, (and thus there being no servient and dominant tenements, the existence of which only can create a right of easement, no such right can arise under the circumstances). Nor could the circumstances of the vendor having sold the watan land with the well and other rights (assuming the expression rights includes the right to draw water from the well in question) affect the question as to what constituted the watan property. *Wamanji v. Parasharam.* P. J., 1884, 220.

Trees.

Where plaintiff, purchaser of trees standing on certain lands, sued Government for an injunction to restrain the Collector from prohibiting him to cut the trees, the defendant contended that as the lands were patilki service inam, the trees were not the property of plaintiff's vendors; *held*, that though, where a watan has been granted as remuneration for service, the holder at any time may be bound to keep the estate unimpaired and to pass it on unimpaired to each generation of watandars, it does not follow that the trees on the lands, which may not be recklessly felled by the watandar, are the property of Government or may not be cut without the Collector's permission. *Semble*—the mere fact that *judi* equal to the amount of the full assessment was levied on the land which had always been treated as patilki inam does not of itself alter the nature of the tenure. "By G. R. No. 9578 of 1889, the Government sanctioned the proposal for conferring rights to forests on the holders of certain service inams This Resolution, however, if applicable to this watan, had not been issued when the trees in dispute were sold and cut down. But it cannot be safely inferred from the issue of the Resolution in 1889 that the watandars to whom it was applicable had, previously, no rights to trees on their watan lands. They are not the holders of a succession of life estates. The whole family of watandars owns the watan ; and the holders of land are presumably the owners of the trees on the land It may be argued that, as the watan was granted as remuneration for service, the holders at any time are bound to keep the estate unimpaired as a source of remuneration to the officiating watandars and to pass it unimpaired to each successive generation of watandars. But it does not follow that trees which may not be recklessly cut by the watandars are the property of Government and not of the watandars. They may be the owners of trees subject to a condition. In this case no evidence

Imposition of full judi.

has been pointed out to us as to the precise rights of watandars in respect of trees on their service lands anterior to the issue of the Resolution. We therefore send down the case for evidence on the point." *S. J. Desouza v. The Secretary of State*, 18 Bom., 319. As to the rights of holders of non-watandari service lands to cut trees standing on such lands and to appropriate the lands to non-agricultural purposes, see G. R. No. 2535, April 21, 1900, under Inam Tenures. It follows from the said G. R. and G. Rs. No. 3411, May 11, 1893, No. 3012, May 1, 1891, and others that a holder of watan lands can appropriate the lands to non-agricultural purposes without any sanction, extra assessment, &c.

"Hereditary office" means every office held hereditarily for the performance of duties connected with the administration or collection of the public revenue or with the village police, or with the settlement of boundaries, or other matters of civil administration; the expression includes such office even where the services originally appertaining to it have ceased to be demanded.

The watan property, if any, and the hereditary office and the rights and privileges attached to them, together constitute the watan.

"Watandar" means a person having an hereditary interest in a watan; it includes a person holding watan property acquired by him before the introduction of the British Government into the locality of the watan, or legally acquired subsequent to such introduction, and a person holding such property from him by inheritance; it includes a person adopted by an owner of a watan, or part of a watan, subject to the conditions specified in Sections 33 to 35 (*of this Act*).

The words in the brackets were repealed by Bombay Act III of 1886.

Government Rules under the Act.

The wide extent of the words "Watan property" as defined requires particular notice. The profits of watan property are frequently specially mentioned in particular sections. A right to profits is of course an

interest in the watan. The definition of watan, which includes the hereditary office with its rights and privileges, and the property, if any, attached thereto, is believed to be in accord with the notion conveyed in the popular use of the word. The fact that it is often found that the share in a watan bears no proporation to the share in the land or other watan property, shows the distinction between the two things, *e g*, a watandar universally recognised as an eight-anna sharer (in relation to the right to office) sometimes has no share whatever in the property. This indicates the abstract meaning of the term watan in ordinary parlance, and this meaning is intended in the definition.

Ditto.

The language used in defining "watandars" includes under that term acquirers under the native Governments, and those claiming now under such acquirers. It would be inexpedient to reinvestigate the title to such acquisitions. As to subsequent acquisitions, the definition only includes those who have acquired them in a *legal* manner; and in determining on this point, it will be necessary to refer to the provisions of Reg. XVI, 1827, and Act XI, 1843, and to the Settlement Acts. Fraudulent transfers made contrary to the express provisions of the law cannot be considered legal.

Essentials of hereditary office.

From the definition it follows that the essential conditions of an 'hereditary office' are these (1) that it must be 'hereditary' and (2) that it must be connected with 'the administration or collection of the public revenue or with the village police or with the settlement of boundaries, or other matters of civil administration.' If either of these conditions is wanting, the office would not be an hereditary office and the property attached to such office would not be watan property. Offices which may be 'held hereditarily' are not 'hereditary offices' within the meaning of this Act, if they are not connected with the administration of public revenue *&c.*, and offices which may be so connected are not 'hereditary offices,' if they are not 'held hereditarily.' The holders of such offices are not watandars, though they may be so called in ordinary parlance, and are not therefore governed by any of the provisions of this Act.

Sutars &c.

The offices of such village servants as are only useful to the village community and not to the State, such as *sutars*, *lohars*, *etc.*, not being connected with civil administration, are not hereditary offices within the meaning of this Act (*Ruls.* 1, 2); the same is the case with the office of *kazi*, it not being hereditary (*Ruls.* 3, 4).

Shetsanadis.

The offices, such as those of *talwars*, *walikars*, *shetsanadis*, being connected with the collection of revenue would appear to be hereditary (s. 5, *Ruls.* 29, 35, 37, 44, 58), if they are or were (as *prima facie* they would seem to be) held hereditarily. But there is a conflict of opinion between the High Court and the Government on the subject of *shetsanadi* office. In *Limbaji* (*supra Rul.* 29) the High Court have held that it is hereditary. But in G. R. No. 4695, July 6, 1899, Government say they "decline to admit that land held by *shetsanadis* is watan property and subject to the operation of the Act", and direct, under the Rules under Act XI of 1852 and VII of 1863, that the land in question in the case be resumed. This opinion seems to be based on the view which Government have all along held and find confirmed by the results of a special inquiry held in 1901, that *shetsanadis* have no *hereditary* right to hold office. This opinion they upheld at the meeting of the Legislative Council of 14th February 1900, and stated that any rent upto the full profit should in future be levied from non-serving members of a *shetsanadi* family in possession of service land with due regard to the Rules under the above Acts, and that as the officiating *shetsanadi* would thus receive full amount of remuneration, there was no reason to suppose that the efficiency of the *shetsanadis'* service would be impaired if their holdings were held partible.

The words "even where the services ..... ceased to be demanded" were added with a view to bring the watans of District Hereditary Officers settled under the Gordon Settlement within the operation of the Act, and thus to preclude the validity or otherwise of those settlements being agitated in the Civil Courts. *Vide* ss. 5 & 15.

The words "if any" after watan property show that property is not one of the essential constituents of 'watan.' They show the possibility of a watan without property.

The words "hereditary interest" mean an interest acquired by inheritance as distinguished from an interest acquired by purchase, gift, or other modes of acquisition; and the phrase "persons having an hereditary interest in a watan" should be confined to persons having a *present* interest of an *hereditary* character in the watan (*Rule.* 5, 7). A watandar, whose interest in a watan is forfeited absolutely, ceases to be a watandar, so far as the watan in question is concerned, from the date of forfeiture (*Rul.* 6).

The qualifying adverb "legally," standing as it does before the second and not the first "acquired," shows that the acquisition of a watan if made after the introduction of the British rule into the locality of that watan *must be lawful* in order to entitle its holder to the status of watandar; but if the acquisition was prior to the introduction of such rule, its legality or otherwise is immaterial.

As the first acquirer of a watan cannot be said to have acquired it by inheritance as distinguished from other modes of acquisition, and as it is even now possible for a total stranger to lawfully acquire a watan by purchase, &c., (by fulfilling the conditions and limitations mentioned in s. 5) from the holder for the time being, the definition of "watandar" includes such an acquirer and his heirs within its meaning.

The clause relating to adoption stood as follows in the original Bill: "It includes a person adopted by an owner of a watan or part of a watan, provided that in cases of adoption made since the village came under Government by any watandar head of a family of the degree of patel or kulkarni or of higher degree, the Government has assented to such adoption." In the course of the inquiries made in regard to the Bill, many objections were raised with regard to the alleged intention of Government to interfere with adoptions, and accordingly it was decided to do away with any necessity of obtaining the sanction

of Government in cases of adoption; and ss. 33 to 35 were added requiring notice to be given to, in lieu of sanction of, Government. *Vide* ss. 33 to 35. The clause, as it stands at present, seems to be defective, inasmuch as it ignores the restrictions upon an adoption imposed by the Sanads issued to District Hereditary Officers &c., in accordance with the Gordon Settlement. An adoption by a District Hereditary Officer, whose watan has been settled in accordance with the Gordon Settlement, from outside the watan family without the general sanction of Government given at the request of the whole body of the watandars &c., would be invalid, so far as the rights of Government are concerned, though among the watandars, *inter se*, the adopted son would have the rights and privileges of a son born to the watandar. Thus he would appear to be a watandar, as far as the rights of watandars, *inter se*, are concerned, but when his adoption comes in conflict with the rights of Government, he would no longer be a watandar. Of course s. 15 reserves the right of settling watans upon conditions inconsistent with the provisions of this Act, but all the same the clause in the definition seems to be defective. (*Vide*, further, s. 15.)

The essential thing required to constitute a watan is the "hereditary office" as defined above, even though the services originally attaching to the office may now have ceased to be demanded, by reason of their being commuted or dispensed with for some reason or other. This explains why s. 32 recognises the retention of the right of service as watan, notwithstanding the relinquishment of the property attached to the watan. Whether a lapsed watan continues to be a watan will be considered later on under s. 22.

Watandar.—This term means and includes a person who has acquired a present interest in a watan acquired by him before the introduction of the British Rule into the locality of the watan or *legally* acquired subsequent thereto, and a person inheriting such property from him; it also includes a person adopted by an owner of a watan subject to certain conditions.

Same Watan.—This expression means a watan attached to *one and the same office*, irrespective of the fact that it is

broken up into separate and distinct *takshims* or shares, the definition of the term "watan" being inconsistent with the supposition that there can be two separate watans connected with the same office (*Rule.* 11, 12, 14).

Watandar of the same Watan.—The meaning of the words *watandar* and *same watan* being thus ascertained and defined, it is now easy and convenient to state here once for all the meaning of the expression *watandar of the same watan*, which occurs in several sections of the Act. When a question arises as to "who are watandars of the same watan as A," the expression means and includes such persons as own and have a *vested and existing interest* in any portion of the same watan, whether such persons belong to A's family or not. Under the Hindu Law, all united coparceners of a joint Hindu family have a *vested interest* in the joint family property ; so also, the lineal male descendants, to the third degree, of a Hindu have a *vested interest* in the ancestral property in his hands. Hence :—

1. If A is a Hindu and a member of a joint family and the watan in question is the property of the joint family, the expression would include such strangers and members of the family divided from him as own a share in the watan or have a vested interest therein, and all the united coparceners of the joint family, such as his lineal male descendants to the third degree, his joint brothers, uncles, &c. and their lineal male descendants to the third degree. A divided member of the family, howsoever nearly related he may be, would not be a watandar of the same watan simply on account of his relationship, if he does not own a share in the watan or has no vested interest therein.

2. If A is a Hindu and a member of a divided family and the watan in question is his ancestral property, the expression would include strangers or members of the family owning a share in the watan or having a vested interest therein, and the lineal male descendants to the third degree of A.

3. If A is a Hindu and a member of a divided family and the watan has come to him by collateral succession or is his

self acquired property, the expression would include only those who own a share in the watan or have a vested interest therein be they strangers or members of the family. It does not include his lineal male descendants.

4. If A is a Mahomedan, Parsi, or Christian, the expression would include only those who own a share in the watan or have a vested interest therein, be they strangers or members of the family. It does not include his lineal male descendants.

RULINGS.

Sutars, &c., are not watandars.

1. L. R. "Looking to the definition of hereditary office, it is impossible to hold that the provisions of the Act are applicable to such village servants as *sutars, lohars, &c.*, whose duties are in no way connected with the administration or collection of revenue" No. 2188, April 14, 1881.

Ditto.

2. The duties with which s. 4 deals are confined to duties in which Government, as being responsible for the administration of the country, is directly interested. *Held, therefore,* that the village *sutar* (carpenter) does not hold any *hereditary* office within the meaning of the section. "Hereditary office means every office held hereditarily for the performance of duties connected (*a*) with the administration or collection of the public revenue, (*b*) with the village police, (*c*) with the settlement of boundaries, or (*d*) with other matters of civil administration. It is clear that a carpenter does not perform duties connected with (*a*), (*b*) or (*c*). Does he then perform duties connected with the civil administration? Is he a civil administrator? We think not. The definition does not seem to us to extend to those duties, which though useful to the village community, are not matters with which Government has any direct concern. As long as the duties of the village carpenter are performed it is not material whether they are performed personally or by a deputy. Lands held for the performance of the duties of a *kazi* have been held not to fall within the meaning of this Act, but for another reason, namely, that his office is not hereditary (*infra* 3 & 4). The precedent is, therefore, only valuable as showing that the scope of the Act is not to be extended beyond its apparent application. The orders passed by the Collector are not binding on

the Civil Courts. He has, we think, unduly extended the meaning of the Act." *Yesu v. Santaram*, P. J., 1896, 181; also, 21 Bom. 733.

3. The enactment of Reg. XVI, 1827, was adverse to any supposition that the office of *kazi* could be hereditary. The repeal of that Reg. by Act XI, 1864, left the Mahomedan Law as it stood before the passing of the Reg, and that law sanctioned no grant of such an office to a man and his heirs. The appointment of *kazi* lies exclusively with the Sovereign; and though the Sovereign may have full power to make the watan attached to the office hereditary, yet he has, under the Mahomedan Law, no power to make the office itself so. In the absence of any established local custom to that effect, the office is not hereditary; and it is doubtful if such a custom would be valid. "The *Hidaya* shows that high personal qualifications in the officiator are to be carefully sought for by the appointing power,—a moral injunction which would be frequently defeated, if the office were made hereditary." *Jamal v. Jamal*, 1 Bom. 633; and *Daudsha v. Ismalsha*, 3 Bom. 72.

Office of *kazi* not hereditary.

4. The office of Kazi is not an hereditary office, unless perhaps by special custom. Where such a custom is not established, property attached to the office is not watan property. *Baba Kalaji v. Nassaruddin*, 18 Bom. 103. *Dharamdas v. Hafaji*, 19 Bom. 250.

Ditto.

5. L. R. "A *watandar* is defined in the Act to mean 'a person having an hereditary interest in a watan.' As A has no present interest or share in the watan, he is not a watandar. The fact that he may possibly some day become the owner of the watan (by succession) does not affect his present position with regard to it, which is that of an outsider." Advocate General: "I quite agree. Hereditary interest means an interest that a person has obtained through, or which has descended to him from, an ancestor. According to Hindu Law, a son by birth acquires an hereditary interest in ancestral estate. Thus in this case, W on his birth acquired an hereditary interest in the watan and had in the lifetime of his father, M and of his uncles, S and B, (assuming he was born during their lifetime), a present interest in the watan and was a watandar within the definition. In like manner, if S and B had sons, such sons would likewise have acquired by birth present interests in the watan and would have

Meaning of *watandar*.

been watandars. But the class that acquires such interest by birth is confined to the lineal descendants of the acquirer of the property and does not comprise collateral members of the acquirer's family. Such collateral members have the possibility of succeeding to the property, if the acquirer's descendants become extinct; but until such descendants become extinct, such collaterals have no interest or estate in the property. There is no such thing as a vested remainder in Hindu Law. Thus, to revert to this case, the watan was acquired by R, ancestor of W and brother of V, who was the ancestor of A; and V never had any interest therein. Consequently V's descendants including A never acquired by birth or otherwise any interest. Nothing shows this more clearly than the fact that, on the death of W without male issue, his widow as his heir succeeded to the watan in preference to A, and A has now no interest in the watan. His right (if any) to succeed depends on his surviving the widow, for he has no vested remainder; and if he does succeed, the watan will be self-acquired property in his hands and not ancestral property, which again shows that he has now no hereditary interest in the watan and consequently is not a watandar." Copy forwarded for guidance. No. 6444, August 30, 1883.

6. L. R. "The effect of the orders contained in No. 6912, August 25, 1905, was to forfeit absolutely S's interest in the watan. The terms of the order and of s. 60 are wide enough to cover any hereditary or other interest which he may have had at that date. From the date of the order, he ceased to be a watandar so far as the watan in question is concerned. With respect, therefore, to holding or inheriting property appertaining to that watan, he is in the same position as a stranger to the watan and may be dealt with in the same way under Part II." Copy forwarded. No. 5063, May 25, 1909.

Ditto.

7. "Hereditary interest" means within the meaning of the definition an "interest acquired by inheritance" as distinguished from an "interest acquired by purchase, gift, or other modes of acquisition;" and the phrase "persons having an hereditary interest in a watan" should be confined to persons having a present interest of an hereditary character in the watan. "It is argued that any one who is in the direct line of heirship to the original watandar or can possibly be an heir to the last watandar has an 'hereditary interest'—an

Ditto.

interest by way of heirship in the watan. Hereditary interest, according to this contention, is equivalent to a *spes successionis*,—however remote. It would embrace heirs in the female as well as in the male line. This interpretation, in our opinion, gives far too wide a meaning to the expression, and one which, we think, the words do not legitimately bear. It is not correct either under English or Hindu Law to speak of the remote expectation which a collateral kinsman has of succeeding to an estate, as an interest in the estate. A collateral relation has no interest in the watan of the present holder. Besides, although there is no preamble to the Act, it is impossible to read its several sections without seeing that one of its main objects is to keep the watan property intact in the same family, an object which would be readily frustrated if alienation in favour of a person in the female line of heirship were permitted. A field sold to the son of a daughter passes as completely out of the watan family as if it were alienated in favour of a complete stranger. The same grammatical objection, and though in a lesser degree, the same argument founded upon the object of the Act, exists against extending the expression to all members of the watan "family" which (s. 4) includes each of the branches descended from an original watandar. If, too, 'hereditary interest' is read as equivalent to 'hope of succession,' there would be no warrant for limiting its operation to the members of the watan family (and for excluding members descended through females). The ordinary grammatical meaning of the phrase 'persons having an hereditary interest' is, we think, best observed, and the object of the Act is certainly advanced, by confining it to persons having a present interest of an hereditary character in the watan. In this sense, it would include all the co-sharers for the time being in the watan estate and probably also the sons of co-sharers, who, according to the principles of Hindu Law, by birth acquire an interest in their father's ancestral property. 'Hereditary interest' will, thus interpreted, mean an interest acquired by inheritance, etc., (as given above). In this sense, subject to the qualifications and explanations contained in the fifth clause of s. 4, we are of opinion that it is used in the Act." *Chinava v. Bhimangauda*, P. J., 1896, 231; also, 21 Bom. 787.

8. A Mahomedan, who owned some watan lands, died leaving a widow A, a son H, and a daughter L. H died leaving a widow S, and L died leaving C, her husband, and two sons. A and S

gave the lands to C under a deed of gift. Plaintiff sued for a declaration that he was the reversionary heir of A and S, and that the alienation made by them was inoperative after their death, as C was not a watandar of the same watan. *Held*, that the alienation was not bad, as, when L died, C succeeded to a share of the watan as her heir by Mahomedan Law, and thus became himself a watandar, since he acquired by inheritance a share in the watan, which, at his death, would descend to his heirs. *Held*, also, that as on the death of A and S, inheritance would devolve under the rules of Mahomedan Law, under which plaintiff was not their heir, he had no right to maintain the suit. *Dadu v. Lalbi.* P. J., 1896, 715.

Meaning of *watandar of the same watan*

* 9. L. R. "Each *takshim* ought, for the purpose of Chapter II, to be treated as a separate watan. In the case adduced, the *kunbi takshim* and the *Gujar takshim* are unconnected with each other, and each according to original custom held its own watan land. The land of each *takshim* will be watan, but a member of the one *takshim* will have no hereditary interest in the watan land of the other *takshim*. He, therefore, as regards that land is not a watandar, and the land in which he has an hereditary interest must be held to constitute a watan separate from that enjoyed by the other *takshim* in which he has such interest. The *kunbi* is not a watandar as regards the land of the *Gujar takshim*, nor is the *Gujar* a watandar as regards the land of the *kunbi takshim*. Each is a watandar as regards the land he appertaining to his own *takshim*, but they are not watandars of the same watan." Copy forwarded for guidance. No. 6026, July 25, 1885.

Ditto

10. L. R. "The petitioner and the respondents held separate shares in the same watan. The question is whether petitioner is a watandar of the same watan as the respondents. If the petitioner held no part of the watan, then the nature of his hereditary interest would have to be considered, but he actually holds and enjoys part of the watan property. He is a watandar of the same watan as defined in s. 4, for holds watan property belonging to that watan legally acquired by him subsequent to the introduction of the British Government. There is no division of the watan into two parts. All that was done

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* In view of the rulings *infra*, this is no more correct law.

or intended to be done was to issue separate Sanads to the holders of recorded shares. 'When a watan is broken up into shares or *takshims*, those takshims do not constitute separate watans." Vide *Rul.* 12, *infra*. No. 5317, June 1, 1909.

Ditto

11. "The plaintiff and defendant are the holders of a separate *takshim*, or share of a patilki watan, and it is alleged that the representative members of the two families officiate in turns. The lower Court has held that, as the plaintiff and defendant belonged to distinct families, the alienation effected by the decree, though in favour of a watandar, was still in favour of a person not a watandar of the *same watan* within the meaning of s. 10. This finding that the two *takshims* held respectively by the families of the plaintiff and defendant are not parts of the *same watan* is no doubt a decision on a question of fact. In dealing with it, the lower Court has not referred to the bearing on the question of the circumstances that the office of patel is held in turns by representative members of the two families. The point is really one the decision of which ought to depend upon the decision thereon arrived at by the Collector before issuing his certificate And if the Collector had in this case found judicially, under s. 10, that the *takshims* or shares of the plaintiff and defendant were distinct watans and that the lands of the defendant's *takshim* formed no part of a watan owned jointly by the parties, then such a decision would apparently be binding on the Courts. (*The Collector of Thana v. Bhaskar*, 8 Bom. 264). But the certificate given in this case is very vague. It is a certificate given in the alternative, and is to the effect that the land in question is 'the property of the watan of the person who does the work of Gawdki of Murnal, and it is assigned as the remuneration of the officiator, and is, therefore, inalienable to any person other than a watandar of the same watan' Now this certificate does not show that it appeared to the Collector that the lands in question belong to a watan in which the plaintiff, though a watandar, has no part or share, or on the other hand that these lands have been assigned as the remuneration of an officiating watandar. There is really no definite decision at all by the Collector affecting the particular lands. They certainly belong to a watan; but if the plaintiff is a member of the watan to which they belong, the alienation to him would certainly not be an alienation to which s. 10 would apply, and the mere certificate that the land is watan would

not, therefore, in such a case be binding on the Court. The certificate is, therefore, bad for uncertainty and cannot rightly be acted upon. The execution to proceed unless stopped by a certificate duly made under the Act." *Ramangawda v. Shivapa*, P. J. 1890, 263.

12. "The definition of 'watan' in s. 4 shows that there cannot be two separate watans in connection with one hereditary office, or, in other words, that when a watan is broken up into shares or *takshims*, those *takshims* do not constitute separate watans. The definition states that the watan property, if any, and the hereditary office and the rights and privileges attached to them together constitute the watan, and is inconsistent with the supposition that there can be two separate watans connected with the same office. The Collector's judgment is: 'The land is not assigned for the payment of an officiator, but is part of the watan of the Lingayat *takshim* of the patelki watan of Murnal, and it is likely to pass into the hands of the representative of R who is not a watandar of the Lingayat *takshim* of that watan, but is a watandar of the Raddi *takshim*. I accordingly issue another certificate.' Very possibly, if there had been different offices to which the separate *takshims* were severally attached, the finding of the Collector, that the *takshims* constituted separate watans, might have been binding on the Courts as suggested in this Court's decision on an earlier stage of this litigation (*supra*, 11), but as the Collector has clearly decided that the two shares are merely *takshims* appertaining to one patelki, it is impossible to say that it appeared to him that, by virtue of the decree complained of, any part of the watan was likely to pass into the hands of a person not a watandar of the same watan. He doubtless thought that this was the case, but it was in consequence of his understanding the meaning of the word 'watan' in a sense different from that in which it is used in the Act. Under these circumstances we think that, as the Collector's decision was based on a misunderstanding of the term watan, and as under the circumstances s. 10 gave him no jurisdiction to issue a certificate, it is not open to the Court to accept that certificate." *Ramangavda v. Shivayagawda*. P. J. 1896, 766; also, 22 Bom. 601.

Ditto.

13. The daughter of a Hindu watandar is not, during the life-time of her father, a watandar of the same watan within the provisions of s. 5. *Muktabai v. Antaji*, 1 Bom. L. R., 206, also 23 Bom. 715.

Ditto.

14. A watan by the partition thereof is not split up into two distinct watans; a holder, therefore, of a share in the watan is a watandar of the same watan as the holder of the remaining share. *Yeshwant v. Sattyanna,* 2 Bom. L. R., 421.

Ditto.

15. L. R. "By virtue of their purchase prior to the introduction of British Rule, both P and M and their descendants are 'watandars' as defined in s. 4. The whole watan, in which they acquired shares, has also been treated as one watan. D, a descendant of P, is a collateral male heir 'within the limits of the watandar family,' as regards M's share. No. 8582, August 24, 1908.

Within the limits of the watandar family.

"Family" includes each of the branches of the family descended from an original watandar: provided that no sub-division shall be recognised except as hereinafter provided in section 26.

"Head of a family" includes the chief representative of each branch of a family.

The word *an* before the words *original watandar* was substituted for the word *the* originally appearing in the Bill, for the reason that there are many watans in which the watandars are not descended from one original watandar. In the Deccan there are many *takshims* of watans in which the holders originally, sprang from different families altogether. As the definition stood originally it only related to one branch of watandars in a watan, but by the amendment it would apply to the various branches. As to the proviso it may be explained that the definition, as it originally stood in the Bill, laid it down that no sub-division recognised within the last thirty years should be taken into account. That was objected to in a great many quarters, and after due consideration the Government thought the objections were reasonable, and, therefore, as would be seen from s. 26, considerable alterations were made in favour of the subdivisions which were already permitted under the rules of the Government—(Proceedings of the Legislative Council, August 24, 1874).

The definition of family is inclusive and therefore inconclusive. (*Vide* No. 4323, April 29, 1907, under

s. 36.) According to the definition, the term " family " means and includes (*a*) each of the different families descended from the different original watandars of the same watan, (*b*) each of the branches of the family recognised before the introduction of Act XI, 1843, that is, July 22, 1843, and (*c*) each of the branches of a family made subsequent thereto which are not contrary to the custom of the watan as to the service. All the branches which have been made after the above date and are contrary to the custom of the watan would be treated as one family and not be recognised as each constituting a separate family.

It should, however, be noted here that by incorporating the provisions of s. 26 as a proviso, the definition would seem to have become inapplicable in its entirety to watans of which services have been commuted. According to it, "family" includes each of the branches of a family descended from an original watandar provided that no sub-divisions contrary to the custom of the watan (as to service) will be recognised. Now, as a matter of course, there cannot possibly be any custom as to service in regard to commuted-service watans, and consequently the criterion on which the recognition or otherwise of sub-divisions depends is absent in their case. The definition, therefore, cannot be strictly applied to such watans. The point will be further considered under s. 15.

The definition of *head of a family* as originally given in the Bill was that the expression means " the eldest existing representative of a family." From this, from the recognition of the principle of ordinary primogeniture in s. 36 (before its amendment), and from the tenor of G. Rs. under old s. 36, the word *chief* used in the present definition meant, other circumstances being equal, the eldest in age and probably in the case of wives the senior by marriage. After the present amendment in s. 36 the word *chief* would probably mean instead of ' the eldest in age,' ' the person entitled to succeed in accordance with lineal primogeniture.'

" Representative watandar " means a watandar registered by the Collector under Section 25 (*of this Act*)

as having a right to perform the duties of an hereditary office.

The words in the brackets were repealed by Bombay Act III of 1886

It will be seen from the definition that the expression "representative watandar" is inapplicable to watans below those of patil and kulkarni, and also, to those the services whereof have been commuted or otherwise dispensed with.

"Officiator" means the person actually performing the duties of an hereditary office for the time being whether he be a representative watandar or a deputy or a substitute appointed under any of the provisions of this Act.

"Guardian" means a relation or other person to whom the care, nurture or custody of any child falls by natural right or recognised usage, or who has accepted or assumed directly the care, nurture or custody of any child, or in case of dispute the holder of a certificate of guardianship from a competent Court.

The definition of guardian is taken from the Bombay Municipal Act III of 1872. According to it, any relative or person having *de jure* or *de facto* care or custody of a child would be a guardian, and, in case of dispute between two or more persons as to guardianship, the person who obtains a certificate of guardianship from a competent Civil Court would be deemed guardian. The Act does not make any express provision as to who shall be recognised as guardian pending the production of a certificate. Probably in a case of this nature, if the officer concerned recognises, on the analogy of the provisions of the Guardians and Wards Act VIII of 1890, s. 17, any one of the disputants, who in his opinion would best serve the interests of the minor, as the guardian for the purpose of the proceeding before him, the recognition would not be opposed to the spirit and object of the definition.

The definitions of the following words used in the Act may be useful.

'Commissioner' means, in Sindh, the Commissioner in Sindh, and elsewhere, the Commissioner of a Division appointed under the

Bombay Land Revenue Code, 1879, or any other law for the time being in force in this behalf. (The Bombay General Clauses Act I of 1904)

'Collector' means, in the City of Bombay, the Collector of Bomby, and elsewhere, the Chief officer in charge of the revenue administration of a district (ditto).

'Government' means 'the Governor of Bombay in Council.' The phrase 'Local Government' would now be more appropriate, as in the above Bombay General Clauses Act, the phrase 'Local Government' is defined to mean 'the Governor of Bombay in Council,' while the word 'Government' is not defined at all.

PART II.

Watan Property and Profits thereof.

Prohibition of alienation of Watan and Watan rights.

5. (1). Without the sanction of Government it shall not be competent :—(*a*) to a watandar to mortgage, charge, alienate or lease, for a period beyond the term of his natural life, any watan, or any part thereof, or any interest therein, to or for the benefit of any person who is not a watandar of the same watan ; (*b*) to a representative watandar to mortgage, charge, lease, or alienate any right with which he is invested, as such, under this Act.

(2). In the case of any watan in respect of which a service commutation settlement has been effected, either under section 15 or before that section came into force, clause (*a*) of this section shall apply to such watan unless the right of alienating the watan without the sanction of Government is conferred upon the watandars by the terms of such settlement or has been acquired by them under the said terms.

This section was substituted by Act V 1886, for the original section which ran as follows :—

"No watandar shall, without the sanction of Government, sell, mortgage, or otherwise alienate or assign any watan or part thereof or interest therein to any person not a watandar of the same watan."

Alienation is transfer of ownership or beneficial enjoyment of property by its owner to another by way of sale, mortgage, lease, gift, will, charge, or in any other manner by which the beneficial interest in the property becomes vested in the transferee.

The Act contrasted with general law.

The power of unfettered alienation is a very important, if not the most important, component of the unit of rights connoted by the term ownership. It is a general rule of jurisprudence that the power of parting with property once acquired, so as to confer the same upon another, must take effect either by inheritance or transfer, each according to law. Inheritance is a rule laid down (or in the case of custom, recognised) by the State, not merely for the benefit of individuals, but for reasons of public policy. It does not depend upon the will of individual owner ; transfer does (*Jatindra Mohan Tagore v. Ganendra Mohan Tagore*, Sup. Vol., I. A., 47). This Act materially interferes with the ordinary law of Alienation and Inheritance. Subject to well-defined and general restrictions, the ordinary law, with a view to ensure a free passing of property from hand to hand, has left, to speak broadly, the disposition of property in general to the unfettered discretion of its owner during his life-time. He may, if he chooses, allow its devolution on his heirs according to the law of Inheritance ; or he may transfer it to strangers out and out, by way of sale, gift or will, and thus cut off altogether the succession of his heirs to it. The general law favours alienation rather than accumulation ; it discountenances every attempt on the part of individual owners to tie up property unreasonably. On the other hand, this Act, in view of the importance of watans to the State and public, and of the necessity

of effectually providing adequate remuneration for the due performance of watan services, has very considerably curtailed the free power of alienation recognised by the general law. The object of ss. 5 to 13 is to define and regulate this restricted power and to provide proper and effective remedies against an undue exercise of that power.

S. 5 is the leading section of the law of alienation of watans. Before considering its provisions, it would be interesting and useful to briefly review the former law on the subject. Before the subject engaged the attention of the Indian Legislature in 1827, the then existing law was in favour of alienability in permanence as well of the offices as of the watan properties appendant to them (*Rul.* 40), together or separately, but in the case of some, although not of all, such offices, the assent of the Native Government seems to have been necessary to the validity of the alienation, and also if the watan were undivided, the assent of the coparceners, if any. The actual incumbent of a service watan was regarded as fully representing the watan—although it might well have been expected to be otherwise having regard to the purpose for which such a watan was granted, namely, to provide adequate remuneration for the performance of the services of the office. Passing to the English Legislation, we find Reg. XVI, 1827, s. 20, declaring that "the allowances derived by an hereditary officer shall in future be considered strictly an official remuneration of the person filling the office," and forbidding its alienation by any sole incumbent of the hereditary office, or by any co-sharer of such office, out of the family—a prohibition which was restricted by the interpretations put on the section by the Sadar-Adalat, to an alienation exceeding the life-time of the alienor. Act XI, 1843, regulated the service of hereditary officers, and provided for the assignment by the Collector, of a portion of the rents pus profits of the watan property for the maintenance of the officiating officer, leaving the surplus to be participated in by the other sharers in the watan. The Act did not affect s. 20 of the Reg., and no part of the watan, whether assigned by the Collector or not, could be alienated. That Act as well as s. 20 of the Reg. was repealed by the present Act. By s. 5 (as it stood before its amendment in 1886) and s. 7 the alienation of a watan, including the rights vested under the Act in a representative watandar, or

Former law reviewed.

part of a watan, was forbidden without the sanction of Government to any person not a watandar of the same watan, and also of the watan property assigned under s. 23 as remuneration, to any person whatever without such sanction. To a watandar of the same watan an alienation of non-assigned watan property as well as of right of service (*Rul.* 33) was, however, valid. S. 5, which was rather broadly worded, was construed by the High Court (*Rul.* 47) to mean that an alienation to a person outside the family was not, as between the alienor and alienee, void, so that the alienor could not impeach the alienation during his life-time, although such alienation was doubtless made void as against the Collector who, if he thought fit, could act under ss 8 to 11 to recover back the property.

Present law.

The section, as amended, is perfectly clear. It permits alienations of a watan or portion thereof excepting only the rights with which a representative watandar as such is invested by the Act, (*a*) to any person whatever, for any period not exceeding the term of the alienor's natural life, and (*b*) to a *watandar of the same watan* without any restriction as to time. All other alienations including an alienation of the excepted rights, are, if made without the sanction of Government, invalid to the extent they contravene the above provisions. For example, if a watandar sells his watan property out and out to a stranger, the sale would hold good as against him but would be invalid as against the persons entitled to the property after him; the watandar who sells his property will not succeed in a Court of Law in getting the sale cancelled during his life-time; (he could not do so even before the law was amended). It is doubtful whether the Collector can cancel the sale. In G. R. No. 9086, September 20, 1909 (*vide* under ss. 8 to 13), Government declared an alienation invalid under s. 11 during the life-time of the alienor. This course can be defended on the supposition that the land in question was 'assigned for remuneration,' but it does not appear from the preamble to the G. R. that it was so. Otherwise, the action of Government seems to be of doubtful legality in the light of the decisions under ss. 8 to 13 (vide *Ruls.* 32, 35 under those sections). It is true that s. 11 does not in terms limit the Collector's power of cancellation to alienations beyond the alienor's life-time only, but then ss. 5 to 13 deal with the ques-

tion of alienation of watans and they must be read together so as to be consistent one with another. Thus read s. 11 should not invalidate an alienation which is perfectly valid under s. 5. S. 11 was in harmony with s. 5 as it stood before its amendment in 1886; when s. 5 was amended, s. 11 also needed corresponding amendment, but the necessary amendment was not made, and hence the apparent anomaly. Right of service, being one of the excepted rights, cannot now be alienated at all so as to hold good either during the life-time of the alienor or in favour of a watandar of the same watan, without the previous sanction of Government.

Sub-s. 2 was inserted by Act V, 1886, in order to remove doubts which existed as to the applicability of the section to watans in respect of which service has been commuted. Service inams settled under the Summary Settlement Acts II and VII of 1863 do not come within the section, having been purposely converted into private alienable property freed from liability to service if any. Watans, settled under Gordon's and Pedder's settlements, not having been intended by either party to those settlements (*i. e.*, their holders and the Government) to be converted into private property with the neceessary incident of alienability, and having been left attached to the hereditary offices, though freed from the performance of service, have remained intact and fall within the scope of the section, provided the terms of their settlements have not conferred any power of alienation in excess of those under the Act, in which case s. 15, cl. 2 would apply (*Ruls.* 19, 20, 21, 38, 48). The Privy Council case of *Padappa* (*Rul.* 77) shows that the section is applicable to alienations made by a *de facto*, though he may not as well be a *de jure*, watandar, as to hold otherwise would be giving greater right to possession as watandar by wrong or usurpation than would be enjoyed by a rightful watandar.

Alienations in case of village servants useful to community only.

Service inams of persons, such as Kazis, Joshis, etc., who are not watandars as defined in s. 4, but are village servants useful to the community only, are not governed by this section; the power of alienation in their case is regulated by the terms of their sanads and the law which governs them.

Government sanction

It should be noted that the section does not enact affirmatively that an alienation if made with the sanction of Government would be valid. Its validity would in each case depend upon the general law of alienation governing the alienor. If that law permits alienations of the property, then the sanction of Government having removed the bar created by this section, the alienation would be valid. If that law has put any restriction upon the power of alienation, then, of course, the alienation, even though sanctioned by Government, would be effective only so far as it does not infringe upon the said restriction. (*Vide Ruls.* 19, 20). For instance, as observed in the case of *Radhabai* (*Rul.* 45), if there is a family custom prohibiting alienation, an alienation though sanctioned by Government, if opposed to that custom, would be legally inoperative. The sanction should be obtained and that too from Government before an alienation is made (*Ruls.* 5, 8); an *ex post facto* sanction would be useless, so also one granted by a Collector only. The application for sanction of Government may be presented to the Collector. (*Rul.* 1). *Rulings* 3, 5, 6, 7, 8, 9, 10, 11, 12, illustrate the practice followed by Government in this connection. It was mentioned in the Legislative Council (*vide* Proceedings of the 24th August 1874) that there could be no reasonable objection to consolidating a watan by permitting a bankrupt shareholder to sell his interest in the watan to another shareholder in the same watan (*vide* also *Ruls.* 2, 4). The interests of the heirs of the alienor are taken into consideration in according or refusing sanction by Government (*Ruls.* 9, 10).

Hindu law of alienation.

The following is a concise statement of the Hindu and Mahomedan Law of alienation. In a joint and united family, a father can make no disposition of the joint property, which will prejudice his issue, namely sons, grandsons and great-grandsons, who by birth get a vested interest in it, unless he obtains their assent or unless there is some established necessity, or moral or religious obligation to justify the transaction. It makes not the least difference whether the disposition is in favour of a stranger, or of one of the family themselves. The test is, whether it is an infringement upon their vested rights.

But this rule is applicable only in those cases where the rule as to sons' liability to pay off their fathers' debts does not come into play. That rule is, to state it broadly, that a father may sell or mortgage not only his own share, but his sons' share in family property, in order to satisfy his own debts, not being of an illegal or immoral character. A father who is separated from his sons can dispose of at his pleasure not only his share but all property acquired after partition. Similarly a man, whether divided or not, is at perfect liberty to dispose of his self-acquired property or property which he has inherited collaterally or in such a mode that his descendants do not by birth acquire a vested interest therein. And whatever may be the nature of the property, a man without issue may dispose of it at pleasure, as against his wife, or daughters, or his remote descendants or his collateral successors. Any want of capacity on the part of the father to alienate the family property may be supplied by the consent of the sons. Circumstances of necessity will also justify a father, as head of the family, in disposing of any part of the family property. If the manager of a joint family is not the father, the law of alienation by such manager is the same as that by the father, namely, that the manager cannot alienate the family property without the consent of the co-parceners except in cases of family necessity. But his personal debts are not binding on his co-parceners, as those of a father are upon his sons; and therefore alienations made by him to pay such debts would not bind them. An united co-parcener can, before partition, alienate his own share in the joint family estate for valuable consideration, but he cannot make a gift of it or dispose of it by will. If the estate is impartible belonging to a joint family or to a separated co-parcener, its inalienability depends upon custom, or in some cases upon the nature of the tenure. The Mahomedan law accords absolute power of alienation and gift to an owner during his life-time. But legacies are to be made only to strangers, *i.e*, those who are not heirs, and must be confined to one-third of the estate of the testator left after paying his debts. If agreed to by the heirs, bequests to a larger amount may be upheld in law. A legacy to one of the heirs made without the consent of the rest is invalid.

Mahomedan law of alienation.

Partition as between coparceners, being an alienation to a watandar of the same watan, is valid except, of course, of office-right and assigned property, provided the custom of impartibility does not govern the estate. (*Rule*. 23 to 30.)

Partition.

Natural life.

The expression *natural life* deserves notice. It shows that an alienation of watan property will hold good as long as the alienor is bodily alive, even though the interest in the property once vested in him may have subsequently ceased to exist. For example, if his interest is forfeited under s. 60, any alienation previously made by him will, it is thought, be effective so long as he is alive. In the same way if he is adopted into another family after the alienation, the alienation, assuming it is good under the Hindu Law, would stand as long as he is alive.

Life interest.

The exact meaning of the expression *life interest* as used in connection with watan tenures should be borne in mind. The expression though correct for all practical purposes ought not to be taken as an accurate definition of the interest which a watandar has in his watan. A life interest in its proper legal sense does not convey the idea of the estate being descendible to the heirs of the person who has that interest, by right of *succession to him*. For example, a Hindu widow's estate is in this connection said to be a life interest, because the property descends, after her, to the heirs of her *husband* and not to *her* own heirs ; similarly a Jahagirdar has *prima facie* a life interest in his Saranjam, as, according to strict law and independently of other considerations, Government can resume the Saranjam after his death. But the estate of a watandar descends to his heirs, and th watan cannot be resumed, unless there is a total failure of heirs, or unless the conditions in the Sanad, under which the watan is held, have ceased to be fulfilled. The expression should, therefore, be taken to be used in the sense that a watan is subject to a limited power of alienation by the holder for the time being, and also subject to special rules of descent.

Repeal of Reg, commutation of service, and *Radhabai's* case.

The repeal of Reg. XVI of 1827 by this Act or the abolition of service by reason of commutation settlement does not validate an already invalid alienation (*Ruls.* 42, 46, 48, 77). *Radhabai's* case (*Rul.* 45) should not be considered as laying down correct law on the latter point and also on the point of the legality of an

alienation of watans settled under the Gordon settlements. *Ruls.* 38, 39, 48, *etc.*, lay down the law, as at present administered, with regard to watans commuted under the Gordon settlements. S. 5 (2) is clear enough. The terms of the Sanad granted are to be strictly adhered to. It appears that if the watan property has permanently lost its special dedication, it also loses its inalienability. (*Ruls.* 52, 86.)

Permanent deputy, will, lease, etc.

A watandar cannot create a permanent deputy, that being an alienation in excess of his power. But a deputy whose office was created before the introduction of Reg. XVI, 1827, into the locality, or was created or recognised by the authority which created the principal watan office, cannot be superseded by the watandar principal and can legally hold his *mutalıki vritti*. (*Ruls.* 61 to 65.) Watan property is not liable to attachment or sale as the assets of a deceased watandar, the interest of the deceased having ceased with his death. (*Ruls.* 41, 43, 55.) A watandar's interest in watan property being only a life interest, he cannot make a valid bequest of the property in favour of a stranger. (*Ruls.* 58, 59.) S. 5 as amended distinctly prohibits a lease, but it appears doubtful whether it came within the term 'alienation' before the section was amended. Authorities seem to differ on the point whether a lease came under s. 20 of Reg. XVI, 1827, *Rul.* 74 deciding that it probably does not, while *Ruls.* 44, 72 deciding that it does. It must be remembered that Act V of 1886 has no retrospective effect.

Limitation, adverse possession, estoppel, *res judicata* notice.

The rules of limitation, adverse possession, estoppel and *res judicata* apply to watan, as to any other, property. Time begins to run from the date of the death of the alienor (*Ruls.* 70, 75, 79), and the lapse of twelve years from that date bars his immediate as well as subsequent successors (*Ruls.* 69, 71, 75, 72). An alienation by joint holders of watan property is valid upto the death of the last survivor of the joint alienors (*Ruls.* 35, 79), and consequently the cause of action to set aside the alienation arises only on the death of the last survivor. A watandar cannot repudiate his own alienation on the ground that

the law did not allow him power to alienate, though any of his successors or the Collector can successfully impeach his unauthorised alienation (*Rul.* 47), but he can impeach it as being fictitious (*Rul.* 50). A watandar for the time being fully represents the watan, and in the absence of fraud or collusion a judgment for or against him is *res judicata* in regard to him as well as his successors. (*Ruls.* 71, 74). Whether such a judgment would also be *res judicata* in relation to the Collector also acting under the Act, is a point not yet definitely decided. But it seems from the argument in *Radhabai's* case (*Rul.* 71) that it will not be, as the Collector represents in such a case not so much the private individual interests of the watandars as the interests which the State and the public have in the watan. It is now settled law that the Collector's action under ss. 8 to 13 is not subject to the law of Limitation (*Ruls.* 22, 26, 49 under ss. 8 to 13). In view of this it is now useless to repeat what was said on the point in the last edition of this book. It would seem from *Chhaganlal v. The Collector of Kaira*, (12 Bom. L. R., 825) that a notice under s. 80 of the Civil Procedure Code of 1908 will be necessary for a declaration that a Collector's order is null and void.

Series of alienations of same property

If any watan property has changed hands by a series of alienations one after another, the right of a claimant to it will generally depend upon the validity or otherwise of the particular alienation which first transferred the property from the watandar family (*Rul.* 35). For instance, if B, father of A, sold a watan land to C, a non-watandar, who in his turn sold it to D, a divided uncle of A and watandar of the same watan, A can successfully recover it from D, because the alienation to C being invalid, the alienation to D which is founded on it must also be invalid. On the other hand, in the above case if the first alienation were to D and not to C, and the subsequent alienation to C from D, A will have no claim against C, the alienation to D by which A's father parted with the watan being valid as an alienation to a watandar of the same watan.

For hypothecation for takâvi loans see *Rul.* 87.

Registration

An hereditary office being undoubtedly immoveable property, a document conceding the exclusive right to that office, if the office was of the value of Rs. 100 or upwards, must be registered. *Sangappa v. Sanganbasappa.* P. J., 1876, 214.

SUMMARY OF RULINGS.

1. Application for sanction of Government may be presented to the Collector.

2. Sale to co-sharers should be encouraged.

3, 5 to 12. Government sanction.

4. A widow cannot convey an absolute right.

13, 14. What amounts to Government sanction?

15. Government cannot confer absolute power of alienation.

16. Commuted watan may be sold (overruled, *vide* 18).

17, 18. Terms of Sanad should be strictly adhered to.

19, 20, 21. Cases of commuted watans in which right of alienation was granted by the terms of settlement or by Sanad do not fall within the purview of s. 5.

22. Government cannot clog ownership.

23, 24, 26 to 30. Presumption in favour of partibility. Family custom of impartibility, primogeniture, *&c.*, may be proved.

25. Sanction of Collector for suit of partition is not necessary.

31, 33, 34, 37. Alienation to watandar of watan property and right of service valid (before s. 5 was amended).

32. Alienation to watandar (before amendment) valid only for life-time (superseded, *vide* 33).

35. Two out of three joint alienors being alive, alienation valid.

36. Equitable assignment to a watandar valid.

38, 48. Law of alienation of watans commuted under Gordon settlement.

39. Law of alienation under the different enactments; estoppel; entry in register.

40. Law of alienation before and after 1827.

41, 43, 55. Watan property not liable to attachment or sale as assets of deceased.

42. Repeal of Reg. XVI, 1827, does not validate invalid mortgage.

44. Lease under Reg. XVI, being partial alienation, invalid.

45. Watan lands become alienable when services are abolished. Effect of abolition of service on previous alienation. (Not good law now, *vide* 46, 48, 72.)

46. Enlargement of estate after mortgage does not benefit mortgagee.

47. Alienor estopped from impeaching his own alienation.

48. Gordon settlement watan inalienable like any other.

49. Naikwadi watan. Watan implies an estate appended to some public office. No perpetuity if service is to be rendered to a private person. Change of Government does not change the nature of tenures.

50. Alienor may impeach alienation as fictitious.

51. Posthumous son can contest an alienation.

52. When the land has permanently lost its special dedication, it loses its inalienability.

53. Alienation before introduction of Reg. XVI, 1827, valid.

54. The decree did not bind the successors.

56. Alienation of *todi giras* valid during life-time.

57. Compulsory acquisition of watan lands.

58, 59. Watan cannot be bequeathed.

60. Bequest of commutel watan valid. (Not good law now). Act V of 1886 not retrospective.

61 to 65. Creation of a permanent deputy, when valid and when not.

66. Nature of watan tenure. Government's interest in watan.

67. Effect of long possession and consent.

68. Date of cause of action to recover watan property accrues to each holder on the death of his predecessor. (Not good law now.)

69, 71. Adverse possession against one holder bars subsequent holders.

70, 75. Adverse possession begins from the death of the alienor.

71. Law of limitation, adverse possession and *res judicata* apply to watans. Alienation implies action. Watan is an estate. Incumbent fully represents watan.

72. Permanent lease invalid. Abolition of service does not validate invalid alienation. Adverse possession.

73. Possession not adverse, when.

74. *Res judicata*, adverse possession, and limitation. Lease is no alienation within the meaning of Reg. XVI, 1827.

75, 78 Adverse possession commenced in the life-time of one watandar continues against subsequent holders.

76. Right to redeem not barred.

77. Repeal of Reg. XVI does not validate invalid alienation. Alienation not valid against the heir.

79. Limitation runs from the death of the last survivor of the joint alienors.

80 to 84. Period of limitation.

85. Refund of consideration money under the Bhagdari Act.

86. Lands converted from shetsanadi watan into ryotwari holding.

87. Hypothecation for takâvi loans.

RULINGS.

1. Commissioner: "A sole representative watandar kulkarni made a petition to the Collector requesting permission to transfer the right of service standing in his name to that of his son. The Collector refused to accept his petition on the ground that the right to sanction such applications rests with Government. I am of opinion that it should be the Collector's duty, on receiving an application of the nature referred to, to make what inquiry may be necessary and submit the matter for the decision of Government Whenever such applications are received direct by Government, they are invariably sent to the Collector for report. There would appear to be no objection to their being presented to that officer in the first instance, and being by him submitted for orders. Such procedure would at any rate save time and perplexity to the parties, who naturally look to the Collector as the medium for the conveyance of their requests to Government." Government concur. No. 3261, April 20, 1896.

Application for sanction.

2. Sales of shares to co-sharers should be encouraged as tending to reduce the number of shares, No. 3418, September 5, 1868.

Sale to co-sharer.

3. Permits a District Hereditary officer to renew the mortgage of his watan lands on better terms under s. 5. No. 7422, September 17, 1884.

Government sanction.

Widow's power of alienation.

4. Commissioner soliciting instructions on the question whether a childless widow, who is a representative watandar possessing a two-anna share in a kulkarni watan and desirous of alienating her interest in the watan including the right of service to another watandar of the same watan, can convey to the alienee an absolute right or only a right which would last only during her life-time, no sanction of Government being necessary in the case[*]: L R. "A widow cannot sell (and therefore a purchaser from her cannot buy) more than that which is owned by her. Sale of shares to co-sharers should be encouraged as tending to reduce the number of shares (*supra* 2); but for a purchaser to acquire an absolute right in a share purchased from a childless widow, it would be necessary for all the reversioners to assent to and join in the sale." Copy forwarded. No. 8617, October 24, 1885.

Government sanction.

5. Commissioner: "It is not expedient to allow watandars to consider a right of service, which is only theirs for life, a transferable property, and sanction should not be given in this case (the petitioner had sold his share in the watan to the representative watandar of the eldest branch, including his right of service, for Rs. 800) even if it (such *post facto* sanction) can be now legally accorded." Sanction refused. No 3912, June 6, 1890.

Ditto.

6. Commissioner: "S states he is old and wants to go on a pilgrimage. The presence of the hakdar at the village is desirable, as the officiator is intriguing against him. As his son is now in Government service at Dharwar, the substitution of the son's name will not make much difference so far as the supervision of the officiator goes. I am of opinion that the reasons assigned by S for the alienation of his rights are not such as to call for the exercise of the powers reserved by Government to meet exceptional cases, and that the object of S can be easily attained by his executing a power of attorney in favour of the son." Government concur. No. 5839, August 12, 1893.

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[*] That was the law before the section was amended. Alienation of right of service would now require sanction in all cases, be it in favour of a watandar of the same watan or an outsider, be it for life only or absolutely.

7. Petitioner is a representative watandar in a kulkarni watan and prays that she may be allowed to alienate her right of service to her adopted son and that his name may be ordered to be entered as a representative watandar. Sanctioned. No. 766, January 24, 1896.

Ditto

8. Collector: "K, a distant kinsman of X, the sole representative watandar of one of the two families of the patilki watan, applied to the Collector for permission to buy X's watan. The permission asked for was granted. K got the sale-deed executed and registered and claims to have his name entered as watandar in place of X. On inquiry, it turns out that the watan consists of only the right of service as patil. Consequently, the purchaser's request to have his name shown as watandar cannot be complied with, except with the permission of Government. It would have been better if, at the time of granting permission before, inquiry had been made as to the nature of the watan which it was proposed to alienate. The alienation cannot legally hold good after X's death and the only question now is whether it should hold good during his life-time. Both parties agree that it should The purchaser is of the same family as the seller and well-behaved. The sale-deed has been executed. The purchaser alleges that he cannot recover his money from the seller owing to the latter's poverty. The watan seems to be also of little consequence, as the remuneration of the service amounts only to Rs. 4–14 per annum. I, therefore, recommend that K be allowed to hold the right of service during the life-time of X." Sanctioned. No. 5521, August 29, 1898.

Ditto.

9. Commissioner: "K, a sole representative watandar patil, gave his elder son in adoption to his uncle. After the adoption, his younger son died, and K passed a deed purporting to transfer the watan lands and the right of service to F, the son given in adoption. K applied, praying that the right of service and the patilki watan lands, which stood in his name, should be transferred to the name of F. K's divided brother objected to the alienation. F being now a nephew by adoption and still a watandar of the same watan, if K were to give a *rajinama* of the watan lands in favour of F, no objection can be raised to the transfer of the khata of the watan lands standing in the name of K to the name of F. I am asking the Collector

Ditto.

to get the transfer of the lands made. In view of G. R. No. 3912 of 1890, (*supra*, 5), and also of the fact that K's brother's interest must be safeguarded, sanction should not be granted to the alienation of the right of service." Government concur. No. 5931, August 21, 1901.

10. Commissioner: "G is one of the representative watandars in the kulkarni service. He holds the right of service in two villages by virtue of his adoption to V now deceased. The adoption was duly notified to the Collector, and G's name was registered accordingly. But, of course, the adoption may be set aside by decree of a competent Court, and in such cases the Collector will be bound to remove the name from the register. Y, another of the representative watandars in the kulkarni service, brought a suit with a view to setting aside the adoption of G. While the suit was pending a compromise was effected between G and Y, whereby the latter agreed to recognise the adoption and withdraw the suit, if G conveyed to him his right of service in one of the two villages as well as a piece of land. The compromise was made conditional on Government sanctioning the transfer of the right of service. G applies for permission to the transfer of his right of service to Y. The effect of the transfer would be the reduction in the number of shares in the right of service. In the interests of G's heirs, the proposed transfer is desirable For, if the transfer is not sanctioned, G will be involved in litigation and if the adoption is declared invalid, G and consequently his heirs will be deprived of the whole of deceased V's interest in the watan, and Y will succeed to that watan as V's nearest heir after the death of V's widow. If, however, G wins the case, Y will lose the prospect of succeeding to the whole of V's share in the watan. Both G and Y seem, therefore, to prefer the certainty of securing a part of V's share by foregoing the rest, to trying the chance of having the whole of the share by means of a civil suit. V's widow, who has life interest in her husband's share in the event of G's adoption being declared invalid in a Civil Court, consents to the proposed transfer. I think that this case is different from those disposed of by G. Rs. Nos. 3912 of 1890 and 5931 of 1901 (*supra*, 5 and 9), in which sanction to the transfer of the right of service was withheld in the interests of the incumbent's heirs. I recommend that sanction may be accorded to the proposed transfer of G's right of service." Sanctioned. No. 4212, June 4, 1904.

Ditto.

11. Collector: "The land is a Deshmukhi watan land and as such cannot be alienated beyond the natural life of the watandar without the sanction of Government. It is proposed that the land should be leased out as *miras*, which, under s. 5, amounts to alienation, and this course requires the sanction of Government. The proposal is immensely advantageous to the estate of the minor who is a ward of the Collector." Commissioner: "The alienation of a commuted Deshmukhi watan involves no public interest." Sanctioned. No. 4949, June 17, 1905.

Ditto.

12. At the time of the settlement, the Deshpande watan lands were made inalienable at the request of the watandars themselves, with the express object of preventing the watan property from going out of the family. All possible precautions should be taken to preserve to the watandar families their land or its equivalent in cash. In the present case, the effect of the sale to the Gokak Water Power and Manufacturing Company Limited for the construction of a ginning factory thereon as proposed, would be that the watan land would go out of the family, and there would be no security for the preservation to it of the sale-proceeds. The Collector should therefore satisfy himself that the consideration is sufficient, and, on being so satisfied, should require that the sale-proceeds should be invested in trust for the benefit of the holders of the watan in perpetuity. He should be authorised in the alternative to consent to a perpetual lease at an adequate rent, which should be paid to the representatives of the watandars. Sanction is accorded to an alienation of this kind duly approved by the Commissioner. No. 5225, May 29, 1909.

Ditto.

13. An alienation of watan property having in 1831 received the sanction of the Sub-Collector, who, the Court said, must be considered as representing the Government, was held valid. *Rachapa v. Aminyouda*, 5 Bom. 283.

Ditto.

14. A Collector merely recognising an adoption by a Mahomedan (the Mahomedan law does not recognise an adoption) cannot be regarded as sanctioning by that act, an assignment of the watan. *Isaeji v. Asmalji*, P. J., 1888, 98.

15. Government cannot confer on any one an absolute right to alienate a portion of a watan It can only declare that, so far as it is concerned, no objection will be taken to any one holding a share of a watan by virtue of the settlement, alienating his share out of the family. This is what is to be understood by the assurance that Government will consider the watan holdings as private property, but the rights (if any) of heirs cannot be prejudiced by such declaration; and it is also, as a matter of course, to be understood that the persons deriving right from the holders to whom sanads are to be issued will derive such right only as is possessed by the holders under the settlement and no more. No. 6183, November 2, 1875.

Government cannot confer absolute power of alienation

16. As far as Government are concerned, watans brought under the Summary Settlement (that is, Gordon Settlement), may be sold. No. 6752, December 1, 1875. Cancelled by No. 6070 of 1877, (*infra*, 18).

Commuted watan.

17. As regards the right of alienation, the terms of the Sanad (granted under Gordon's Settlement) should be strictly adhered to. No. 3279, June 2, 1876.

Terms of Sanad to be strictly adhered to.

18. L. R. "The Sanads granted in several collectorates preclude the right of alienation out of the watandars' family. G. R. No. 6752 of 1875 (*supra*, 16) is, therefore, not quite correct, because *such* watans may not be sold, and Government have an interest of their own in preventing their sale. It is to the interest of the watandars themselves that this inalienability of their watans should be preserved. G. R. No. 6752 of 1875 (*supra*, 16) should therefore be distinctly cancelled, as it has already been virtually superseded by No. 3279 of 1876 (*supra*, 17)." Government are pleased to cancel No. 6752 of 1875 (*supra* 16), and to direct that in cases of district service watans to which Gordon's Settlement has been applied, the terms of the sanad should be adhered to in each case in respect of alienation. No. 6070, October 8, 1877.

Ditto

19. Commissioner: "The petitioner prays that he may be allowed to alienate by sale Desaigiri cash allowances in the Broach District which have passed into the possession of an outsider by deed of mortgage.

S 5 does not apply.

G. R. No. 1584, April 25, 1867, contained directions for offering the terms of the commutation settlement of the allowances enjoyed by the District Hereditary Officers of the Broach and Surat Districts for acceptance by those officers. The settlement offered was accepted by those officers and was sanctioned by Government in G. R. No. 3929, November 14, 1867, in which the proposal of the watan commission to confirm the watan emoluments as absolute private property without restriction of transfer or alienation was approved. In G. R. No. 4425, December 16, 1867, Government declined to confer upon any one an absolute right to alienate any portion of a watan, but as assurance had been given that under the Settlement, the holdings of watandars would be considered private property, it was declared that so far as Government were concerned, there would be no objection to any one holding a share of a watan by virtue of the Settlement, alienating his share out of the family, but such declaration was not to prejudice the rights of heirs. S. 5 does not apply to the petitioner's case. Government have, by the terms of the Sanad, guaranteed the continuance of the watan to whosoever shall, from time to time, be the lawful holders thereof, but without affecting the rights and interests of other parties." Government concur. No. 6502, October 16, 1900.

20. Commissioner: "The Desaigiri cash allowance is held by the family of J, and S represents the family. He is the only surviving male member of the line and has sold the allowance to an outsider who has applied to have his name entered on the *hal*. By the terms of the Sanad issued in accordance with the orders of Government Resolution No. 3929, November 14, 1867, the allowance has been confirmed as absolute private property without restriction of transfer or alienation but without affecting the rights and interests of other parties. It has been explained in G. R. No. 4425, December 16, 1867, that Government cannot confer on any one an absolute right to alienate any portion of watan, but can only declare that so far as they are concerned, no objection will be taken to any one holding a share of the watan by virtue of the settlement, alienating his share out of the family. It has been further stated in the G. R that the above is what is to be understood by the assurance that Government will consider the watan holding as private property, but the rights of heirs cannot be prejudiced by such declaration." The sale should be recognised and the name of the vendee entered in

Ditto.

the accounts in lieu of the vendor's. As regards the question whether the words "on behalf of the family of J" should be eliminated from the records, Government are of opinion that though the term "on behalf of" ceases to be appropriate, yet there may be an advantage in the records showing that the allowance was granted to a specified person, or that it is continued in accordance with a settlement made with a specified person. No. 482, January 25, 1901.

Ditto

21. Commissioner: "The land appeared in the alienation register as *kârbhâri inam*. Karbhari was in the old days the assistant of the patil and karbhari watans were originally treated as inams to village servants useful to the State, but no service whatever was required by Government from the watandars other than patils, kulkarnis and *mhars*. The profits, however, of such watan were, at the time of fixing the scale remuneration in 1872, taken for providing remuneration to *mhars*. The inam was classed as one useful to the State upto 1884-85. From 1885-86 it is shown as one useful to the village community under Commissioner's orders. As the cash allowance payable to the village *mhar* was made up by imposing scale judi on the lands, and as the net profit accruing to the karbharis after the imposition of the scale judi was again subjected to the *nim* judi, this seems to be tantamount to a non-service settlement." L. R. "Watans subjected to the settlement like the one in question, were thereby converted into private property and the right of transfer had been conceded to them. No sanad appears to have been issued in the present case. Even assuming that the watan is one which falls under Part II of the Watan Act, still clause (*a*) of s. 5 (1) of the Act will not apply, because, under the service commutation settlement, the right of alienating the watan without the sanction of Government has been conferred upon the watandars by the terms of the settlement (s. 5, cl. 2). S. 11 of the Act should not therefore be applied in the case of an alienation like the one now in question." In accordance with the L. R's opinion, the land in dispute should be restored to the petitioner alienee who will be entitled to hold it on the same terms on which the watandar alienors held it before its alienation. No. 3940, April 15, 1908.

Government cannot clog ownership.

22. Government, having absolutely granted the house-sites which are no part of the watan property, cannot clog the ownership with a prohibition against alienation. *Pandurang v. Govind.* 1 Bom. L. R., 498.

Partition.

23. In s. 20, Reg. XVI, 1827, there is nothing to prevent the sharers in a watan from making a partition of the lands and allowances attached to the watan, which would be binding on their descendants, though it would not affect the liability of the whole watan for the necessary expense of service. *Devappa v. Shidappa.* P. J., 1873, 28.

Ditto

24. In a suit for the partition of a Deshgat watan, the defence being that the watan was impartible, *held* that there was no such general presumption in favour of the impartibility of estates of this kind as to shift the burden of proof, which was upon the Desai, to show that the watan had, contrary to the general Hindu law, been inherited by him alone. It was for him to show, by evidence of the nature of the tenure of the watan, that it was impartible, or to show by evidence of family custom or of the district, *i. e.*, local custom, that impartibility attached to it. The watan in this case being property appertaining to the office, the partition was made without prejudice to the right of the Desai to any income, payable out of it, for the performance of his duties, to which he might be entitled under any law in force. *Adrishappa v. Gurushidappa.* 4 Bom. 494.

Ditto.

25. Act III does not render the sanction of the Collector necessary to the bringing of a suit for partition of watan. The Act, however, preserves the power of the Collector to provide for the remuneration of the officiator (ss. 8 and 10). S. 6 relates to suits by the Collector and not by the watandars. *Chandrarao v. Vithalrao.* P. J., 1880, 292.

Primogeniture.

26. It had been the practice in a Deshpande watandar's family, extending over a century and a half without interruption or dispute of any kind whatever, to leave the performance of the services of the watan and the bulk of the property in the hands of the elder branch and to provide the younger branches with maintenance only. *Held*, that such a practice, being more probably due in its origin to a family or local usage than to a mere arrangement determinable at the will of any members of the family, ought to be recognised and acted upon as a legal and valid custom. Discontinuance of services attached to an impartible watan does not alter the nature of the estate, and make it partible (*infra*, 45 followed). *Ramrao v. Yeshvantrao.* 10 Bom. 327.

27. In the case of *Gopalrao v. Trimbakrao*, the family custom of eldership and primogeniture was on the evidence held established. 10 Bom. 598.

Ditto

28. There is abundant authority that the impartibility of estates attached to hereditary offices may be established by evidence of the practice followed by the family, fortified by similar evidence as to the custom amongst the families of holders of similar hereditary offices in a particular district. In a case from Belgaum (*supra*, 24) with regard to the alleged custom of the district, their Lordships in the Privy Council make the important remark that although the evidence may show that tenures of the kind are more frequently impartible than partible, it is not in their Lordships' opinion of that conclusive character which is necessary to establish a general district custom. Applying these principles to this case, we think the defendants have failed to establish the particular custom of impartibility. *Shivshankar v. Huchapa.* P. J., 1894, 584.

Impartibility.

29. As the shetsanadi holding is a watan, the ordinary law about watandars would apply to it. Subject to the superior claims of Government for service and for remuneration of the officiator, watans as such are partible under Hindu Law among co-heirs except when family or district custom is established to the contrary. The question of partibility or otherwise of a shetsanadi holding should be considered in reference to the parties in suit independently of the right of the Government to resume it and independently of the analogies of other classes of watans. "The rulings go to show that a shetsanadi holder is a watandar, and that his interest in the land is that of a watandar. The occupation of the land does not represent the payment made for the office. This payment is represented by a fraction of the assessment which is not recovered from the holder. This assessment may be increased by the Collector if he deals with the watan under s. 64 of the Watandars' Act. As a matter of fact, registers of these inferior watandars, except in the case of *mhars*, have not been prepared, but the Collector has power to deal with them." *Limbaji v. Rama.* P. J., 1898, 127.

Partition

30. Property consisting of an hereditary Inam village and a cash allowance is liable to partition except where it is held on Saranjam or other impartible tenure, or where the terms of the original grant impose a

D.tto.

condition upon its enjoyment that the management shall rest with a particular branch of the family of the grantees; and possibly a long continued practice, from which a family custom may be inferred, may operate to bring about the same result. Deshgat watan or property held as appertaining to the office of Desai is not to be assumed *prima facie* to be impartible. The burden of proving liability lies upon the Desai; and on his failing to prove a special tenure or a family or a district or local custom to that effect, the ordinary law of succession applies. "Neither by the terms of the original grant, or of the subsequent orders of the Ruling Power, nor by family custom, nor by adverse possession had Chinto's branch of the family acquired a right to perpetual management of the village or in consequence to resist its partition." *Gopal Hari v. Ramakant*, 21 Bom. 458, confirmed by the Privy Council in *Vinayak v. Gopal*, 27 Bom. 353; same case 5 Bom. L. R., 408.

Alienation to watandar.

31. The Collector held that by an agreement executed by the father of S in favour of the father of B, which was confirmed by an agreement executed by S in favour of B, and which was recognsied by the Collector in appointing an officiator in 1864, the right of S's branch to the watan lands and to service was transferred to B's branch. There is no doubt now about the validity of the transfer. The Act, by prohibiting the alienation of a watan, which by the definition includes "the watan property if any and the hereditary office, and rights and privileges attached," to any person not a watandar of the same watan, implies that such alienation to a watandar of the same watan is valid.* No. 7409, December 7, 1881.

Alienation of right of office.

32. L. R. "The holder of an hereditary office being simply a tenant for life cannot transfer the hereditary office so as to prejudice the rights of the proper heirs, and no sale of the office by an incumbent can have any effect beyond the incumbent's life. In *Raoji* (*infra*, 61) it was held that the nomination by the holder of an hereditary office of an hereditary substitute to his successors in office was an act beyond his capacity, being a tenant for life only. There is nothing in the Act from which it can be inferred that the sale of an hereditary office to a watandar of the same watan (as in this case) is un-

* That was the law before s. 5 was amended in 1886.

lawful, as the term watan includes not only the watan property but the hereditary office; and the purchaser is, in virtue of the transfer entitled to hold the office hereditarily so long as the watandar who made the transfer continues to live. Perhaps, the best course in such a case is to register the name of the purchaser of the watandar's life interest in the hereditary office in lieu of the watandar making the transfer; but a note should be made in the register of the fact of the transfer in order that the name of the proper heir may be registered on the death of the said watandar, and any dispute as to the succession avoided." Copy forwarded No 19, January 3, 1883. (Superseded by *infra*, 33).

33. L. R. "The decision in Ravji (*infra*, 61) was passed in 1864 several years before the Act became law. It was based upon the ruling that the holder of an hereditary office was simply a tenant for life which the Court said "had been frequently decided." These decisions dated, in fact, from 1829, being based upon s. 20, Reg. XVI, 1827. S. 20 was, however, repealed by the Act, and the law substituted for it is that contained in s. 5, which authorizes alienation to a watandar of the same watan, but not to an outsider except with the sanction of Government. The hereditary office being a part of the watan, the terms of s. 5 apply to alienations of it. To a watandar of the same watan such an office may be alienated in perpetuity, or for life or any other term, at the owner's pleasure; to an outsider it cannot be alienated at all without the sanction of the Government. If a representative watandar alienates in a lawful manner his right of service, the alienee becomes thereby the representative watandar in his stead.* Recognition of transfers of hereditary office should, therefore, be regulated by these considerations. There ought to be no objection to substituting the name of the lawful alienee of a representative watandar in the register, if there is no question as to the alienation and as to its validity. Where there is any question between the parties as to either point, they should be directed to produce a decree of a competent Court under s. 36 before any mutation of names in the register is allowed." Copy forwarded in supersession of No. 19 of 1883 (*supra*, 32). No. 2776, April 7, 1883.

Ditto

* That was the law before s. 5 was amended in 1886.

34. Commissioner: "The transfer of watan land together with service rights from one watandar to another of the same family, was admissible under Act III prior to its amendment. In view of the circumstances of the service rendered before 1843, of the transfer of the rights of watan property and service by the petitioner's uncle, a four anna sharer and representative watandar, to the petitioner, and of the sanction formally accorded to this transfer by the Collector in 1875, I consider that the petitioner is entitled to be entered as a representative watandar of the senior branch holding a four anna share in the watan. The alienation does not seem objectionable. The fact that the uncle alienated his share to the petitioner as a member of a divided family with the consent of Y estops Y from questioning the alienation." Government concur. No. 7409, October 11, 1893.

Ditto

35. Commissioner: "Talwarki watan lands were mortgaged with possession by N, F, and P to M, an outsider, in 1888. M sold his mortgage right to D, a watandar of the second *takshim* and a *bhauband* of N and others, watandars of the first takshim of the talwarki watan. F executed a sale-deed in 1895 in favour of D to the effect that he sold his $\frac{1}{3}$ right in the mortgaged property. Out of the alienors of 1888, N alone was dead and his two brothers P and F, the other parties to the transaction, were alive. The lands have not been specifically 'assigned' as remuneration of the officiator under s. 23. All talwarki watan lands form really the remuneration of the officiator; since there is no special levy on these as is in the case of patilki and kulkarniki watan lands for the purpose of getting a fund from which payment can be made, and, as a rule, there is no cash payment. The alienation has resulted in the land going into the possession of a watandar of the same watan and, therefore, there is no special object (even if it were legally possible to do so) in regarding the lands as assigned. The lands will remain liable to contribution for the remuneration of an officiator. It is probably not legally possible, therefore, nor equitably desirable to consider the lands as assigned under s. 23, and to take action under s. 7. We must go by s. 5 and under this section the alienation is still valid. Two out of the three alienors being still alive, I think the lands should be restored back to D." Sanctioned. No. 9771, September 25, 1908.

Alienation to watandar by non-watandar alienee.

Equitable assignment to a watandar

36. The agreement (by which the parties compromised their dispute as to succession by dividing the watan in dispute equally) in question amounts to an equitable assignment of the income of the village; but it is an assignment to a person who, whether as the heir of the last holder or under the agreement itself, was a watandar within the meaning of the Act. The decree should, therefore, be for the plaintiff. *Sitaram v. Ramchandra.* P. J, 1885, 24.

Alienation to watandar.

37. Reg. XVI, 1827, s. 20 did not prohibit the alienation of shetsanadi land by the officiating member to another member of the watan family. *Kalappa v. Kenchappa.* P. J., 1892, 68.

Alienation of watans commuted under Gordon Settlement.

38. L. R. "In the Satara case (which fully followed *Radhabai's* case) the Court failed to recognise that the terms, under which Gordon's settlements were effected, prevented the estates subjected to those settlements from becoming 'in all respects like the ordinary landed property of the district.' But the Belgaum case (*infra*, 48) completely confirms all that was contended for on behalf of Government in the Satara case and at length places the question of the inalienability of the district hereditary officers' watans to which Gordon Settlement was applied beyond doubt. The present position of the matter is therefore thus: (1) As regards alienations since the 28th January 1887 (the date on which Bombay Act V of 1886 became law), sub-s. 2 of s. 5 of Act III, 1874, as amended by s. 1, Act V, 1886, applies. (2) As regards alienations previous to that date, which have already been finally adjudicated, nothing can be done. (3) As regards alienations previous to that date which have not already been finally adjudicated, the High Court's ruling in the Belgaum case should be relied upon." Copy forwarded. No. 5920, August 20, 1890.

Law of alienation under the different Acts.

39. L. R. "R claims the right to have his name entered as purchaser at a court-sale of certain Deshmukhi and Sar-deshmukhi lands. The Commissioner expresses the view that the lands were under the High Court's ruling (*infra*, 48) inalienable. But that ruling does not go so far as to say that service lands under the Gordon settlement were or are absolutely inalienable. The Court only considered

how far the quality of inalienability under s. 20 of Reg. XVI of 1827 was affected by the Gordon Settlement. It was not contended, much less held, that the Gordon Settlement created any new and additional inalienability. Prior to Act III watan service lands were regarded as held on a tenure of successive life estates, and the prohibition against alienation, it was held, did not extend to an alienation for any period not exceeding the life-time of the watandar incumbent. Act III, s. 5, prohibited all alienations of watan outside the watan family, unless sanctioned by Government, and thus restrained alienations even of the life estate. The Courts, however, recognise the injustice of allowing a man to take advantage of such a provision to repudiate charges created by himself on his own life-interest. A watandar is therefore held estopped from profiting by the invalidity of his own alienations (*infra*, 47). The Legislature with a view to prevent fraud as well as to enable life-incumbents to deal with their own interests, so long as they do not affect those of their successors has (s. 1, Act V, 1886) limited the restriction to alienations extending beyond the term of the alienor's natural life. S. 7 of Act III, however, would still invalidate unsanctioned alienations of watans assigned as the remuneration of an officiator. It was *only so long* as s. 5 of Act III remained unamended by Act V that an alienation of the life estate of unassigned watan was void without sanction. But as pointed out, the alienor is estopped from urging the objection. The Collector no doubt might raise such objection in the interests of Government. But Government would probably never desire that he should do so in the case of a non-service watan, when, as no interests of Government are involved, such interference would operate merely to enable a man to repudiate his own debts. No doubt, it seems, can exist as to the validity of an alienation by an actual incumbent of his life estate, if effected (*a*) prior to Bombay Act III of 1874, or (*b*) subsequent to Bombay Act V of 1886, even without the sanction of Government. No alienation, however, beyond the life estate of uncommuted service watan, or watan settled by the Gordon Settlement, is or ever was valid without the sanction of Government. When, therefore, a person claims recognition as the alienee of a watan of either of these descriptions, the first question to be considered is (if the watan is unassigned) whether the claimant's alienor is still the actual incumbent or not.

Estoppel.

If the alienor is still the actual incumbent, he cannot repudiate the charge on his life interest, and Government would probably refuse to do so and, indeed, could do so only if the alienation was between the dates when Act III and Act V came into force In the present instance the alienation took place by court-sale in 1872 The claimant or his representative in interest, therefore, then purchased the life estate of the person whose interest he bought but no more. The question is whether that person (whose name appears to be H) is still alive. If he is dead, the life estate, which was all the claimant could legally have bought, has ceased to exist, and the claimant has no right whatever to recognition by the Collector But if that life estate still continues, an entry in the Collector's records recognising the extent of the claimants' interest would probably be found convenient to protect the Revenue authorities from error which might prejudice the claimant and give him a cause of action. The claimant cannot in any case demand the entry of his name in the Collector's book or sue if he is refused, for the books are kept for fiscal purposes and for the guidance and information of Revenue Officers and not as evidence of title. But the said officers would be liable if, misled by the inaccuracy of those records, they took any course of action prejudicial to the claimants' rights, as for instance by ignoring the interest which he has to prevent a forfeiture. There could, it seems, be no objection to enter under the name of H, if he is still the incumbent, some such entry, namely, R, purchaser of the life interest of H." Copy forwarded. No. 7675, October 29, 1890.

Entry in register.

40. As to civil hereditary offices, and the inams (watans) annexed to them, the balance of authority seems to incline in favour of the alienability in permanence *previously to British legislation* as well of the offices as of the inams appendant to them, though the purpose for which such inams were granted, namely, to ensure to the officer the proper means to perform his duties with efficiency and dignity, would naturally lead to the contrary conclusion. Reg XVI, 1827, s. 20, prohibited alienation by any hereditary officer of his official emoluments, and directed that such official emoluments enjoyed by a cosharer should not leave the family in which the office is vested. That Reg., it has been held, prevents the attachment of the inam lands appurtenant to a deshmukhi or patilki watan in respect of a deceased watandar. The prohibition against alienation, however,

Law of alienation before and after 1827.

according to the interpretation of that Reg. made by the Sadar Adalat, did not extend to an alienation for any period not exceeding the life-time of the watandar (the incumbent). After a conflict of opinion it has been finally settled that s 20 of the Reg. is not in any wise affected by Act XI, 1843, s. 13. *Krishnarao v. Rangrao.* 4 Bom. H. C. R., 1 (A. C. J.).

Life-interest.

41. As the holder for the time being of a Deshmukhi watan has only a life interest in the allowances, pertaining to that watan, such allowances, accruing due subsequently to his death, cannot be attached as part of his estate. *Hanmantrao v. Bhawanrao.* 10 Bom. H. C. R., 299.

Effect of repeal of Reg. XVI of 1827.

42. A mortgage by a watandar of watan property executed at a time when Reg. XVI was still in force, was, in its inception, void against the heir of the said watandar; nor did it become in any way validated against the heir by reason of the repeal of that Reg. by the Act of 1874. "It may be that the heir is, in respect of the property of his father other than that annexed to Kulkarniship, liable to pay his father's debt, but the Reg. exonerated the watan property from the mortgage by the father for any period beyond his own life." *Kalu Narayan v. Hanamapa.* 5 Bom., 435, and *Ravaloyirao v. Balvantrao.* Do. 437.

Watandar has life interest

43. In 1856 certain watan property was mortgaged by the deceased defendants to the plaintiff who obtained a decree on the mortgage in 1861 and attached the rents of the watan in the same year. On his death in 1869 his son succeeded to the estate and obtained a removal of the attachment. The plaintiff thereon applied for a fresh attachment of the property. *Held,* that the mortgagor having only a life interest, the watan came into the hands of the son free of the mortgage. "The watan in dispute is chaudari deshmukhi and Kulkarni watan. That such estates were not under the Reg. liable for the debts of the last holder is too clear to admit of question and, indeed, the Sub-Judge's order in directing the attachment to issue proceeded on the ground that Act III had effected a change in the character of such tenures. No provision, however, of the Act has been pointed to us as supporting this proposition. It was contended that s. 15 ratifying as it did settlements made by Collectors with the holders, operated to convert the life interest

into heritable and transferable property. No single authority has been shown us in support of this view. In the Privy Council case of *Rajkishensingh* (1 Cal., 186), it was held that assuming the custom (of the estate being impartible and inalienable) to have existed, although by settlement (made with the holder by Government at the time of the perpetual settlement) any incidents of the old tenure of the estate were impliedly at an end, yet the settlement did not of itself operate to destroy the family usage, even though its origin could not be shown. Again, where the *raj* of a particular place was confiscated for rebellion and after a lapse of 20 years was bestowed on a younger brother of the expelled Rajah, it was held that although the *raj* was to be treated as the self-acquired property of the said younger brother, yet that the grant, being from the ruling power, in the absence of evidence of the intention of the grant to the contrary, carried the incidents of the family tenure as a *raj*, as the intention of Government must be taken to have been to restore the estate as it existed before its confiscation, with no change other than as affected the expelled Rajah and his descendants, and was not, therefore, the creation of a new tenure but simply a change of tenant by the exercise of a *vis major*: *Baboo Beer Partab Sahee* (12 M. I. A., 1). And where lands had been granted for the performance of certain services, it was held that the circumstance that there was no longer occasion for the performance of the particular services did not justify the resumption of the lands. *A. J. Forbes* (13 M. I. A., 438). Our attention has not been drawn to any conduct on the part of the Collector under s. 15 which can have brought that section into operation with respect to the watan in the present case; and even if there had been such conduct, we cannot see how such a circumstance could act retrospectively so as to give a previous mortgage a greater degree of efficacy than it had under the law in existence when that mortgage was created." *Jagjivandas v. Imdad Ali.* 6 Bom, 211.

Analogous cases referred to.

44. In 1866 the defendant took a lease of lands pertaining to a *talwar or shetsanadi* watan (the holders of which, under Reg. XVI, 1827, and Act XI, 1843, s. 15, are hereditary village officers) from the last owner, who, as sole occupant of the *talwar* office, was entitled exclusively to the emoluments attached to it. When Act III came into operation, no order as regards remuneration was made, but

Lease invalid

the plaintiff, subject to objection, was appointed to officiate. The plaintiff thereupon sued to eject the defendant. *Held*, that the lease to the defendant as a partial alienation was invalid under Reg. XVI, s. 20; that the invalidity thereof was not removed by the Collector not being called upon to declare it to be null and void under s. 9, cl. 1, Act III; and that the plaintiff, as life owner, was entitled to possession. "The land being held and entered in Government accounts at a fraction of the full assessment was, as to the residue of the interest therein, assigned as remuneration for the duties to be performed by the functionary. The last holder became the sole occupant of the office, and from that moment the emoluments annexed to it became inalienable under the provisions of s. 20 of the Reg. By his lease therefore which is a partial alienation, the defendant acquired no title at all. It would be directly opposed to the Reg. When the Act came into force the land in question was already assigned and according to s. 23 the assignment is to be "taken to have been made under this section." Now, watan property assigned to the officiating officer, he being of the lower class, is subject to the provisions of s. 64, but it does not appear that, in this instance, any new order as to remuneration, or any exonerating the land from its complete subjection to the service, had been made. The watan stood at the institution of the suit as it had stood when the Act came into operation. It was competent to the Collector under s. 9, cl. 1, to declare that the alienation was void. He has not apparently acted on that section, but the nullity of the lease under the Reg. is not removed by that. What was void in its inception is not made valid by the lapse of time, except when that particular consequence is enacted by the Legislature. The plaintiff has been appointed to the office. To him the watan consequently belongs, and the occupant under an entirely void title may be ejected by him." *Purushottam v. Mudkangavda.* 7 Bom. 420.

Watan lands become alienable when services are abolished.

45. Service watan lands become alienable when the services are abolished, except in cases where there is a concurrent family custom operating similarly to keep the watan estate together. Such a custom may continue and may singly bind the hands of the successive holders of the property after the former restriction has failed or been removed. The abolition of the public duty does not alter the nature of the estate; if the family custom forbids aliena-

tion beyond the life-time of the alienor, the custom will operate equally after the patrimony has ceased to be a watan, as before. Where, however, such a concurrent custom does dot affect an estate, then when it is freed from its connection with the public office, the reason arising from that connection for the preservation of the estate necessarily fails, and the lands become subject to the ordinary law of descent and disposal. *Per.* West J.:—(1) Lands with respect to which a summary settlement under Bombay Acts II and VII of 1863 has been effected, are wholly exempt from official obligation. (2) Where service lands or what were deemed service lands have been aliened, and at later period the service has been disclaimed or abolished, this subsequent abolition or discharge renders the title of the alienee in possession undisputable by the alienor's heirs, assuming that there is no special family custom operating apart from the law which preserves service lands for the intended uses. The alienation is, of course, subject to the terms on which family property can usually be alienated. "So long as lands are assigned by the Sovereign to the support of a public office, or the land-tax payable on lands is remitted in consideration of services to be performed by a particular family or line of holders, the lands are, according to Hindu law and customary law, incapable of alienation or disposal, such as to divert them, or the proceeds of them, from the intended purpose. It often coincides in its operation with another principle, *viz.*, the compulsory force of a special family custom of inheritance, which prevents alienation of the patrimony beyond the family, and in some cases even its partition within the family, while it replaces the ordinary rule of the joint inheritance of a group of sons by that of primogeniture or some other mode of singular succession. When an estate is freed from its connection with a public office, the reason arising from that connection for the preservation of the estate, intact and unincumbered, necessarily fails. There is not in the lands themselves, according to Hindu Law, any inherent quality limiting them to special kind of ownership and devolution They become subject to the ordinary laws of descent and disposal, just as where a particular custom concerning them has been abandoned, or they have passed into a family not subject to the custom. But though the political and public tie, which kept a watan estate together, may thus have failed, a concurrent family custom producing an effect wholly or partly the

Effect of abolition of service on previous alienation

same, may continue and may singly bind the hands of the successive holders of the property as strictly as before. The abolition of the public duty does not in this sense, any more than the remission or the imposition of the land-tax, alter the nature of the estate. It is only necessary to bear in mind that this 'estate,' the proprietary relation of a family to certain lands, is not by Hindu law a quality of the lands; it is a jural relation of the family. If the family custom forbids alienation beyond the life of the alienor, the custom will operate equally after the patrimony has ceased to be a watan in the technical sense as before. That such a custom exists or not, may, in most cases, be gathered from the previous practice of the family. If while the watan has been reserved for the office-holding member, the rest of the family estate has been sold or mortgaged or divided or dealt with as an ordinary joint property, that is an indication that no special custom has prevailed; that the watan has been kept together, not by the family law, but by the official obligation. In some cases the watan estate itself has been distributed within the family after the fashion of an ordinary divisible property, though kept from leaving the family by the expressed or understood terms of the official tenure. When the office ceases, the tenure ceases too, though not by the office becoming sinecure; and there being no special family custom, the property may be dealt with in the usual ways. This result is contemplated by Bombay Acts II and VII of 1863. S. 1 of Act II enables the Governor-in-Council to make a summary settlement with the holders of land who claim exemption from the land-tax; but clause 2 of the section excepts from the rule 'lands held for service.' By s. 16 the Governor-in-Council may determine what are and what are not 'lands held for service,' and when he has once made a settlement under the Act, he has conclusively elected to treat the estate embraced in such settlement as lands not 'held for service,' since such a tenure would make the settlement impossible. Accordingly s. 2 provides that 'such land shall be the heritable and transferable property.' It is plain that such language must have been used with the intention of wholly freeing settled lands from official obligation. The terms on which the proposed benefits are to be secured are an annual payment of $\frac{1}{4}$ of the land-tax previously remitted, plus $\frac{1}{16}$ of the full land-tax. On such terms the estate, with which we have now to do, has been settled. It is no longer affected with a liability on

Summary settlement Acts considered.

account of service; and unless as a family estate subject to a special family custom, it has become in all respects, except its partial exoneration from land-tax, like the ordinary landed property of the district. The next question is, where service lands have been aliened and at a later period the service has been disclaimed or abolished, does this latter event render indisputable by the alienor's heirs the title of the alienee in possession which, had the liability to service continued, might have been disputed? Assuming that there is no special family custom operating apart from the law which preserves service lands for the intended uses, it seems the answer to the question must be in the affirmative, with an addition of the terms on which family property can usually be aliened. The service lands are a property, not merely a remuneration; otherwise the right to them would cease with a discontinuance of the service. As a property, they would, subject to known restrictions, be bound by the transactions of the owner for the time being. The change in the character of a holding on the death of a particular tenant from tax-free inam to taxable rayatwari did not, it was ruled in *Vishnu v. Tatya* (1 Bom. H. C. R., 22), destroy the original estate or free the lands from specific liens created by the last inamdar, (because the sole effect of such a change upon the liens was to lessen their security to the extent of the diminution in value of the estate caused by the new liability to payment of land-tax, by the imposition of which the Government did not acquire any right to the land itself but only the right to levy the public assessment from it). Hence there has been an imposition, not of the full land-tax, but of $\frac{1}{16}$ths of it. This would not destroy the previous estate, nor would it annul a previous alienation. The nullity of the alienation, if it is null, must arise from a character possessed by the estate at the time of the attempt to alien. On a literal construction of Reg. XVI, the estate held by the watandar would be inalienable. It is conceded, however, that it was not absolutely inalienable; the watandar's conveyance was valid, at least, for his own life. Thus the prohibition against alienation has been allowed to deprive a watan of the usual incidents of an estate only so far as was necessary to prevent its permanent severance from the service annexed to it. The nature of the estate, as such, was not otherwise varied from the common type. The Hindu law makes each succeeding holder take as an heir to his predecessor, notwithstanding the collateral contingent

Watan land is property

operation of the rule for preserving the watan from dissipation. In the case of an alienation by the watandar in possession, the successors reclaiming after his death would do so in virtue of the special right conferred on them incidentally to their obligation to perform the service ; and the incident would cease along with the obligation. As heirs they could reclaim only in the same circumstances as other heirs. The right of repudiating the ancestor's transaction arose through the office descending ; in this sense it was that the alienation was void against the heirs. If legally possible, it was but voidable, and the special burden of the lands having made the alienation, not originally null, but only subject to defeasance for the benefit of the service, that cause for recovery could no longer avail when the service itself had once been finally dispensed with." *Radhabai v. Anantrao.* 9 Bom., 199. But *vide Ruls.* 46, 48, 72..

Enlargement of estate does not enure to the benefit of the mortgage.

46. "The mortgage was of a certain Desgat watan property effected in the year 1850. The mortgage being ostensibly of land attached to an hereditary office was in its inception void against the heir of the mortgagor by reason of the provisions of Reg. XVI of 1827. At the date of the mortgage in 1850, the mortgagee knew that the property which was being made over to him in mortgage was land appurtenant to an hereditary office. He knew or ought to have known that, by reason of the provisions of the Reg. of 1827, that land was inalienable beyond the life of the incumbent. Assuming that the estate of the mortgagor was enlarged, subsequently to the mortgage, into an estate similar to that of any owner of private property, the mortgagee cannot allege that he has any title by estoppel under which any enlarged estate coming to the mortgagor subsequent to the mortgage would enure to the benefit of the mortgagee, for a title by estoppel rests upon representation made by the grantor and acted upon by the grantee. (*Vide* s. 43 of the Transfer of Property Act.) We hold, therefore, that the mortgagee took merely such estate as the holder of the watan property was capable of conveying to a mortgagee in 1850, and that being so, he cannot claim to hold under the mortgage after the death of the mortgagor." *Gangabai v. Baswant.* 34 Bom., 175, also 12 Bom. L. R., 143.

47. The plaintiff, who was a watandar Kulkarni, sued to recover from the defendant possession of certain land with mesne profits, alleging that it was his service watan land wrongfully taken possession of by the defendant in 1880. The defendant set up a mortgage of the land alleged to have been executed to the defendant by the plaintiff's mother in the plaintiff's name during his minority. Both the lower Courts found that the land was the plaintiff's Kulkarni watan land; that it had been mortgaged by the plaintiff's mother to the defendant for good consideration; and that the mortgage was binding on the plaintiff. *Held*, that the plaintiff was estopped from denying his title to mortgage the field. The general rule being that the grantor cannot dispute with his grantee his right to alienate the land to him, the circumstances in the case did not justify a departure from the rule. The plaintiff, although an hereditary public officer, was not a trustee for the purposes of the Watan Act, and it could not be presumed that the grantee knew that the plaintiff's guardian had not obtained the previous sanction of Government to the mortgage. The plaintiff was, therefore, estopped from saying that the grant was forbidden by the Act.

Estopped

Meaning of s 5 before its amendment.

Quære whether s 5 of Act III (as it originally stood) made an alienation to an outsider void as between the grantor and grantee "Under ss. 19 and 20 of Reg. XVI it was well settled that a grant of service watan land by the holder of it was good as against himself (*Krishnarao, supra*, 40). Act III purports to declare and amend the existing law, and with the exception of s. 5, which forbids alienation of the watan to any person not a watandar, is exclusively directed to arming the Collector with special powers for recovering watan lands, which have been alienated and restoring them to the watan and also for providing, as between the members of the family, for the efficient and regular performance of the service of the watan. Such being the nature of the Act, and having regard to the law as it stood when the Act was passed, it may well be doubted whether s. 5 should be construed as making an alienation to an outsider void as between the grantor and grantee, although such alienation is doubtless made void as against the Collector, who, if he thinks proper, can at once invoke the aid of the Court under ss. 9 and 10 to recover back the watan property. But, however this may be, we think the

plaintiff was estopped from denying his title to mortgage the land. The general rule is that 'the grantor cannot dispute with his grantee his right to alienate the land to him.' It was laid down by Mr. Justice Ashhurst in *Fairtitle v. Gilbert* (2. T.R. 171), that the general rule did not apply where the grantors were trustees who were not acting for their own benefit, but for the benefit of the public, and further, that as it was a public Act of Parliament under which the trustees were acting, the Court was bound to take notice that the trustees had no power to execute the mortgage in question. In *Deodem Levy v. Horne* (3 Q. B., at p. 766), Lord Denman would appear to have doubted whether the public character of the grantors could affect the question of estoppel, but he pointed out that Mr. Justice Ashhurst's statement proceeded on the presumption that the contents of the Act were known to the contracting parties, but that, however that might be, there was no presumption that the mortgagee knew the fact of a previous mortgage having been made, which by the act in that case prevented his suing in ejectment. Here the plaintiff, although an hereditary public officer, is not a trustee for the purposes of the Act, and it certainly cannot be presumed that the grantee knew that the plaintiff's guardian had not obtained the previous sanction of Government to the mortgage. We think, therefore, that the circumstances do not justify a departure from the general rule. *Narayan v. Kalgauda.* 14 Bom. 404.

Watan commuted under Gordon Settlement inalienable.

48. In a suit in which plaintiffs alleged that the lands sold in execution of a decree against their father were service watan lands and inalienable: *held*, on the evidence, that, with the exception of two fields, none of the lands in question were service watan lands, and that the two excepted fields, which had been the subject of Gordon Settlement in 1864, remained inalienable watan lands, although the services in respect of them had been dispensed with. "The actual decision in *Radhabai's* case (*supra*, 45) had reference exclusively to a settlement under Act II, 1863, which, it was supposed by the Court, (although, erroneously, it is now said,) was the nature of the settlement in that case; and the nature and effect of Gordon Settlement has still to be determined. What is termed a Gordon Settlement

was an arrangement entered into in 1864 by a Committee, of which Mr. Gordon, as Collector, was Chairman, acting on behalf of Government with the watandars in the Southern Maratha Country, by which Government relieved certain watandars in perpetuity from liability to perform the services attached to their offices in consideration of a *judi* or quit-rent charged upon the watan lands. Any doubt there might have been as to the binding legal effect of these settlements either as regards Government or the watandars or their successors was set at rest by s. 15, cls. 2 and 3, Act III of 1874, which provides that they should have the same force as if made under s. 15 of the Act which expressly contemplates such settlements being made by the Collector. At the time when the Gordon settlements were made, service lands were regarded as the remuneration of the hereditary offices and made inalienable by Reg. XVI (as construed by the Courts) beyond the life of the actual incumbent, and the question, therefore, is how far this quality of inalienability of watan lands was affected by these settlements. The settlements made under Acts II and VII of 1863 could leave no doubt, as pointed out in *Radhabai's* case, that the lands were thenceforth to be transferable as the property of the holders. But in the case of Gordon Settlement, the precise nature of which is not to be gathered from any Act of the Legislature or any formal document containing the terms of the settlement, the matter is necessarily not so clear. However, the reports of the Gordon Committee leave no doubt that the settlement made by the Committee, unless it was specially provided by any particular settlement, was not intended by either party to those settlements to convert the watan lands into the private property of the watandars with the necessary incident of alienability, but to leave them attached to the hereditary offices, which although freed from the performance of service remained intact, as shown by the definition of hereditary office in the declaratory Act III of 1874. There is no doubt, as pointed out in *Radhabai's* case, a presumption against such an intention on the part of Government as creating a perpetuity, but we think it is sufficiently rebutted by the above evidence regarding these settlements in the S. M. Country. In the present case there is no reason for inferring a contrary intention either from the contemporary documentary evidence bearing on the settlement,

History of Gordan Settlement.

or from the *sanad* granted by Government in 1885 in pursuance of such settlement." *Appaji v. Keshav.* 15 Bom. 13.

Naikwadi watan

49. "The property sold appears to be part of what is called a *naikwadi* watan to be held on a tenure of service to the Pant Pratinidhi. A watan properly so called implies an estate appended to some public office or assigned for its support by grant to the family of hereditary office-holders *in esse* or *in posse*. In the present case the land is entered in the village books as *sarakâri*, not *inam*. It does not appear that any remission of the land-tax is made on account of the service to be rendered, or that it differs in any sense, so far as the British Government and the public revenue are concerned, from the ordinary ryotwari lands. No *naikwadi* service is rendered to the British Government, but it seems that some service bearing the name of naikwadi is or was rendered to the Pant Pratinidhi. It has been contended that such service formerly rendered to the ruler of the District then including the village in question warranted the Chief, according to the local law, in annexing lands to the office or service, so as to make them inalienable from the family performing the corresponding duties. The lands in question, it is urged, were so bestowed on this family, and as an estate of that family, remained an estate when the village came under the British rule, which estate retained its incidents including that of inalienability beyond the grantee's life even though the services should be rendered no longer to the Sovereign or a representative of the Sovereign, but to one ranking within British territory only as a private person, or even though the services should be altogether dispensed with. An estate assigned forever to the possession of one family who have in return to perform certain duties, becomes, when those duties are dispensed with, a simple perpetuity. If the duties are to be rendered to individuals in their private capacity, the ordinary support of a perpetuity on the ground of public benefit fails. On the other hand private property as such is not deprived of that character, nor are private legal relations as to property in any way changed by change of sovereignty without express legislation. It will be a question in this case how far the *naikwadi* was a grant for a public or private service, and then what is the present nature of the service and of the holding and how the facts thus determined affect the liability of the land to aliena

tion under the British Government and the present law The case is therefore sent down for re-trial." *Fatu v Dhondi.* P. J., 1884, 182.

Alienor may impeach fictitious alienation

50. An alienation by a life-tenant of a service watan may be impeached on the ground that it was a fictitious sale not intended by the parties to have effect. *Amratlal v. Bapubhai* P. J., 1887, 207.

Posthumous son can contest alienation

51. A posthumous son of a watandar can contest an alienation of immoveable property made by his father before he was born or begotten, as in such a case the father has only a life-interest. *Damodar v. Balwanta.* P. J , 1888, 243.

Alienation valid, when

52. "It is admitted that since 1861 Government has levied full assessment from this land, and that the services of a kulkarni, formerly paid by a reduction in the assessment of this land, are now paid in cash directly from the village treasury. There is therefore 'no remission of land-tax in consideration of services to be performed by the family.' This is the definition of a watan we gather from *Radhabai's* case (*supra*, 45) and this corresponds with the definition given in the Watan Act. It was asserted that land which had once been watan land always remained inalienable until it was declared by Government to have lost its watan character. But the authorities show that when the land has permanently lost its special dedication, it also loses its inalienability. The land is, therefore, alienable in default of a special custom of inheritance." *Vishwanath v. Bayubai.* P. J., 1890, 28. But this is not quite correct law now.

Permanent alienation valid, why.

53. Watans such as the Nadgauda Service watan were (presumably) alienable in permanence prior to the application to them of Reg. XVI, 1827. Such a watan situate in the Satara District was alienated by its holder in 1849. Reg. XVI not having been introduced in the Satara District till 1863, the alienation was held good (there being no evidence to rebut the presumption of alienability). *Manohar v. Dattatraya.* P. J., 1896, 378.

Decree did not bind the successors of a watandar.

54. T, the owner of a watan estate, having resumed the lands given to a *sanadi,* on the latter's line becoming extinct, let them to a tenant of the *sanadi,* who passed annual kabulayats to T. T having died, R

succeeded to the watan, and having obtained a decree against the widow of T and others for possession of the watan was obstructed in its execution by the tenant as to the lands in his possession. R sued the tenant to remove the obstruction and for possession. A decree was passed in terms of an agreement of settlement arrived at between the parties, by which both parties alleged that R was the owner of the lands and that R agreed to continue them to the tenant as long as the latter should continue to pay the amount of the Government assessment for the time being. Considering the terms of the agreement, the Court thought it was impossible to hold that R created a permanent tenancy in favour of the tenant and his descendants, even if he had (as the Court thought he had not) the power to do so; and that there were no words of inheritance in the agreement, which the decree exactly followed, or any expression in it to lead to the conclusion that it was intended to bind R's successors in the watan estate. The decree was binding as a decree founded upon the agreement between R and the tenant but was not intended to bind, nor did it bind, the plaintiff who succeeded upon the death of R, the former holder for life, and not as claiming through him, and who was at liberty to refuse to continue the defendant as his tenant. *Narainrao v. Ranu.* P. J., 1897, 174.

Watan property not liable to sale as assets of deceased.

55. Two brothers V and D mortgaged their watan property to B. D having died after the mortgage, B got an arbitration award for the payment of the mortgage debt. D's son N who was then a minor was joined as one of the parties to the award as the representative of his deceased father with his uncle V as his guardian. Afterwards a decree in terms of the award was passed. At the time of the decree N had become a major. The provision for the payment of the mortgage debt was in the following terms:—If money should not be paid according to this award, the lands given in writing in mortgage.....from the said lands and from the settled rent-money and from other properties and also personally from the defendants the plaintiff is to recover the money claimed annually as mentioned above by recourse to execution. After the passing of the decree in the terms of the award, V also having died B sought to execute the decree by sale of the watan property against the heirs of V and N as the representative of his deceased father. N contended that the watan property in his hands was

not liable as the assets of his father. *Held,* that the award was not passed against N in his personal capacity and the decree which was framed in the terms of the award was not a personal decree which could be executed by sale of N's interest in the watan nor was that interest assets of D's estate. *Narayan v. Ramrao.* 3 Bom. L. R. 482.

Alienation of toda giras

56. Alienations of *toda giras* are valid during the life-time of the person who effected the alienation. *Fezali v. Mahomed.* 7 Bom. L R., 798.

Compulsory acquisition of watan land

57. Where land compulsorily acquired is held on watan tenure, the money payable in respect of the watandar's interests should be deposited in Court and invested in accordance with the provisions of s. 32 of the Land Acquisition Act *Collector of Belgaum v. Bhimrao.* 10 Bom. L. R., 657.

Bequest.

58. The interest enjoyed by one of a body of coparceners in possession of land attached by way of emolument to an hereditary office (*e. g.* shetsanadi), cannot be bequeathed to one or more of the other coparceners: as the estate held by each sharer is only a life interest, subject to the right of the Collector, under Act XI, 1843, to assign a fit remuneration from the rent and profits for the maintenance of the person appointed to conduct the duties of the office. "Such lands are entailed estates, the holders of which are simply tenants for life and cannot alienate the lands beyond the terms of their natural life This has been distinctly declared to be the law, when such estates have vested in a single person, by the interpretation put by the Diwani Adalat on Reg. XVI, 1827, s. 20. It is now contended that though the sole incumbent cannot alienate the lands beyond the period of his life, yet that when the estate has vested in a body of coparceners, one of them may bequeath his interest to another parcener, though he could not alienate it to a stranger. This argument is founded on the words of s. 20, cl. 2. We consider, however, that the estate which each parcener holds in his particular share cannot be larger than the estate possessed by the whole body of coparceners in the entire estate; and that this last being a life-estate only, the estate of each parcener in his particular share is similarly limited, consequently there is no power to bequest, inasmuch as there is nothing to bequeath either in the one case or the other." *Bhimppa v. Mariappa.* 3 Bom. H. C. R., (A.C.J), 128.

59. Alienation by will of what was then a watan held for service being in its inception invalid as against the heirs of the testator, did not become valid because of a change, after his death, in the tenure by the abolition of the services. (The fact that the services were abolished after the testator's death distinguished this case from *Radhabai's*, *supra*, 45.) *Bai Devkore v. Amritram*, 10 Bom. 372.

Ditto.

60. "It is admitted that the services attached to the watan in question had been commuted by the Alienation Settlement Officers in 1869; the question is whether, under these circumstances, H who was the holder for the time being, could dispose of the watan property by will. The question must now be regarded as settled in the affirmative by the ruling in *Radhabai's* case (supra, 45) it not being contended that there was any family custom forbidding the alienation. Since then, however, Act V of 1886 has been passed, which by s. 1 invalidates alienations.....although the services have been commuted.....unless the right of alienation is conferred by the sanad. There was no such right reserved by the settlement in this case, but the principle that an Act is *prima facie* not to have a retrospective effect given to it, will prevent the application of the Act of 1886 to an alienation by will in 1871. The alienation is therefore valid." *Bai Hariganda v. Tulsidas*. P. J., 1887, 69. Not correct now.

Ditto.

Act V not retrospective.

61. The holder of an hereditary office, such as a Deshpande watan, cannot create an hereditary deputy. The appointment of a deputy made by an incumbent cannot extend beyond the life of such incumbent, as the holder of an hereditary office being simply a tenant far life, the nomination of an hereditary substitute to his successors in the office is an act clearly beyond his competence. *Ravji v. Mahadevrao*. 2 Bom. H. C. R., 237. But *vide Rul.* 65 *infra*.

Hereditary deputy cannot be created.

62. "In *Ravji's* case (*supra*, 61), it was held that the holder of a Deshpande watan cannot create an hereditary deputy, and that no such appointment could have effect beyond the incumbent's life. In the present case the management of the watan is vested by the sanad executed in 1850 in the defendants and their heirs in perpetuity under the

Hereditary deputy.

title of *Gumastas*, but the remuneration attached to the office is equally in derogation of the successor's rights, as in the case of a deputy, and is, therefore, in the absence of proof of custom, invalid against such successors; but in any case we think that, having regard to the terms of the sanad, it was in the power, whether of the original grantor or any of his successors, to determine the office and the remuneration at any time after the watan services ceased in 1864. The sanad is in terms the grant of an office, the performance of whose duties is remunerated by a portion of the income of the watan, and which in Forbes (XIII, M. I. A., 438) is treated by the Privy Council as liable to resumption when the services cease. It was said, however, that adverse possession began in 1864 when the services ceased. Assuming the grant to be invalid as against the successors, adverse possession would only run from the date of the grantor's death; and, although the grant might have been cancelled by the grantor in 1864, there is no evidence to show that it was so cancelled by him or that the grantees ever claimed or enjoyed the remuneration during the grantor's life otherwise than in virtue of the office." *Krishnaji v. Vithalrao*, 12 Bom. 80.

Adverse possession.

63. The creation of a perpetual *mutalik*, with a certain share of the watan as *vritti* on account of *mutaliki* was (prior to 1827) within the powers of a holder of the watan for the time being, more especially when it was done for good and valuable consideration passing to the watan. But it was not competent to him to exclude his successors from the entire management of the watan, as that was virtually to attach an incidence to their estate which was inconsistent with its nature, and which he was not competent to do. "The agreement is not merely the creation of a permanent office, for the services of which a certain share in the watan is allotted as remuneration, but it proceeds on the special service to be rendered to the family by recovery of the watan itself. In other words, the performance of the service as *mutalik* is not the entire consideration or motive for the grant, nor does it expressly provide for the grant ceasing when the services should be no longer required. This distinguishes it from the grant in *Krishnaji* (*supra*, 62), and brings it within the principle on which the Privy Council decided in favour of the continuance of the grant in *Forbes* where there was no longer any occasion for the service to be performed." *Bhimaji v. Giriappa*, 14 Bom. 82.

Creation of office of hereditary deputy, good, when

64. "As to whether a Deshmukh could dismiss the holder of the paid office of hereditary *gumasta*, appointed to collect, in the watan of the former, the deshmukhi allowances from the villages, it was shown by documentary evidence that the *gumasta's* ancestor had been appointed by the ruling power of the day, from which authority also the Deshmukhi had been derived. It was also shown that the hereditary *gumasta's* title was independent of the Deshmukh, and that the latter could not displace him. No change had been made under British rule from what had prevailed as to this under the Peshwa; but such evidence as there was, accorded with the above. *Held*, that the right of the *gumasta* to act as such, and to receive the payments had either been granted, or else had been so recognised and confirmed, by an authority binding on the Deshmukh that he could not deprive the *gumasta* of his office which the Government had conferred upon him; and that the Deshmukh had not the right, as against him, to collect the allowance himself, directly, either from the village officers, or from the treasury. *Per* High Court: "There is no doubt that the agency has been for several generations with the defendant's family. It is one thing, however, to have held it in the past from generation to generation, and another to be entitled to hold it hereditarily in the future. The principle of the law which creates and governs agencies is quite opposed to the notion of their having any hereditary quality; and this Court has more than once refused to recognise hereditary agencies, or the power of a watandar to create them. But in this case the evidence shows that the right the defendant claims (to act as a paid hereditary agent) has been either granted, or else so recognised and confirmed, by an authority binding on the plaintiff, that the plaintiff cannot now turn round and contend that he can dispense with the services of the defendant." *Per* Privy Council: "If the case of the defendant had rested merely on the fact that the office of *gumasta* which he held had been hereditary from generation to generation, and had been recognised as hereditary by the Deshmukh of that day, nearly a century and a half ago, their Lordships would have had to consider what rights were inherent in such an hereditary *gumasta*, and whether the Deshmukh could, and if so under what circumstances, put an end to the relation between him and the *gumasta*, and either

Ditto.

Principle of law of agency opposed to creation of hereditary deputy

collect the revenue himself or appoint some other *gumasta* to perform the duties for him. But it is unnecessary to determine this point, inasmuch as the defendant's case is (and is proved by evidence to be) that his ancestors held the office of *gumasta* from the same authority as that from which the Deshmukh derived his rights, that is to say, the sovereign power to which they were both subject, or that at all events the hereditary right to act as *gumasta* has been so recognised and confirmed by that authority, that the Deshmukh cannot now claim to treat him as deriving his right merely from an ancestor of the Deshmukh, and as subject, therefore, to dismissal according to the law ordinarily regulating the relations between principal and agent." *Ramchandra v. Trimbak*, 16 Bom. 374.

Alienation for *mutaliki* services good, when.

65. A watandar of Desgat lands having granted lands to defendant's family for *mutaliki* services rendered in past times and for money payments made in the interest of the watan, nothing being said about the grant being for future services, nor any obligation of service being imposed by it, *held*, that the grant was absolute, having been made in 1816 when the grantor had full power to make it, and could not be resumed if the service was not performed. "The words: 'You are to perform the duties of *mutaliki* also in future in the same manner as you have been doing from former times' seem to be directory only, for there is no provision that the grant is to be dependant on any service being performed or that it should be resumed if the service is not performed. The case is similar to that of *Bhimaji* (*supra*, 63). The case of *Ravji* (*supra*, 61) relates to a Deshpande watan, and it cites no authorities for the ruling that a Deshpande watandar can appoint no deputy. The case of *Bhimaji* is a direct authority to the contrary in respect of a Deshmukh or Desgat watan." *Lakshman v. Narayanrao*. P. J., 1896, 355.

Nature of watan tenure considered.

66. A watan, being an estate held from Government, is subject to special rules both as to devolution and as to the capacity for proprietorship. Government usually has bestowed it on a particular family with reference to the special fitness of that family on account of caste or social or political status for the performance of certain public services annexed as an obligation, though not as a condition, to

the grant. Enjoyment by that family is thus an essential element of that tenure. This being so, the tenure fails on the entail so to speak being broken and the property passing into the possession of one, not a member of the family of beneficiaries. This is recognised in the case of *Radhubai* (*supra*, 45). If then the original family of watandars have allowed themselves to be ousted so long or in such wise that they can no longer assert their right against the intruders, the result is not to destroy the latent ultimate right of the donor as reversioner, *i. e.*, the Government, but to bring the reversionary right into immediate operation. The ousted watandars, if they have conspired with the intruders, have been guilty of a fraud on the donor tending to the destruction of the residuary estate, which is recognised as a ground of forfeiture of the tenure. If they have been put out by force or fraud or the operation of any particular law (*e. g.*, of Limitation), their estate has simply perished and that out of which it was carved (*viz*, the estate of Government) becomes integral again. The intruders cannot, as against Government, take advantage either of the fraud or the negligence of the tenant watandars, so as to destroy the higher estate of the sovereign, except when the right of the latter is barred by limitation. Watan lands are also service lands, and Government, under general rules to that effect, may resume them at discretion. The law of the case being thus stated, Government are pleased to direct that the patilki watan in question be resumed by them and re-granted to the ousted Lingayat family. No. 6890, September 13, 1889.

Government's interest in watans.

67. L. R. "It is admitted that the opponents have been in undisputed possession of the kulkarni watans of the five villages in question since 1845. They were made over to them in that year by the deceased B, and after his death in 1853 the watan lands were with the consent of his mother and widow transferred in 1855 to the names of the opponents. The present applicant R is said to be B's son, although the opponents question the validity of his adoption. It is not stated when the adoption took place, *i. e.*, whether before or after the alienation by B in 1845 of the watans, but it is stated that at the time of the latter's death R was still a child. R's present age is not given. The nature of the transfer is disputed with reference to the terms of the document of 1845, which R wrote. But even

Long possession and consent, effect of.

if that document did not exist or could not be received in evidence, the continuous possession by the opponents since 1845 of the entire watans, the consent of the widow and mother of B to the transfer of them in the Collector's records to the opponents' names and the acquiescence all these years of R in the enjoyment of those watans by the opponents, leave no room for doubt of the fact that what the opponents and their ancestors acquired was the watans and that they were not merely appointed deputies to perform service for B and his successors Such being the case, the applicant R would be prevented now by the law of Limitation from questioning the title of the opponents to the watans in a Court of law; for if he was a child in 1853, it must be considerably more than 12 years since he attained his majority. His right to recover those watans, if he ever possessed any, is therefore extinguished now by s 28 of Act XV of 1877, and I do not think that anything in the proviso to s. 26 of Act III of 1874 would justify the Collector in ignoring the fact or in treating the rightful possessor of the watans —the opponents—as if they did not exist. On these grounds, I beg to recommend that R's application be rejected." Government concur. No. 3066, March 29, 1892.

Date of accrual of cause of action.

68. Where land, belonging to a service watan being held on a tenure of successive life estates, passes out of the possession of the watandars: *held*, that a cause of action to recover such land accrues to each successive life tenant upon the death of his predecesssor.* *Kuria v. Gururav*, 9 Bom. H. C. R., 282.

Limitation

69. "It does not appear from the report of *Kuriá's* case (*supra*, 68) whether there had been any alienation by the plantiff's ancestor of the watan lands or not. No doubt if A, being the incumbent of a service watan, has alienated it, his heir B, although more than 12 years may have elapsed between such alienation and the death of A, would be entitled to recover the watan, as B's title to the land would not accrue until the death of A, and the possession of the alience would not be regarded as adverse so long as A is alive. But from the moment of A's death, the possession would be adverse to B, and if B suffered 12 years from that event to elapse without bringing any suit, we think not only B himself but also B's heir

* This case is no more correct law.

would be barred by limitation. To hold otherwise would be to put an end to the law of Limitation altogether as to watans. The incumbent of a service watan is in a position parallel to that of a Hindu widow, who, though, except for certain special purposes, cannot, as against the heirs of her husband, alienate his immoveable property ; still, she completely represents the absolute estate in the property, and, under certain circumstances the law of Limitation would, during her incumbency, run against the reversioners." *Babaji v. Nana*, 1 Bom. 535.

Adverse possession begins, when

70. Adverse possession only begins to run against the heir from the time when he is entitled to succeed to the possession of the watan property, *i. e.* from the date of the death of the watandar. *Ravlojirao v. Baluantrao*. 5 Bom. 437.

Adverse possession and *res judicata*.

71. In the absence of fraud and collusion, adverse possession for 12 years during the life-time of one holder of service watan lands is a bar to succeeding holders ; and similarly judgment against one holder is *res judicata* as regards a succeeding holder. In *Kuria's* case (*supra*, 68) the Court assumed that service land was held on a tenure of successive life-estates, the right to which accrued on the death of each life tenant. In *Babaji's* case (*supra*, 69), however, the Court said the incumbent of a service watan is in a position parallel to that of a Hindu widow who completely represents the absolute estate, and under certain circumstances the law of Limitation might during her incumbency run against the heirs to the property. In determining which of these views is the correct one, it will be convenient to consider what was the nature of the estate of a holder of a watan appendant to an hereditary office before the subject engaged the attention of the Legislature in 1827. In *Krishnarao* (*supra*, 40) the conclusion arrived at was that the balance of authority inclined in favour of the alienability in permanence. A re-examination of those authorities has led me to the same conclusion, which, if correct, can leave no doubt that the actual incumbent of a service watan previous to English legislation was regarded as fully representing the watan. This important conclusion was not brought to our notice or was present to our minds when we decided the case of *Kuria*. Reg. XVI of 1827, s. 20 (as interpreted by Courts) limited the power of alienation to the alienor's life-time. Act XI of 1843 did not touch or affect

Previous law.

the law on this point. That Act as well as s. 20 of the Reg. was repealed by Act III of 1874. Ss. 5 to 11 deal with the subject of alienation. It was contended that the object of the above legislation was that the land should be always forthcoming for remuneration of the office, and should not, therefore, be diverted from the particular family in which the hereditary office was vested—an object which would be liable to be defeated if the watan property could be lost by the negligence of the incumbent. That such was the general object of the Acts referred to, may be conceded, and so far as that object would be liable to be defeated by an act of alienation by the holder for the time being of the watan, the provisions of the Acts, and especially of Act III, are sufficient to provide against that contingency. But alienation implies action, not the passive lying by, of the incumbent; and a prohibition, which is confined in terms to alienation, cannot, therefore, avoid the effect of adverse possession by a stranger during the life of an incumbent of the watan. In the case of *Mayor of Brighton* (L. R., 5 C. P. Div., 369), it was held that apt words were necessary to exclude the operation of the Statute of Limitations, and that a mere prohibition against alienation was not sufficient for that purpose. In neither Act III—passed after the Statutes of Limitations had been introduced into this country, although the Legislature has expressly prohibited alienations to persons outside the watan without the consent of Government, and has invested the Collector with large powers of control over the watan property with a view to its preservation for the purposes of the office,—nor in any of the other Acts is there anything to be found which can be held to protect either the heirs or the public interest as represented by the Collector, against the effect of adverse possession, by a stranger. It may be said, however, that although Act III does not avoid the effect of adverse possession, still the general scope of the legislation since 1827, and the prohibition against alienation are sufficient to preclude our regarding the incumbent as fully representing the watan, and that, therefore, a fresh cause of action should be deemed to accrue to each succeeding holder of the watan against an intruder, whose adverse possession had commenced in the life-time of his predecessor. Assuming, however, as I think we must, that the incumbent for the time being fully represents the watan before English legislation, the mere restriction of his power of alienation outside the family cannot be held sufficient

Alienation implies action.

Incumbent fully represents watan.

to change that character, or to prevent his representing the watan in all questions with the outside world relating to it as fully as he had hitherto done" *Per* Sir M. Westropp, C. J.

Res judicata.

Per West J.: "As representing a public interest they (the successors to a holder) might get an improvident alienation or incumbrance set aside, but as heirs they take through their predecessors in title the property of the latter, in a quality and quantity determined by the rights established against it (property), as well as those established in its favour, as one and the same estate, not as several estates in the hands of the successive possessors or groups of possessors. In the case of a watan or property held on a tenure of public service, it follows that each holder of office in succession, being subject to the service, may insist, as against his predecessor's alienation, on a restoration of the property to its intended uses. It is in this sense probably that the court in *Kuria's* case said that a watan is held on a tenure of successive life estates. No holder could dispose of the watan for a term (as the cases have determined) beyond his own life. But the validity, as against the issue, of a decree as to ownership of a particular field obtained against the ancestor rests on different considerations. An entail or a dedication to a public service cannot affect the right of outsiders to lands not embraced in it, or which could not legally be embraced in it. If, then, a watan is an estate, as it seems to be, it would be contrary to sound legal principles that the same man should have to prove again and again in successive suits that a piece of land held by him as his own did not form part of the watan. For the quieting of titles here, as in the case of ancestral property of the usual kind, it is necessary that some one should be recognised as capable of representing in litigation the aggregate of interests, in virtue of which he is in possession of the watan. Under the Hindu law the son in each generation represents his father, and takes up his *persona* as centre of a connected group of rights and liabilities in the fullest possible sense. As regards the issue, therefore, of a watandar against whom a judgment has been given, no doubt ought to be entertained of their being bound by the judgment as *res judicata*. A watan recognised as such, cannot legally pass away from the watandar family, and even though the family should have divided into several branches with rights enjoyed in rotation, this does not seem to

Watan is an estate

constitute for each branch so distinct an estate that, on its falling into possession, that branch can claim to revive a contest in which another branch has already been defeated. Under the Regulation law each branch, as it succeeded to the office and the emoluments constituting the watan, might claim to renew the struggle as representing *an inalienable public interest*, but this interest is now placed under the guardianship of the Collector, who has absolute power to defeat a judgment that would withdraw land from watan holding (*vide* s 10). The *private right* should not be incapable of final determination. It is not ever disputed that a watandar in possession may singly sue to recover property wrongfully severed from the watan. He is not called on to join every one, however remotely interested, as a plaintiff. But if he has the capacity thus to represent the aggregate of interests in a successful suit, he must have it equally in an unsuccessful suit, and in the absence of fraud, he must have it no less in a suit in which he is defendant. Property dedicated to religious purposes is, by Hindu law, inalienable; yet a decree obtained without fraud against one *shebait* (manager) binds his successors. He fully represents the estate in litigation, and a judgment for or against him is *res judicata* for his successor, though in case of alienation (by him) limitation is computed against the successor only from his (latter's) succession. It is a general principle of jurisprudence, that a mere special line of descent or mode of devolution does not make the property subject to it exempt from the effects of a judgment against the person in whom at the time the estate is vested. The particular law of devolution in such a case no more involves such a consequence than the general law of devolution—which would otherwise operate, would do. Where the aggregate estate is not fully represented, *res judicata* can affect it only to the extent of the representation. A restricted power of dealing with the property (*e g*, as in the case of a joint Hindu family consisting of a father and sons, where the father cannot dispose of the patrimony indiscriminately without son's assent) does not involve an incapacity of submitting to adverse possession until limitation has given a title by prescription to the adverse holder. The representation of the estate is full, as in the case of resignation or abandonment of his holding by a *mirasdar* (*Arjuna's* case, 4 Bom. H. C. R., 133 A. C. J.). In the case of collateral succession the matter is still plainer. The collateral heir is not co-owner; and as the owner

Adverse possession.

may alien the property so as to disappoint the collateral heir, it is obvious he may submit to the growth of a prescription that will annul the estate before the collateral's right to it ever becomes more than a mere expectancy. Is a service holding, then, of so different a character that limitation and prescription do not affect it? A watan is an estate given to a family with certain obligations annexed to it. The gift of an estate, however, can confer no right to appropriate other men's property, and the law of prescription rests on a presumption, that a right held for a certain time without contest as against a person capable of contesting it could not have been successfully contested. The presumption is not less strong against the holders of a watan than against any other proprietors; social order and security would be as much disturbed by unlimited claims brought forward by watandars as by any other class. The preservation of the property as a support for the services necessitates a distinct set of rights, both as to substance and as to procedure, but the special assignment acts as a concurrent or collateral restriction without making the watandar's estate any the less an estate, subject as much to the ordinary rules, except where these come into conflict with public interest and its peculiar safeguards. Watan estates are governed by the ordinary law as to all their incidents, except so far as the public rights may be impaired by allowing the consequences of these incidents. The public rights had formerly to be asserted by the successor to the estate, and, coinciding in the same person with the private heritable right, were hardly distinguished from it; but it is evident that there can be no real and general quieting of titles if some prescription will not guard them against claims, even in an alleged public interest. This was recognised by the framers of the Elphinstone Code, who in the 5th Regulation provided that a possession acquired without fraud either of land or of hereditary office should ripen into ownership in 30 years. Reg. XVI could not prevent the operation of Reg. V, because, under that law should property be claimed, whether as watan land or not, 30 years' possession by the defendant had to be received 'as proof of a sufficient right of property in the same.' Ss. 35 and 36 of Reg. XVII show that the Legislature accepted the principle of prescription creating a private right of property or of fiscal exemption equally against the State, as against the individual; against the State, therefore, also where represented by the individual. The recent Limitation Acts, though less distinctly expressed for the conver-

sion of possession into ownership, are, for the purposes of the present discussion, laws of acquisitive prescription ; the right acquired under them is gained in a shorter time, but is of the same kind as under the earlier law. Under Art. 140, Act XV, 1877, a successor is barred by 12 years' possession after his heirship has become a present estate, and by s. 28 his right has, at the same moment, become extinguished. It has been extinguished in favour of the adverse holder for the prescribed time, whose ownership, except as against some wholly independent title, must thus at the same moment have become complete. That this was the intention of the Acts appears from their preambles, though it must be admitted that the enacting parts are by no means perfectly adapted to the purpose. In the case of *Ganga Govind* (11, M. I. A., 345) the Privy Council say : 'It is of the utmost consequence in India that the security which long possession affords should not be weakened. If the party out of possession could set up a 60 years' limitation by making common cause with a Collector, who could enjoy security against interruption"? The general principle to be gathered from the decided cases is that neither a special mode of descent nor an incapacity for alienation will prevent limitation from operating against an estate. This is so even in the case of sacred property. When a possession contradictory of an alleged title has been held for the prescribed time, the law seems to presume a corresponding right contradicting that title, not one derived from it. An independent ownership cannot be affected by the special incidents of one opposed to it. Even in the case of a Hindu widow, an adverse possession which bars her, bars the male successor to the estate. It is plain that the inalienable quality of a watan cannot legitimately be made use of to determine the question of whether a particular piece of land is watan or not. After the lapse of 12 years' adverse possession the law says that, having been held as non-watan, it is non-watan and thus averts the evil of an indefinite repetition of suits. When, therefore, the succeeding holder takes as heir of his predecessor, he is bound by the bar which bound his predecessor ; and in India every successor after the first generation in possession as donees, must, in general, take as an heir, since the creation of executory interests for persons not in existence at the time of deed is not allowed by Hindu law. The successors of living persons, by or for whom the estate is first taken, can take only by reason of their personal relation to their predecessors, and this is inheri-

tance, even though an unusual line of descent may have been prescribed, to which the law in case of public grants and of religious endowments, gives effect." *Radhabai v. Amantrao*, 9 Bom. 198.

Permanent lease invalid.

72. The lease being a permanent lease of watan land by a watandar is not binding beyond the life of the lessor or upon his heirs. An attempt has been made to show that the cases referred to are no longer law, and reliance is placed for this argument on the decision in *Radhabai* (*supra*, 45). There is nothing, however, in that decision which can be construed as overruling the earlier decisions On the other hand the case of *Kalu* (*supra*, 42) is expressly referred to without disapproval by West J. We find that case was also relied on and followed as authority in the later case of *Devkore* (*supra*, 59). It must, therefore, be taken as still established law that an alienation like the present is not binding on the watandar's heirs. It was next suggested that the restriction on alienation was not applicable to land in question, because the service in respect of the watan had beed excused. But according to the cases above referred to, the alienation having been void when made could not be subsequently validated by the service being excused. The further question whether the commutation of service was of a character which would validate the alienation—discussed in the case of *Appaji* (*supra*, 48)—need not now be considered, (there being no sufficient evidence of the service having been excused). The second question is as to adverse possession. It was argued that the possession could not possibly be adverse, being under a lease. But the lease is a lease of a permanent charactar, and a claim to hold the property comprised in a lease in conformity with and by virtue of its terms after its legal expiration must make the possession of the holder, adverse to those who claim to have then become owners—*Radhabai* (*supra*, 71). The case of *Narayan* (P.J., 1889, 136) is not inconsistent with this view, for it only amounted to a decision that the lessee, under a void lease was during the life of the grantor of the lease a tenant from year to year. But the Court there also apparently thought that the holding of the lessee must be adverse after the death of the grantor." *Bhagu v. Byramji*. P.J., 1892, 39.

Abolition of service does not validate invalid alienation.

Adverse possession.

73 The possession by an officiator in a service watan of ryotwari lands, held by him in substitution for the service lands, is not adverse to the other watandars *Laxman v. The Collector of Belgaum.*, P.J., 1892,64.

Possession not adverse when

74. The village of C was the Sardesai watan of the plaintiff's family Defendants were the Khots and Kulkarnis and also holders of certain *dhara* lands in the village. The assessment due on these lands was payable to the plaintiff's family, but defendants claimed to set off from it certain sums due to them and payable out of the assessment of the village under grants made or recognised by plaintiff's grand-father R They also held a *kowl* from R stipulating for a fixed assignment on a portion of the lands R died in 1851, leaving two widows J & M From 1851 to 1860 the village was under attachment In the later year, the attachment being removed, the village was registered in the names of the widows J and M and continued in their names down to 1882-83 N, adopted son of M, was never recognised as owner by Government He died in 1865, leaving a widow U, who adopted the plaintiff in 1874-75. Plaintiff was then a minor, but he reached his majority in 1879, or at most in 1882, in which year Government for the first time recognised him as owner of the inam. In 1878 J and M, while in management of the watan, sued the defendants for assessment due on their lands after giving them credit for certain of the sums due to them under their grants. Defendants claimed to set off the amounts of the rest of the grants as well. The litigation ended in defendants getting credit for all the grants claimed by them In 1882 plaintiff was recognized as the owner of the village by Government, who also in the same year, at the instance of the plaintiff, introduced the survey settlement into the village. Thereupon in 1888 the plaintiff brought the present suit to recover the assessment as settled at the survey on defendants' lands without giving credit for any of the grants claimed by them, alleging that the village being service watan, he was not bound to recognise the grants, if any, of his predecessors, or the *kowl* which fixed once for all the amount of the assessment payable by the defendants on their lands. Defendants contended, *inter alia*, that the validity of the grants was *res judicata* by reason of the result of the former suit brought by J and M, and also pleaded

limitation. The lower Courts disallowed both the pleas. *Held*, on second appeal, (1) that the legal effect of the decisions in the previous suit was to bar the present suit as *res judicata* so far as it sought to question and set aside the sub-grants or deductions in favour of the defendants inasmuch as (*a*) from 1852 to 1882 J and M alone represented the watan estate for N, his wife U and also for the plaintiff, who had no status of their own in the watan property from 1860 to 1882; and (*b*) except as regards three of the items allowed for in that suit, there was no acquiescence on the part of the widows in the former suit, but they raised the question of the validity of the alienations, and that question was decided against them; (2) that as regards limitation by adverse possession, defendants' adverse possession of the sub-grants commenced in R's time and long before, and it was acquiesced in not only by J and M but R himself, and defendants thereby acquired a right to them, which could not now be questioned. Further, even if the cause of action were held to have arisen in plaintiff's case in 1875 when he was adopted, after the quarrel with the defendants commenced in 1874 they had adversely enjoyed the grants for more than 12 years, and plaintiff had not brought the present suit within 3 years of his attaining majority. His right to set aside those grants was therefore barred by limitation. As regards the permanent lease, assuming that Reg. XVI, 1827, applied to the present case, as there was no evidence to show that the village had formed part of the allowances specially set apart by the Collector for the due performance of the duties of the watan, and the granting of the permanent lease could hardly be regarded as an alienation within the meaning of the Regulation, the binding character of the lease as against the plaintiff could not well be questioned.

Res judicata.

"The widows were not usurpers. They were in possession as the only heirs of R, and Government recognised them as owners by entering the watan in their names. R had left no male issue. From 1852 to 1882 the widows alone represented the watan estate of R and represented it in full right as owners, the adoptions not being recognised for 30 years. The admissions of the parties show that the widows were managing the estate for N, his wife U, and also for the plaintiff, who had no status of their own in the watan property from 1860 to 1882. As the widows represented the estate in full

right, and were the managers of the family including plaintiff's adoptive father and plaintiff, and as there was no acquiescence on their part in the previous suit and the question of the validity of the alienation was raised, the decision passed against them must be held to operate as *res judicata*. The defence of adverse possession has a two-fold application, (1) to the sub-grants, and (2) to the permanent lease. Neither the sub-grants nor the permanent lease were made by the widows. They were granted by R, and his ancestors. In regard to the sub-grants it is argued that there could be no adverse possession, because they were only money-grants out of the assessment and did not confer any right in land. In *Krishnaji* (13 Bom., 276) it was held that the adverse possession against a widow for more than 12 years bars the right of a subsequently adopted son. The District Judge distinguishes that case from the present on the ground that the widow received no part of the income from the defendant in that case, while here the deductions did not absorb the whole income. This line of argument cannot be considered valid. If the deductions claimed as set-off in this case had absorbed the whole income, the defendant's position would have been no better or worse than it is now. The set-off arrangement was for mutual convenience. Plaintiff's ancestors might well have recovered the assessment in full and the defendants might also have recovered the sub-grants separately. If they had done so for a period of 50 years or more, the defendants' claim to the money would not be affected by the plaintiff's claim to the assessment. Defendants' claim must stand or fall according as their title by grant and acquiescence of plaintiff's ancestors and their own long possession was made out. The ruling therefore applies, for the adverse possession and acquiescence commenced in R's time, and long before that. The case of *Radhabai* is also in favour of the defendants. Even if the cause of action be held to have arisen in plaintiff's case in 1875 when he was adopted, and plaintiff remained quiet for more than 12 years, defendants' possession would be protected—*Ravlojirao* (*supra*, 70). As regards the permanent lease, it may fairly be questioned whether Reg. XVI applies to the present case. That Reg. is not now in force. There is no evidence to show that the inam village formed part of the allowances specially set apart by the Collector for the due performance

Adverse possession.

Permanent lease.

of the duties of the watan. Lastly the granting of the lease can hardly be regarded as an alienation within the meaning of the Reg.* Oftentimes the granting of such leases is most conducive to the improvement of the estate. In the case of similar leases granted by the plaintiff's ancestors in the same village to the other tenants, the High Court has held (P. J., 1893, 198) that such leases were valid documents, which limited the rights of the inamdar plaintiff to enhance the rent against the terms of the lease. In those cases also the present plaintiff had urged that the service tenure of his village precluded his ancestors from granting such leases, but this objection was overruled." In the case of *Sarvotam* in P. J., 1893, 198, the plaintiff sued to recover enhanced rent from the defendant, on the ground that as the land was watan property, the *kowl* granted by R had no effect beyond his life, and that by the custom the plaintiff was entitled to enhance the rent. The Court *inter alia* said : "It may be that on R's death the *kowl* lost its validity and the inamdar was entitled to recover possession of the land, but without some fresh agreement by the tenant the landlord could not be entitled to recover an increased rent." *Ramkrishna v. Sarvotam*, P. J., 1896, 268.

Adverse possession

75. The holder of a watan having mortgaged it to the defendant in 1868, died in January 1880. His son H died in 1890. The brothers and sons of H filed a suit in June 1893 seeking to have the mortgage declared not to be binding on the estate and to recover the watan property freed from the mortgage. *Held*, that the suit was time-barred, the defendant having held adverse possession under his mortgage for more than 12 years from the death of the alienor. All that is required in order to bar subsequent estates is an adverse possession for twelve years from the death of the holder who had made the alienation of the estate complained of. *Ramgauda v. Gopal.* P. J , 1898, 30.

Right to redeem not barred.

76. The plaintiff mortgaged walikar inam lands to defendant who was to enjoy the profits in lieu of payment of interest. The plaintiff was relieved from the payment of assessment over the lands in consideration of his performing the service of walikar. In the famine of 1876, the plaintiff left the village and as the service was not performed by

* This appears to be inconsistent with *Rule* 44 and 72.

him, the Government appointed some one else to perform the service and demanded from the defendant payment of the full assessment of the lands. This the defendant paid and continued in possession paying it since then. In 1895, the plaintiff brought a suit to redeem the mortgage :—*Held*, that the Government merely demanded the payment of assessment in lieu of the performance of service, that there was no change of title, and that the plaintiff consequently had the right to redeem. "If in consequence of plaintiff's failure to perform service, Government had forfeited his tenure of the land and granted it to the defendant, then no doubt the plaintiff would not own the equity of redemption, but if the Government merely demanded the payment of assessment in lieu of the performance of service, then there would be no change of title, and the plaintiff would have the right to redeem." *Bhima v. Raghavendracharya.* 2 Bom. L. R. 211 ; also 24 Bom 482.

77. B, a Desai, died in 1847, leaving his two widows K and R The plaintiff P was born to R in 1848, *i.e* , the year after B's death. B's watan had been attached by Government in 1844, but in 1848 or 1849 Government restored a small portion of it, entering it in the name of K and refusing to recognise the infant P. In 1865 the Government restored the rest of the watan, again acknowledging K as the holder, the agreement with her being under the Gordon settlement. In 1865 K mortgaged two villages (part of the watan) to one S (father of the defendants), who was the watani karkun, for Rs. 9,900, which had been advanced by him to K while the watan was under sequestration Possession was given to S and the village officers were directed to pay him the revenues. Subsequently K repented of her bargain, and directed the village officers not to pay the revenues to S. He accordingly brought a suit against her for the revenues of 1869-70 and obtained a decree, in execution of which he sold the villages and bought them at the sale. In 1878, however, the Collector cancelled the sale under the Watan Act. In 1873 S obtained a further decree against K for the revenue of two years (1870-72) and for possession as mortgagee. He got possession through the Court in 1875. K and P, who had been on good terms, quarrelled, and in 1872 K adopted one C as a son to her deceased husband B. In 1872, P sued K and C, praying that he might be declared the son of B, and that the adoption of C might be cancelled. In 1879 the High Court held that P

was the legitimate son of B, and that C's adoption was invalid. The legitimacy of P being thus established, the Collector, in 1878 entered the watan in his name. At that time and until 1880 P and S were on friendly terms, the two having joint possession of the mortgaged villages, P being, subsequently to October 1878, the recognised occupant, and S taking some, if not all, of the revenues of the two villages. In 1880 S died, and his sons, the defendants, quarrelled with P, who in 1881 obtained an order from the Collector directing the village officers to pay the revenues of the two villages to him and not to the defendants. This order was subsequently set aside, and thereupon P in 1887 filed the present suit to have the mortgage executed by K to S in 1865 declared null and void, and to recover possession of the two villages. In the alternative he prayed for redemption of the mortgage. The defendants pleaded *inter alia* that the villages were not watan; that they were entitled to the villages by reason of adverse possession; that the suit was barred by limitation; and that the plaintiff was estopped from disputing the mortgage. *Held* by the Privy Council, reversing the decision of the High Court (reported in 18 Bom. 22, *Swamirao v. Padapa.*), (1) that the decision in *Kalu Narayan v. Honmappa* (*supra*, 42)—that a mortgage by a watandar of watan property executed in 1871, when Reg. XVI of 1827 was still in force, was in its inception void against the heir of the watandar and did not become validated against the heir by reason of the repeal of that Reg. by Act III of 1874—was directly applicable to the present case; (2) that assuming that the appellant P was barred by limitation from recovering the lands as heir of his father from those claiming under K, and consequently his title as watandar from his own birth was extinguished, yet that circumstance did not alter the tenure; the lands remained watan, and K was watandar *de facto* with all the rights and subject to all the restrictions incident to that tenure; consequently she could not make any alienation which would be valid against her own heir; (3) that though the appellant P's earlier title be extinguished by limitation, there was nothing to preclude him from asserting his title as K's heir; and (4) that if the mortgage was void against the appellant P and not merely voidable, no amount of acquiescence short of the period of limitation would give it validity as against the appellant, her step-son and sole heir. "It is clear

Repeal of Reg does not validate invalid alienation.

No alienation valid against heir

on the evidence that the nature of the tenure was not altered. The widow was granted and held possession as watandar and in no other character. Consequently she could not make any alienation (beyond her own life-time) which would be valid against her own heir whether that owner were the appellant or another. And on the assumption that the appellant's earlier title is extinguished by limitation, there is nothing to preclude him from asserting his title as her heir. The (opposite) argument seems to give greater right to possession as watandar by wrong or usurpation than would be enjoyed by a rightful watandar." *Padappa v. Swamirao.* 24 Bom. 556; also 2 Bom. L. R. 548.

Adverse possession.

78. By giving the words 'plaintiff and defendant' in Art 144 of the Limitation Act the extended meaning given to them in s. 3 of the said Act, adverse possession for 12 years during the life-time of one holder of service watan lands is a bar to succeeding holders as decided by the Full Bench in *Radhabai* (*supra*, ¶1). Consequently, the adverse possession commenced in the life-time of one watandar avails as against the subsequent watandar and will not be stopped by his minority at the death of such preceding watandar. *Rama v. Shamrao.* 7 Bom. L. R. 135.

Limitation runs from death of alienor.

79. Certain lands attached to a Deshpande watan belonged jointly to two brothers V and D. In the year 1872 the lands were let by V under a perpetual lease which was attested by D. D pre-deceased V. In the year 1905, within twelve years from the death of V, his representative brought a suit for the recovery of the lands let by V. It was contended that the suit not having been brought within 12 years from the date of the lease, was barred by limitation. *Held*, that a watandar is entitled to alienate watan lands for the term of his natural life, and his children, although not separate in interest from him, have no right to object to such alienation until after his death. Where a lease of watan property is effected by one joint owner with the consent of the other joint owner, the time for the recovery of the watan property from the lessee runs from the date of the death of the survivor of the joint lessors. "The property in suit is watan property which was the subject of the Gordon settlement of 1864, which was not intended by either party to those settlements to con-

Joint lessors.

vert the watan lands into the private property of the watandar with the necessary incident of alienability, but to leave them attached to the hereditary offices, which, although freed from the performance of services, remained intact, as shown by the definition of 'hereditary office' in the Act. The fact that watan land is attached to the office, deprives it of some of the incidents which would attach to it if it were ordinary land in the possession of a Hindu family." *Narsinh v. Vaman*, 34 Bom. 91 ; also 11 Bom. L. R. 1102.

Limitation.

80. Where a *hak* is not charged upon, or payable out of land, a suit for its recovery must be brought within six years from the last payment made on account of it "It being found that no payment has been made since 1857, the cause of action arose when the first payment became due after 1857. If the plaintiff can pass that by and sue for payments becoming due within 6 years, there will be no law of limitation. The law says that the suit must be brought within six years from the date on which the cause of action arose. The right does not depend upon whether arrears claimed are within the period of limitation. If this were the case, the right might exist for an indefinite period. It, therefore, appears to me that the right becomes extinct if no suit is brought within proper time." *Raiji v. Desai.* 6 Bom H. C. R. 56.

Ditto

81. Where there has been no recognition of title nor any payment of dues within the period of limitation prescribed by the law, there is a sufficient bar to the claimant's right to recover, if he ever had any. The cause of action to establish title and the cause of action to recover arrears on such title are not distinct and independent of each other *Madvala v. Bhagvanta*, 9 Bom. H. C. R 260.

When title to *hak* is barred, claim to arrears is also barred, unless title is already declared.

82 When the title to share in a *hak* is barred, the claim to share in past payments on account of the *hak* is also barred, because the cause of action to establish title and the cause of action to recover arrears which rest on such title, are not distinct and independent of each other, so that if the former be barred even the arrears which may be within the period of limitation cannot be recovered But this rule is applicable only to cases in which a plaintiff must establish his title before he can ask for arrears due under such title, but not to a case where the plaintiff

has already in a former suit obtained a decree declaratory of his title. It is no longer necessary for him to establish his periodically recurring right against any person who is bound by that decree, and that being so, there is nothing in the law of limitation which can be construed into a restriction of the plaintiff's right to recover the arrears falling due within the period of limitation. *Chhaganlal v. Bapubhai*, 5 Bom. 68.

Limitation.

83. Art. 132 of the Limitation Act of 1871 applies to suits which are brought by a hakdar against the person originally liable for payment of the hak, and not to suits by one sharer against another sharer, or alleged sharer, who has improperly received the plaintiff's share of the *hak*. A suit of the latter description is a suit for money received by the defendant for the plaintiff's use, and the period of limitation is three years under art. 62. *Harmukhgauri v. Harisukhaprasad*, 7 Bom. 191.

Ditto.

84. A certificate of administration granted under Reg. VIII, 1827, only indicates the person who for the time being is in the legal management of the property in respect of which it is granted, but does not constitute the holder of the certificate a representative of the estate for the purpose of distributing it amongst his co-sharers. In 1864, N, the owner of a share in a Deshpande watan, died childless and intestate. A certificate of administration under Reg VIII, 1827, was granted to one G, a distant relation, who received N's share in the watan upto and including the year 1871. In the meantime, *viz*, on the 19th November 1870, two nearer relations, *viz*., D and B, succeeded in getting G's certificate cancelled, and obtained a certificate to themselves jointly. In 1876 the Collector recognised D alone as the heir of N, and paid D's son S the share of the deceased N with arrears from 1872. After S's death, his son P (defendant No. 1) received it down to the year 1884. In 1883, K (father of plaintiff No. 1) got the certificate of 1870 cancelled and obtained a certificate to himself jointly with defendant No. 1. K died and the plaintiffs (his son and nephew) brought this suit claiming to be co-sharers in the one anna and four pies' share of N. The defendants contended *inter alia* that the suit was barred. The Court of first instance awarded the plaintiffs' claim for the three years previous to the suit, and rejected the rest of the claim.

The defendants appealed to the District Judge, who held that the plaintiffs' claim was totally barred under Art. 123 of the Limitation Act, XV of 1877. *Held*, that Art. 123 did not apply and that the suit was not time-barred. There was no cause of action until N and his successors D and S in title were recognized by the Collector and paid the arrears of the *hak*. (G was quite independent of them); and this recognition did not take place until 1876—less than 12 years before institution of the plaintiffs' suit. "In the cases of *Chhaganlal* and *Harmukhgauri* (*supra*, 82 and 83) the claims were against co-sharers in the *hak*, and in the former case the Court held that where the title to share in the *hak* is barred as against the co-sharers, that circumstance is fatal to the claim to share in past payments on account of the *hak* which have been received by co-sharers. The District Judge has applied art. 123, but we concur in the opinion that the article only applies to a case in which it is sought to obtain the share from a person who is the executor of the will or otherwise represents the estate with a legal obligation to 'distribute the estate.' In the present case it is true that certificates were granted to different persons but such a certificate only confers the right of management, and does not constitute the holder a representative of the estate for the purpose of distributing it amongst the co-sharers. In *Chhaganlal's* case article 131 was applied, and we think rightly, in determining whether the claim to share in the *hak* was barred." *Keshav v. Narayan*, 14 Bom. 236.

85. The prohibition against alienation of an unrecognised subdivision of a *bhag*, provided by s. 3 of the Bhagdari Act, applies to the person in possession of the *bhag*, though he may not be the *bhagdar*. Where an alienation is declared to be void under s. 3 of the Bhagdari Act, an order for refund of the consideration money which has passed under the impeached transaction may be made. S. 65 of the Indian Contract Act deals with two cases: first, an agreement which is discovered to be void, and secondly, a contract which becomes void. There is clearly a distinction between the agreement in the first case and the contract in the second case. The first deals with agreements void *ab initio*, the second with contracts which become void after they have become contracts. Among agreements void *ab initio* are agreements based upon an unlawful consideration (s. 24), and under that section would fall the agree-

Order of refund of the consideration money

ment under consideration which is unlawful by reason of the provisions of the Bhagdari Act. *Jijibhai v. Nagji*, 11 Bom. L. R. 693.

86. In 1865, a shetsanadi on being discharged without fault from his office by Government was, under the rules then in force, allowed to remain in possession of the shetsanadi lands, but full survey assessment was imposed thereon. The defendant No. 2 who was appointed the new shetsanadi, was remunerated from the extra assessment levied upon the shetsanadi lands. In 1905, the Government resumed the lands and handed them over to defendant No. 2. Plaintiff, the purchaser from the heirs of the original shetsanadi, sued for recovery of the lands. *Held*, (1) that the order passed, and the action taken, under the rule, by the Government, had in law the effect of converting the lands from a shetsanadi watan into a ryotwari holding and in investing the holder of the land with the rights of an ordinary occupant entitled to it, so long as he paid the survey assessment; (2) that the defendant No. 2 had held the office of shetsanadi independently of the lands in dispute; and all that was done in 1865 was that his remuneration for that service was increased and the enhanced amount was made payable, not from the lands in dispute, but out of the assessment payable to Government by the occupant; that, that was an arrangement between defendant No. 2 and Government, which could not prejudice the rights of the preceding shetsanadi in the absence of any law affecting that right; and (3) that the proceedings adopted by the Collector in 1905, were on the supposition that what was done in 1865 had the effect of continuing the land in dispute as one reserved for shetsanadi service; but that was not its effect and the proceedings in question were *ultra vires* of the Collector. *Yellappa v. Marlingappa*, 12 Bom. L. R. 577.

Lands converted from shetsanadi watan into ryotwari holding.

87. There is no objection whatever to the hypothecation for takavi loans of watan land which forms part of a watan in which service has been commuted; or of watan land (service commuted or not) which has passed into the possession of non-watandars with whose possession the Collector does not interefere. Land forming part of a watan in which service has not been commuted, and remaining in possession of the watandars, should not be accepted as security in cases where the land itself is required to remunerate persons rendering

Hypothecation for takavi loans.

service. In all other cases, the particular instance should be dealt with on its merits. Ordinarily the security will be good, and the loan will be repaid. But it is desirable that, as a rule, notices should be issued before such watan land is accepted as security, that the objections of the watandars, if any are made, should be considered, and that the amount of the loan for which such security is accepted should be so limited that a 10 or 15 years' lease of the land, subject to payment of the usual judi, would realize in a lump sum the amount advanced. No. 19, January 4, 1910.

Collector may institute legal proceedings for protection of watan.

6. *Clause 1.*—In any case in which it shall appear to the Collector that the institution of legal proceedings is requisite or desirable with respect to any watan, or the estate, property, funds or affairs thereof, the Collector shall certify such case in writing under his hand to the (*Revenue*) Commissioner, together with such statements and particulars as in his opinion may be requisite or proper for the explanation of such case, and thereupon the said (*Revenue*) Commissioner, if upon consideration of the circumstances he thinks fit, shall authorize the Collector to institute and prosecute in the name of the Collector such legal proceedings as may appear requisite or proper for the protection of the watan, its estates, property, funds or affairs, by suit or petition in any Civil Court having jurisdiction in the matter. The cost of such proceedings, unless recovered from the opposite party, shall be paid out of the funds of the watan.

He may proceed under ss. 8 to 11 or 13

Clause 2.—The Collector may, if he thinks fit, proceed as provided in sections 8, 9, 10, 11 or 13 (*of this Act*) in lieu of instituiting or prosecuting legal proceedings under this section.

The words in the brackets were repealed by Bombay Act III of 1886.

The object of the section is to provide for cases in which there might be any particular complication in consequence of the alienation of a watan or any part of it before the coming into force of the Act. There might occur cases in which watandars combined to defeat the objects of Government, and to these this section would apply. (Proceedings of the Legislative Council, August 24, 1874.) ✓

The section is worded in very general terms. It authorises the Collector with the previous sanction of the Commissioner, to institute and prosecute in *his own name* legal proceedings requisite for the protection of any watan and its affairs by suit or petition in any Civil Court having jurisdiction in the matter. It does not contemplate the granting of a certificate to enable a *private* person to institute legal proceedings. The High Court Reports do not contain a single case instituted under this section Presumably the provisions of ss. 8, 9, 10, 11 and 13, which are of a very summary nature, have been found adequate to meet all the cases that have come before the Collectors in the working of the Act. Rulings (*infra* 47, 48 under ss. 8 to 13) indicate the nature of cases in which recourse to a Civil Court might be found necessary.

7. Watan property assigned under section 23 (*of this Act*) as remuneration of an officiator, and the profits of watan property so assigned, shall not be alienated or assigned to any person whatever without the sanction of Government.

Watan assigned as remuneration not alienable without sanction.

The words in the brackets were repealed by Bom. Act III of 1886.

Without the previous sanction of Government the part of the watan property assigned for the officiator cannot be alienated in any way to any person whatever

Government Rules.

✓ The essential characteristic of an assigned land is that it must remain with the officiator, or at least its full rent is to be enjoyed by him. Any alienation of it by him is provided against under this section, which is a proviso to s. 5 (1) which permits a watandar to alienate his watan for a term less than his natural life.

S. 13 exempts such property from liability to process of Civil Courts. For what is assigned property, *vide* s. 23, *infra*.

Agreement between watandar and deputy for payment invalid.

An agreement between the watandar and a deputy nominated by him for the payment by the latter to the former, in consideration of procuring such nomination, of a sum of money out of the cash allowance received by the deputy as remuneration assigned to his office is not legal, being contrary to the spirit of s. 7 read with s. 23. *Appa v. Sadu.* 18 Bom., 752.

Watan property passed into possession of person other than officiator liable to contribution for remuneration of officiator.

8. Whenever any watan or any part thereof, or any of the profits thereof, whether assigned as remuneration of an officiator or not, has or have before the date of this Act coming into force passed by virtue of, or in execution of, a decree or order of any British Court into the ownership or beneficial possession of any person other than the officiator for the time being, or has or have before such date passed otherwise than by virtue of, or in execution of, a decree or order of any British Court into the ownership or beneficial possession of a watandar other than such officiator ; or

when any watan, or part or profits thereof, not being assigned as remuneration of an officiator, has, after the date of this Act coming into force, passed by virtue of, or in execution of, a decree or order of any British Court or otherwise, into the ownership or beneficial possession of a watandar other than such officiator ;

such watan or any part thereof, or any of the profits thereof, shall be liable under the orders of the Collector to contribution for the remuneration of such officiator in like manner and to the like extent as if no such decree had been passed or no such transfer had taken place.

Collector may declare alienation of watan property to be under certain circumstances null and void.

9. *Clause 1.*—Whenever any watan or any part thereof, or any of the profits thereof, whether assigned as remuneration of an officiator or not, has or have, before the date of this Act coming into force, passed otherwise than by virtue of, or in execution of, a decree or

order of any British Court, and without the consent of the Collector and transfer of ownership in the revenue records, into the ownership or beneficial possession of any person not a watandar of the same watan, the Collector may, after recording his reasons in writing, declare such alienation to be null and void, and order that such watan or any part thereof, or any of the profits thereof, shall from the date of such order belong to the watandar previously entitled thereto, and may recover and pay to such watandar any profits thereof accordingly.

Collector may in case of land recover full rent.

Clause 2.—If such part of a watan be land, it shall be lawful for the Collector, instead of transferring the possession of the land, to demand and recover the full rent ordinarily paid by tenants of land of similar description in the same locality, and the amount so recovered shall be considered as the profits. The decision of the Collector as to what is the full rent shall be final.

Civil Court, on Collector's certificate to remove attachment on watan-property assigned as remuneration of officiator.*

10. When it shall appear to the Collector that by virtue of, or in execution of, a decree or order of any British Court any watan or any part thereof, or any of the profits thereof, recorded as such in the revenue-records or registered under this Act, and assigned under section 23 (*of this Act*) as remuneration of an officiator, has or have after the date of this Act coming into force, passed or may pass without the sanction of Government into the ownership or beneficial possession of any person other than the officiator for the time being; or that any such watan or any part thereof, or any of the profits thereof, not so assigned, has or have

* This marginal note is incomplete, as, under the provisions of the section, the Collector can issue a certificate even as regards watan-property not assigned.

so passed (*a*) or may pass (*a*)** into the ownership or beneficial possession of any person not a watandar of the same watan, the Court shall, on receipt of a certificate under the hand and seal of the Collector, stating that the property to which the decree or order relates is a watan or part of a watan, or that such property constitutes the profits or part of the profits of a watan, or is assigned as the remuneration of an officiator, and is therefore inalienable, remove any attachment or other process then pending against the said watan or any part thereof, or any of the profits thereof, and set aside any sale or order of sale or transfer thereof, and shall cancel the decree or order complained of so far as it concerns the said watan or any part thereof, or any of the profits thereof.

Collector may declare null and void alienation of watan-property made after passing of Act

11. When any alienation of the nature described in section 10 (*of this Act*) shall take place otherwise than by virtue of, or in execution of, a decree or order of any British Court, the Collector shall, after recording his reasons in writing, declare such alienation to be null and void.

Resumption of property to which an order made under s. 10 or s. 11 applies

11 A. The Collector shall either summarily resume possession of all property to which an order of a Court passed on receipt of his certificate under section 10, or his own declaration under section 11, relates, or assess it at the rate prescribed in clause (2) of section 9, as he may think fit, and the said property shall thence-forward revert to the watan.

Powers of Collector to carry out provisions of ss 8, 9 and 11

12. It shall be lawful for the Collector, whenever it may be necessary, in carrying out the provisions of sections 8, 9 and 11 (*of this Act*)—

** (*a*)-(*a*) The words were inserted by Act V, 1886, s. 3.

* S. 11-A was inserted by Act V, 1886, s. 5.

(*a*) to summarily evict any person wrongfully in possession of any land, or

(*b*) to levy any rent due by any person in the manner that may be prescribed in any law for the time being in force for the levy of a revenue demand.

Watan assigned as remuneration not liable to process of Court.

13. Watan property assigned as remuneration of an officiator under section 23 (*of this Act*) and the profits of such watan property are not liable to process of any Civil Court.

On receipt of a certificate under the hand and seal of a Collector, to the effect that certain property designated therein is watan property so assigned, the Court shall remove any attachment or other process placed on, or set aside any sale of, or affecting, such property or the profits thereof.

The words in the brackets in ss. 10, 11, 12 and 13 were repealed by Bombay Act III of 1886.

Government rules.

S. 8. This section provides a means by which the Collector can enforce contribution for the remuneration of the officiator in the following circumstances: (*a*) when any part of a watan *whatever* or profits have passed by a British decree before the passing of this Act into the enjoyment of any person except the officiator for the time being; (*b*) where, before the passing of the Act, any part *whatever* of the watan or profits has *without* a British decree passed into the enjoyment of a watandar not being the officiator; and (*c*) where after the passing of the Act, by means of a British decree, any part except that assigned for the officiator has passed into the enjoyment of any other watandar. These three cases may be regarded as exceptions to the procedure provided in section 9, by which a resumption of the property or profits of any part of the watan whatever may be made. In case (*a*) the reason of the exception is that although the property may have been illegally alienated, it was by a decree of a British Court. In case (*b*) the reason is that the transfer, though invalid and without a decree,

was made from one member of the watan to another. In case (*c*) the reason is that the transfer will be from one member to another, and by a decree, of the part not assigned to the officiator. The case is the common one of a partition or succession at Hindu Law, where the Civil Courts define each person's rights.

S. 9 governs cases fulfilling *all* the following conditions: (1) Alienation before the passing of the Act, (2) without both a British decree and the proper consent by the Revenue authorities, (3) to an outsider.

Ss. 10 and 11. These sections provide amply against future alienations of an illegal kind. Section 10 applies where the watan is attached or sold by a Court. The Collector's certificate leads to the removal of any process attaching the officiator's share, at the instance of any person whatever, and will have the like effect as to the rest of the watan when an illegal transfer has been made to any outsider. The certificate does not apply to property (except that assigned to the officiator) disposed of among the watandars themselves by a suit *inter se*. Section 11 provides for summary proceedings by the Collector himself in all future cases, not supported by a Court's order, of (1) alienation of the officiator's share, (2) alienation of any part to an outsider. The procedure by certificate or resumption under sections 10 and 11 can take effect only where the property affected has been recorded or registered. Hence it will be the duty of Collectors to pay particular attention to those functions.

S. 12. It will be perceived from the above, that by section 8 an alienee, who has come into possession of profits of watan property under certain circumstances, cannot be dispossessed by the Collector. Hence, under the definition of watandar the alienee has an interest in the watan and is a watandar, but cannot be entered in the register as a representative watandar unless he has established a customary right to serve. On the other hand, if these circumstances (namely, those mentioned in s. 8) do not exist, the Collector *may*, under section 9, dispossess the alienee of the profits. But this section is not, like sections 10 and 11 which refer to alienations made after the passing of the Act, imperative but permissive only, and it is desirable to lay down some rule for the guidance of the Collector in exercising the power conferred on him by section 9.

Ditto Rules for guidance of Collectors under section 9

The general rule is that alienations effected before the passing of Act XI, 1843, and in lately-acquired territory before the introduction of the British rule, shall not be interfered with. The profits thus alienated will, of course, be liable to contribution to the emoluments of the officiator under section 23, and the alienee cannot be registered as a representative watandar unless he has established a customary right to serve under section 26. Alienations effected since 1843 should not be interfered with when fraud is not apparent, when reasonable consideration has passed, and when the profits have actually been in the enjoyment of the alienee In other cases the Collector should, according to his discretion, have recourse to one or the other of the two courses laid down in this section which is more fully explanatory of section 9.

Ditto

S 13. Watan assigned as the remuneration of the officiator and its profits cannot be attached by Civil Courts. Where this is done by inadvertence, the Collector can cause the removal of the process

The Collector should inform all Patels and Kulkarnis and all the members of watandar families, that it is their duty to bring to notice all illegal alienations of watan or profits, and all invalid attachments or process placed upon them in future.

S 8 explained.

One of the principles of the watan system is that a portion of the watan must be set aside for the officiator. If the Government considers that that portion is insufficient, it has power to take a little from all the other shares in the watan and hand the proceeds to the officiator. In the case of an assignment, alienation being made without the consent of the Collector, whoever holds the portion assigned does so upon the same terms as the other sharers. Suppose a Court by a decree made over a watan or a certain portion of it to a person, the section (8) is meant practically to say on behalf of Government —"Although you have got a decree in your favour from a Court, you are just in the same position as any other watan-holder, and we shall take a share from you for the support of the officiator if necessary." Suppose a certain watan land having a survey assessment of Rs. 20 was liable to a payment of Rs. 10 judi or quit-rent, then Rs. 10 forms the profit or watan emoluments of this portion of watan lands. If this land had been sold to a person outside the

watan, he would have continued to pay the Rs. 10 judi. It becomes desirable to increase the sum payable to the officiator, and had this land remained on the watan it would have been liable to a further payment of Rs.5 a year on this account or Rs. 15 in all. It will suffice if, notwithstanding the transfer, this land is still held liable to a similar, rateable payment with the rest of the watan. (Proceedings of the Legislative Council, 1873).

The Government rules under the various sections, framed as they are under s. 82, must be 'not inconsistent with the Act' and are intended to be rules 'for the guidance of Government officers in cases not expressly provided for.' If any one of these rules is inconsistent with the express provisions of any of the sections, it is to that extent *ultra vires*. Rules for the guidance of the Collectors lay down general principles which as a rule should be followed by them. But Government may instruct them to take action differently in contravention of these rules in special cases (*Rul.* 15).

Binding force of Government rules

Property resumed or otherwise dealt with under these sections goes to benefit some or other of the watandars. If Government want to resume the property for their own use, they cannot do so under any of these sections; they shall have to proceed under the general rules for resumption of service lands published under Government Notification No. 10333 dated 12th October 1908. This power has been reserved to Government by s. 1, cl. 3, of this Act. (*Rul.* 15).

Meaning of resumption under the Act.

Property which is not watan property as defined in s. 4 but is only so called in ordinary parlance cannot be made the subject of the Collector's action under any of these sections. (*Ruls.* 24, 62). *Vide* also Notes on s. 5.

None of the sections applies to non-watan property.

Unlike s. 11 which is imperative on the Collector, ss. 8, 9 and 10 are permissive only.* When a case falls under s. 11, the Collector has no discretion to use; but when a case falls under ss. 8, 9 or 10,

Ss. 8, 9, 10 permissive.

* S. 10 is referred to as imperative in Govt. Rules under s. 12, but this does not appear to be correct.

the Collector may use his discretion. The phrase 'it shall be lawful' in s. 9, cl. 2, has only a permissive force (*Rul.* 11). S. 10 does not appear to be obligatory on the Collector. He can use his discretion in issuing a certificate, which when *properly* issued, is binding on the Civil Court. If a mortgage of watan property relates to a period before the Act and is *bona fide* and for good consideration, s. 9 will not interfere with it. If the mortgage merges into a decree after the Act, the Collector would not probably be justified in certifying to the Court under s. 10. The restoration of possession of watan property, under a decree of a superior Court, to the person in whose possession it was before the transfer of its possession under an erroneous decree of a lower Court cannot be made the subject of a certificate under s. 10. This is not such a passing into the ownership or beneficial possession as is contemplated by s. 10. (*Ruls.* 41, 50). For the Collector to take action under s. 10, there must be (1) a decree or order, (2) some property passed or likely to pass by virtue or in execution of the decree or order, and (3) want of Government sanction. If one or more of these conditions is not satisfied, the Collector cannot take action under s. 10 (*Rul.* 54). An award under the provisions of the Land Acquisition Act is not such a decree as is contemplated by s. 10 (*Rul.* 54). Where the effect of a decree is to transfer the watan property from one non-watandar to another, s. 10 does not authorise the Collector to issue a certificate, the section contemplating only the transfer from a watandar to a non-watandar (*Ruls.* 47, 48). The Collector shall not issue a certificate where sanction of Government is accorded to the alienation. As to what would constitute Government sanction, *vide Rul.* 54. The words "without the sanction of Government" in s. 10 must not be limited to 'assigned' watan only but must be taken to qualify the whole section. The section is ill-penned (*Ruls.* 41, 46, 51). Where Government or the Collector has been a party to the suit in which the decree complained of has been passed, the Collector, it appears, should not issue a certificate under s. 10 (*Rul.* 34). The Collector's certificate becomes exhausted on the removal of the particular attachment for which it was issued

Scope of Collector's action under s. 10.

(*Rul.* 45). The Civil Courts have no option but to raise an attachment on receiving a Collector's certificate (*Ruls.* 39, 40, 52), but the certificate must have been issued lawfully and to the proper Court, which is the Court whose decree that is whereby the watan is affected or the Court in which the execution proceedings are pending (*Ruls.* 53, 41, 52). The Collector, when granting a certificate under s. 10, exercises a judicial function, and hence, is subject to superintendence and control by the High Court; but the High Court will not interfere with the Collector's discretion, unless there is violent misuse of authority, obvious bad faith, or reckless disregard or wanton perversion of the law on his part (*Ruls.* 44, 46, 52, 54). It is not necessary that the share of a sub-sharer in a watan should be separately entered in Government records in order to enable the Collector to issue a certificate (*Rul.* 29).

Collector acts judicially.

It will be seen that with one exception the provisions of these sections are in perfect accord with those of s. 5. The reason why alienations made by virtue of a British decree are expressly mentioned in these sections and not also in s. 5, is that as a matter of law the principle of *res judicata* would, in cases under s. 5, be applied to such alienations, while that principle would obviously be inapplicable in the case of a Collector acting under these sections, he not having been a party to the previous suit. An express mention therefore of such alienations was necessary in his case so as to secure harmony between the provisions of the two sets of sections. The exception relates to alienations for a period less than the alienor's natural life. Such alienations, which are perfectly valid under s. 5, would, on a strict construction of these sections, be invalid. This anomaly has arisen as pointed out in *Ruls.* 32, 35 by reason of the omission to amend these sections in 1886 when s. 5 was amended, and calls for an amendment of these sections. Government concurred in the opinion of the Remembrancer of Legal Affairs that ss. 10 and 11 were, by implication, repealed by the amendment in s. 5 introduced in 1886, so far as they affected alienations of life-interests in unassigned watans, and that if the co-existence of

The anomaly in ss 9, 10 and 11 pointed out.

two sets of provisions would be destructive of the objects for which they were passed, the earlier would be repealed by the latter (*Ruls.* 32, 35). But lately Government declared an alienation null and void during the life-time of the alienor (*Rul.* 58) and the point has become unsettled (*vide* Notes on s. 5). It is obvious that the Collector cannot exercise his power under ss. 9 to 11 in cases in which the power of alienation is expressly granted by the terms of the sanad or by the terms of the settlement under which the services relating to the watan are commuted. In other cases of commuted watans he can exercise the power vested in him by these sections (*Ruls.* 28, 33, 51). It should be borne in mind that s. 8 never applies in the case of commuted watans, there being no officiator in the case, and the section making provision only where there is an officiator.

Commuted watans.

There is no reason to restrict the contribution leviable under s. 8 to the survey assessment on the land. Even the full rental of the land may be demanded, if the circumstances of the case justify the same (*Rul.* 2).

Contribution under s 8.

The consent of the Collector within the meaning of s. 9 must be express (*Rul.* 22). The section applies even though, after the first alienation, there have been other alienations by non-watandars (*Ruls.* 23, 26). If the Collector declares an alienation null and void under s. 9, the property must be restored to the watandar *previously entitled thereto* and not to the officiator or any other watandar (*Ruls.* 12, 14). The Collector's proceeding under s. 9, cl. 2, necessarily has the effect of annulling the alienation of the profits of the watan property. No formal declaration of annulling is necessary. But even though one is made, there is no legal justification for any beyond that of annulling the alienation of the profits. The transaction itself cannot be annulled. The other incidents expressed or implied in the contract stand as they were before. The personal liability for the debt, the equity of redemption of the mortgage or the limit of the term of the lease would remain unchanged (*Rul.* 7). If there is a mortgage of watan property previous to the date of the Act and subsequently another mortgage of the same property after the

Application of s 9

date of the Act, then, provided the subsequent mortgage keeps alive the previous mortgage and is a continuation of the same, the subsequent mortgage will not be liable to be interfered with as an alienation dating after the Act. In any other case, the subsequent mortgage will be a different transaction liable to be dealt with separately as an alienation after the date of the Act (*Rul.* 7, 58). It should be noted that, in dealing with a mortgage under s. 9 or 11, none of the provisions of the D. A. R. Act or any other similar Act are to be taken into consideration (*Rul.* 58).

Suit under s 6, cl 1.

Rulings 47, 48 indicate some of the cases in which the Collector may sue under s. 6, cl. 1. Whether the 12 or 60 years' limitation would govern the suit is a question not yet settled by authority. If the Collector, in such suit, represents the public interest in the watan, it is eminently reasonable that the 60 years' period should be applied; but the provisions of art. 149 of the Limitation Act (IX of 1908) and s. 79, &c., of the Civil Procedure Code (Act V of 1908) seem to come in the way of this view. Art. 149 speaks of a suit by or on behalf of the Secretary of State for India in Council; and s. 79 (1) of the Code enacts that suits by or against Government shall be instituted by or against the Secretary of State. On the other hand s. 6, cl. 1, enacts that the suit shall be instituted by the Collector in *his* name. As the Collector so acting does so in the exercise of a statutory power vested in him and not on behalf of Government— he is not even required to make a reference to them but only to the Commissioner— the suit cannot, legally speaking, be deemed a suit by or on behalf of the Secretary of State within the meaning of art. 149. Therefore, if that article does not apply, then as a matter of necessity, the 12 years' limitation must apply to the suit instituted by the Collector. On the authority of the decided cases (*Ruls.* 22, 26, 49) the present law is that no limitation applies to the Collector's proceedings under ss. 9 to 11.* No law of

Limitation under ss. 9, 10, 11.

* The point was discussed at some length in the last edition, but in view of the above Rulings settling the point, it is not thought necessary to reproduce the discussion here.

limitation applies to proceedings taken by the Collector under s. 3 of the Bhagdari Act which is similar to ss. 9 to 11 of this Act (*Ruls.* 21, 25, 27). *Ruling* 49 says, 'if the purchaser has acquired a title by adverse possession, it will be for him to take the proper measures to assert it as against the Collector or any other party, as the case may be.' How this right could be asserted in this case (under s. 10) or in a case under s. 9 or 11 is not easy to say.

Application of s. 13.

The official remuneration of the officiating hereditary officer is not liable to civil process so long as it is in the hands of the Collector or other disbursing officer, but as soon as it is in the hands of the hereditary officer himself, it is deprived of any special protection (*Rul.* 61).

The following tabular form may be useful as showing the various cases under ss. 8 to 11 :—

No.	Alienation when effected.	By what means	To whom.	Nature of watan property.	Case falling under.
1	Before date of Act.	By virtue of decree, etc.	Non-officiating watandar.	Unassigned.	S. 8
2	Ditto.	Ditto.	Ditto.	Assigned	Do.
3	Ditto.	Ditto.	Non-watandar	Unassigned.	Do.
4	Ditto.	Ditto.	Ditto.	Assigned.	Do.
5	Ditto.	Otherwise than by virtue of decree, etc	Non-officiating watandar.	Unassigned.	Do.
6	Ditto.	Ditto.	Ditto.	Assigned.	Do.
7	Ditto.	Ditto.	Non-watandar	Unassigned.	S. 9
8	Ditto.	Ditto.	Ditto.	Assigned	Do.
9	After date of Act.	By virtue of decree, etc.	Non-officiating watandar.	Unassigned.	S. 8
10	Ditto.	Ditto.	Ditto.	Assigned.	S. 10
11	Ditto.	Ditto.	Non-watandar	Unassigned.	Do.
12	Ditto.	Ditto.	Ditto.	Assigned.	Do.
13	Ditto.	Otherwise than by virtue of decree, etc.	Non-officiating watandar.	Unassigned.	S. 8
14	Ditto.	Ditto.	Ditto.	Assigned.	S. 11
15	Ditto.	Ditto.	Non-watandar	Unassigned.	Do.
16	Ditto.	Ditto.	Ditto.	Assigned.	Do.

In all, there are 16 cases, out of which 8 fall under s. 8, 2 under s. 9, 3 under s. 10, and 3 under s. 11. Actual eviction is not possible under s. 8; full rental may be demanded as contribution for the officiator. *The person previously entitled* to the watan will not gain anything. The alienation is valid, subject only to the contribution, if any. In cases under ss. 9 to 11, the alienations are invalid. Eviction is possible, but full rental may be substituted. This brief statement of the results in the various cases, especially, those under ss. 9 to 11 must be understood subject to the various qualifications detailed in the Notes above. The following corollaries with regard to watans the services relating to which have been commuted, may be noted :—

1. Property attached to such watans which has passed before the date of the Act by virtue of decree, &c., into the possession of any one, watandar or non-watandar, cannot be resumed or become otherwise liable in any case.

2. Property attached to such watans which has passed into the possession of a watandar before or after date of the Act, cannot be resumed or become otherwise liable in any case.

3. Property attached to such watans is never liable to be dealt with under s. 8.

SUMMARY OF RULINGS.

1. Application of the different sections.

2. Contribution under s. 8 need not be restricted to the survey assessment; even the actual rental can be demanded.

3. Applicability of ss. 8, 9, and esp. 10.

4. Action under s. 8.

5. S. 9 contemplates special circumstances.

6. Alienation before British rule not interfered with under s. 9.

7. Formal declaration of alienation being void under s. 9, not necessary. Such declaration when made does not annul the whole transaction. s. 9 and not 11 applied to the case, as the new alienee stepped into the shoes of the previous alienee. S. 6 is permissive.

8. Alienation not interfered with under s. 9.

9. S. 9 does not apply where watan has passed to a watandar. Meaning of the term watandar. Claims of a daughter considered. Act V is not retrospective.

10. S. 9 inapplicable when British decree, &c., intervenes.

11. 'It shall be lawful' in s. 9, cl. 2, is permissive and not mandatory.

12. S. 9 not applicable in the case.

13. S. 9 applicable in the case.

14. Power of Collector under s. 9. Watan property to be restored to watandar *previously entitled* and not to officiator.

15. Government rules under s. 12 are not binding on Government, who may direct Collector to act contrary to them in special cases. No power of resumption on behalf of Government under s. 9. Government can take action under general rules for resumption of service lands.

16. Action under s. 9 not desirable.

17, 18. No action necessary under s. 9.

19, 20. Action taken under s. 9, cl. 2.

21. No law of limitation applies to proceedings taken by Collector for maintenance of tenures in the interest of State under the Bhagdari Act.

22. No law of limitation applies to proceedings taken by Collector under s. 9. Consent of Collector under s. 9 should be express.

23. S. 9 applies even though after first alienation there have been other alienations by non-watandars.

24. Collector cannot take action under s. 9 in regard to non-watan property.

25, 27. Law of limitation does not govern the Collector's action under the Bhagdari Act.

26. Wanta pasaita lands. Law of limitation does not govern the Collector's action, s. 9. S. 9 will operate though there is another alienation after the first.

28. Collector can proceed under ss. 10 and 11 in regard to Gordon Settlement watans, where sanad has granted no express power of alienation.

29. Where property is watan s. 10 would apply, though, being a subshare, it is not separately recorded.

30. Issue of certificate under s. 10 is discretionary.

31. S 10 does not apply where unassigned property passes into the hands of a watandar. Meaning of watandar. *Res judicata.* Certificate cannot be issued otherwise than as prescribed in the Act. Abolition of service does not extinguish deputy's watan rights.

32. Ss. 10 and 11 have been repealed by implication by Act V, 1886, so far as they affect alienations of life interests of unassigned watan property.

33. Certificate may issue in case of Gordon Settlement watans, in case of alienations since the date of Act V and in case of alienations previous to that date which have not been finally adjudicated. But in case of alienations previous to the date of Act V which have been already finally adjudicated nothing can be done. Revenue officers are bound to respect notices of attachment issued by Civil Courts.

34. Certificate should be issued when Collector or Government has not been made a party to the suit.

35. An alienating incumbent is estopped from denying his right to alienate and the Collector should not interfere in his favour in case of unassigned watan. When s. 5 was amended corresponding amendment in s. 10 was necessary. Anomaly in s. 10 pointed out.

36. Collector's certificate under s. 10 not interfered with by Government.

37. S 10 when applicable. What is beneficial possession.

38. S. 10 does not apply to the case. Meaning of watandar.

39. Court is bound to raise attachment on receipt of Collector's certificate. Plaintiff's *status* as hereditary deputy was held to be *res judicata*, binding on the Collector also. Civil Courts have no jurisdiction to order registration of a person as representative watandar under s. 56. Decree is evidence within the meaning of s. 26.

40. Court bound to remove attachment on receipt of Collector's certificate.

41. Compromise as to watan property held valid. Collector should send his certificate to the Court by whose decree the watan is affected. Restoration of possession lost in execution of an erroneous decree is not an alienation within the meaning of s. 10. Collector should not issue a certificate where the alienation is sanctioned by Government. S. 10 is very ill-penned.

42. Certificate issued to prevent *interim* attachment does not exclude jurisdiction of Court to make a decree.

43. Extent of power of Bombay Legislature.

44. The High Court on its appellate side is bound to administer the law as it subsists in the Subordinate Courts. It has revisional powers over the Collector who exercises a judicial function while acting under s. 10. But High Court will interfere with Collector's discretion only if there was violent misuse of authority or reckless disregard of law

45. Certificate becomes exhausted on the removal of the particular attachment for which it was issued.

46. The Collector acts judicially and his certificate is valid until revoked by a higher authority. The middle clause of s. 10 presents a case of defective specification.

47 Collector cannot issue his certificate to stop alienation by non-watandar. He may in such a case take action under s. 6, cl. 1.

48. Collector cannot issue his certificate to stop alienation by a non-watandar.

49. No limitation applies to the issuing of a certificate by the Collector. In such a case it will be for the alienee to take proper measures to assert his right as against the Collector or any other party

50. Restoration of possession delivered under erroneous decree does not fall within the scope of s. 10.

51. S. 10 applies to Gordon Settlement watans. S. 1, Act V, considered. Meaning of the term watan. Retrospective effect. Law of alienation under the various Acts considered. The word 'such' in describing 'unassigned' watans in s. 10 is superfluous.

52. Court in s. 10 is the Court ordering the sale. District Court on appeal has no jurisdiction to interfere with the Sub-Judge's dealing with the certificate. The High Court may interfere under s. 622 of the Civil Procedure Code (Act XIV of 1882). Court is bound to respect a valid certificate.

53. A certificate which does not apply to the case under consideration cannot be respected.

54. Scope of Collector's action under s. 10.

55. S. 11 is mandatory.

56. Alienation of land made in this case in 1878 may stand, but that of right of service to be declared null and void. Principle of hereditary service explained.

57. Action taken under ss. 11 and 11A.

58. Alienation declared void under s. 11.

59. Lease for 99 years declared void under s. 11 during lessor's life-time.

60. Collector can, in appeal, restore possession under s. 12 (*a*).

61. Remuneration of an officiator attachable on its coming into his hands.

62. Exemption from process of Civil Courts, independently of the intervention of the Collector, is limited to assigned watan property only.

63. *Kazi's* office is not hereditary office. One on whom no obligation of service has been imposed cannot avail himself of s. 13.

64. Government are bound by limitation in appeals and applications.

RULINGS.

Action under the different sections by the Collector.

1. The sanads may be issued in the form hitherto adopted including the income from houses (which were found on inquiry to be watan property). Action by the Collector under ss. 8 and 9 will not be called for, as there is no assignment to an officiator and the restoration of the watan not so assigned is optional. Ss. 10 and 11 require that the property to be protected or restored shall have been recorded as watan in the revenue records. Where this may be the case no difficulty will arise; where the property is not so recorded the Collector cannot interfere. No. 3289, May 26, 1887.

Contribution under s. 8.

2. B, one of the two officiating *ramoshis*, made an application stating that as one of the two officiating *ramoshis*, he ought to have in his possession a moiety of the *ramoshi* watan land, but that he had only a fourth of the land, the other ¼th having been enjoyed by his nephews T and X, who were non-officiating watandars; and praying that either the land in the possession of his nephews or full rent hereof might be ordered to be given to him. The land is assigned

for the remuneration of the officiator; it was (previous to the Collector's order of transferring possession to B) in possession of T and X, who were watandars but not officiators; it was transferred to them 35 years ago about 1869, *i. e.*, before the Watan Act came into force. On these facts the Commissioner is right that only s 8 of the Act applies; that the Collector's order should be set aside; and that a contribution should be paid by the watandars in possession of the land, T and X, towards the remuneration of the officiator. But the Commissioner is wrong in holding that this contribution cannot exceed the survey assessment of the land. He refers to G. Rs. Nos. 5885 dated 15th August 1893 and 4547 dated 30th June 1899. In the first G. R. the land was already subjected to full assessment, and the watandar Kulkarni was otherwise remunerated, *i. e*, by cash emoluments. In the present case, the land being *ramoshi* watan is doubtless not subjected to full assessment, and it is definitely stated that the land is the only remuneration, *i e*, that there is no cash emolument, and the whole remuneration of the officiator must come from the land. In the second G. R. relied on by the Commissioner, it is also clear that the watandar being a Kulkarni was remunerated by cash emoluments. Both the G. Rs, therefore, which the Commissioner refers to, may be clearly distinguished from this case, by the presence in them, and the absence here, of any cash emoluments paid by Government to the watandar. When Government pays cash remuneration to the officiator, it may be proper that the Government should take from the inam land only the full assessment of that land; and it has been ordered that no more should be taken from the land. But when Government pays no cash remuneration to the officiator, and there is no remuneration for him except what he can get from the land, it is decidedly improper not to let the officiator get the full rental from the land. Hence the contribution leviable in this case from the watandars T and X should be under s. 8 of the Watan Act such as the land would be liable to "in like manner and to the like extent as if.....no... ..transfer (to T and X) had taken place." Now if no transfer had taken place, the officiator would either have cultivated the land himself in which case he would have got all the profit derivable from the land, *i. e.*, a sum equivalent to a full rental,—or else would have let it on a full rental. In either case he would have got a full rental and not merely the survey assessment. The possessors of the land should accordingly be made to pay a full rental for the

land for the remuneration of the officiator. This course is in accord with s. 23. No. 454, January 19, 1905.

3. Commissioner: "Proceedings were instituted against persons falling into four distinct categories of alienees under the Watan Act. Two of the alienees were non-watandars who had come into possession of the lands otherwise than by virtue of a Civil Court's decree after 1874 and s. 11 applied to their case. The section being mandatory, the lands have been restored. The three categories that remain are (*a*) a non-watandar holding under a *miraspatra* of 1865, a case falling under s. 9; (*b*) non-watandars coming into possession in 1868 by virtue of a Civil Court's decree on a mortgage, a case falling under s. 8; (*c*) non-watandars coming into possession by virtue of Civil Court's decree after 1874, cases falling under s. 10. All the above sections are merely permissive. The question now at issue is one of policy. In the case of unassigned watans interference is improper when it is not necessary in the public interest and only operates to enable debtors to repudiate their liabilities. (*a*) It has always been considered discreditable to upset a *miraspatra*. (*b*) As regards the case falling under s. 8, nothing could be done; for, the section only permits the Collector to require contribution for an officiator, and there is no officiator in any of the cases above referred to, the lands being Deshpande watan lands. (*c*) Watandars of District Hereditary Officers' watans are not of a class that needs special protection and hence relief under s. 10 does not appear to be necessary." Government agree with the Commissioner as regards the cases falling under classes (*a*) and (*b*), but not as regards the cases falling under (*c*). Government have agreed to limit interference to cases in which the attached land (*A*) is assigned as remuneration or (*B*) is watan on which it is attempted to enforce liability created by some person deceased. Certificates were not to be approved for attachments affecting only the life interest of the watandar debtor and this leads to the inference that certificates might have been approved in respect of (*C*) attachments affecting subsequent interests, *e. g.*, an out-and-out sale. Government would strongly approve of the prevention of alienation of more than a life interest, and consider such prevention expedient as a matter of policy and right in the interests of descendants of the alienor, who has no right to alienate their contingent interests.

Applicability of ss 8, 9 and 10.

It would, therefore, be consistent to require the Collector to issue a certificate under s. 10 if the alienation comes under either (*B*) or (*C*) category as above. It will of course be understood, that as laid down in the last clause of the rules under s. 12 of the Watan Act (*vide* p. 97), alienations of very long standing in which fraud is not apparent, when reasonable consideration was passed and when the profits have actually been in the enjoyment of the alienee, should not be interfered with; but it is highly objectionable that alienations, which have been effected since 1874, should be permitted against the clear prescription of s. 5 (1), whether the Courts intervene or not. It appears that the watan lands in class (*c*) of the Commissioner's report were alienated by the petitioner's deceased father, and if so, the alienation is one which would virtually fall under category (*B*) stated above. The Collector's order in respect of it should be modified accordingly. No 2549, March 10, 1908.

Action taken under s. 8

4. Commissioner: "At the time of making inquiries regarding the settlement of the *Koli* watan register, the Mahalkari found that the land had been in the possession of one kulkarni S for the last 80 years and that S and his forefathers usually appointed an officiator to the village and paid him annually Rs. 12 for his remuneration. The Mahalkari ordered in these proceedings that S should be evicted from the inam land and that it should be restored to the *kolis*. The Collector held that the land in dispute had been in the possession of S and his forefathers from before the introduction of the British Rule and cancelled the order. As S becomes a watandar *koli* according to definition given in s. 4, this case falls under s 8, but as he is not an officiator, it is recommended that the Collector's order may be modified and S may be ordered to pay full rental for the land in his possession for the remuneration of the officiator." Accepted. No. 5603, June 5, 1908.

S. 9 contemplates special circumstances.

5. L. R. "If the property (Nadgaudaki watan) has been alienated, the case is clearly one which can be dealt with under s. 9, cl. 1, as the alienation of the watan property, notwithstanding the service originally appertaining to it has ceased to be demanded, by the petitioner's mother in 1863 in favour of the person, now in possession, not being a watandar, was not lawful. The Collector has refused to interfere to cancel the *miraspatra*. The only objection

taken to the Collector's order is that the *miraspatra* is a lease of watan property; but it is clear that this is not *per se* a sufficient reason for declaring it null and void. S. 9 contemplates special circumstances which would justify such a step. No special circumstances exist in this case, but, on the contrary, a certain rent is payable to the petitioner on account of the watan land, and he is probably no worse off than he would have been, had the Collector interfered and proceeded in the manner provided in cl. 2 of the section." Government see no reason to interfere. No. 2461, April 15, 1882.

Action under s. 9.

6. Alienations of watan property that took place before the introduction of the British rule are not affected by s. 9. No. 3523, May 30, 1882.

7. L. R. "C, some twenty years ago, mortgaged his watan land to M, an outsider, with possession. In 1880 he executed a lease to one K, the balance of Rs. 125 being left with K, who was to pay off M, and to keep the mortgage-deed. The Assistant Collector on the application of C subsequently declared the mortgage void under the Act, but the Collector on appeal treated the alienation as one made before the Act, and therefore dealt with it under s. 9, cl. 2, but refused to declare the original mortgage-deed null and void. The Commissioner is of opinion that the Collector cannot proceed under s. 9, cl. 2, without declaring the alienation null and void and further that in accordance with the Government Rules the alienation prior to the Act should not have been interfered with, as reasonable consideration had passed and the transaction appeared to be *bona fide*. The first question whether rent can be demanded or not from an alienee under s. 9, cl. 2, without a declaration that the alienation is null and void answers itself when the effect of such a declaration is considered. Such a declaration does not invalidate or annul the whole transaction; it does not relieve the alienor from personal liability but only affects the alienation of the watan property; when the alienation was prior to the Act and the watan property consists of land the Collector is bound* under s. 9, cl. 2, to leave alienee in possession of the land and to recover full rent from him, but in such a case the rent

No formal declaration of alienation being void is necessary.

* It is now settled that s. 9, cl. 2 is only permissive and not imperative (*vide Rul.* 11 *infra*).

is regarded as profits. The Collector's procedure in such a case necessarily has the effect of annulling the alienation of the profits. The transaction does not require to be annulled. The recovery of the profits, *i. e.*, of the rent which shall be considered as the profits, operates as annulling the alienation of the profits, leaving the rest of the transaction untouched. The Collector has no power to do more than declare the alienation of the profits of the land alienated null and void; and his order for such recovery is an implied declaration that such alienation is null and void. There is in such a case no necessity or legal justification for any declaration beyond that, and if the delaration be required to be expressed in words, it could merely declare that the alienation of the profits was null and void. The other incidents expressed or implied in the contract stand as they were before. Thus, the liability for the debt and in case of a mortgage the equity of redemption or in case of a lease the limit of the term would be unchanged by the declaration. The alienor objects that the alienation was subsequent to the passing of the Act, and that therefore s. 11 and not s. 9 must apply But the recitals in the *miraspatra* show that the present holders were themselves to pay off the mortgage and retain the document creating it. Following the analogy of decisions as to priority among mortgages, it would seem that the present holders in paying off the mortgage and retaining the document creating it intended to keep that security alive, and that this intention was fully acquiesced in by the alienor. The mortgage still subsists The present holders therefore appear to stand in the shoes of the mortgagee under the mortgage passed prior to the Act and to be entitled to the benefit of s. 9, cl. 2. With regard to the question as to whether alienations of this nature should be interfered with, it is only necessary to refer to the Rules on s. 12 (*vide* p. 97). Those Rules point out that s. 9 is permissive and not like ss. 10 and 11 imperative, and that the Collector may exercise discretion in cases of alienations effected prior to the passing of the Act. S. 9, cl. 2, on the other hand, as pointed out in G. R. No 9506, December 26, 1883, is imperative,* for it imposes a *duty* to be performed

Such declaration, when made, does not annul the whole transaction

S 9 and not s. 11 applicable to this case, why.

S. 9 permissive.

* It is now settled that s. 9, cl. 2 is only permissive and not imperative (*vide Rul.* 11 *infra*).

when the occasion arises, and not merely confers a power to be exercised at discretion. Under the rules, therefore, as the transfer relates back to a time prior to the Act, as no fraud can be alleged, as reasonable consideration is passed, and as the alienees are in possession, the Collector should refuse to act under s. 9, cl. 1. If the Collector could interfere without transgressing those rules, he would still, by reason of the long standing of the transaction and the fact that it related to land which, as in this case, may have been improved at some expense, be empowered to take action of the nature indicated in s. 9. cl. 2." Copy forwarded. No. 947, February 4, 1890.

Alienation not interfered with under s. 9

8. Commissioner: "The case is one of restoration of Kulkarni watan lands ordered by the Collector under ss. 9 and 12 on the ground that the alienation of these lands must have been made after the passing of Act XI, 1843, and for no reasonable consideration. The presumption is rather the other way. It is highly improbable that Kulkarnis would allow land to pass from their possession into that of individuals of the cultivating class without adequate consideration; and there is absolutely no ground for assigning the date of the alienation, which appears to be beyond living memory, to a period subsequent to 1843. As Kulkarni watan land is always liable for the full assessment to provide for the pay of the officiators, no public object is served by cancelling the alienation." The Collector's order set aside. No. 7059, October 6, 1890.

9. L R. "In this case the Collector reports that in 1872 one B, widow of a representative watandar, bequeathed her share of watan lands to the sons of her daughter S. In 1874 the Assistant Collector treating this as an alienation to a non-watandar fixed, under s. 9, an annual rent on the lands to be paid to the officiating watandar. S suing as guardian of her sons then obtained a decree against the officiating patel which was confirmed by the High Court. In 1888 the patel applied for assistance to recover the rent fixed by the Assistant Collector. The Mamlatdar granted the assistance. The Assistant Collector reversed the decision which was, however, restored by the Collector on the ground that the lands were liable as watan property, notwithstanding the decision of the Courts, to contribute to the officiator's remuneration. Scale judi has, it seems, been fixed on the land, but this does not appear to affect the question. The Collector appears

to have been of opinion that the lands were liable to be dealt with under s. 9. The Commissioner states that S's sons took under a deed of gift, not under a will, and that S in her suit claimed as heir of B, irrespective of this deed of gift; and holds that S holds as owner and not as alienee and as she acquired previous to Act V (which would have postponed her succession to that of males) s. 9 has no application. I think the Commissioner's statement of the facts and view of the law are correct. S 9 does not apply to cases in which a watan, or its profits, have passed into the ownership or beneficial possession of a person who is a watandar of the same watan. A watandar is a person having an hereditary interest. No one has an hereditary interest in a watan, or can subsequently be regarded as a watandar, until he has actually succeeded thereto, unless he is of the class known to Hindu law as unobstructed heirs, that is, sons, sons' sons and their sons. The unobstructed heirs have an interest in the ancestral property from their birth. The interests of all other persons who may succeed are contingent and dependent on default of persons preferentially entitled and as their titles may be defeated by unforeseen contingencies they have no hereditary interest till they actually succeeded. Under Reg. XVI no person could succeed who was not of the family in which the office was vested. A married daughter is not, strictly speaking, of her father's family and on her marriage enters the *gotra* of her husband. The object of the Reg was to keep the watan in the family to which it was originally granted A daughter takes an absolute interest, her own heirs inherit and she becomes a new stock of descent. The Sadar Diwani Adalat held that females were precluded by s. 20 of the Reg from succeeding to a watan. Subsequent, however, to the passing of Act XI, 1843, the High Court has frequently recognised the right of a female, even of a daughter, to succeed, as she is allowed to appoint a deputy and is bound, if required, to furnish an efficient deputy. S. 20 of the Reg. having been repealed by Act III, the words *hereditary interest* must now be taken in the ordinary meaning of an interest acquired under the ordinary law applicable regulating inheritance, except so far as it may be altered by express enactment. Act III thus left to ordinary Hindu law, as modified by special custom, the devolution of watan pro-

S 9 does not apply where watan has passed to a watandar.

Meaning of watandar.

Daughter's claims considered

perty among Hindus; and daughters and daughters' sons, though of a different family, in the absence of special custom, would succeed to watan as to other property. That the Legislature contemplated this as the result of Act III, appears from the express legislation by which it deemed it necessary to postpone males claiming through a female (who must necessarily be of another family) to males otherwise entitled. Under Act III, therefore, a daughter, until Act V became law, was entitled, in default of unobstructed heirs and on the death of the widow, to succeed to divided watan in the absence of special custom excluding her. The Courts have, in this case, decided that S was entitled to succeed. At the time the property passed into her ownership and possession, therefore, she was a watandar having an interest actually acquired by descent, and s. 9 has, therefore, no application. Act V cannot affect the case, the presumption being, in the absence of express provision, that enactments taking away or impairing vested rights acquired under existing laws, were not intended to have a retrospective operation. The Collector's order, therefore, appears to be unsustainable. It may be noted that the claim of the opposing patel is barred both by limitation and as *res judicata*." Copy forwarded. No. 474, January 20, 1891.

Act V is not retrospective.

10. Commissioner: "Government Rules say 's. 9 governs cases fulfilling the following conditions, namely, (1) alienation before the passing of the Act, (2) without both a British decree and a proper consent by the Revenue authorities, (3) to an outsider' It is clear from the above that the absence of a 'British decree' is as essential as the want of a 'proper consent by the Revenue authorities' to satisfy the second out of the above mentioned three conditions, so that this case (purchase at a Court-sale in 1871) cannot fall under s. 9. The circumstances of the case would apparently bring it under the operation of s. 8, but that section too cannot apply, as the watan in question is a Deshmukhi or non-service watan, and as no contribution is consequently leviable for the remuneration of an officiator." L. R. "I concur. S. 9 is inapplicable to alienations made before the Act came into force and which took place either by virtue of a decree or order of a British Court, or with the consent of the Collector

S. 9 not applicable

S. 8 too inapplicable.

and a mutation of names in the Revenue records." Copy forwarded. No. 2253, March 19, 1893.

Meaning of *it shall be lawful*, &c

11. L. R. "The question is whether the expression 'it shall be lawful' in clause 2, s. 9, is mandatory or permissive. In *Julius v. Bishop of Oxford* (L. R., V. A. C. P., 229) decided by the House of Lords in 1880, it was held that the natural meaning of the words *it shall be lawful* is permissive and enabling only, and that 'they of themselves merely make that legal and possible which there would, otherwise, be no right or authority to do. But there may be circumstances which may couple the power to show that there is obligation to exercise it.' And the general effect of the ruling appears to be that the burden is on anyone seeking to deprive the expression of its *prima facie* permissive force and to attach to it a compulsory or mandatory effect. But there is one class of cases in which it was admitted to be established that this compulsory effect must be recognised. In the words of the judgment of Lord Cairns 'there may be something in the nature of the thing empowered to be done, something in the subject for which it is done, something in the conditions under which it is done, something in the title of the persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do.' The result seems to be that, when a public power for the public benefit is conferred in enabling terms, a duty is impliedly imposed to exercise it whenever the occasion arises." Advocate General: "I think that throughout Act III the distinction between mandatory and permissive expressions is clearly maintained, and that the Act should be construed by attributing, as it occurs, its natural meaning. 'It shall be lawful' and 'may' should therefore be construed as permissive. 'It shall be the duty of' and 'shall' or 'must' should be construed as mandatory. Nowhere in the Act do I find anything, in (*a*) the person entitled, (*b*) the subject-matter, (*c*) the object of the Act, (*d*) the person or class intended to be benefited (*Bishop of Oxford's* case) which, in my opinion, can confer a mandatory meaning on words, which in their primary sense are permissive only. It follows that s. 9 is throughout, in my view, permissive. I see no reason why it should be obligatory on the Collector to declare (under cl. 1) void alienations before the Act of watan property to persons not watandars of the

same watan. So to construe s. 9 would virtually be to avoid retrospectively all such previous alienations—a result which could have been attained by adding a few words to s 5 without interposing the Collector at all whereas the use of the word 'may' and the obligation imposed on the Collector of 'recording his reasons' point to his having a discretion in the matter. It follows also that under cl. 2, s 9, the Collector has a discretion, either 'to transfer possession,' or 'to demand and recover' &c." Copy of the opinion of the Hon. the Advocate General should be forwarded for guidance, The orders Nos. 9506 of 1883, 5391 of 1889, and 947 of 1890 (*vide Rul.* 7 *supra*) which are not in accordance with this opinion shoulds so far as they are inconsistent with it, be modified but not so as to reopen any case already decided except on further application. No. 9198, November 21, 1895.

S. 9 not applicable.

12. Commissioner: "The Collector's order making over the profits of the land to B in the capacity of officiator was erroneous, as the land was not assigned for the remuneration of the officiator. The order would be justifiable under s. 9, if B could claim the profits of the land as its owner though not as an officiator. But B has no exclusive right to the land. Even if the claim of B to the land be admitted, it appears that no relief can be granted to him under s. 9. The rule sanctioned by Government for the guidance of the Collectors in exercising the power conferred upon them directs that alienations effected since 1843 should not be interfered with when fraud is not apparent, when reasonable consideration was passed and when profits have actually been in the enjoyment of the alienee. In the present case the transfer took place between 1845 and 1865 and was a *bona fide* one. I recommend that the Collector's order should be cancelled." Sanctioned. No. 2538, April 14, 1898.

S 9 applicable to the case.

13. Commissioner: "The District Deputy Collector held an inquiry and decided that as the watan lands were mortgaged in the year 1876 (*i.e.*, after the passing of the Watan Act), they should be recovered from the mortgagee under s. 11. The Collector dismissed the appeal on the ground that it was time-barred. Some of the lands were alienated in 1871, and as there is no fraud apparent, as reasonable consideration has been passed, and as the lands have actually been in the possession of the alienee, there seems to be no reason to interfere with their alienation." Government observe

that the Collector agreed with the District Deputy Collector on the merits (?) and consider that s. 9, cl. 1, fully meets the case. After careful examination of the papers, the proposal to revise the Deputy Collector's decision does not commend itself to Government. No. 321, November 16, 1898.

Power of Collector under s. 9 Watan property to be restored to watandar *previously entitled*

14. L R. "Watan land has a twofold value: (*a*) in the total or partial exemption from land revenue that may be granted; (*b*) in the occupancy value of the land. The first mentioned source of value is not always present. The second, *i. e.*, the right to the possession of the land, must always remain. There is no power given by the Act to the Collector to distribute among the watandars the benefit of the exemption (total or partial) except as provided in s. 23. And the second benefit, namely, that of the occupancy or actual possession, could only be given to the whole body of watandars (unless they form an undivided coparcenary) by dividing the land into as many portions as there are separate watandars. This might involve minute subdivision and even then perfect equality of partition with reference to varying quality and advantages of position could not be ensured, and the Collector has no power to make such partition at all under the Act. The occupancy right or possession is itself a source of profit. Unless the watandars are all provided in interest, joint possession cannot be given; and individual possession would either involve morcellement or special advantage to one or more, and the Act gives no power either to partition or to assign possession to any individual member, except *the person previously entitled.* Nor can the Collector select a new tenant and distribute the rent as the profits. The only power the Collector has to effect the apportionment or assignment of the watan land, as far as the watandars are concerned, is that given by s. 23. He then can equalise enjoyment under that section by the rateable increase or diminution among the holders on the principle contemplated in that section. The Collector has no power to arrange for the redistribution of watan land or its profits and s. 23 affords the only authorised mode of distributing the benefit of the recovered land among the whole body of watandars. Of course, when the land is recovered and assigned o the officiator, it has reverted to the watan, and relieving each ndividual member *pro tanto* of the burden of contribution to emoluments benefits the whole body of watandars. But unless 'prev

ously entitled,' no one watandar except the officiator has or can be given a better right to possession of the whole or any part than any other watandar. The Collector's order in this case stands thus—'The watan land is from the date of this order to revert to the representative watandar and form a portion of his emoluments. The difficulty to be dealt with is, how the order passed can be upheld. For, the person 'previously entitled' is unknown, and the order passed 'made over' the land to the officiator. The land must be 'made over' to some one, but could only be made over to the officiator under s. 23 by assignment, and this would admit of rateable distribution not otherwise practicable under the Act. The entire watan should benefit by the restoration of the land.' The Collector's order above referred to might stand with the addition "until the person, if any, previously entitled establishes his claim to it in which case it should revert to him alone." No. 3753, June 14, 1900.

Government rules under s 12 are not binding on Government, who may direct Collector to act contrary to them in special cases.

15. L. R. "The rule (*vide* Government Rules under s. 12, *supra*) appears to be one framed by Government under s. 82 of the Watan Act. But such rules must be "not inconsistent with the Watan Act" and are restricted to rules "for the guidance of Government officers in cases not expressly provided for." Nor is it enacted as in the case of rules under the Land Revenue Code, that such rules "shall, until cancelled or amended, have the force of law." The rule cannot therefore be considered a binding enactment, absolutely barring the Collector from exercising the power which is otherwise vested in him by s. 9, in all cases of the kind specified in the rule. Such an interpretation would be inconsistent with the provisions of s. 9 and the rule to that extent is *ultra vires*. It seems clear, however, from the introductory words to the two rules dealing with alienations before and after 1843, that they are only intended to lay down general principles by which Collectors should ordinarily be guided in exercising the powers conferred on them by s. 9; and there is nothing to prevent Government, by virtue of its general power of control under s. 74, for special reasons instructing the Collectors to take steps under s. 9, even in cases where the two rules in question direct that alienations should not, as a general rule, be interfered with. Under

ss. 9 and 12, the Collector is only empowered to transfer the possession of the land alienated from the alienee to the watandar entitled thereto, or to recover full rent from the alienee and pay such as the profits of the watan to the watandar. There is no power given to the Collector of resuming the land on behalf of Government, so as to place the land at the absolute disposal of Government and deprive both the alienee and the watandar, otherwise entitled thereto, of possession thereof. Such power of resumption is not given to Government by the Watan Act (except in the special cases of forfeiture under ss. 60 and 64), but is exercised under the general principles regulating the tenure of service lands and the rules made by Government in that behalf. This power is indeed expressly reserved by s. 1, cl. 3, of the Watan Act, and has not been questioned by the Civil Courts (*Ramrao v. Secretary of State for India in Council.* P. J., 1896, 666). It is therefore open to Government under No. 5 of the rules referred to and published in Government Notification * No. 2824 dated 28th April 1898 to resume the land in question, if it has been "alienated contrary to the provisions of the Watan Act or of any other law for the time being in force." S. 5 of the Act prohibits the alienation of a watan or watan rights beyond the term of the alienor's natural life, to a person who is not a watandar of the same watan without the sanction of Government. The Maharki watan land in question has been so alienated: for a permanent lease of watan land comes within the terms of the prohibition (*Bhagu v. Byramji.* P. J., 1892, 39, *Rul.* 72 under s. 5) and the lease in this case is passed by the ancestors of the present Mahars. Accordingly I think that Government have power to direct the resumption of this land as having been alienated contrary to the provisions of the Watan Act. As the Maharki service inam land has been alienated by the watandar Mahars to a non-watandar from a date prior to 1863, contrary to the provisions of the law for the time being in force relating to such watans, the said land shall be resumed under the rules published in Government Notification No. 2824 dated 28th April 1898. In carrying out this order, the Collector should, however, recover

No power of resumption on behalf of Government under s 9.

Government can take action under general rules for resumption of service lands.

* These rules have now been superseded by rules published in Government Notification No. 10336, dated 12th October 1908.

possession of only such portion of the land in question as is actually required and continue the remainder to the alienee, subject to the payment of full rent ordinarily paid by tenants of land of similar description in the same locality. The amount so received should be paid to the watandar Mahars as profits of part of the alienated watan land." No. 5964, August 26, 1899.

Action under s 9 not desirable.

16. The patilki watan land in question seems to have been abandoned by members of the watan family, there is no indication of its having come into the possession of the present holders by fraud, their possession (begun after 1843 but before 1874) has long been acquiesced in, and it is understood that the remuneration of the officiators is sufficiently provided for from other land. The case is one in which it is not desirable to take action under s. 9. No. 7424, November 28, 1900.

S 9 mapplicable.

17. The alienation by way of sale of the District Hereditary Officers' watan land to a stranger took place in 1865, and fraud or want of reasonable consideration is neither alleged nor proved to exist in the transaction. Government decline to interfere. No. 7366, July 26, 1907.

Ditto

18. Commissioner: "In 1853 the Watandar of a Deshpande watan land executed a permanent lease, which was registered, by which he declared the land to be leased permanently to a non-watandar. After certain transactions with regard to the land between various persons, an award statement was made and filed in the Civil Court in 1894, to which the deceased watandar's heir was not a party There is no reason to suppose that the perpetual lease of 1853 was made without consideration. Alienations so long back are not to be interfered with unless there are strong grounds. And there are certainly no strong grounds in this case. The Deshpande is not a party to the award of 1894, and no claim to possession as against him could be based on it. The claim rests entirely on the lease of 1853. It was evidenced by a registered deed and there is no evidence of any transaction putting an end to it. The conduct of the Deshpandes appears to be fraudulent in all the transactions. It is not a case in which the special procedure allowed by the Watan Act for

the protection of service lands should be made use of. There is no service attached to the watan." Government concur. No 2553, March 10, 1908.

Action taken under s 9, cl 2

19. Commissioner: "When the Mahalkari framed the *mahar* watan register, he found that certain mahar watan inam lands had long been in the possession of S and therefore ordered that the lands being service inam lands should be restored to the *mahars* The case may be taken to fall under s. 9. Under that section the Collector can either resume the land or impose a full rent. Looking to the facts that this case did not arise out of any complaint by the *mahars* themselves and that S has long been paying a rent. the question arises whether the interests of the watandars would not be sufficiently met by raising the present rent to a full one, if it is below that now. The *mahars* might in this way actually get more profit from the holdings than if they were delivered into their own thriftless hands. I recommend that the land should be restored to the petitioner S and that payment of full rent should be made to the *mahars*." Sanctioned. No. 5598, June 5, 1908.

Ditto.

20. Commissioner: "In 1854 K, a village watchman, resigned service and left the village. The Taluka authorities thereupon ordered that his service inam land should be leased for cultivation to the person offering the highest rent Accordingly the land was leased to R, an agreement to rent the land for one year only being taken from him. In the following year an officiating village watchman was appointed, but instead of putting him in possession of the inam land it was arranged to pay him the annual rent received from it. Although the agreement with R was for one year only, the land remained continuously in the possession of him and his heirs for some years until it was unauthorisedly sold by one of R's heirs to X. It has remained in the possession of X's family to the present day, the full assessment being paid by the person in possession to the officiating village watchman, who is at present K's son D. The land, however, has all along continued to be shown in the revenue records as service inam and is at present entered in the name of K's son D. On D's application the land was restored to him." It is manifest that the lands form part of the village watchman's watan. The first alienation, by lease, was made by a Government officer and the second, by

sale, by the Government lessee. Although there was consent of the Collector to the alienation there was no transfer of the ownership in the revenue records. S. 9, therefore, applies to the case and it is open to the Collector to declare the alienation null and void. But it is contrary to precedent to oust the holder from possession in such a case as this where there is long possession and no fraud is disclosed. Government cancel the order passed and direct that the petitioner, a descendant of X, should be allowed to retain possession of the land on payment of a full rent in accordance with s. 9, cl. 2. No. 3544, April 8, 1909.

No law of limitation applies to proceedings taken by a Collector under Bhagdari Act.

21. No law of limitation applies to proceedings taken by a Collector under Bhagdari Act V of 1862. "An Act of Limitation, being restrictive of the ordinary right to take legal proceedings, must be construed strictly, *i. e.*, in favour of the right to proceed. The Collector here represents the Government, the Crown, and is seeking to carry out the provisions of an Act passed for the maintenance of certain tenures in the interests of the State. (*The Collector of Broach v. Rajaram.* 7 Bom., 545.) Previous to the passing of the Limitation Act IX, 1871, when any limitation was intended to be prescribed for a proceeding under any Act, the period was embodied in the Act, *e. g.*, s. 119 of the Code of Civil Procedure of 1859, and s. 214, Act VI, 1863. All such provisions as to limitation were repealed by, and re-enacted in, Act IX, 1871. No limitation is prescribed in the Bhagdari Act, and the reason for this is obvious. The preamble to the Act declares it to be necessary, for reasons of State policy, to prevent the alienations of portions of a *bhag*. If a portion is sold, it is a fraud upon the Act. The only person who can get a sale set aside is the Collector, who cannot act until he knows that the Act has been infringed. The collusion of parties or other cause might keep an illegal sale concealed for 20 years. If time ran against the Collector, the Act would be practically ineffectual. Therefore no limitation is prescibed in the Act, and there was no provision as to limitation which could be repealed by, and re-enacted in, Act IX, 1871, or in Act XV, 1877." *The Collector of Broach v. Desai Raghunath.* 7 Bom., 546.

22. The consent of the Collector under s. 9 cannot be presumed merely from entries in some village *Khardas* which are the records of the Kulkarni and may never have come to the notice of the Collector. *Semble*—The consent of the Collector within the meaning of the section must have been expressly obtained. No time is prescribed within which an order of a Collector under s. 9 must be made, and no law of limitation applies in such a case. "It is argued that the appellant and the original alienee have held the land since 1835 (the certificate was issued in 1887), and so the former had become owner by prescription at the time the order complained of was made. We observe, however, that no time is prescribed within which the orders contemplated in s. 9 must be made. The words used are 'whenever before the date of this Act coming into force'. These are words of the widest signification and are inconsistent with any limitation of time. In the case of *the Collector of Broach* (*supra*, 21) under the Bhagdari Act where similar words are used, it was held that no law of limitation applied, and we think the same reasoning applies and that the same construction ought to be given to the words in this section." In this case the Collector in 1887 had passed an order under s. 9 declaring the alienations by the watandar to the original alienee and from the latter to the appellant to be null and void and demanding the full rent from the appellant, who therefore brought this suit against the Secretary of State to contest the validity of the order. *Shri Balkrishnaji v. The Secretary of State*. P. J., 1892, 324.

Consent of Collector under s 9 should be express

No limitation for Collector's action under s 9.

23. S. 9 applies even though after the first alienation there have been other alienations by non-watandars. "The case of *Shankar* (*infra*, 47) was a case under s. 10. In s. 9 the words used are 'whenever any watan or part thereof has passed into the ownership or beneficial possession of any person not a watandar.' The fact that after the first alienation under which the watan passed, there have been other alienations does not seem to affect the case. Doubtless, the Collector could not by merely setting aside an alienation by one who was not a watandar restore possession to the alienor, but here he has gone to the root of the matter, and while dealing with the alienation to the appellant has dealt also with the alienation to the original alienee and

S. 9 applies even though after first alienation there have been other alienations by non-watandars

declared both to be null and void and has ordered the appellant to pay the full assessment. The appeal fails, and it is therefore, unnecessary to consider the question whether the Civil Courts have jurisdiction to entertain such a suit as the present. *Ditto.*

Collector cannot take action under s. 9 in regard to non-watan property.

24. The property attached to a *Kazi's* office not being watan property (*see* s. 4) the Collector has no power to make an order with respect to it under s. 9. *Babu Kalaji v. Nassaruddin.* 18 Bom., 103.

The law of limitation does not govern the Collector's action under the Bhagdari Act.

25. Under s. 3 of the Bhagdari Act, the Collector can act at any time; and the plea of adverse possession cannot prevail against any order that he may make. The law of limitation does not govern the Collector's action under the section. *Dala v. Parag.* 4 Bom. L. R., 797; and *Jethabhai v. Nathabhai.* 28 Bom., 399; also 6 Bom. L. R., 428.

Wanta Pasaita.

26. Where land assigned as remuneration of officiating village servants is described in the Collector's Revenue Registers as 'Wanta Pasaita', such a description is not inconsistent with the ordinary meaning of the word 'Pasaita' or in any way suggests that wanta pasaita land would remain 'rent-free' if it passed in the ownership of any person not a watandar and not entitled to remuneration for the performance of village service. The law of limitation does not govern the Collector's action under s. 9.

The law of limitation does not govern the Collector's action under s. 9.

The summary powers given by s. 9 to the Collector in respect of the recovery of service land alienated to an outsider or the profits thereof, are not controlled by the date of alienation. The fact that after the first alienation under which the watan passed there was another alienation does not affect a case under s. 9 of the Act. *Bai Shivganga v. Secretary of State.* 7 Bom. L. R., 186.

Another alienation after the first.

27. Possession acquired under an alienation made in contravention of s. 3 of the Bhagdari Act can become adverse and bar a suit for recovery by the individual alienor or his representative in interest. Under s. 3 the Collector may take action at any time; his action is not subject to the law of limitation; the plea of adverse possession cannot prevail against any order which he may make. *Adam v. Bapu.* 10 Bom. L. R., 1128.

The law of limitation does not govern the Collector's action under s. 3 of Bhagdari Act.

28. L. R. "Ss. 10 and 11 do empower the Collector to prevent the alienation of watans settled under Gordon's settlement except in cases in which the terms of the settlement expressly render the watan alienable without the consent of Government. The sections apply (1) to any watan or part of a watan assigned as remuneration of an officiator, and (2) to any watan or part of a watan not so assigned. In the first case alienation to any body but the officiator for the time being, and in the second case alienation to any but a watandar of the same watan, may be set aside. In the case of the watans in question it is of course only with regard to alienations of the second kind that any dispute can arise, and for these the Collector may undoubtedly have recourse to the powers conferred upon him by these two sections." In the case of watans in which the terms of Gordon's settlement do not expressly render them alienable without the consent of Government, the Collector can proceed under ss. 10 and 11 to prevent alienation by attachment or otherwise. No. 6070, October 8, 1877.

Collector can proceed under ss 10 and 11 in regard to Gordon settlement watans where sanad has granted no express power of alienation.

29. L. R. "I do not think that it makes any difference whether a share of a sub-sharer in a watan is separately entered in Government records or not, the only point the Collector has to satisfy himself about and certify to the Court being that the property in question is a portion of the watan or of the profits thereof." Government concur No 953, February 23, 1878.

Where property is watan, s 10 would apply, though, being a subshare, it is not separately recorded

30. L. R. "No definite instructions as to when and how the Collector should interfere in respect of non-service watans are desirable or could very well be laid down. In the case referred to in G. R. No. 1579, March 17. 1881, the Collector's interference was held uncalled for and his certificate under s 10 was under the orders of Government withdrawn." Government concur No 998, February 13, 1882.

Issue of certificate is discretionary

31. L. R. "It appears that G in 1863 obtained a decree of the Civil Court establishing his right as hereditary deputy to obtain payment of a certain sum annually out of the income of the Deshpande watan. In execution of this decree a warrant has been issued to the Mamlatdar directing that Rs. 658, otherwise payable to the Deshpande K, be attached and forwarded to the

Court for payment to G. The question now is whether the Collector should issue a certificate under s. 10. In my opinion, no such certificate can legally be issued. The first part of the section refers where watan property, assigned under s. 23 as remuneration of an officiator, has passed after the Act came into force or may pass without the sanction of Government into the ownership or possession of any person other than the officiator. This portion of the section is clearly inapplicable. It is not contended that the cash allowance attached has been assigned as remuneration, and as no Deshpande service is now required there can apparently be no official remuneration. The second part of the section provides that when it appears that any part of a watan not so assigned has passed or may pass by virtue of or in execution of a decree into the ownership or beneficial possession of any person not watandar of the same watan, the Court shall, on receipt of a certificate of the Collector, remove any attachment or other process. Under this part of the section the Collector can only issue his certificate to prevent the watan or any portion of it passing into the hands of a person who is not a watandar of the same watan. The question then is whether G is a watandar of this watan. The question must be answered in the affirmative. It is true he is not registered as a representative watandar, as when he applied in 1880 to be so registered the Collector held that as the Deshpande service was not required no one could be recognised as representative watandar. With this decision of course the Courts cannot interfere, as it is a matter entirely within the cognizance of the Collector. But none the less G appears to be a watandar of this watan though not registered as a representative watandar. In s. 4 a watandar is defined as a person having an hereditary interest in a watan. It seems hardly possible to hold that G has not such an interest. The High Court have held that 'G's status as hereditary deputy watandar having been ascertained and established in 1863 is a fact which neither a Revenue nor a Civil Court could ignore or reopen. It is *res judicata*'. (*Vide Rul.* 39 *infra*). The decree declared that he had an interest in the watan and was entitled to receive therefrom a certain sum annually. He therefore fulfils the definition of watandar given in the Act, and no certificate ought to be issued under s. 10. It is true that one was given in

S. 10 applicable, when.

Meaning of watandar.

1875 which the High Court was unable to set aside though their Lordships supposed it was passed in ignorance of the decree of 1863; and now no doubt if a certificate were issued the Court would be obliged to act upon it. But although such a certificate if granted would be effective, it of course cannot be issued otherwise than as prescribed by the Act, and I think in 1875 it must have been given under some misunderstanding. It may be argued that the non-service settlement abolished G's office of hereditary deputy. No doubt the occasion for his service has ceased But his interest in the original watan was a species of property of which he could not be deprived by any arrangement between Government and the Deshpande to which he was not a party. 'Service lands, are a property, not merely a remuneration.' (*Per* West J. in *Radhabai's* case, s. 5, *Rul.* 45); and this principle seems to apply no less to the emoluments of the hereditary deputy than those of the original watandar. No certificate can therefore be issued in this case under s. 10." Copy forwarded. No. 4188, July 7, 1887.

Abolition of service does not extinguish deputy's watan right.

32. L. R. "Ss. 10 and 11, so far as they affect alienations of life-interests in unassigned watans, were repealed by implication under Act V, 1886. For if the co-existence of two sets of provisions would be destructive of the objects for which they were passed, the earlier would be repealed by the latter." Copy forwarded. No. 8513, December 20, 1888.

Ss 10 and 11 repealed in part by implication.

33. L. R. "The decision in *Appaji's* case (s. 5, *Rul.* 48) at length places the question of the inalienabilty of the District Hereditary Officer's watan lands to which Gordon's settlement was applied beyond doubt The present position of the matter is therefore thus: (1) as regards alienations since January 28, 1887 (the date on which Act V, 1886, became law) sub-s. 2, s. 5, Act III, as amended by s. 1, Act V, applies, (2) as regards alienations previous to that date, which have been already finally adjudicated, nothing can be done, and (3) as regards alienations previous to that date which have not been finally adjudicated, the High Court's above ruling should be relied on. Officers who

When certificate to issue in case of Gordon settlement watans

receive notices of attachments are legally responsible for giving immediate effect to them and for holding the money, if any, payable as therein described, in deposit until the further order of the Court. But if the *hals* in question have been subjected to Gordon's settlement and the case does not fall under class (2) above stated, the Collector should issue a certificate to the Court under s. 10 in order that the attachment may be removed. But until the attachment is removed by the Court, the money should be held in deposit." Copy forwarded. No. 5920, August 20, 1890.

Revenue officers bound to respect notices of attachment.

34. L. R. "A certificate under s. 10 should be sent in any case in which Government or the Collector has not been a party to the suit in which a decree adverse to the district hereditary officer (falling under Gordon settlement) has been passed." Copy forwarded. No. 6500, September 13, 1890.

When certificate to issue.

35. L. R. "The Act gives special protection to the interests of the public service in cases of assigned watans by declaring property so assigned as 'not liable to process of any Civil Court.' In the case of unassigned watan, however, the power of alienation without Government sanction has been recognised by s. 1, Act V, as extending to the life-interest of the alienating incumbent. The alienating incumbent is himself estopped from denying his right to alienate (s. 5, *Rul.* 47). But s. 10, Act III, was not modified in accordance with Act V, so that the Collector has still the power to issue a certificate in respect of an alienation which under the amending Act it is yet competent to the alienor to make without sanction. In 1888 I ventured to lay stress on this anomaly and to submit that Government would probably not approve of the Collector taking action so inconsistent with the spirit of the amending Act, merely to enable a man to repudiate his own liabilities when he would be estopped from disputing them on his own account. In the present instance the watan property is unassigned watan brought under the Gordon settlement. No doubt, it may, owing to the said anomaly, be legally possible for the Collector to issue a certificate under s. 10. But I would submit that it is improper that such interference should be made in cases of this

Estoppel.

Anomaly in s 10 pointed out

nature, as it is not necessary to protect interests of the public service and could only operate to enable debtors to repudiate liability for their own debts. The Collector's interference might be properly limited to cases affecting (1) watan assigned as remuneration of an officiator, (2) watan on which it is attempted to enforce a charge or liability created by some person deceased, in which cases alone no private sale could take place without sanction. If every attachment affecting the life interest of a watandar debtor is to be set aside by issue of a certificate, the result will be that watandars will be able through the medium of a Collector to repudiate charges on their own life interests which they would be estopped from repudiating on their own account. This, I think, is opposed to the spirit of the law, and probably also to the wishes of Government." Government concur. No. 2917, Apirl 28, 1891.

Collector to issue certificate when.

36. The Collector directed the issue of a certificate under s. 10 to the High Court, stating that the property to which the Court's decree of 1877 related was watan property, which had passed unlawfully into the possession of a non-watandar, and asking the Court to set aside that decree whereby the watan property would revert to the possession and enjoyment of the watan family. Government will not interfere with the Collector's order. No. 7374, July 27, 1907.

Collector's certificate not interfered with.

37. K mortgaged with possession certain Deshmukhi watan lands to S in 1869. The lands were sold to S in execution of a Civil Court's decree obtained by him against K, and S became the owner of these lands under a sale certificate dated 16th July 1874. K died in 1877. P, son of K, applied to the Collector for grant of a certificate under s. 10 to set aside the decree of the Civil Court granting possession of the lands to S's son and his request was granted. L. R. "The question is whether s. 10 can be applied to the facts of this case. S was 'not a watandar of the same watan' and there is no question of 'any sanction having been given by Government.' If the property passed into the ownership or beneficial possession of S, it can hardly have been otherwise than in execution of the decree. We are thus reduced to two questions :—

S. 10, when applicable.

(1) Did the property pass into the ownership or *beneficial* possession of S ? (2) If so, did it pass before or after 5th February 1875, the date on which the Act came into force? (1) It is necessary to observe that the Act says *'beneficial* possession,' that is to say, possession not on behalf of any other person. There can be no doubt that by virtue of the litigation which ended in the sale certificate, the right, title, and interest of K passed to S. It is therefore necessary to consider what K's position was. The Privy Council have held in a suit between the parties (*Padappa v. Swamirao*, 24 Bom., 556, *Rul.* 77, s. 5) that by whatever right K held, she held, *as watandar*. It follows that any possession which S may have derived from K before her death in 1877 was a beneficial possession, for the alienation was valid upto that date. (2) The sale certificate is dated 6th July 1874. The Act came into force on 5th February 1875. If S got possession between these dates by virtue of the decree against K, s. 10 would not empower the Collector to oust him. On the other hand, if S got possession after 5th February 1875 by virtue of a decree passed before that date, the Collector could interfere. In my opinion, the formen state of things seems to be borne out by evidence." The certificate granted by the Collector should be cancelled. No. 3340, April 2, 1909.

Beneficial possession.

38. L. R. "The petitioner G is the holder of a decree against the property of deceased D. He sought to execute it by attachment of the revenues of the *majmudari* watan of the alienated village of Jhegra. On an application from B and C, daughters of D, the Collector stopped the proceedings by the issue of a certificate under s. 10. The petitioner G and the respondents B and C hold separate shares in the same watan. The petitioner has obtained a decree in the Civil Court which he would in the ordinary course be entitled to execute against the revenues of the village. So far as Government are concerned, the only bar in his way is s. 10 The question is whether the petitioner is a watandar of the same watan as the respondents. The Collector's order is clearly based upon principles which do not apply to this case. If the petitioner held no part of the watan, then the nature of his 'hereditary interest' would have to be considered, but he actually holds and enjoys part of the watan property. He is a watandar of the watan. In the circum-

S. 10 does not apply to the case.

Who is watandar.

stances Government may set aside the orders passed by the Collector." Copy forwarded. No. 5317, June 1, 1909.

39. A decree of the District Court at Sholapur, made in 1863, declared the plaintiff to be a hereditary deputy watandar of a certain Deshpande watan vested in the defendants as hereditary watandars, and, as such deputy, entitled to receive a certain sum annually out of the income of the watan. The plaintiff received moneys from time to time under his decree. He was not, however, subsequently to the decree, registered and treated as "a representative watandar" under Act III, s. 56. In 1875 plaintiff made a darkhast for the attachment of a certain amount belonging to the watan for arrears due to him under his decree. The money was accordingly attached. Subsequently the Collector issued a certificate to the Subordinate Judge for the removal of the attachment under s. 10. *Held*, that the lower Courts had no option but to raise the attachment on receiving the Collector's certificate. *Held*, also, that as the plaintiff having according to law as it stood in 1863 succeeded in then establishing his right to be a hereditary deputy Deshpande, he was entitled to the benefit of s. 56. His *status* as hereditary deputy watandar was a fact which neither a Revenue nor a Civil Court could properly ignore or reopen. It was *res judicata*. *Held*, further, that as plaintiff was not registered and treated as "a representative watandar," although the decree of 1863 entitled him to be so registered, a Civil Court had no jurisdiction to register him as such a representative watandar, or to direct that he should be so registered by the Collector, and that any application for such registration should be made to the Collector. "Plaintiff's right, as such hereditary deputy watandar, to be registered as 'a representative watandar' is created by Act III. He has not, as a fact, been so registered. Although the decree of 1863, in the absence of any subsequent forfeiture of office, may and does entitle him to be so registered, yet the Civil Court has no jurisdiction to register him as a representative watandar, which authority s. 25 has conferred on the Collector, whom s. 26 requires to take into consideration 'the records and other evidence available' among which, in such a case this, would be

Court bound to raise attachment.

Res Judicata.

Jurisdiction.

the decree of 1863 as a judicial declaration of the plaintiff's *status* as hereditary deputy. To the Collector the plaintiff should apply." *Gopal v. Sakharam*, 4 Bom., 254.

Decree would be evidence.

40. The applicant obtained a decree in 1861 against A for Rs. 3, 956 of which he subsequently recovered Rs. 2, 742. In 1866 he applied to the Court for the attachment of certain watan belonging to A in satisfaction of the balance. In 1868 the Court attached the watan by a prohibitory order to the Mamlatdar. While this attachment was pending the Collector sent to the Court under s. 10 a certificate which referred to the proceeds of the watan which had accrued due before the passing of the Act and to those which had been subsequently assigned by the Collector as remuneration. The Court, thereupon, removed the attachment. *Held*, that the Collector was authorised, by the first part of s. 10, to inform the Court by his certificate that a portion of the profits attached had been assigned by him as remuneration, and that the Court was bound, on receiving it, to remove the pending attachment. *Held*, also, that the arrears due at the date of the Act which had not been assigned, fell within the latter part of the section. "As to the arrears due at the date of the Act, and which have not been assigned, they fall under the latter part of the section, where it is true that the words 'may have passed,' * are not to be found; but we think that the section must be read as if they had been, as it can scarcely be supposed that it was intended that the Collector should pay over the profits to the attaching creditor one day and apply the next day to the Court for an order to have them restored, as he would be entitled to do as soon as they had passed into the beneficial possession of the attaching creditor." *Jagjivan v. Ismail*, 4 Bom, 426.

Scope of s 10.

41. Previously to 1818, R, the great-grandfather of the plaintiff, settled accounts with A, the father of the defendant, in respect of debts due by himself (R) and his ancestors. The amount found due to A was Rs. 20,000, and as security for this sum, R in 1818 mortgaged to A certain watan lands, and also an annual allowance of Rs. 200 received by him (R) on account of *rusum*. Under this deed these properties were to be held by A in lieu of interest until

* The words 'may pass' have now been inserted by Act V, 1886.

repayment of the principal. A dispute subsequently arose as to the amount of the *rusum*, and B, the son and successor of R, the mortgagor, having by attachment interrupted A's possession (as mortgagee) of the watan lands, he (A) presented a petition of complaint to the Sub-Collector, who issued an order in 1830 to the Mamlatdar directing him to require the parties to refer their disputes to arbitration. The arbitration took place, and in 1831 both the parties executed a *rajinama*, which set forth the terms of settlement agreed upon. A was to hold the mortgaged lands and *rusum* for fifty years, at the end of that period the principal debt and all interest thereon was to be deemed to have been paid off, and the lands and *rusum* were to be surrendered to the mortgagor or his heir. Under this *rajinama* the mortgagee held uninterrupted possession of the mortgaged property until 1872. B, one of the signatories of the *rajinama*, died in 1843, and was succeeded as watandar by E, and E again was succeeded by the present plaintiff who in 1872 brought this suit against the defendant (A's son) to recover possession of the mortgaged property. The Sub-Judge held that the mortgage of 1818 was not genuine, and that the *rajinama* of 1831, being an alienation of watan property after the passing of Reg XVI, 1827, s. 20, was invalid as against watandars subsequent to the grantor. He, therefore, made a decree for the plaintiff. In appeal, the Judge held that the mortgage of 1818 was genuine, but he agreed with the Sub-Judge in regarding the *rajindmd* as a fresh alienation of watan property, and therefore, invalid as against the plaintiff, having been executed since the passing of Reg. XVI. He, therefore, affirmed the decree of the Sub-Judge. The defendant thereupon filed a special appeal in the High Court, which in 1875 reversed the decree of the Courts below,

Compromise as to watan property valid, when.

holding that the *rajindmd* was not a fresh alienation of watan lands, but a compromise of a dispute in regard to an alienation by way of mortgage in 1818, of watan lands, and that the *rajindmd* was, therefore, valid and ought to be enforced, and was not affected by Reg. XVI, 1827, s. 20. Previously to this decree of the High Court the plaintiff had applied for execution of the Sub-Judge's decree, and had been put into possession of the mortgaged property in 1873 The decrees of the lower Courts being thus reversed by the High Court, the defendant in 1876 presented a petition to the Sub-Judge, praying a restoration of the mortgaged property to his possession. The

plaintiff did not oppose his application, but the Sub-Judge refused it, on the ground that he had received a certificate from the Collector, issued under s. 10, stating that the property, the subject of the application, formed part of a watan. *Held*, that the certificate of the Collector was unlawfully issued and that the Sub-Judge should proceed to give effect to the decree of the High Court by re-

Collector shou'd send certificate to proper Court.

instating the defendant in possession of the premises mentioned in the *rajinimá*. The certificate which the Collector is authorised to issue under s. 10 should be sent to the Court, by whose decree or order the watan is affected, in the manner mentioned in the section. The Collector's certificate in this case, therefore, had not been issued to the proper Court. The restitution of the mortgaged property to the defendant

Restoration of possession delivered under erroneous decree is no alienation within the meaning of s. 10.

in whose possession it was at the commencement of this suit in 1872, and until execution of erroneous decree of the Court of first instance in 1873 was not such a passing into the ownership or beneficial possession of any person not a watandar of the same watan as is meant by s. 10. The alienation of the watan property to A having, in 1831, received the sanction of the authorised officer of Government, s. 10 did not apply, the intention of the Act being that whenever the alienation of a hereditary officer's watan has received the sanction of Government, the Collector should not issue his certificate. The words 'without the sanc-

Collector not to issue certificate, where alienation sanctioned by Government.

tion of Government' in s. 10 qualify the whole section. "Act III does not authorise the Collector to issue his certificate for the purpose of preventing the rectification of a Sub-Court's decree by the High Court, or the reinstatement of a person in possession of which he has been deprived by the execution of the erroneous decree of a Subordinate Court. The last passage in s. 10 leads to the conclusion that the Legislature intended the certificate to be sent to the Court whose decree was supposed to give effect to the alienation of the watan, for it provides that on receipt of the certificate, the Court shall (*inter alia*) cancel the decree or order so far as it concerns the watan. It is wholly improbable that the Legislature could have intended that the Sub-Judge should cancel the decree of the High Court. We think the certificate, if properly issuable, should be sent to the Court whose decree or order is that whereby the watan is affected. It is admitted that none of the watan pro-

perty, the subject of this suit, has been assigned as remuneration. Hence the first portion of s. 10 is inapplicable. Wholly erroneous decrees have been made by the Courts below and have been reversed by the High Court's decree of 1875 which entitled the defendant to be reinstated in the position which he occupied before the execution of the erroneous decrees. We do not think that the Legislature had any such purpose in its contemplation, when enacting s. 10, as to take advantage of the errors of Civil Courts by maintaining a possession obtained by their wrongful operation, or to interfere with the jurisdiction of the High Court to reverse and prevent the execution of erroneous decrees of Courts subordinate to it. The restitution of possession to the defendant does not appear to us to be such a passing into the possession of any person not a watandar of the same watan as is meant by s. 10. Moreover, the beneficial possession passed to A, *qua* mortgagee, in 1818 was subsequently modified and confirmed by the direct intervention and sanction of the Sub-Collector in 1831. Upon that occasion that officer must be regarded as representing Government. S. 10 which is very ill-penned uses the words 'without the sanction of Government.' The location of those words in the section may, at first sight, lead to the supposition that they are limited to the watans assigned under s. 23, but, on the purview of the Act, we think that those words are intended as a qualification of the whole section. We find them in s. 5, which is the leading section and indicates the general policy of the Act. The same words occur in s. 8 and equivalent words are to be found in s. 9. The general intention of the Act seems to be that whenever the alienation of an hereditary officer's watan has received the sanction of Government, the Collector shall not issue his certificate." *Rachapa v. Amingavda.* 5 Bom., 283.

S. 10 is ill-penned.

42. A certificate under s. 10, stating that a watan has been assigned to an officiator as his remuneration and granted by the Collector to save a watan from attachment before judgment, does not exclude the jurisdiction of the Civil Court to make a decree notwithstanding that the decree may be rendered inoperative by the Collector issuing a fresh certificate. "The certificate appears to have been issued to defeat an attachment before judgment, and, having fulfilled its object, it cannot be said that it operates to ex-

Certificate issued to prevent *interim* attachment does not exclude jurisdiction of civil court to make decree.

clude the jurisdiction of the Court to make a decree in plaintiff's favour. There can be no doubt, however, that if this Court were to make such a decree, the Collector would immediately renew the certificate and this Court would be constrained by s. 10 to cancel its decree, which would consequently be wholly inoperative. Under these circumstances it seems strange that the plaintiff should have thought it worth his while to press this appeal." *Siddheshwara v. Ramchandra*, 6 Bom., 463.

Extent of power of Local Legislature

43. The Bombay Legislative Council has authority to make laws regulating the rights and obligations of the subjects of the Bombay Government, but not to affect the authority of the High Court in dealing with them when made. "The objection that the Bombay Government could not legislate so as to bind this Court by a certificate of a Collector under s. 10 is in one sense valid, while in other it is not. The jurisdiction of the High Court rests on statute 23 and 24 Vic., c. 101 and Letters Patent issued under it The Legislative power of the Local Government rests on 23 and 24 Vic., c. 67, ss. 42 and 43. Under these it cannot interfere with any Act of Parliament. The Statute constituting this High Court and the Letters Patent give to the Court such jurisdiction as was possessed by the late Supreme and Sadar Courts together with a general power of appeal and superintendence over the Civil Courts of the Presidency. Any Act, therefore, of the local Legislature which should propose to cut down this jurisdiction would so far be *ultra vires* and inoperative. But, then, it is to be remembered that this restriction of the one authority by the other relates only to matters of jurisdiction, that is, of the exercise of the judicial function and matters ancillary to this. Granting the existence of any particular law, the mode in which it is to be interpreted, the jural relation it creates, the duties it imposes, and the way in which these are to be enforced, all such questions have to be determined by the High Court, and any attempt by the local Legislature to control it in the exercise of these functions would be simply abortive. But a different proposition is stated when it is said that because in a given state of the law this Court may establish particular relations and issue particular commands which must be obeyed, that state of the law cannot be altered because the range of operation of the Court's power will be altered at the same time. Such a construction of the statutes would make legislation by the Local Government virtually impossi-

ble. It is plain on reflection that jurisdiction relates to authority in ascertaining and giving effect to the law as it is; and as the substantive law changes, while the jurisdictional power remains constant, the actual result must be variable. Thus legislation on the rights and obligations of its subjects by the Bombay Government in no way necessarily infringes on the authority of the High Court, unless the powers of the latter in dealing with the law, when made, are in some way affected." *The Collector of Thana v. Bhaskar.* 8 Bom., 264.

When High Court will interfere with Collector's action

44. The High Court, in its appellate jurisdiction, is bound to administer the law as it subsists in the subordinate Courts. The Collector when granting a certificate under s. 10 exercises a judicial function, and is subject to the supervision of the High Court, but the High Court will not interfere with his discretion, unless there is violent misuse of authority, obvious bad faith, or reckless disregard, or wanton perversion of the law on his part. "It is said, the Collector (in sending the certificate) seeks to supersede the powers of this Court either without any semblance of right at all, or else under an enactment which for that very reason is so far invalid. It is admitted the Collector could stop the action of a subordinate Court, or get it reversed, in the mode he has adopted; but in the High Court, it is urged, this is inadmissible. This Court, however, in exercising its appellate jurisdiction is bound to administer the law as it subsists in the subordinate Courts (Letters Patent cl. 21). Part of that law is that the Collector is empowered to prevent a sale by his certificate. This being the law in the Court below is law for the same case here; the liability to the Collector's interference on behalf of the public has accompanied the litigation throughout and is part of the law that we have to apply. The Collector is to act when it shall appear to him that this is right and necessary in the public interest. He is called on to make some inquiry, and thus exercising a judicial function, he is subject to superintendence and control by this Court, as is every functionary, should he make his authority a mere cloak for illegal and wholly unreasonable proceedings. No one can, under such circumstances, escape supervision and control: if an executive officer, he is liable to a suit for bad faith or a

Collector acting under s. 10 exercises a judicial function and is subject to High Court's supervision.

palpable abuse of power; if a judicial officer, he is subject directly to the superintending power of this Court (vested in it by the Letters Patent). But where there is no violent misuse of authority, &c., the Collector, acting in good faith, must be allowed to discharge at his discretion and with full effect the duty assigned to him. In the present case we cannot discover that there has been, on the Collector's part, any wilful or reckless disregard of the law. His certificate, therefore, is decisive of the character of the property, and we only carry out the general purpose of the Legislature in a matter quite within its competence, by cancelling the decree made by this Court to the necessary extent." Ditto.

45. A decree in 1863 declared the plaintiff to be a hereditary deputy watandar of a certain Deshpande watan vested in the ancestors of the defendant as hereditary watandars, and that the plaintiff, as such deputy, was entitled to receive a certain sum annually out of the income of the watan. It did not explicitly deal with the claim to future payments then set up by the plaintiff as hereditary deputy watandar. The plaintiff received moneys from time to time under the decree until 1875, but he neglected to have himself registered as a representative watandar under s. 56. In 1875 he made a claim for certain arrears of the allowance which he alleged to be due under the decree and he attached certain moneys out of the income of the defendants' watan. The Collector issued a certificate under s. 10 for the removal of the attachment, and the attachment was accordingly removed by the Subordinate Judge. The plaintiff appealed from the order of removal, but the Appellate Court confirmed the order. On second appeal to the High Court, it was held on 23rd June 1879 that the lower Courts were right in raising the attachment, that the Civil Courts had no jurisdiction to register the plaintiff as a representative watandar and that the Collector was the proper authority to be referred to (*vide Rul.* 39, *supra*). Thereupon the plaintiff applied to the Collector to cancel the certificate which had removed the attachment and to register him as a representative watandar. The Collector rejected the plaintiff's application. In 1881 the plaintiff presented a fresh darkhast to attach the same watan property in virtue of the said decree of 1863, but the application was rejected as *res judicata* by both the lower Courts. They held that the

certificate of the Collector which remained uncancelled operated as a bar. *Held*, that the decree was one capable of execution. *Held*, as regards the Collector's certificate, that under s. 10 the certificate was exhausted in operating on the execution which it stopped and that the lower Court ought to have dealt with the case apart from that certificate. "A mere order of a Court without contest is not necessarily *res judicata*. This is especially so in the case of execution proceedings which are primarily executive, though questions may arise in them for judicial decision. The Collector's certificate was exhausted in operating on the execution which it stopped. The Collector can effectually protect the watan against any injurious claim and he can register the plaintiff as a watandar. He has not done either. The Court below must (now) consider whether execution can proceed on the present application, and the Collector whether he can prevent it, and, if he can, whether he ought to do so (by issuing a fresh certificate)."* *Gopal v. Konda.* 9 Bom., 328.

Certificate becomes exhausted on the removing of the particular attachment.

46. The Collector arriving at a conclusion as to the rights of the persons interested and of the Government under s. 10 must make an inquiry as to the true character of the property and the liabilities and privileges annexed to it, and in doing this, he acts judicially, and having, therefore, jurisdiction over the subject matter, that is, the liability to attachment, &c., of the property, his certificate, equivalent to an order, even though irregularly granted, has validity until it is set aside by higher authority. "It would seem, from a comparison of the clause relating to the property not assigned as remuneration with that relating to property so assigned and with the subsequent clause directing the terms of the Collector's certificate, that the middle clause presents a case of defective specification to be aided by the other parts of the section. However that may be, it seems clear that the Collector (acting under the provisions of s. 10) acts judicially. *Kasturchand v. Balwantrao* P. J., 1887, 70.

Collector acts judicially and his certificate is valid until revoked.

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*No certificate was afterwards issued in this case. (*Vide Rul. 31, supra*).

47. The plaintiff S and his brother, who were watandar Deshpandes, sued to redeem a certain property alleged to have been mortgaged by their undivided paternal aunt to the defendant B. B objected on the ground that the plaintiffs were not the heirs of the widow, who had left a daughter. The daughter was joined as co-plaintiff, and a decree passed in her favour, and that decree was confirmed by the Special Judge. The plaintiffs being dissatisfied with this decision applied to the Collector for the issue of a certificate under s. 10 prohibiting the property from passing out of the family. The daughter in the meanwhile obtained possession of the property under the decree. Subsequently the certificate applied for by the plaintiffs was filed by them. The lower Court, feeling doubt as to whether the Collector could legally issue the certificate and how far it would operate, referred the case to the High Court. *Held*, that the Court should not act upon the certificate of the Collector. The effect of the decree being to transfer the property from the mortgagee, who was not a watandar, to the daughter, who, according to the Collector's certificate, was also not one, s. 10 had no application. The Collector, if he thought proper, should take proceedings under s. 6, cl. 1. "Both the mortgagee, and the daughter not being watandars, we do not think that the decree was within the contemplation of s. 10, the object of which was to give practical effect to the prohibition against alienations by *watandars* as provided by ss. 5 and 7." *Shankar v. Babaji.* 12 Bom., 550.

Collector's certificate can not stop alienation by a non-watandar.

Collector may act under s. 6.

48. The plaintiff sued as purchaser at a Court sale of the interest of defendant No. 1, to redeem and recover the possession of the land in dispute, alleging that it had been mortgaged by defendant No. 1 to defendant No. 2. Defendant No. 1 denied the mortgage, and that he had any title to the land, which he said belonged to R and formed part of R's Deshmukhi watan. R having died leaving a minor widow, the latter was made a party and the Collector as administrator was made her guardian. The Collector certified to the Court under s. 10 that the land formed part of a watan. The suit was dismissed on the production of the certificate. *Held*, that the Judge ought not to have acted on the certificate by setting the sale aside. Ss. 9 and 10 were not ap-

S. 10 inapplicable, as the alienation was by one non-watandar to another.

plicable to the case as the first defendant, whose interest was purchased by the plaintiff, was not a watandar. (*Vide* Rul. 47 *supra*). *Bhau v. Balappa*, 13 Bom., 343.

No limitation applies to collector issuing certificate.

49. In execution of a decree against N, his lands were sold in 1876 and H purchased them and took possession in the same year. N died in 1877, and in 1888 his son alleging that the lands were watan property applied to the Collector under s. 10. The Collector referred the matter to his subordinates for inquiry, and the certificate was not issued until 1890, that is, more than 12 years after the death of the last holder N. *Held*, that although more than 12 years had elapsed, the Court could not refuse to act on the certificate of the Collector, as provided by s. 10. "The sending the certificate by the Collector, as contemplated by s. 10, is not an application to the Civil Court, but only a proceeding in the nature of a notification which, the Act itself provides, shall be acted upon by the Civil Court in a certain manner. Art. 178 of the Limitation Act has, therefore, no application to it. We think the Sub-Judge cannot refuse to act on the certificate. If the purchaser has, since his purchase, acquired a title by adverse possession, it will be for him to take the proper measures to assert it as against the Collector or any other party, as the case may be." *Chandra v. Bahinabai*. 17 Bom., 362.

Restoration of possession delivered under erroneous decree does not fall within the scope of s 10.

50. The restitution in execution of an Appellate Court's decree of property to the defendant in whose possession it was at the commencement of the suit and until the execution of the erroneous decree appealed against, is not such a restoration as falls within the scope of s. 10, and the defendant, notwithstanding the Collector's certificate, is entitled to be restored to possession. *Rachapa's* case (*supra*, 41) referred to. "The reversal of the decree carried with it the right of the defendant to be replaced in the same position as if the Lower Court had not passed an erroneous decree. *Rachapa's* case shows that such a restoration does not fall within the scope of the section." *Venkatesh v. Govindrao*. P. J., 1895, 358.

S. 10 applies to Gordon Settlement watans.

51. S. 10 applies to Deshmukhi service watan with respect to which the liability to serve has been (prior to the passing of the Act of 1874) commuted under the Gordon settlement. "The object of s. 10 is to supple-

ment the prohibition against alienation by a watandar to a person not a watandar by enabling the Collector to undo an alienation which may have been effected since the passing of the Act by a decree or order of a Civil Court. It will apply, therefore, whenever s. 5 is applicable. By s. 1 of the amending Act V, 1886, s. 5 is amended by restricting the prohibition to an alienation beyond the life-time of the watandar and also by making the section so amended applicable in the case of any watan in respect of which a service commutation has been made prior to the Act of 1874. The important question arises as to what was the object with which this last amendment was made: was it to extend the operation of the Act to such watans or to remove a doubt as to their being included in the Act of 1874? We think that looking at the definition of a 'watan' in the Act of 1874, and having regard to the circumstance that doubts had been entertained whether such watans were within the contemplation of the Act, latter was the true object.

Act V, 1886.

The definition of a watan in the Act includes the case of a watan in which the services have ceased to be demanded—language which appropriately expresses the state of things existing in the case of a watan, the subject of a Gordon settlement, for it is worthy of remark that the language of the sanads issued under the Gordon settlement is that Government undertake in future not to require services to be performed. But it remains to consider whether the Act was intended to have a retrospective effect. We think that such an intention is to be gathered from the language of s. 15, cl. 2, which would appear to have been introduced on the assumption that watans, the subject of a settlement before the Act, were included in the Act, but required to be placed by express terms on the same footing as those which the Act contemplated becoming the subject of a settlement by virtue of the power in that behalf of the Act itself." *Per* Candy J.: "It is admitted in this case that there was no condition of the settlement expressly allowing alienation of the watan property. The Division Bench of this Court which confirmed the decree of the District Court permitting the attachment and sale relied upon the ruling in *Radhabai's* case (s. 5, *Rul.* 45) *viz.*, that lands of a service watan become alienable when the services are abolished. But as pointed out in *Appaji* (s. 5, *Rul.* 48) that ruling had reference ex-

Meaning of *watan*.

Retrospective effect.

clusively to a settlement under Act II, 1863, and did not determine the nature of the Gordon settlement. The decision in *Jagjivandas* (s. 5, *Rul.* 43) showed that the fact the services had been commuted would not make a watan alienable. The intention of the Legislature to include watans under Gordon settlement is shown from the definition of *hereditary office* in Act III. It may be remarked that the expression 'ceased to be demanded' with reference to services originally appertaining to a watan has apparently direct application to the terms of the sanad usually given in cases under Gordon's settlement in which it is recited that 'the said lands and cash allowances shall be continued *without demand of service.*' The expression cannot apply to those watans, the services appertaining to which were useful to the village community, but which have now fallen into desuetude, for the term 'hereditary office' is limited to offices held for the performance of *duties connected with the civil administration*, whether those duties are now demanded or not. The result of these considerations is that *prima facie* a watandar under Gordon settlement is within the terms of the Act, which so far changed the old law that, whereas the prohibition against alienation under s. 20, Reg. XVI, 1827, was restricted by the interpretations to alienations exceeding the life-time of the incumbent or cosharer, the alienation prohibited by s. 5 of the Act was *any* alienation without the sanction of Government. By Act V, 1886, the prohibition was confined to alienations without the sanction of Government beyond the life of the alienor. Now it is clear the object of s. 10 was to give practical effect to the prohibitions against alienations as provided in ss. 5 and 7. If then, a watandar under Gordon settlement comes within the provisions of s. 5, the Collector can, in his case, act under the provisions of s. 10. But, it is said, the object of s. 10 is obviously to enable the Collector to preserve the watan property for the purposes of the office. But where the services have ceased to be demanded, what interest has the Collector in interfering to protect the property? The successive watandars might assert their rights in the Civil Courts under the law prohibiting alienations, but there is no apparent reason why the Collector should interfere. The answer is that the watandars under Gordon's settlement were purposely included within the terms of the Act. Otherwise there

Law of alienation under the various Acts considered.

was no object in the peculiar definition (discussed above) of 'hereditary office.' If so, there is no reason why the Collector should not intentionally have been given a discretion, enabling him to keep the lands attached to the watan. Since Act V, 1886, this discretion in the case of 'unassigned' lands would be limited to alienations without the consent of Government and beyond the life-time of the alienor. In the present case the mortgage was effected in 1873, and by the then law was good only for the life-time of the alienor who is now dead. It is clear that by the Civil Court's order directing attachment and sale, part of the watan in question may pass into the ownership of a person not a watandar. It is sufficient then for the Collector to certify that this is watan property and so inalienable. It has been held in *Kasturchand* (*supra*, 46) that the Collector acting under s. 10 acts judicially, and his certificate, therefore, cannot be questioned by the Court. It was argued that the use of the word *such* in describing 'unassigned' watans in s. 10 must be taken as showing that a watan to come within the limits of that section must be *assignable*. I cannot agree with that argument. Reading strictly the word would mean 'any watan assigned under s. 23, but not so assigned,' which would be nonsense. The word *such* is therefore superfluous and must be rejected. If watans under the Gordon settlement are within the terms of s. 5, then, there is nothing to exclude them from the provisions of s. 10." *Bhau v. Ramchandra*. 20 Bom., 423.

Collector acts judicially.

The word *such* in s. 10 is superfluous.

52. The Court in s. 10 means the Court in which the proceedings relating to the sale in question are pending. As no appeal is provided, the District Court has no jurisdiction, on appeal, to rectify any mistake that might occur in dealing with the Collector's certificate. If the Court erroneously refuses to act upon such certificate, the remedy open to the person producing it before the Court is to approach the High Court under s. 622 of the Civil Procedure Code (of 1882). If an Appellate Court exceed its jurisdiction in purporting to act under s. 10, it is open to the High Court to interfere under s. 622 of the Civil Procedure Code. "If the certificate was valid and related to the property in dispute, the Subordinate Judge was bound to set

Court in s 10 is the Court ordering the sale, it is bound to respect a valid certificate

District Court has no jurisdiction on appeal High Court may interfere under s 622 of Civil Procedure Code.

aside the sale. If for any reason the certificate was invalid or inapplicable, then only could the sale be maintained." *Bhau v. Ramrao.* P. J., 1898, 255.

Certificate which does not apply to the case under consideration cannot be respected.

53. The applicant sued for a declaration that his share in certain lands were watan property and for recovery of the possession of the same as they were sold through the Court and had gone into the possession of strangers; and in support of his claim, he produced a certificate under s. 10 requiring the Court to cancel any sale of his share in the said lands. The opponent contended that before the sale, a certificate had been obtained from the Collector that the lands in dispute were not service watan lands and were liable to attachment and sale. "The certificate produced by the applicant purports to certify that the lands now in question are *inter alia* the watan property of the Deshpande and the same having been assigned as remuneration of the officiator are not liable to be alienated in favour of any person other than the watandar (or the officiator for the time being) of the said watan. The absolute inapplicability of such a certificate to a watan settled by Gordon's Committee is obvious. When all service was abolished, how could any lands be assigned to the officiator? Under these circumstances the sale cannot be cancelled." *Divakar v. Vinayak.* 1 Bom. L. R., 825.

Scope of Collector's action under s 10

53 A. "Government took action to acquire by the machinery of the Land Acquisition Act part of a land with the buildings thereon. The land was registered in the Revenue records as Maharki watan. It was in the occupation of L, to whom the buildings erected upon it admittedly belonged. The Assistant Collector passed an award whereby he awarded to L for the buildings Rs. 10,777 and to the Mahars collectively, who claimed to be interested as watandars, Rs. 4,508 for the land. He directed that the latter sum should be credited in the Government Treasury in the names of the Mahar claimants and that the interest accruing thereon should be paid to them by the Mamlatdar. There is nothing to indicate that this was under any arrangement come to with the Mahar claimants. The award was not accepted by L, and the Assistant Collector referred the matter to the court. L claimed the whole of the compensation for the Maharki land on the ground that they had acquired it by

adverse possession. This claim was decided in their favour by the award of the Court. L thus became entitled as against the Mahar claimants to the compensation money. The Collector, however, forwarded to the Court a certificate purporting to be issued under s. 10 of the Watan Act in order that the 'order for the payment' of the compensation money (Rs. 4,508) to L might be set aside 'in accordance with the provisions of ss. 10 and 13' of the Watan Act. The District Judge, holding that the Court had no jurisdiction to decide whether property is watan or not in face of the Collector's certificate cancelled his former order directing the compensation money to be paid to L. From this decision L now appealed contending that the Collector's certificate was issued without jurisdiction and is of no effect. S. 10 empowers the Collector to issue a certificate when it appears to him that by virtue of or in execution of a decree or order any watan property has passed or may pass without the sanction of Government into the ownership or beneficial possession of any stranger to the watan. In considering whether the action of the Collector in the present case was within his powers various questions arise. Is there a decree or order in this case such as is contemplated by the section: if so has any property passed or can it conceivably pass by virtue or in execution of such decree or order: and if so has it passed or may it pass without the sanction of Government? With regard to the first question, an award under the Land Acquisition Act is not a decree or order capable of execution under the Civil Procedure Code and is therefore not within the purview of the section. As regards the second question the award of the Court which was the cause of the certificate made it quite clear that the Mahars' property had been acquired by L by adverse possession before the commencement of the proceedings for the acquisition of the land. The Collector is called upon to make some inquiry before issuing his certificate "and thus exercising a judicial function is subject to control by this Court, should he make his authority a mere cloak for illegal and wholly unreasonable proceedings." (*Collector of Thana v. Bhaskar*, 8 Bom., 264). It could not appear to the Collector if he had perused the award of the Court which he wished to have set aside that L was in ownership of the land at the date of its acquisition by

Award is not a decree within the meaning of s 10.

No property passes by virtue of the decree

Collector acts judicially and is subject to revision by High Court.

Government otherwise than by adverse possession. Even if it could be said that there was any danger of the passing of the ownership by virtue or in execution of a decree or order in the Land Acquisition proceedings it could not be said that that result was arrived at without the sanction of Government who set the machinery of the Act in motion for the acquisition of the land. Moreover, it has been said by a Full Bench of this Court in *Rachapa v. Amingowda* (5 Bo n., 283) that it cannot be supposed that the "Bombay Legislature had any such purpose in its contemplation when enacting s. 10 of the Act as to take advantage of the errors of the Civil Courts by maintaining a possession obtained by their wrongful operation or to interfere with the jurisdiction of the High Court to reverse and prevent the execution of erroneous decrees of Courts subordinate to it." Yet if we allowed the Collector to intervene and say as in effect he does "I wish the award of the Assistant Collector to stand and that of the Court to be set aside," we should be crediting the Legislature with such an intention. We restore the award of the Court and direct the District Judge not to act on the certificate of the Collector." *Ladha & Co. v Assistant Collector, Poona.* 12 Bom. L. R., 839.

Government sanction.

54. Commissioner: "In 1887 R mortgaged Kulkarni service inam lands to S, an outsider. R died in 1897. His son X applies for the restoration of the mortgaged lands on the ground that the alienation became null and void on the death of his father. The case seems clearly to fall within s. 11 which is mandatory. I recommend that the applicant may be put in possession of the lands by evicting the mortgagee." Sanctioned. No. 7889, November 8, 1901.

s. 11 is mandatory.

55. In 1878 L, one of the representative watandars in the Kulkarni watan of Sudi, applied to the Collector for permission to alienate her right of service with the watan lands pertaining to it to one M. Without waiting for the permission, she executed a deed by which she made this alienation. Afterwards the Collector gave the permission asked, and in consequence, M's name was entered as representative watandar and as Khatedar of the watan lands. M was not a watandar of the same watan. The sanction of Government for the alienation was not obtained. All the persons who possessed an hereditary interest in

Alienation of land may stand, that of right of service declared null and void.

the watan at the time of the alienation, except X (who has left no issue) signified their consent to it. L, died in 1890. No steps were taken to set aside the alienation between 1878 and 1905, during which period M was in possession. M was not a watandar of Sudi. If, as seems probable, he and L were descended from the same common ancestor, there was in all probability a bifurcation, M's family taking the watan of Musigeri and L's, the watan of Sudi. No doubt, L's alienation was *bonafide* and as regards lands it may stand good. But as regards service, the interests of administration and the views and jurisdiction of Government have to be considered no less than the rights of private parties *inter se*. It is altogether inexpedient to allow a member of the Musigeri watan to acquire rights of service in Sudi. The result will be constant dispute and friction. The whole principle of hereditary service is that the village officer should belong to and be a watandar of the village in which he is to serve. There can be little question that if Government had had any voice in the matter in 1878, they would have refused sanction to the alienation of the right of service to a watandar of another village, even though remotely connected by common ancestry with the watandars who desired to alienate. The alienation of the right of service in question should be declared, therefore, to be null and void, and the Collector should be directed to remove the name of M from the watan register and enter the name of the person appearing to be most entitled, as representative watandar in lieu of that of L. No. 4331, April 29, 1907.

Principle of hereditary service.

56. Government understand that B, the predecessor of the present holders, was a member of the matadar family, and that the present holders are also members and, therefore, watandars within the meaning of s. 5 of the Watan Act by virtue of s. 3 (preamble) of the Matadar's Act. If so, B had no power to lease the land to the Manekchok mill beyond the terms of his natural life, nor could the present holders ratify that lease, beyond their own natural lives, to any one not a watandar of the same watan without the sanction of Government. The owners of Manekchok mill have, therefore, under the lease no permanent right to the land, as they are presumably not watandars of the same watan, and the lease has not received the sanction of Government. It is, therefore, the duty of the Collector to declare the alienation to the Manekchok mill null

Action taken under ss. 11 and 11 A.

and void under s. 11 of the Watan Act, and either to levy full rent or summarily to resume possession of the land under ss. 11 and 11 A, unless the lease is formally ratified by the present holders and sanctioned by Government. In the opinion of the Governor in-Council the proper course, to which as Government are advised there is no legal objection, is to leave possession with the Manekchok mill and to regard the rent as the profits of the Watan and levy thereout a rateable contribution for the remuneration of the officiator. The technical procedure, however, to attain this object would be for the Collector to declare the lease to the Manekchok mill to be null and void under s. 11 and to levy full rent instead of resuming possession from the mill under s. 11 A, and then to decide how much of the rent should be assigned as remuneration to the officiator under s. 23. The result will be that the Manekchok mill will cease to hold under the void lease and will thenceforward hold under the order of the Collector passed under s. 11 A. No. 4791, May 10, 1907.

Alienation declared void under s 11.

57. Commissioner: "The holder of District Hereditary Officer's watan lands subjected the Gordon settlement passed a mortgage deed in 1877 in favour of a non-watandar. The lands had been already previously mortgaged to the non-watandar for a period from 1866 to 1883. The mortgage deed of 1877 created a new alienation under which the mortgagee was empowered to enjoy the lands from 1883. The alienor is dead. The main contention of the heir of the alienee is that the lands have been in the continuous possession of his family from a period prior to 1843. But the mortgage deed of 1877 created a new alienation altogether and it is compulsory to declare the alienation null and void under s. 11. As regards the other contentions of the alienee, though these watan lands have been subjected to Gordon settlement and the service has been commuted, they are none the less inalienable under s. 5 (2) and any consideration of the provisions of the D. A. R. Act is irrelevant in a case coming under the Watan Act." Sanctioned. No. 1778, February 19, 1908.

Lease for 99 years declared void under s. 11 during lessor's life-time.

58. Government memorandum:—A portion of certain kulkarni watan land was leased to Messrs. A. Brown and company for 99 years for the erection of their saw mill-an alienation made for a period beyond the term of the lessor's natural life

without the sanction of Government in contravention of the provision of s. 5 (1) (*a*) and, therefore, null and void and liable to be dealt with under the provisions of ss. 11 and 11A or under the rules published in Government Notification No. 2702, dated 23rd April 1902, as amended by Notification No. 4155, dated 1st June 1904. Such land, though technically *alienated*, is virtually now on the same footing as unalienated land and should apparently be made to pay to the state, in virtue of the increased profits obtained by its holder through its diversion from an agricultural to a non-agricultural purpose, such fine or increased assessment as might have been imposed, under ss. 48 and 65 of the Land Revenue Code and the rules thereunder, in consequence of the land if unalienated being appropriated to a non-agircultural purpose. The demand for further assessment should be made on the watandar lessor not on the lessees as the former benefits by getting a rental which he would not have obtained but for the diversion of the land to a non-agricultural purpose. The Collector is requested to be so good as to report the full details of the alienation in question and to state whether he sees any objection to taking action on the lines suggested above in the present case as well as in any other case of similarly unauthorized alienation of watan land. Commissioner :—"The alienor in this case is alive, and it appears probable that the alienation does not become illegal until the death of the alienor. It is not usually considered advisable to interfere with such alienations until the death of the alienor and then only on application by the alienor's heirs. As regards action under ss. 11 and 11 A, these sections can be applied only if and when the alienation is illegal but even when applied there is nothing to show that the application of these sections (which appear to have been framed in order to protect the watandars rather than in order to protect Government) can alter the tenure of the land. Ss. 48 and 65, Land Revenue Code, therefore, would apparently not apply, even were action taken under ss. 11 and 11 A, Watan Act. The judi payable on the land in question is equal to the assessment." The alienation should be declared null and void by the Collector under s. 11. Possession, however, should be left with the lessee, from whom the Collector should levy as full rent the sum agreed upon, assigning to the officiator, whose emoluments are understood to be insufficient, such sum as he may consider appropriate and leaving the remainder to the watandar lessor. The

lessee will thenceforward cease to hold under the void lease and will hold under the order passed by the Collector under s. 11 A No. 9086, September 20, 1909.

Collector can restore possession.

59. L. R. "The terms of s. 12 (*a*) are sufficiently wide to authorise a Collector to evict a person whom on appeal, he considers his Assistant has wrongly placed in possession of land under s. 9, and to make over the land to the person to whom he decides it should be given." Copy forwarded. No. 2507, march 28, 1883.

Remuneration attachable on coming into the hands of the officiator.

60. The official remuneration of the officiating hereditary officer is not liable to civil process so long as it is in the hands of the Collector or other disbursing officer; but as soon as it is in the hands of the hereditary officer himself, it is deprived of special protection. "The settlement of watans in Guzerat has not deprived the allowances, paid to watandar office-holders, of the character they formerly had. The settlement, indeed, rests on Act XI, 1843, s 13, expressly devised for the preservation of watans in such a state as to enable them to afford a remuneration for the services they were meant to provide for. Rules made to secure really efficient service, and for the supersession of those watandars who should not be able to render it, are not to be regarded as taking the watandars and their estates out of the Act, but rather as providing a means by which the Act is to be made to operate upon them with additional efficacy. But once in the hands of the officiator, the allowance is deprived of any special protection. It blends with his other moneys and becomes undistinguishable. In such a case what the creditor seeks to attach is not a portion of the allowance as allowance but a sum of money in the hands of the officiator whose personal obligation to pay the money is not extinguished by his being a watandar, though the watan cannot be attached." *Ganpatlal v. Sampatram*. 10 Bom. H. C. R., 400.

Exemption from process applies only to assigned property.

61. The power of the Collector to procure the removal of the process of Civil Court, or to get the Court to set aside a sale under s. 10, extends to any watan, or any part thereof, or any of the profits thereof, assigned or not assigned as remuneration; but the exemption (independently of the intervention of the Collectors) from liability to the process of the Civil Court extends

only to such watan property, or profits thereof, as have been assigned as remuneration. *Nilkanth v. Baslinga.* 9 Bom., 104.

Scope of s. 13.

62. Plaintiff obtained a money decree against H and in execution sought to attach and sell a decree obtained by H against M which entitled H to receive annually a certain portion of the *rozina* allowance paid by Government to M as *Kazi*. H contended that the *rozina* allowance was paid to M and his family for service as *Kazi*, and that, therefore, it was not liable to the process of the Civil Court under s. 13. *Held*, that as the *Kazi* office was not a hereditary office plaintiff's right to attach the decree obtained by H against M was not barred by s. 13; and also, as H was not liable to serve as *Kazi* it was not open to him to urge that the allowance in question was appropriated as service remuneration and was not, therefore, transferable. "M acts as *Kazi*, and it may be open to him, but not to the defendant on whom admittedly no obligation of service has been imposed to urge that the allowance is appropriated as service remuneration and is non-transferable." *Dharamdas v. Hafaji.* 19 Bom., 250.

Limitation in appeals and applications by Government.

63. "The right of Government to recover court fees (in a pauper suit) is subject to the same period of limitation as the right of a subject to enforce a decree or order would be. The Legislature, where it intends that Government should have a longer period than the subject, has been careful expressly to say so; as, for instance, Art. 150, Act IX, 1871. But the Legislature makes no difference between Government and its subjects in cases of appeals or applications." *Venubai v. The Collector of Nasik.* 7 Bom., 552.

Combination of hereditary offices.

14. *Clause 1.*—It shall be lawful for a Collector, for reasons to be stated in writing, to combine two or more watans held for the performance of similar services in the same village or parts of the same village.

Clause 2.—Any such combination made before the date of this Act coming into force shall have the same force as if made under this Act. (*Repealed by Act XVI of 1895*).

Government Rules.

It is not thought desirable that two or more hereditary offices should be combined except for very substantial reasons.

The Ahmedabad petitioners characterised this section as a most objectionable and injurious one. Hereditary Officers, they contended, could not be treated as if they were merely stipendiary. If the section were agreed to, it would, in their opinion, extinguish many hereditary officers. Watan offices were held from time immemorial, and the holders had their rights and position formed by the usages of the country as well as by enactments. Under the British Government they have received no privileges as watandars which they did not possess before, and there was no law to authorise the adoption of a measure which might have the effect of extinguishing watans. In their opinion, the Government, if they desired village services to be efficiently performed, should increase the emoluments of watandars instead of depriving them of their hereditary offices. If Government could not do this then they ought to leave the watandars alone The Hon'ble Mr. Rogers explained that the chief object for which this section was drafted, was that an order had been issued some time before this legislation to provide for cases in which the watan lands of different villages were mixed together in consequence of the villages themselves being amalgamated, and that although the watans were combined, the rights of those holding the different watans were preserved by giving them rights in the new village in proportion to those enjoyed before the combination of the watan properties. The Hon'ble Mr. Gibbs remarked that in joining certain villages and watans a great administrative improvement would be secured. If by amalgamating certain villages a suitable remuneration for an efficient officiator could be secured, he thought it would be right to make that amalgamation. All the families concerned in the watans would have their chance of service by rotation (Proceedings of the Legislative Council, 24th August, 1874).

In the Bill this section stood as follows: "It shall be lawful for a Collector, for reasons to be stated in writing, to combine two or more hereditary offices whether in the same or different villages. From the date of the passing of the order the watans appertaining to such combined hereditary offices shall be deemed to have become combined in one estate" The section, as it now stands, does not contain the second provision. It would, therefore, seem on the

authority of s. 4, *Rul.* 12, that the watandars of such combined watans would not be watandars of one and the same watan within the meaning of the definition of that expression, as the watans before their combination appertained to separate though similar offices.

PART III.

COMMUTATION OF WATANS.

Commutation of service.

15. *Clause 1.*—The Collector, may, with the consent of the holder of a watan, given in writing, relieve him and his heirs and successors in perpetuity of their liability to perform service upon such conditions, whether consistent with the provisions of this Act or not, as may be agreed upon by the Collector and such holder.

Settlements made before passing of this Act to have same force as those made under this Act.

Clause 2.—Any settlement made for this purpose before the date of this Act coming into force by any Collector or other officer acting on behalf of Government with the holder of any watan shall have the same force as if made under this Act. (*Repealed by Act XVI of 1895*).

Settlement on whom to be binding.

Clause 3.—Every settlement made or confirmed under this section shall be binding upon both Government and the holder of the watan and his heirs and successors.

Who is a "holder."

Clause 4.—The word "holder," for the purposes of this section, includes any sole owner or the whole number of joint owners or any person dealt with as representative of the persons beneficially interested or entered as such in the Government records at the time of the settlement.

Government Rules.

This section is intended in the conservative spirit which pervades the Act to give the completest confirmation to settlements in commutation of service already agreed upon by Government and the watandars.

The section has been enacted in order to enable Government to dispense with the services of a watan by effecting a commutation settlement, whenever they have no further need of those services, and in order to validate settlements made before the date of the Act. The section empowers the *Collector* with the *written* consent of the holder or holders of a watan for the time being, to dispense with the watan services in *perpetuity* on such terms as may be mutually agreed upon whether those terms be consistent with the provisions of this Act or not. The settlement thus effected is binding both on the Government and the holder and his successors. Whether the term *Collector* used in this section would include an Assistant or Deputy Collector under the provisions of the Land Revenue Code, 1879, s. 10, is a question not yet definitely decided. On the wording of that section, however, the answer would probably be in the affirmative. But the importance and finality of the powers conferred on the Collector by this section would seem to suggest the desirability of reconsidering the propriety of the inclusion. The expression "any person.....settlement" in cl. 4 is likely to give rise to a difference of opinion as to "dealt with" by whom or at what time; possibly the meaning is "dealt with" by Government at the time of the settlement. However, the point being of very rare occurrence need not be considered further.

All questions relating to watans falling under this section would have to be decided on the terms of the settlement in each case. That is to say, if there are any special terms in a Sanad, they would be given effect to, whether they be consistent with the provisions of this Act or not, but anything beyond, or not covered by, those terms would be regulated by the provisions of this Act. For instance, if a sanad allows in express terms a free power of alienation, that power, though it is in contravention of s. 5, would be respected, but, if no such power be granted by the sanad, s. 5 would be the law governing the case.

GORDON SETTLEMENT WATANS.

The cases most frequently to arise under this section are those under the Gordon Settlements, especially in connection with questions of alienation, succession and adoption. The history of these settlements is given in the Introduction and the law of alienation is considered under Part II. The watans so settled are those of District Hereditary Officers; and the standard form of sanads issued to these officers is given in Appendix, Sanads. A reference to that form would show that the sanad does not accord any power of alienation in excess of that under the provisions of Part II. The words used in the Sanad are: "The said land shall be continued *hereditarily* by Government on the following conditions, that is to say, that the said holders and their heirs shall continue faithful subjects, etc."; while in the sanad relating to watans continuable as purely private property (*vide* Appendix) the words are: "The said land shall be continued forever by the Government as the *private* property of the persons *who shall, from time to time, be its lawful holders*, etc." The terms of the sanads relating to Gordon Settlement watans being thus in strict harmony with the provisions of Part II, the holders of these watans are no better or worse off than any other watandar as far as the power of alienation is concerned (*vide* Part II, and *Rul.* 11).

Alienation.

It would be useful to point out what strikes as an inconsistency between the English and Marathi forms in regard to the first clause of the sanad. In the English form that clause runs as follows: "The said lands.....shall be continued .....as long as any male heir to the watan, lineal, collateral or adopted, within the limits of the watandar-family, shall be in existence;" while in the Marathi form it is: "The said lands.....shall be continued.....so long as any male heir to the watan, lineal, collateral or *adopted, within the limits of the watandar family*, shall be in existence." The difference between the two lies in the fact that whereas in the English form the expression "within the limits of the watandar family" quali-

Inconsistency in English and Marathi forms of sanad pointed out.

fies "heir to the watan," that in the other qualifies the word "adopted." This difference though appearing unimportant at first sight is calculated to give rise to very knotty and important questions of law. So far as the present Rulings (Nos. 30, 31) go, the law seems well settled that a watan of this class would continue in the family of the grantee as long only as there is in the family a male member *claiming descent through a male.* These rulings are the logical conclusion of the first clause of the sanad in the English form, as that form specifies the duration of the grant by the words "so long as a male heir to the watan within the watandar-family shall be in existence." But the words used in the Marathi form bear a different construction altogether: they mean, to give them freely, that so long as a male heir to the watan—whether that heir be a lineal or collateral one or one adopted within the watandar-family—is in existence. They therefore do not exclude males *descended through females,* while the English form does. This difference becomes the more complicated by the fact that the sanads give, without a single exception, the terms of the grant in both the languages; and thus gives rise to the question as to the terms in which of the two languages should be considered as the real terms agreed upon between the parties to the sanads. It may be noted that the punctuation in the second clause of the sanad is different from that in the first. For the purposes of this book it is not necessary to pursue the subject further. It may, however, be observed that a strict construction of the first clause in the Marathi form would preclude the succession of a person adopted outside the watandar-family and thus render the third clause meaningless.

Succession.

It is now settled law (*vide* the English form of the sanad, and *Ruls.* 14, 22 to 31, 37, &c.,) that the existence of a *male* heir within the watandar-family is a condition precedent to the continuance of the watan in that family. As long as a male heir is in existence Government would not concern itself as to which member, male or female, of the family is in actual enjoyment of the watan. Till the passing of G. R. No. 2197 of 1899, the prac-

tice used to be to enter in the Government records the name of the preferential male heir for the time being as the nominal holder of the watan without any objection on the part of Government as to the rights of any actual holder thereof. As long as any male heir was in existence the ordinary watan law of succession governed succession (*vide Rul.* 50); and any female, such as a widow, if she had a preferential right of inheritance over the registered and other male members of the family, could enforce that right in a Civil Court, and hold the beneficial possession of the watan notwithstanding that she was not according to Government records the registered holder. But on the death of the last surviving male heir within the family the watan reverted to Government, and the right of enjoyment and succession had under the ordinary watan law came to an end.

In their Resolution No. 2197 above referred to Government disallowed the entry of the name of the nearest male heir of a deceased District Hereditary Officer to an allowance standing in his name and permitted it to be entered in the name of his widow. Further in G. R. No. 7566 of 1900 (*vide Rul.* 35) the widow of the last male owner was declared to be entitled to have her name entered in the register (presuming, of course, the existence of a male heir so as to fulfil the conditions of the sanad, *vide Rul.* 37), and an independent record was directed to be kept of the next male reversionary heirs for the purpose of avoiding the risk of the right of resumption at any time being overlooked. G. R. No. 7917 of 1891 (*Rul.* 28) (directing the name of the next reversionary male heir to be entered in the register and the name of the widow to be registered as wahiwatdar) was cancelled.

In connection with this useful change in the mode of registration the following remarks would be found helpful. S. 2, Act V, 1886 enacts that "every female member of watan-family other than the widow of the last male owner, and every person claiming through a female, shall be postponed, in the order of succession,.....to every male member of the family qualified to inherit....." They, therefore, can in no case succeed to these watans, as on the death of the last qualified male

heir in the family (after which event only the section gives them the right of succession) the watan would, instead of continuing in the family, lapse to Government under the first condition of the sanad. But as the section has no retrospective effect, there may be cases of females other than widows of last male holders receiving cash allowances, etc., that occurred before the section came into force. (*Vide Rul.* 32.) There would also sometimes occur cases in which sons adopted contrary to the terms of the sanad and hence not recognised by the Government would have beneficial enjoyment of the watan so long as there is any other male heir, though presumably it would not be entered in the name of the adopted son but in the name of some one of the other male heirs. In such cases, or in cases of succession of females (other than the widows of the last holders) above referred to, or of widows of last holders disposed of before the passing of G. R. No. 2197 of 1899, the actual recipients and the registered holders may be different persons, but in other cases there is no likelihood of there being any difference now. It should be noted that even in the case of the widow of the last holder, registered under the above G. R., the rule of succession would be that she would receive the allowance, etc., so long only as there is any male heir within the terms of the sanad just as the unregistered recipient before the G. R. would or might have received only so long as the registered male holder was alive.

Meaning of watandar family as used in sanad.

The exact meaning of the term "watandar family" used in the sanad is a matter of some difficulty. *Ruling* 31 has construed it in the strict sense of the definition in s. 4. But with all due deference it is submitted that that seems to be too narrow an interpretation. It is already shown (*vide* Notes on s. 4) that the definition of "family" is not fully applicable in the case of these watans. In the same way a strict application of the definition of "watandar" given in s. 4 to that term in the sanad would in a measure savour of an anachronism. The Gordon Settlements were effected and their conditions and terms settled before 1865; the Act was passed in 1874.

The terms "family" and "watandar" are defined in the Act in a much more limited sense than their ordinary legal import. It would therefore be contrary to legal principles to restrict and cut down the ordinary legal meaning of the terms as used in the sanads issued at a time when the Act was not even thought of, by the limited definitions in the Act. The correct interpretation would be to construe them in the sense attached to them by the law on the subject then in force, that is, by the Hindu and Mohammedan law, the watan law of the time (Reg. XVI, 1827, and Act XI, 1843) being silent on the point. So construed, the term "watandar family" would include all the persons known to Hindu law as *gotrajas*, that is, all he members (excluding daughters and their descendants, they not being members of the same family, *Rul.* 27) of the family to which the watan belongs between whom consanguinity, lineal or collateral, subsists whether in an ascending or descending degree and whether they have an existing *present* interest in the watan or not. The same expression used in connection with a settlement effected after 1874 may fairly be construed according to the definitions in the Act.

Adoption.

Upon the acquisition of the S. M. Country the Government notified that, according to the established custom of the Native Government the permission of the Sirkar being requisite to make an adoption complete, they would adhere to that custom and would not recognise an adopted son as having a right to any property held from the state unless their sanction had been obtained previous to the adoption and the regular nazarana paid for it (*Rul.* 6). This rule was in force until the Gordon Settlement was effected. By that settlement the necessity of sanction of Government and of payment of nazarana in the case of an adoption of a person who is a member of the watandar family has been dispensed with. As to the adoption of a stranger the third clause in the sanad provides that when all the sharers of the watan agree to request it, then the general privilege of adopting at any time any person will be granted by Government to the watan, on the payment from that time forward in perpetuity of an annual nazarana of one anna in each rupee

of the total emoluments of the watan. If no such general privilege has been previously obtained, the adoption of a stranger will not ordinarily be recognised by Government (*Ruls.*27,29,31, 38), though, as a matter of grace, they may sometimes recognise such an adoption (*Ruls.* 44,48). The effect of non-recognition would be that such an adopted person would not be a 'male heir to the watan within the limits of the watandar family' within the meaning of the first clause. The adoption, if valid in other respects, would hold good and would give right of succession to the adopted son to the other family property and even to the watan property provided any male heir within the meaning of the first clause is in existence. His right of succession and enjoyment of watan property would cease with the death of that heir, and the property would revert to Government. (*Vide Rul.* 51.) He would also be a watandar of the same watan for the purposes of Part II so long as any male heir within the meaning of the first clause is in existence. As soon as that heir is dead, the whole watan would lapse to Government. It should be noted that, if only the definition of watandar in s. 4 is taken into consideration, such an adopted son would have to be recognised as a watandar, for the conditions for a valid adoption specified therein are only those given under ss. 33 to 35. But that definition appears to be defective in this respect and must be supplemented by the provisions of the sanads granted to the watandars under the Gordon and other settlements. (*Vide* Notes on s. 4.)

The above observations would apply *mutatis mutandis* to watans settled under the Pedder's settlement, except in so far as the terms of that settlement are different from those of the Gordon Settlement.

RULINGS.

No nazarana to be levied on succession to estate or to office.

1. The estates on which it is proposed to levy nazarana on succession are rent-free estates of two classes, those which are now hereditary and those which, being now held on life tenures, it is proposed to make hereditary on the payment of the nazarana. With respect to estates of the first class—hereditary rent-free lands, —it appears to us that we have no more right to subject them to

this form of revenue than to any other partial and exclusive impost. Indeed, the proposal, first, to establish the nazarana, and then, in consideration of its magnitude, to commute it for a fixed annual payment, is only laying the leases of a land revenue under a new denomination. The exceptions to what we have here laid down are two, first, where there is clear evidence that payments of this kind have been taken by preceding Governments from which we should derive the right to receive similar payments either by single sums or by fixed annual payments; second, where the hereditary tenure is matter of dispute between the actual holders and the Government, and a payment of the kind may be equitably taken as compromise. With respect to estates of the second class, life tenures, which it is proposed to make hereditary on payment of nazarana, we cannot concur in any of the arguments by which the expediency of alienating for ever lands of this description is sought to be maintained; these, being certain to lapse to Government, are portions of public property which we see no good financial or political reason for giving away. Payments on accession to offices are highly objectionable. The public service rendered and its rewards are, or ought to be, fairly equivalent. To pay, however little, for the right to render the service, implies that the service is paid too highly, and still more it gives at least an appearance of a claim to hold office by a different tenure from the proper discharge of its duties. The Court of Director's Despatch, No. 4, Sept. 5, 1832.

2. Our (above) instructions were intended to apply to all cases of accession and succession to offices without any exception whatever. You now request to be informed whether the exaction of nazarana on the adoption of an heir by an hereditary officer is to be prohibited. We consider that although accession to office by an adoption is not specifically mentioned in our despatch, the objections to any payment being required on succession to hereditary offices are equally applicable to succession by that mode. We accordingly desire that the practice of not requiring nazarana on succession, by any mode, to service watans, may be continued. Ditto, No. 5, Sept. 4, 1850.

Ditto

3. The first great principle with respect to all adoptions is, that which alone justifies Government in interfering at all with the subject, namely, that Government is not in any way bound to recognise any adopted son, who was not adopted with its pre-

Sanction of Government in case of adoption.

viously declared sanction. The rules to be observed in sanctioning and recognising adoptions affecting service watans are that: (1) all applications for the assent and sanction of Government should be granted, provided they are not prevented by the following rules namely, (2) that no adoption should be permitted or recognised, which tends to increase or perpetuate a sub-division of the emoluments of a service watan, which it may be for the interest of Government and the public to keep, as far as possible, undivided, (3) that no adoption by the sole proprietors of a service watan should be permitted, unless it be clearly for the benefit of Government and the public, that the service for which the watan has been held should be perpetuated at the charge of Government occasioned by the continuance of the watan. Of course, for all social and religious purposes, an adoption will remain valid, whether or not the sanction of Government be obtained. No. 1343 Feb. 14, 1851.

Nazarana in case of adoption.

4. The Hon'ble Court's orders enjoining the continuance of the practice of not requiring nazarana on succession, by any mode, to service watans, are final. The Governor-in-Council sees no objection, however, to the exaction of a nominal nazarana of one rupee, which amount, he is of opinion, should, in no case coming under the rules sanctioned by Government letter of 14th February last (*Supra*, 3), be exceeded. This nominal exaction will serve to keep people in mind of the necessity of obtaining the previous sanction of Government or of the Collector in cases of adoption to official watans, and of facilitating trace, in after years, by the entries in the Government accounts of the sanction having been given. Cases of large Desai watans in the S. M. Country do not come within the Hon'ble Court's orders. They are cases in which adoption is allowed generally in the Political Department as a matter of policy, the question in such cases being, not whether it is to the benefit of Government and the public, that the service for which the watan has been held should be perpetuated, at the charge to Government occasioned by the continuance of the watan, but whether it is politic or just to sacrifice a certain amount of revenue in order to perpetuate a family which, failing descent by adoption, would become extinct. In cases where the latter question has to be considered, the exaction of nazarana has been recognised by the Hon'ble Court. No. 5666, May 20, 1851.

Government sanction.

5. The Collector may sanction adoptions in cases in which the value of the entire watan does not exceed Rs. 100. No. 8151, August 12, 1851.

Ditto

6. Whereas according to the established custom of the late Government, continued in the S. M. Country by the present Government, the permission of the Sirkar was requisite to make any adoption complete, Government hereby declares its resolution to suffer no relaxation of this ancient established rule, and publishes the following rules: (1) No adopted son will be recognised as having, by virtue of his adoption, a right to the possession of any property of any kind held from the State, unless the sanction of Government has been obtained previous to his adoption, and the regular nazar paid for it in cases where such is receivable by Government; (2) when Government sanctions an adoption, it will do so on the assumption that such adoption is in comformity with the religious law and caste usages of the applicant, the customs of his family, and the rights of all other parties. The sanction is merely a declaration that Government has no objection of its own to the adoption of a certain person as a son by the applicant; if the adoption is afterwards annulled, Government will not give back the nazar which it has received not as a consideration for upholding one party against another, but merely as a pledge that it waives its own power of objecting to the proposed transaction. Circular order Book of 1860, p. 31.

Adoption.

7. District Officers, who have accepted the settlement, may adopt from within the limits of the watandar family without the permission of Government and payment of nazarana. If all the sharers agree, the adoption of any person legally qualified even though not belonging to the family, may be allowed by Government on payment of an annual nazarana of one anna in the rupee. No. 3539, Oct. 13, 1863.

Settlement to relate to watan property.

8. Unless the petitioner can be admitted to have a claim as hereditary district officer, the settlement made applicable to them cannot be applied to his case. No. 1897, May 16, 1864.

Settlement.

9. Government are not at present disposed to enforce a non-service settlement against the wishes of watandars; but in cases where they are not willing to accept it, service up to the full value of their watan should be exacted. No. 3045, June 16, 1874.

10. Government are not disposed to relax the terms of the existing settlement according to which the sharers in a watan must unanimously agree to the adoption of a person not a member of the family. No. 6909, December 31, 1874.

Adoption.

11. "Cl. 2 enacts that any settlement made with the holder of any watan before the Act came into force shall have the same force as if made under the Act. Cl. 1 enacts that such settlement may be made 'upon such conditions, whether consistent with the provisions of this Act or not, as may be agreed upon.' The effect of this appears to be to legalise any terms that may be, or may hereafter have been, mutually agreed upon between Government and the holder of a watan, even though such terms may not be consistent with the provisions of the Act. But watan property does not cease to be watan property, because the duties, for the performance of which it was originally acquired, have been commuted for a money payment, and unless there be something in the terms of the settlement inconsistent therewith, the law ordinarily applicable to such property still applies to it, notwithstanding that Government have dispensed with the necessity for service. Under this view s. 5 is applicable to the watans of district hereditary officers, because as far as I am aware there is nothing in the settlements entered into with them to the contrary. The standard form of the sanad is as follows (*vide* Appendix, sanads). The three conditions in the sanad so far from being inconsistent with the provisions of the Act, are in strict accordance with s. 5. It cannot be said that the property of any watan to which a sanad containing the above conditions has been given, has been thereby converted into *private property* in the usual wide sense of that term." L. R.'s No. 176, May 8, 1875.

Alienation.

12. L. R. "The one rupee Nazarana required by G. R. No. 5666 of 1851 cannot be demanded from representative watandars whose unqualified right to adopt and to have their adopted heirs' names entered in the register has been distinctly recognised by the Act. The question in regard to other watandars is one which would be best disposed of on a consideration of the whole body of Rules to be observed in future in respect of the resumption and continuance of

Nazarana and entry in register.

lands held for service." Commissioner: "The District Hereditary watandars have under the Gordon Settlement been permitted to adopt from without the watandar's family on payment of additional quit-rent as nazarana equal to one anna in a rupee, and the holdings thenceforward become private properties. The question is whether nazarana is to be taken from Mahal watandars and whether after the watans have been converted into private property on payment of the nazaranas, they are to be struck off the service watan registers." L. R.: "The reply to the first query is that the conditions already agreed upon with Mahal watandars for commutation of service are legalised by s. 15, whether consistent with the provisions of the Act or not, and are binding on both parties; as to the second query, a distinct register of commuted service watans should be kept." The nazarana in the case of District Hereditary watans on account of adoptions from without the family is, it is stated, one of the conditions of Gordon Settlement. It is undesirable to treat Mahal Zamindary property converted into private property exactly like ordinary inams, and it should be registered in the register of non-service watans. In the revenue accounts it may be treated as inam, being described, however, as settled Mahal Zamindary. In other cases than the above, Re. 1 nazarana should be levied as hitherto, as it will facilitate the recording of changes of title. But in the case of representative watandars to whom and to whose widows the Act gives unqualified power to adopt, no nazarana can be levied. No. 6282, November 6, 1875.

Nazarana.

13. It would not be expedient to forego the nazarana (of one anna in a rupee) and the method least likely to cause difficulty would be to adhere strictly to the terms of the sanad in each case. No. 3279, June 2, 1876.

Lapse

14. As regards the entry of cash allowances in a widow's name, the terms of the sanad in each case should be strictly adhered to. With regard to the continuing of watan emoluments to the widows of the deceased holders, if the sanads undertake to continue to male heirs only, a widow can have no claim, and if there are no male heirs lineal, collateral or adopted, the watan would seem to have lapsed. No. 2915, May 23, 1881.

15. L. R. "There is nothing in the form of sanad which limits the succession to collaterals in descent from the original grantee. The watan, according to the sanad, is to be continued so long as any male member to the watan, lineal, collateral or adopted, within the limits of the watandar family shall be in existence. Any person, therefore, is an heir between whom and the last holder collateral consanguinity subsists whether in an ascending or descending degree. The expression 'watan family' includes all persons who have an hereditary interest in the watan. The same form of sanad contains the agreement that no nazarana or other demand on the part of Government will be imposed on account of the succession of heirs, lineal, collateral or adopted, within the limits of the watandar family." Copy forwarded. No. 2764, April 27, 1882.

Succession and adoption.

16. The entry of the watan in the name of the mother (of the last holder) cancelled as being contrary to the terms of Gordon Settlement. Attachment and taking over of the watan lands, and discontinuance of payment of cash allowance, ordered, until any person established his right of succession in a Court or until the further orders of Government. No. 1309, Feb. 17, 1883.

Entry of name.

17. In cases in which it is found necessary to make out a sanad in the names of several sharers of district hereditary watans in repect of which commutation settlement has been made, a copy may be given gratis to each, but each of such copies should be signed and executed by the same officer and treated as an original document. In no other case can a copy of a sanad be granted, but an extract from the register of sanads may be given on payment of the fees prescribed in the rules under Section 213 of the Land Revenue Code and section 91 of the Registration Act. No. 4180, June 2, 1883.

Copy of sanad.

18. As the Gordon Settlement was made with the widow of the deceased Deshpande her name should be retained in the accounts. No. 1184, Feb. 7, 1884.

Entry.

19. L. R. "A cash allowance stood in the name of D wife of A. In 1882 the name of B was substituted for that of the widow, he being a collateral who, in the then state of the family, would succeed as nearest

Entry and adoption.

heir on death of the widow. Since then, however, D has made a lawful adoption from within the watan family. It is evident from the form of sanad that Government have recognized the right of succession in virtue of such adoptions and therefore that the widow's adoptive son has a preferential claim to the allowance over collaterals Had the adoption taken place previous to A's death, the allowance would have been entered in the adoptive son's name in lieu of his without the least hesitation. A boy adopted by a widow has precisely the same status as if he had been adopted during the widow's husband's life-time. Therefore the boy's name should now be entered in the records in lieu of B's." No. 10054, Dec. 22, 1884.

Adoption by non-representative service watandars

20. Commissioner: "The question is whether in the face of the provisions of the Act and the rules published thereunder, the old rule regarding the grant of permission to non-representative watandars to adopt, should be regarded as having the force of law. The policy of Government in the matter of adoptions by service watandars being decidedly more liberal than before, under the provisions of the Act, it would seem absurd to restrict in case of non-representative watandars a privilege which has been conceded to the representative watandars. If the restriction is unnecessary in the case of the latter, it is more so in the case of the former." The view is correct. No. 1001, Feb. 2, 1885.

Entry.

21. Government are not prepared to abandon the decision resolved upon in 1881 which was that, as the district watan lands and cash allowances in the Deccan and S. M Country were continuable by the sanads hereditarily to the holders and their heirs, as long as any male heir to the watan, lineal, collateral or adopted, shall be in existence, the watan property secured by the sanad should be entered in the Government records in the name of the male heir from time to time entitled to succeed to it. At the same time it is stated in the sanad that Government will not raise any objection or question in consequence of the watan property being held by any other person with the consent of the owners under the sanad, and this concession appears to make sufficient provision for any rights of other persons than the male heirs. No. 1071, February 4, 1885.

22. If the widow under Gordon's settlement under the terms of the sanad has no right to succeed to the property—watan or cash payment—she can in no circumstances claim the latter or sue the Collector if he pays it to the lineal male heir who does claim it No. 10407, December 24, 1885.

Succession

23. The Collector points out that according to the ordinary rule of Hindu law a widow would inherit in a divided family, (and that G. R. No. 10407 of 1885, *supra* 22, would in such a case inflict unnecessary and apparently uncontemplated hardship on poor and helpless Hindu widows). But this is beside the question at issue which is whether the widow is excluded from inheritance by the terms of a particular grant. Government adhere to the view that male heirs only can be recognised under the sanads The construction of the sanads, however, is a proper matter for adjudication by the Civil Courts. If a widow desires to sue the recognised male heir in order to establish her title to any watan property to which she may consider herself entitled, the Collector should grant her the certificate under the Pensions Act to enable her to sue No. 1653, March 2, 1886.

Ditto

24. Commissioner. "Whether the word sharers (in the third condition of the sanads) include all the individuals holding or possessing an interest in the watan property or only such persons as are recognised as sharers in our accounts. For instance, A's name only is exclusively entered in the accounts, his *bhauband* B is in actual possession of a share of the watan, but his name does not appear in the accounts A wishes to adopt a son outside his family and asks for sanction of Government. Is it necessary the consent of B should be secured before sanction could be accorded?" L. R. "The words 'all the sharers of the watan' should be interpreted literally. There is nothing in the sanads to indicate that only the sharers whose names are entered in the Collector's records are meant." Copy forwarded. No. 5854, August 16, 1886.

Meaning of the term sharers

25. Commissioner: "With reference to the ruling of Government that, pending any further judicial decision, the practice of entering the name of the male heir of the original grantee should continue, and there should be no active interference with

Cash allowances, &c., may be paid to females as long as male heir is in existence.

any holder of the property as long as a male heir is in existence, I understand Government is not to interfere with the *possession* or *enjoyment* of the *watan property* by whomsoever it may be held so long as a male member is in existence. Watan property includes allowances. It therefore follows that their payment to persons in enjoyment of them for a long time is not to be interfered with. But under No. 15 of the Rules under the Pensions Act these allowances are to be paid only to those persons whose names have been authorisedly entered in the records as the payees. The names of the actual holders (*e g.*, widows) not being entered in Government accounts, there will be an account objection to payments being made to them. I propose that the name of the actual holder be entered after that of the male heir as recipient of the allowances, *e.g.*, A, recipient B. It will, of course, be stated in the column of remarks that the allowance will be continued only so long as the male heir of the original grantee is in existence and at the time of every payment the production of the life certificate of the person in whose name the allowance stands (*i. e.*, the male holder) will be insisted upon." The proposal is sanctioned. No. 176, January 8, 1887.

Ditto.

26. The Commissioner's opinion—that if the widows were in receipt of the cash allowances and their possession thereof was actively interfered with by the Collector, the allowances should be paid to them instead of to the distant male heirs—is approved. G. R. No. 10407 of 1885 and 1653 of 1886 have been (already) impliedly cancelled. No. 178, January 8, 1887.

Adoption.

27. L. R. "It will be seen from the terms of the settlement accepted by the petitioner M that to validate an adoption outside the family of the watandars a general power to adopt must have been previously obtained from Government at the request of the watan family and it was not contemplated that an *ex post facto* sanction in particular cases should be applied for or granted. Therefore if the person whom M has adopted is not within the limits of the watandar family, M's petition for *post facto* sanction must be rejected as there was no general power given to the family to adopt a stranger. The question, therefore, in this case is not whether the adoption is valid, but whether it could affect the watan property, (in other

words) whether a daughter's son can be regarded as within the limits of the watandar family. In G. R. No. 2764 of 1882 watandar family is stated to include all that have a hereditary interest in the watan. This would seem a fair construction if it be taken to include only those who are in actual enjoyment or have a vested interest. The question is whether the word *family* is to be restricted, in its application, to the agnate group (or *gotraja-sapindas*) or extends to all cognates (including *bhinna-gotraja-sapindas*). Neither the daughter nor her son was really recognised as member of the family to which the daughter by birth belonged. For a woman is by marriage born into the husband's family and thus ceases to be a *gotraja-sapinda* or agnate though she remains a *sapinda* of her own blood relations. The daughter's son is consequently always spoken of as a *bhinna-gotraja-sapinda*, a cognate. He is nearer in degree but exactly similar in class to a sister's son who only comes in as a *bandhu* in the line of succession. Thus a daughter's son is not a member of the family of his maternal grandfather but is only given an exceptional rank in the order of succession. His right of inheritance is a contingent one; and he takes as full owner and becomes a new stock of descent. He cannot, therefore, be called a watandar of the same watan. His adoption, therefore, cannot operate under the terms of the sanad so as to affect the watan." Copy forwarded. No. 6680, October 6, 1888.

Meaning of the term *family*.

Daughter's son is not a member of the family.

28. Commissioner: "A District Hereditary Officer's watan subject to Gordon settlement is to be continued 'so long as any male heir to the watan lineal, collateral or adopted, within the limits of the watandar family, shall be in existence.' In order to protect the reversionary right of Government, it would seem to be quite necessary to enter the name of the male heir. But there seems to be no objection to enter the name of the widow of the last male owner as wahiwatdar when she is entitled to inherit the watan under s. 2, Act V, 1886." Government concur. No. 7917, November 23, 1891. Cancelled by No. 7566, December 3, 1900 (*vide Rul.* 35).

Cash allowances.

29. *Ex post facto* sanction to an adoption already made cannot be granted, though no objection is raised by *bhaubands*. No. 5815, July 31, 1895.

Adoption.

30. Commissioner: "R, the last holder, died without issue in 1891; and his family has now become extinct. Before his death he executed a will in favour of B, son of the daughter of his divided brother G. In virtue of the will B has come into possession of the land of R. In conformity with the first condition of the sanad, this land is not liable to be continued to B seeing that he does not belong to the watan family, the family of R and that of G being distinct. The land should be resumed and B be allowed to hold it on condition of his paying the full assessment. As regards the land in possession of G's wife S, she is a widow without male descendants in the watan family. She adopted one N in 1888 and now requests sanction to it, being willing to pay the nazarana at one anna in the rupee of assessment on the land. With regard to the adoption, it should be observed that to validate an adoption outside the family of watandars a general power must have been previously obtained from Government at the request of the watan family. Such a power has not been obtained by the family of S. The adoption of N, therefore, cannot be ratified by a subsequent sanction. All the watan lands standing in the name of S should be resumed under the first condition of the sanad, as no male heir to the watan, lineal, collateral or adopted, within the limits of the watan family exists." Sanctioned. There is, however, no objection to the lands standing in the name of S also remaining in the possession of her heirs on payment of full assessment. No. 8279, October 24, 1895.

Lapse.

Adoption

31. Commissioner: "K acquired both Nadgaudaki and Desgat watans. He made over the Nadgaudaki watan to his uncle J, and retained the Desgat in his own family. R, widow of M, a descendant of K, adopted P, a descendant of J, in 1871, though there appear to be many descendants of K in existence. The question is whether P can be accepted as a collateral of M and a member of the Desgat watan family looking to the definition in s. 4. The Collector is of opinion that under G. R. No. 2764 of 1882 (*supra*, 15) P, who is a collateral, can be considered as a watandar of the Desgat family. Under the ruling in G. R. No. 6444 of 1883, (*vide* under s. 4) P might, no doubt, become the heir of K on failure of the direct descendants of the latter. But the question is, is he under the terms of Gordon settlement a watandar whom the widow can adopt,

Meaning of *watandar*.

the limits of the watan family being held to include only those who have an hereditary interest in the watan? According to the later G. R., direct descendants only can be considered to have such an interest The rulings contained in the two Resolutions appear to be conflicting." The opinion expressed by the Commissioner is correct. The orders in G. R. No. 6444 of 1883 supersede previous orders on the subject which are inconsistent with it. No. 1887, February 28, 1896.

Daughter's name entered as recipient of the cash allowance

32. L. R. "The view taken by the Collector that G is entitled as heir to her father to have her name entered in the revenue accounts as the recipient of the cash allowance or Rusum grant, seems correct. Hindu females can be allowed to have their names entered in Government account books as recipients of such cash allowances. G inherited her father's estate on his death in 1881 and the prohibition under s. 2 of Act V of 1886, can have no retrospective effect. The only question then is, "whether G can be considered as a holder of the cash allowance which her deceased father enjoyed during his life-time." The mere fact that payment which ought to have been made to her was wrongfully withheld, does not weigh against her right to be considered in law a holder of the allowance. Under s. 4 "watandar" includes a person holding watan property by inheritance The general legal signification of the word holder appears to be any person entitled in his own name to the possession of certain property or to receive or recover the money due therefrom Clause 4 of section 15 states that "holder" includes "any person dealt with as representative of the persons beneficially interested or entered as such in the Government records at the time of the settlement." G might be considered as a representative of her father who was an actual holder of the cash allowance in question G's title to the recovery of the allowance is based on her right of inheritance, and actual possession or enjoyment is not necessary to enable her to recover the allowance which she is entitled to as a Rusum grant 'to be paid to her by certain jaghirdars' out of the income of the Inam village as the senior representative of a Deshmukhi family." Government concur. No. 3550, May 11, 1897.

Effect of remission of nazarana.

33. Collector: "When K a watandar Deshmukh died in 1875, there was no male member of his family surviving. Government sanctioned, as a special act of grace on account of the valuable services render-

ed by K, the remission of the nazarana of an anna in the rupee for permission to adopt a son R from outside the family. R died leaving no son. R's widow prays for leave to adopt a son from beyond the limits of the watan family without payment of an additional nazarana. A clause in the notice issued by the Settlement Officer and accepted by the Deshmukh in 1863, authorizes, with the permission of Government, an adoption from outside the watan family on payment in perpetuity of a nazarana of an anna in the rupee, provided all the sharers in the watan agree to apply for it and to pay the nazarana. The watan, however, is without any sharer. No sanad has yet been issued to the Deshmukh." There can be no doubt that if an additional nazarana had been paid and accepted in 1876, a general right of adoption from outside the watan family would have been secured and the effect of the remission in 1876 was clearly to grant what would ordinarily be obtained by the payment of the nazarana. The request of the petitioner should be complied with. No. 4092, June 1, 1897.

Resumption for want of heirs.

34. L. R. "The watan property consisted of the lands themselves and not merely of the right to exemption from payment of revenue thereon. The effect of the Gordon settlement was not to convert the watan lands in respect of which service was no longer demanded into the private property of the watandars so as to detach them from the hereditary office, and the lands covered by such a settlement remained to all intents and purposes subject to the same incidents as service lands. The unauthorized adoption of Y, an outsider, could confer on him no title whatever to those lands, and his widow L and the son adopted by her could therefore derive no title from him. As B the widow of the last holder died in 1883 and no claimant entitled to represent the watan family has since appeared, and as any such claim would now be time-barred, there appears to be no objection to the resumption of the watan. L's possession could not enure for the benefit of any possible claimant in the line of descent from the last holder, but would have been adverse to any such claimant. No fresh period of limitation would therefore run from the date of her dispossession." The watan should be resumed and with it the land now in the wrongful enjoyment of L. It is to be observed that Government Resolution No. 6310 dated 25th August 1883 does not refer to non-service lands. It refers on the contrary to lands held for service useful to the community, and

alienated contrary to the conditions of their tenure. But the circumstances are entirely different from those of the present case, in which there has been no alienation and the watan with its land has become liable to resumption through failure of heirs. No. 5500, September 5, 1900.

Widow's name to be entered in register as holder of cash allowance

35. Commissioner: "In the event of the holder of a District Hereditary Officer's allowance subjected to Gordon's settlement dying without male issue leaving his widow as his only heir, the practice hitherto followed under G. R. No. 7917 of 23rd November 1891 has been to enter the allowance in the name of the nearest male heir of the deceased, the name of the widow being added as its actual recipient for life. In a recent case, however, disposed of in their Resolution No. 5197 of 25th March 1899 Government have disallowed the entry of the name of the nearest male heir of a deceased District Hereditary Officer to an allowance standing in his name and have permitted it to be entered in the name of his widow. I have therefore the honour to inquire whether G. R. No. 7917 of 23rd November 1891 should be treated as cancelled and no objection should, in future, be taken to the entry of a District Hereditary Officer's allowance in the name of the widow of the last male holder when she is his sole heir" L. R. "In the case of such a widow, she and she alone during her life-time (subject to the rights of any son that may be adopted) is entitled to have her name entered in the register. It is of course open to Government to direct any independent record to be kept of the next male reversionary heirs for the purpose of avoiding the risk of the right of resumption at any time being overlooked." G. R. No. 7917 of 23rd November 1891 should be considered as cancelled. The Commissioners of Divisions should be requested to issue necessary orders for the purpose of keeping an independent record of the next male reversionary heirs. No. 7566, December 3, 1900.

Restoration of lapsed watan

36. Commissioner: "The village was a non-service watan Inam village subjected to Gordon settlement in 1885-86. The last male holder died in 1871 without male issue. The name of his widow was wrongly entered to the watan, although the Collector believed that there was no male heir alive. On the widow's death in 1887, her daughter claimed the entry of the village in her name but the

village was declared as lapsed to Government. The claims of S, on the ground that he was a distant cousin, were rejected and he was refered to a Civil Court. S's son has obained a certificate declaring him to be heir of the last male holder and prays for the restoration to him of the village declared as lapsed." The watan should be restored. No. 4729, July 8, 1901.

Widow entitled to succeed only if there is male heir within the terms of the sanad

37. L R "The Commissioner's letter disposed of by G. R. No. 7566 of 3rd December 1900, is evidently by its terms confined to the question whether in the case of a last male holder dying without issue, *but not without collateral and reversionary male heirs in the watandar family*, the name of his widow should be entered in accordance with G. R. No. 2197 of 25th March 1899 or the name of the nearest male heir in accordance with No. 7917 of 23rd November 1891, and Government dealt with the question accordingly. It had no reference whatever to the case of a holder leaving no male heir to the watan, lineal, collateral or adopted, within the limits of the watandar family, and the widow was presumably styled 'the *sole* heir' of her deceased husband (the last male holder of the watan) because under Hindu Law 'she fully represents the estate and so long as she is alive no one has any *vested* interest in the succession.' In the present case there is no collateral and reversionary male heir in the family. The sanad guarantees the continuance of the allowance, &c., 'so long as any male heir to the watan, lineal, collateral or adopted, within the limits of the watandar family, shall be in existence.' The moment the last remaining male heir goes out of existence, this condition of the grant ceases to be fulfilled, and the watan *ipso facto* lapses. Section 2 of Act V of 1886 allows the widow of the last male holder to succeed to a watan, but this is of course subject to the terms of the settlement of the watan as to its continuance." Copy forwarded with reference to G. R. No. 7566 of 3rd December 1900. No. 8021, November 16, 1903.

Sanction to adoption not *ex post facto* but previously obtained on the agreement of all the sharers and on payment of additional nazarana.

38. The decision that the adopted son cannot succeed to the watan is correct and will not be interfered with. The sanction which is required under the sanad to validate an adoption outside the watan family is not sanction to a particular adoption but sanction to a general power to make such adoption on the agreement of all the sharers and on

payment of additional nazarana. There is in fact needed a subsidiary agreement on the point. The adoption which was made without that agreement was not valid and there is no reason for departing from the terms of the sanad in this matter. But if the adopted son cannot succeed to the watan property, he cannot with consistency or equity be held an heir so as to defeat the succession of the widow. The word "heir" cannot be interpreted in one sense for one purpose and in another sense for another purpose. According to the terms of the notice which was accepted and to previous legal opinion, the widow is an heir entitled to succeed and the watan should be continued to her. No. 8497, November 3, 1904.

Commutation of Raul watans

39. The recommendations made by the Commissioner that the Raul watans in Khandesh be dealt with as those of District Hereditary Officers and that the peons at present maintained by the Rauls be dispensed with, or replaced, where necessary, by regular policemen, are approved, and the Collector should be authorised under section 15, to offer to all the Rauls a service commutation settlement at the rate of 3 annas in the Rupee on the net amount of inam. Such Rauls as cannot be induced to accept the settlement should be informed that in their case Government will pass such orders as may seem fit under No. 4 of the Rules published in Government Notification No. 2702 dated 23rd April 1902. The Commissioner should be requested to report whether the Rauls have consented to accept the settlement, and submit for the approval of Government a draft form of sanad to be granted to them. No. 994, February 2, 1906.

Adoption by a distant bhauband widow, resumption

40. Collector: "V, Khatedar of Desgat watan lands, died without issue." He left no widow. L, a distant Bhauband widow, adopted an outsider after V's death and requests sanction to it, being willing to pay the nazarana at one anna in the rupee of the assessment on the land. To validate an adoption outside the family of watandars, the requisite general power has not been previously obtained at the request of the family of V from Government. The adoption, therefore, cannot be ratified by a subsequent sanction. I would recommend that all the

watan lands standing in the name of V should be resumed under the first condition of the sanad, as no male heir to the watan, lineal, collateral or adopted—within the limits of the watan family exists." L. R. "The adoption by L who is not the widow of the last male holder, but of a collateral relation, has not the effect of divesting the estate, which had already vested in Government on the death of the last male holder. It appears that a portion of the watan lands is in the possession of outsiders who set up a claim to possession. Their possession will not, however, be adverse to Government, and as it is presumably based on an illegal alienation, would afford further grounds for the resumption of that portion under No. 5 of the rules published in Government Notification No. 2702 dated 23rd April 1902. In this case Government have the power to resume all the lands by actual ousting of the present holders. The Government might perhaps allow the lands to be continued in the name of the adopted son, whose adoption is not invalid, in spite of its not being within the terms of the sanad (*Balaji v. Datto.* 27 Bom., 75), subject to the payment of full assessment from the date of V's death. If, however, the Collector finds that any of the lands are in the *bona fide* possession of a third person, then these might be excepted and offered to such person on similar terms." Government approve. No. 10256, October 18, 1907.

Widow's right to allowance.

41. Petition from the divided uncle of a deceased watandar holding Deshpande watan allowance, remarking that in accordance with the orders of Government in watans subjected to Gordon settlement a male heir entitled to inherit is to be given preference to the widow of the last male holder. Government declined to interfere. No. 11530, November 25, 1907.

Succession of heir claiming through a female.

42. L. R. "In my opinion, Government cannot raise any objection to the watan being continued to the heirs of the deceased cash-allowance holders, even though such heirs claim through females. The settlement is determined by the terms of the notice of 1864, which was accepted by the watandars, rather than by the terms of the sanad, which was issued some 16 years later. Even if clause 1 of sanad (form 14) were the determining factor in the case, this would not necessarily involve the escheat of the cash allowances in quest-

ion to Government, owing to there being no lineal or collateral male heirs to the *deceased co-sharers*. As regards the succession, it seems to me that (in the absence of any other male member of the watan family qualified to inherit under section 2 of Act V of 1886) K is under Nos. 18 and 19 of the Pensions Act Rules, clearly entitled to have his name entered to both the shares of the cash allowance, as the nearest heir of the husbands of D and S, the deceased cash allowance holders, in preference to the remoter bandhus." Copy forwarded. No. 11573, November 26, 1907.

Meaning of 'within the limits of the watandar family' considered.

43. The Deshpande watan, consisting of certain lands and cash allowances, was originally acquired by K. K had three grandsons, R, N and B, who became equal sharers in the watan. Afterwards the descendants of B refused to perform the required duties and were consequently excluded from participating in the emoluments. The descendants of the two remaining branches afterwards owned equal shares. A dispute about the ownership of the watan having arisen, the Raja of Satara issued a sanad dated 1724 A. D. assigning the watans hereditarily to G, X and S, descendants of R, N, and B respectively. Though S was one of the joint grantees, it appears that S's son or grandson did not actually possess any share in the watan, the other two branches remaining in the possession and enjoyment of the entire watan. After a lapse of time, the two branches parted with one-third of the watan in favour of M, a descendant of B but not through S. So among the descendants of B, M's line became fresh possessors of one-third of the watan. The widow of the last male holder of M's line adopted V, a descendant of B but not through M neither through S, against the orders of Government. The widow died leaving V as her heir. A dispute arising between V and Y, a descendant of R and G, the Civil Court gave the watan inam lands into V's possession, and the decree was confirmed by the High Court in 1890. In 1889 the Collector held that V was adopted from outside the watan family of M and, therefore, could not be recognised as a successor to the widow's watan. He, however, thought that the widow's watan reverted to Y, the eldest male descendant of G's line and entered his name to the inam lands in place of the widow. Y's name was subsequently entered as a successor to cash allowances also. It may be mentioned that only

one sanad (form No. 14) has been issued to Y for the entire watan. V's son applied to the Collector to enter his name on the strength of the Civil Court's decree but the Collector refused the request. L R. "The view suggested is that the widow's watan should now revert to Government for failure of heirs, and not to Y, an outsider. This assumes that the one-third of the watan originally acquired by M, to which the widow succeeded, is a seperate watan, and that descendants of the original acquirer K, who are not also descendants of M, are not watandars of the same watan, or 'within the limits of the watandar family', to use the expresssion contained in condition 1 of the form of sanad No. 14. This assumption is against the High Court Rulings in P. J., 1890, p. 263, 22 Bom., 601, and 2 Bom. L. R., 420 (*vide* s. 4, *Ruls.* 11, 12, 14). M having acquired his share of the watan before the introduction of the British Government into the locality of the watan, became a 'watandar' as defined in section 4, but his share of the watan did not thereby become a distinct watan, nor has it been treated as such by the British Government, who made settlement for the entire watan and granted only one sanad in respect of it. The clause in the sanad 'this is not to be considered to affect the legal rights of anybody else' is only meant to safeguard the rights of watandars cosharers *inter se* and does not modify the conditions on which Government have guaranteed the continuance of the entire watan to the rightful holders thereof. (*cf.* 4 Bom. L. R., 762, and 2 Bom. L. R., 23); (*vide Ruls.* 50, 51). Y is, therefore, not an outsider for the purpose of succession to the widow and her watan cannot revert to Government." Government accept the opinion. No. 2484, March 9, 1908.

Adoption recognised *post facto* as a matter of grace.

44. Commissioner: "Certain Deshmukhi and Deshpande watans originally stood in the name of Y's adoptive father and after his death Y' mother was recognised as heir. Y prays that the watans may be continued to him after his mother's death and he may be recognised as adopted son. I am of opinion that only a technical irregularity in not making a petition to Government prior to the adoption has occurred in this case. Had Y's adoptive father applied beforehand, Government would have granted the permission as a matter of course in accordance with the third condition of the sanad. Special concessions were granted by Government on the formal applications of even widows, who had no right to succeed in the absence of male

heirs and whose watans were therefore liable to resumption I recommend that the applicant may be recognised as an adoptive son on condition of his paying nazarana from the year of his adoption. The above recommendation is made in consideration of the fact that the Deshmukhs are an old and well-known Maratha family and in view of the fact that, if the watan be resumed, Y will have no adequate means of subsistence. Government will take a liberal view of the matter in view of their recently declared policy to maintain the dignity and position of the old Maratha aristocracy." As an act of grace, Government sanction and recognise the adoption of Y on payment of nazarana from the year of his adoption. The effect of this order will be to confer a general right of adoption outside the watan family. No. 5988, June 16, 1908.

Meaning of 'watandar family'

45. Two shares of two annas each of the Deshpande watan were purchased by P and M, descended from one X, respectively in 1805 and 1807. The question for determination is whether on failure of male heirs in M's family, his two-anna share should lapse to Government or whether it should revert to M's distant collateral in P's family, or to the original Deshpande family. The Gordon settlement was made with R of M's family as one of the sub-sharers of a whole Deshpande watan and only one sanad has been issued in respect of all the sub-sharers. L. R. "By virtue of their purchase prior to the introduction of British Rule, both P and M and their descendants are 'watandars' as defined in section 4. The whole watan in which they acquired shares, has also been treated as one watan under the Gordon settlement. In my opinion, therefore, D, a descendant of P, is a collateral male heir 'within the limits of the watandar family', within the meaning of the Gordon settlement sanad, and R's (of M's family) share cannot legally be forfeited to Government." Government concur. No. 8582, August 24, 1908.

Entry of name.

46. Commissioner: "J has some ground for complaint in that she has not been given all that was awarded to her by the Civil Court It seems that J should now be entered as owning a share of two annas and nine pies in the watan lands." Government concur. No. 6449, July 5, 1909.

Succession to cash-allowance

47. L. R. "A, son of K, claims to be entitled to a cash allowance being Deshpande watan property held under the Gordon settlement. In 1887 the last male holder G died and the Collector entered

his widow B as 'Wahiwatdar' and K as 'Successor.' The male heirs at that time were K, D, and X; as they were all equal in degree of relationship to G, K was entered as the senior. B died in 1905. K had previously died in 1903. In 1906, the Collector entered D as the person entitled to the allowance. As K had died, the petitioner A was at this time one degree more remote from G than D and B. A's appeal is made on the grounds: (1) that the Collector could not reverse his predecessor's order, (2) that the person to be entered was the heir at the death of the last male holder, not the heir at the widow's death. (1) The sanad under which the cash allowance was held was granted on the condition that it would be continued as long as there was a male heir in existence and that Government would not question the right of the actual holder for the time being. But as by the rules under the Pensions Act payment can be made only to a person entered in the records as the lawful holder, it is necessary that when a holder dies, a right should be conferred on his success or by entry in records. This then was the point at issue in the judicial inquiry in 1887, *viz.*, who was the holder after G? The decision was in favour of B and her name was entered. The entry of the reversioner K's name was for the purpose of record and for the better assurance to Government of the existence of a male heir. The respective rights of the reversioners were not then in question; the right of succession had not accrued to them and they had no cause of action. The question as to who was next male heir was not *res judicata* by reason of the entry in 1887. (2) The right of a reversioner cannot be determined till the death of the widow, and it is obvious that circumstances may alter during the widow's life-time. Succession in the case of a Gordon settlement watan must follow the ordinary rules of law." Copy forwarded. No. 7756, August 9, 1909.

Sanction accorded *ex post facto* as an act of grace

48. L. R. "There appears to be no legal objection to granting *ex post facto* the general privilege of adopting without restriction of family under the third condition of the sanad. The question is between Government and the survivors of the family and no objection appears to be raised on either side. The privilege should have been applied for beforehand and could then have been claimed as of right. If desired, however, Government may waive the objection as an act of grace." Sanction accorded to the adopted son's name being substituted for

that of his adoptive mother as an act of grace. It should not be taken as a precedent. Government cannot promise to grant *ex post facto* the privilege of adopting. No. 11028, November 15, 1909.

Sanad.

49. Where a sanad by way of summary settlement of land revenue has been granted by Government under Bombay Act VII, 1863, Government cannot reform or set it aside, without the assent of all parties interested therein. To do so would be an assumption, by Government, of the function of a Civil Court. *Dolsing v. The Collector of Kaira.* 4 Bom., 367.

Succession to Gordon settlement watan

50. Held, on a construction of the first clause in a Gordon settlement sanad that it does not limit the succession to male heirs only, because it merely relates to the continuance of the watan and leaves the inheritance to devolve under the ordinary law of inheritance in force in the family of the watandar. The bar to the succession of a daughter by inheritance to the watan property of her father was for the first time created by the amending Act No. V of 1886. But before this bar could operate to exclude, the plaint watan property had already vested in her, immediately on the death of her mother. A property already legally vested could not be divested. *Govind v. Sitabai.* 2 Bom. L. R., 23.

Validity of adoption without consent of Government or bhaubands.

51. "The plaintiff has brought this suit for a declaration of his right as adopted son of a Deshpande watandar &c. It is urged that the 3rd clause of the Gordon settlement sanad is a bar to an adoption by a single watandar without both the request of the other watandars, and the consent of Government..... How far the consent of the Government and the kinsmen was requisite for a legal adoption prior to the Gordon settlement, is doubtful..... It would seem that the participation of the King and the kinsmen was evidentiary and not essential. It was determined by this Court "that a formal adoption should not be set aside because it has not received the sanction of the ruling power and that there are no good grounds for the argument that a distinction should be made when the property to be inherited is of a watan".....In my opinion the consent of the Bhaubands was as little necessary to the validity of an adoption among watandars, as under the general Hindu Law. Such being then the law apart from the scheme of the

Gordon settlement, has the sanad in this case framed in accordance with that settlement, rendered the consent of the Government and the kinsmen necessary? This is a question of construction of the sanad. In construing this document it must be borne in mind that it relates to the whole watan and not merely to a takshim in the watan. Looking then to the terms of the sanad, nowhere is any express prohibition imposed on adoption, whether the person proposed for adoption was or was not a member of the watandar family; but while in the second clause there is express provision that no nazarana shall be chargeable in respect of the adoption of a member of that family, the third clause provides for the recognition by Government of a general power to adopt without restriction as to family on the entire body of watandars accepting liability to a perpetual nazarana in consideration thereof and applying collectively for the purpose.....I fail to see that the document can or does create in favour of kinsmen a right to object that would not otherwise exist. In my opinion, therefore, the adoption in this case is valid and affected the succession to the watan lands to the extent that the plaintiff has become entitled to succeed thereto as against the other watandars. But in so doing I do not mean to say that the tenure of the lands would be prolonged or the rights of Government would be curtailed in case the body of watandars were to die out and the plaintiff or his successors were alone left to claim the watan lands The result of the suit will not affect the interest of Government."

Batty J. "It would appear that the clause in the sanad, relating to the unrestricted right of adoption, could have had reference only to the rules determining the continuance and not to the principles of devolution that were to regulate the interests in question." *Balaji v. Datto.* 4 Bom. L R., 762; also 27 Bom., 75.

Rights of individuals to exact customary service from village servants not affected.

16. Nothing in the last preceding section shall be held to affect any rights of individuals or village communities to exact such service as may be customary from village servants whose watans were originally granted or are now held for the performance of such service, but who have been relieved by Government of liability to perform such service to the State.

Many of the hereditary village officers perform a dual kind of service—partly to the State and partly to the village community. For instance, the barber is supposed to shave the people, and also, on occasions when a robbery has taken place and foot-steps of the robbers have to be tracked, to be present on the occasion with a torch to lead the way if that is necessary. The carpenter is supposed to mend the carts of the villagers besides doing certain Government work. In such cases Government will relieve the watandars from service, but they are not in any way exempted from their liability to serve the village community. (Proceedings of the Legislative Council, August 24, 1874.)

Assessment of amount of payments in alienated villages.

17. When all or any of the property of a watan consists of payments of whatever description, whether in money or kind, made by jagirdars, inamdars, mehwassi chiefs, or others owning or occupying immoveable property wholly or partially free from assessment, the Collector may from time to time determine the amount of such payments recoverable: Provided that no larger demand shall be made than one equivalent to the amount that would be payable under the scale in force for the time being in the case of Government villages.

Appointment of panchayat to define rights and duties of certain classes of watandars.

18. When all or any of the property of a village watan of lower degree than that of patel or kulkarni consists of a right to levy in money or kind directly from individuals, it shall be lawful for the Collector, on the application of any person interested, to cause the nature and extent of such right and of the duties to be performed, and the persons, families or classes liable to make payment and to perform the duties, to be defined in writing by a panchayat of five persons, whereof two shall be appointed by the villagers, two by the watandars, and one, who shall be sar-panch, by the Collector.

The decision shall be in accordance with the opinion of the majority of the panchayat: Provided that, in case

the villagers or the watandars fail to nominate members within seven days, the Collector shall appoint such members as may be required to constitute a panchayat of five :

Provided also that, in case the panchayat do not come to a decision within seven days from the appointment of the sar-panch, the Collector may himself pass a decision.

The decision of the panchayat or of the Collector, as above provided, shall be final and binding on allper sons or classes whose rights, duties or liabilities have been submitted to such decision.

Mode of fixing amount payable when profits of watan fluctuate.

19. Whenever, on failure of the panchayat to come to a decision, the Collector, acting under the last preceding section, passes a decision, and it appears that the profits of the watan or part thereof are of fluctuating amount, or are payable in kind, it shall be lawful for the Collector to determine the amount payable and to decide whether the payment shall be made in kind or money.

Validity of settlements made prior to passing of Act.

20. Any settlement of the nature described in section 17, 18 or 19 (**of this Act*), made before the date of this Act coming into force, by a Collector or other officer duly authorized by Government, shall have the same force, as if made under this Act.

Settlements for such period as government may direct.

21. Settlements of the nature described in sections 17, 18 and 19 (**of this Act*) made after this Act comes into force, shall be made for such periods as the Governor in Council may from time to time direct.

Government Rules.

Section 17. It is inexpedient that the present rates and mode of payment in alienated villages should be altered except when serious disputes arise or the parties agree on a new scale.

* The words in the brackets were repealed by Bombay Act III of 1886.

Section 18. This section was introduced in order to provide for the legal definition of the rights and duties of the village Mahars and watchmen,

Ditto.

and to lead to a peaceful settlement of quarrels which at present tend to the damage of the Mahars, who revenge themselves by poisoning the cattle of the ryots. The section can only be used when application is made by a person interested. By employing a village panchayat to deal with these minute and intricate matters, the Collectors are enabled to avoid an annoying responsibility. Government desire to impress on all the Government service the necessity of showing very great patience in using the panchayat. Experience has shown that many delays and more informalities are tolerated by such a tribunal, and that, without some aid and even judicious supervision, the institution may become too tardy for action. The Government hope, however, that their officers will apply themselves to gaining the great advantage of decisions of panchayats by exercise of caution and patience, and that the influence of the Mamlatdars and patels will prevent extravagant delays.

The Government are convinced of the necessity of dealing with the village Mahars and watchmen with the utmost care and caution; it is not at all

Ditto.

desirable that the authority conferred by s. 18 should be generally used: it will be sufficient to apply it when the disputes grow so high as to lead to fighting, arson, or poisoning of cattle. In fact, it should only be used in the last resort. Generally the ryots and the Mahars are a fair match for each other: each class is sure to try to interest inexperienced officers in hopes of gaining some petty advantage. A very slight gain in one village will incite the same class in neighbouring villages to petition for settlement—a consequence it is in every way desirable to avoid. Hence the anxiety of Government that s. 18 should not be used except under pressing circumstances, and that the decisions when it is used should invariably be those of panchayats.

In the course of previous discussions on s. 18 an objection was raised that it gave power to panchayat to settle what villages were to pay to the *balootedars*, but did not give power to the panchayats to settle what the *balootedars* were to do in exchange for that payment; but by alterations now made that matter was provided for. There are peculiar cases in the Deccan which render it necessary

that something of this kind should be done. *Mahars*, for instance, are very strongly suspected of poisoning cattle in a great many parts of the country; and the best way we considered to settle the disputes which led to such crimes being committed was to order a panchayat to assemble and decide among the disputants. This is really one of the most important sections in the Bill, as the whole system of village administration may be said to depend upon it. Some means must be adopted whereby the payment of village officers will be secured. *Mahars*, village watchmen, &c., are essential to the comfort and well-being of villages, and unless they get their proper remuneration it would be quite hopeless to expect proper services from them. All we say in this section is that the rights of these people will be maintained. We want a prompt remedy by which the half-naked *Mahars* and others may get their rights, and do in return the services which their watan has for generations past entailed upon them. Looking at the system of police administration in this country we cannot get on without *Mahars* whose obligations are of such a minute character that it would be impossible to expect a Collector to say what they are, although they are perfectly well-known to the country side, and the reason, why we wish the panchayat to be established is that they may arrange these matters. For the cases where a panchayat passes a decision and the watandar refuses to accept it, there is full power in the Bill to confiscate a watan. Moreover the panchayat may withhold remuneration in certain cases. For instance, if much grain were stolen frequently and the thief could not be found out, the panchayat might refuse to pay the *Mahar* on the ground that he was not performing the duties attached to his watan. We must leave the section indefinite to a certain extent. We cannot go into minute particulars about what the Collector must make the *Mahars* do. It is the desire of Government that Collectors should not interfere too closely with existing village arrangements. Proceedings of the Legislative Council, August 24, 1874.

To give rise to the jurisdiction of the Collector in a given case to act under s. 17 the following elements must exist: (1) the payments must form part of a watan as defined in s. 4, (2) must be due from inamdars or others owning immoveable property wholly or partially free from Government assessment, (3) and must be of a fluctuating character and not certain or con-

stant. In other words, the payments, as also the right referred to in s. 18, must exist beforehand, and if they or the right are of a fluctuating character, the Collector in the one case and the panchayat in the other can determine the amounts of such payments (s. 17) and such right and duties (s. 18). The amount of the payments so determined cannot be higher than what would be payable under the (customary and not the Wingate's) scale in force in the case of neighbouring Government villages (*Rul.* 6).

S. 18 relates to payments due to inferior watandars from individuals generally. Here the Collector can act, not on his own motion, but only on an application made by any person interested—that is by a watandar or individual liable to pay,—and should, in the first instance, refer the matter to the panchayat which is to determine and settle not only the rights but also the duties of the said watandars. A decision passed under this section is final, and no appeal will therefore lie therefrom. It appears from the wording of s. 19 that the Collector cannot interfere with the award of the panchayat even though the amount fixed by it may be of a fluctuating character. The panchayat is given a free hand in the matter, and its award must be adhered to and enforced in the terms it is made. The Collector, acting under s. 18, may, in case the profits are of a fluctuating character or are payable in kind, determine the amount payable and decide whether the payment shall be made in kind or money.

S. 20 validates settlements already made. S. 21 rules that settlements made after this Act comes into force shall be made for such periods as Government may from time to time direct. Government have directed (No. 34, January 4, 1876) that settlements made by panchayats under s. 18 should be for a period of ten years.

The amounts awarded by the settlements under these sections may be recovered as land-revenue (s. 81). The Collector can, in exercise of his powers under s. 64, enforce the settlements made under s. 18, as against the watandars.

RULINGS.

Ryots in inam villages are occupiers not paying assessment to Government within meaning of s. 17.

1. Commissioner: "The L. R. has entirely misunderstood or overlooked the main point in question, that the fees were levied not from the inamdars but from the cultivators. It is true the cultivators are occupants but they are not occupants of land *free from assessment,* for they have to pay assessment to the inamdar, and the fees cannot under such circumstances be legally enforced against the cultivators under s. 17." L. R. "It is difficult to say whether the cultivators who pay the inamdar assessment can be deemed to own alienated land within the meaning of s. 17. A distinction is certainly drawn between those who own and those who occupy alienated land. In the Bill for amending the Hereditary Offices Act which was before the Legislative Council in April last, the general expression 'holders of alienated villages' was substituted for the present words 'jahagirdars, inamdars, mehwassi chiefs and others owning or occupying immoveable property wholly or partially free from assessment.' It is, however, unnecessary to go to the length of saying that the Legislature intended by the words 'others occupying' to include the tenants of an inamdar The regular payment for a long period of one and a half *payalies* of grain and one rupee in cash for every twenty-two and a half bighas of land cultivated is clearly watan property as defined in the Act to which the kulkarni is entitled. The only doubt entertained as to the application of s. 17 to this watan is because the payment is made not by the inamdar directly but by the cultivators. The section certainly relates to payments 'made by' inamdars, &c., but it is clear that whatever payment is made directly by the tenants on account of the watan is made indirectly by the land-lord. The payment is calculated on the amount of land cultivated by each individual cultivator who pays it direct to the kulkarni. It certainly is of great importance that payments of this kind should not be lightly suspended by the ryots who have hitherto been accustomed to make them without demur, and that the village officers in such cases should not be driven to seek a remedy in Civil Courts. I can only repeat my opinion that I think s. 17 in such a case as this should be applied to its fullest extent by determining the amount recoverable, and, if necessary, recovering it from the inamdar as a payment affecting him quite as much as it does his tenants. Under any circumstances there can be no objec-

tion to the Collector proceeding under that section and if in his opinion the inamdar or the cultivators show good cause why the payment should be discontinued, he can report the matter for orders." Government concur in this opinion. A tenant of an inamdar would clearly appear to be a person occupying immoveable property free from assessment under s. 17. It seems immaterial whether the cultivators do or do not pay rent to the inamdar. It is sufficient that no assessment is paid to Government. No. 7884, December 24, 1881.

The settlement under s. 17 is variable.

2. L. R. "In Bill No. 12 of 1873 to amend the law relating to hereditary officers the corresponding section to s. 17 of the Act provided that it would be lawful for the Collector to assess the amount of payments made by jaghirdars, &c., and recoverable from them, upon an average of ten years next preceding. Subsequently the section took its present form The object of the section is to enable the Collector to fix definitely what the payment should be, and s. 21 provides that the Collector's settlement shall be made for such period as the Governor in Council may from time to time direct. The section, moreover, is so worded as to leave the settlement entirely in the discretion of the Collector subject only to the restriction mentioned in the proviso. It is clear the Legislature could not have intended that proof of payment of a certain sum in the Peishwa's time should bind the Collector to fix the same amount for all time. Payment by way of remuneration must in its very nature be variable, and to be bound by established custom in determining it would defeat the object of the payment. In order to preserve the variability of this kind of watan property the Collector's settlement is a periodical one. In each instance as it occurs the Collector must determine what is fair and adequate remuneration, due regard being had to the nature and extent of the service performed." Government concur. No. 476, January 23, 1882.

The value of the hak how to be determined.

3. The Kulkarni of an alienated village had a right to levy certain hak from the ryots as remuneration. He had no customary right to receive it from the holder of the village but had to levy it from each individual cultivator according to the yield of the lands. As the village was not surveyed, remuneration according to scale could not be fixed. The Civil Court in a suit in connection with the hak held that 'the Collector can issue an order under s. 17.' The Collector's

opinion was that under s. 23 the hak must be considered to be the fixed annual emoluments, that the rate was not exorbitant, that the question was how the hak could be recovered by the Collector, that as s. 17 imposed a restriction in the form of a proviso as to which he was unable to satisfy himself, resort might well be had to s. 86 of the Land Revenue Code inasmuch as the customary haks formed a charge on the holdings of the cultivators, and consequently fell under the definition of 'land' as given in the Code, and that from that point of view the Kulkarni became the superior holder. The Collector was further of opinion that s. 17 applied to surveyed villages only. L. R. "The haks which a Kulkarni is entitled to recover from the cultivators of an inam village are not 'charges on the revenue or rent of villages or other defined portions of territory.' They are payments for which the cultivators are liable to the Kulkarni in addition to the rent, if any, which they pay to the inamdar, and are not recoverable from the rent. Moreover, it cannot reasonably be contended that the words 'villages or other defined portions of territory' include cultivators' holdings. For these reasons I am unable to concur in the view that the hak in question is covered by the definition of the word 'land' in the Land Revenue Code, and that the Kulkarni is in respect thereof a superior holder. According to the view approved in G. R. No. 7884 of 1881 (*supra* 1) s. 17 is the law which applies to haks of this nature. This seems to be admitted by the Collector, but he is encountered by the difficulty that in unsurveyed villages he cannot tell whether the aggregate of the haks would or would not be more than 'equivalent to the amount that would be payable under the scale in force for the time being in the case of Government village,' and therefore cannot tell whether in determining under that section the amount of payments recoverable by a Kulkarni, he transgresses the provise to the section. I think, however, that an approximate estimate of the amount that would be payable if the village were a Government village will sufficiently satisfy the proviso, and that such estimate may be based upon general considerations without requiring the detailed particulars obtainable in a surveyed village." Government concur. No 3786, May 26, 1886.

S. 18 is confined to rights and duties connected with civil administration.

4. L. R. "Under s. 18 the term watan applies only to hereditary offices, watan property and rights and privileges attached thereto. The term hereditary office is limited to offices held for the performance of *duties* connected with the civil ad-

ministration, whether those duties are now demanded or not. The term watan property is limited to property provided for the remuneration of such duties only. S. 18, therefore, does not apply to any *services* unconnected with the civil administration, nor does it apply to any remuneration for such services, or to any rights or privileges attaching to such services or remuneration. Whether the duties connected with civil administration are now required to be performed or not, I am of opinion that the section would not apply to other kind of services demanded either by the village community or by individuals, the remuneration for which must be a matter concerning only those who demand them." Copy forwarded. Care must be taken that the customary services due from *mahars* under s. 69 in connection with the village sanitation are not treated as private service to individuals. (The question put was whether s. 18 applied to the private remuneration of inferior village officers.) No. 4273, June 28, 1888.

Remuneration of Mahar in alienated village. Scope of Collector's action under ss. 17 and 18.

5. It appears from the examination of the Government records that there is no precedent for the grant by Government of either land or cash allowance to the watandar mahar in an alienated village. Government consider that there is nothing contrary to equity in expecting the inamdar to remunerate the mahar for Government work. When the village was alienated to him he took over not only the revenues but the legitimate liabilities for remuneration out of these revenues of the duties of village administration. Section 17 lays down that when all or any of the property of a watan consists of payment made by inamdars or others owning or occupying land in an alienated village, the Collector may determine the amount of such payment recoverable from them. The first essential is therefore that the Collector should ascertain whether the watan includes a right to receive payments from the inamdars and others. If he finds that it does, he can determine the amount payable and recover it under s. 81 of the Act, provided that no larger demand is made than one equivalent to the amount that would be payable under the scale in force for the time being in the case of Government villages. If he finds that the watan does not include a right to receive payments from the inamdars, he cannot create and enforce a new liability on the latter. In the present case, therefore, the Collector should be requested to make an inquiry under s. 17 as to the custom

of the village and to report whether the mahar watan property includes any payment from the inamdar. The idea that service to Government should be paid for by a grant from the revenues or of land is not perfectly correct. Section 18 contemplates not only part but *all* of the remuneration of a watandar being in the form of a *baluta*. It has already been ruled in G. R. No. 3074 dated 3rd May 1899, that there is no ground for the assumption that *baluta* are due to Mahars for private services only. On the contrary they form part of remuneration for what may be termed Government service, such as watch and ward and even the report of crime which is after all at least as much in the interest of the particular village in which it occurs as of the State at large. The proper remedy, therefore, for the insufficient remuneration for the public duties of useful servants who are ascertained to be under paid is to recover from the land-holders any contribution towards the remuneration for which they are legally liable. If in any case the Collector finds that there are difficulties as to recovery of *baluta* he should have an inquiry made by panchayat under s. 18. No. 9838, September 28, 1908.

Not only part but whole of remuneration may be in the form of baluta.

6. The payments referred to in s. 17 are those mentioned in s. 4, namely, "customary fees or perquisite in money or in kind whether at fixed times or otherwise." It is the commutation of these customary and fluctuating payments that is provided for by ss. 17 to 21. But the Collector has no power under s. 17 to impose new burdens on the land-owner in cases where the payment being constant already there is nothing to determine. Plaintiff was the *inamdar* of a certain village. Defendant No. 3 was the watandar kulkarni of the village. He enjoyed for the performance of his duties some inam lands and a cash allowance of Rs. 5 paid annually by the inamdar. In 1884, defendant No. 3 having failed to perform the service in person or by deputy, the Collector appointed defendant No. 2 to act as Kulkarni. Defendant No. 2 officiated from November 1884 to December 1886. On the application of defendant No. 2 the Collector increased his remuneration according to the scale fixed for Government villages, known as the Wingate scale, and ordered plaintiff to pay the increased remuneration so as to make up the amount due under that scale. In September 1890, the Collector recovered the sum of Rs. 171 from the plaintiff by

Collector cannot act under s 17 where the payment is already constant and certain.

attachment of his property. The plaintiff thereupon sued the Secretary of State for India in Council to recover this amount as being illegally levied. The Secretary of State pleaded that the Collector having determined the amount of defendant No. 2's remuneration under s. 17, the plaintiff had no cause of action against him and that the suit was barred under s. 4, cl. 3, Act X, 1876. *Held*, that as the cash payment made by the plaintiff to the watandar was certain, and not of a fluctuating or indeterminate character, the Collector had no power to increase the remuneration of the officiator under s. 17. *Held*, also, that the suit was not barred by s. 4, cl. 3, Act X, 1876. "S. 17 must be read along with the other sections which together form part III—headed the Commutation of Watans, as opposed to Part IV, which relates to the creation or lapse of watans. This heading of commutation is itself suggestive of a strict restriction on the exercise of the powers conferred on the Collector. S. 15 empowers him to relieve a watandar of his liability to service, but that relief is under s. 16 not to affect the rights of individuals or village communities to exact customary services from village servants, the relief extending only to the services due to the State. Next comes s. 17 with its complementary ss. 18 and 19, the former applying to payments in kind or money made to watandars by jaghirdars, inamdars, or others, owning or occupying immoveable property wholly or partially free from assessment, while the latter sections relate to the inferior watans, where the payments in money or kind are due to the watandar from individuals generally without any specification. In the case of the holders of alienated lands, the Collector is himself to determine the amount of the payments due to the watandars. In the case of cultivators generally, the inquiry is to be entrusted to a *panchayat*, and if the *panchayat* fixes the profits which are of a fluctuating nature, the Collector is empowered to determine the amount payable. The words used both in ss. 17 and 19 are exactly the same, and they must be construed alike. These amounts so determined under ss. 17-19 are, moreover, to hold good for such periods as the Governor in Council may from time to time direct. It is thus plain that s. 17 clearly relates to the power of the Collector to determine payments of a fluctuating character. The word watan property, as defined in s. 4, expressly includes not only property assigned or held for service, but also a right to levy customary fees or perquisites, in money or kind, whether at fixed times

Ss. 17 and 21 considered generally

or otherwise. It is the commutation of these customary and fluctuating demands which is provided for in ss. 17-21. Unless the payments claimed already formed part of the watan property by force of custom, there is no foundation for the exercise of the authority to determine their amount conferred by these sections. The payments and the right must exist beforehand, and then, if the payments or the right are of a fluctuating or indeterminate character, the Collector in the one case, and the *panchayat* in the other, can determine the amounts of such payments (s. 17), and *such* rights and duties (s. 18). In the present case, it is admitted that the inamdar has only been paying Rs. 5 in cash to the watandar. The Collector has, therefore, no occasion to determine the amount, as it was not of a fluctuating nature. It does not follow from the fact of this payment of Rs. 5 in cash, that the Collector had authority under s. 17, while professing to determine the amount, to raise the cash amount from Rs. 5 to Rs. 80. He can only determine the amounts of *such* payments as were already payable, and it is not open to him under s. 17 to increase the amount as he has done in this case. This view of the scope of the section is strengthened by the fact that in the first draft of the Bill, the words used were that 'it shall be lawful for the Collector to assess the amount of *such* payments recoverable upon an average of the ten years next preceding.' This limit of ten years' average was subsequently given up, and in its place the proviso was added that the amount to be determined was to be equivalent to the amount payable under the scale in force for the time being in the case of Government villages. These words were not intended to refer to the scale of remuneration fixed by Government, known as the Wingate scale, for this latter scale has no reference to uncertain customary payments of the kind contemplated in ss. 17-21. Under s. 216 of the Land Revenue Code the holder of an alienated village is not bound by the provisions of Ch. VIII relating to survey settlement, not introduced with his consent, which was the case in plaintiff's village. A number of opinions of the Legal Remembrancer have been filed. Such opinions cannot well be admitted in evidence, as they are opinions given in a one-sided inquiry. Such as they are, they do not go far enough to support the defendant's contention. We feel satisfied that s. 17 cannot be regarded as authorising the interference of the Collector in this case. We have

The scale referred to in the section is not Wingate's scale.

L.R.'s opinions referred to.

next to see if any other section can be held to support it. The Collector has no doubt power under s. 46 to appoint a deputy, and such a deputy would be an officiator under s. 4. Under s. 23 the Collector has power to fix the emoluments of the deputy, and to direct the payment thereof to the officiator. These words are large enough to cover the order of the Collector in this case, but the second para of the same section provides a limitation on this power, in that it directs the Collector to assign watan property or the profits thereof towards the emoluments of officiators. This was in fact the procedure followed in this case in the first instance, when the Collector directed defendant No. 3 to increase the amount of the remuneration payable to defendant No. 2 S. 23 did not authorise the subsequent procedure ordering plaintiff to make good the deficiency The scale in British territory was not obligatory on the plaintiff. It was, moreover, only a maximum limit. Defendant No. 3's inam land was assessed at Rs. 60. Plaintiff, however, was not bound by this limit, as he did not accept the survey settlement. He in fact asserted that the land yielded a profit of Rs. 105, and his assertion was not challenged by defendant No. 3. This resource was open to the Collector to make good the deficiency. Any how neither s. 23 nor s. 17 authorised the Collector's procedure so far as plaintiff was concerned. S. 16 of the Land Revenue Code also does not provide for the present case because it does not extend to alienated villages. It was urged that the suit was not maintainable under para 3, s. 4, Act X, 1876. If the Collector had *prima facie* jurisdiction to pass the order he did, plaintiff would certainly have no right to sue to set aside or avoid the order. As it is, the Collector had no power to levy the money from plaintiff as ordered by him. The order was not passed by Government and the Collector cannot be regarded as having been duly authorised to act illegally and without jurisdiction." *Per* Ranade J.

Power of Collector under s. 23.

Jurisdiction.

Per Jardine J. : "What the Collector did is analogous to what may be done under s. 22 but while that section places the cost of creating new watan on the Government, the Collector has placed that of the additional watan property his order seeks to create, upon the inamdar. The words of ss. 17 and 22 differ much, and we may, therefore, infer a different meaning in each, especially as s. 23

Ss 17 and 22 compared.

limits the Collector to the existing watan and its profits in assigning emoluments to the officiator. The function of the Collector (under s. 17) does not extend to the whole watan property but only to what is meant by the words 'such payments.' It is merely one of commutation of payments of uncertain amount by ascertaining a fixed equivalent therefor, which apparently he may express in money or kind. There is no warrant whatever, in the language of s. 17, for supposing that he could thereby impose new burdens on the landowner in a case where the payment being constant already there was nothing to determine. I think the addition of the word 'recoverable' in s. 17 has reference to s. 81 (though possibly it may be argued that it bars a civil suit, a matter on which I express no opinion); and that what the Collector fixes is the amount which may be recovered by revenue process; he is not to recover more from the Inamdar than is payable in Government villages for the same thing or on the same occasion. Thus the coercive action of the Collector is limited by the customary scale of the country as in some other revenue matters. The Collector's award of commutation appears not to be so final a judgment as a decision under s. 18. But for the addition of the word "recoverable" I would interpret the word 'determine' as was done in an English case, where that word was held to give finality." *Anantacharya v. The Secretary of State.* 19 Bom., 581.

Collector cannot impose new burdens

PART IV.

CREATION AND LAPSE OF WATANS.

22. When no watan exists, it shall be lawful for Government to create one, and in so doing to assign, subject to such sanction as may be required by any law, or order of the Governor General of India in Council, for the time being in force, such property of Government as to Government may seem fit.

Creation of new watans.

Such watan shall be subject to all the provisions of this Act, and the watandars shall exercise the powers and

perform the duties conferred and imposed by this Act or any other law for the time being in force.

When a watan or part of a watan has lapsed or has been confiscated or otherwise lawfully resumed by Government, or when the right of any particular family to hold a watan does not exist or is not established, it shall be lawful for Government, subject to the sanction mentioned in the first clause of this section, to assign such watan or part of a watan to such person or persons as to Government may seem fit.

Government Rules.

The creation of new watans and the assignment of lapsed watans are matters belonging to Government, and require no directions here.

The tendency of Government is against the creation of new watans. (*Ruls.* 2, 3, 4, 6, 11.)

Under s. 4 the essence of a watan being the office, it is thought that the term watan as used in clauses 1 and 2 here connotes an office and not merely watan property apart from and independently of an office, so that under the section no watan can be created or revived which carries with it or includes no office as an essential ingredient. In cl. 3 the term is used in a wider sense: it may mean an office singly, or property singly, or an office and property combined. Under this clause the Government alone can make the assignment (to a watandar family or to a total stranger), and that too of a watan lapsed, or confiscated or otherwise lawfully resumed by Government under the provisions of this Act or any other law in force. The Collector has no independent power of action under the section, and a watan property resumed by the Collector under s. 11-A cannot be dealt with under this section inasmuch as property resumed under that section *reverts to the watan itself*, *i. e.*, for the benefit of the particular watandar family. (*Vide Ruls.* under ss. 8–13.)

Watan holdings would, like any other property, lapse to Government on a total failure of heirs. On a watan lapsing,

in the absence of any specific directions by Government to the contrary, the property connected therewith (which, though lapsed, is still referred to as "such watan" in the third clause) retains its original character of watan property, merely requiring designation (with such sanction as may be necessary) of the new assignees. The assignment for providing remuneration for the performance of the duty appertaining to the hereditary office (*vide* s. 4) has not ceased, though the persons to whom the assignment was originally made or has continued have failed. The hereditary office is only vacant pending the assignment thereof under this section to such persons as Government may deem fit. It should be borne in mind that the words 'held hereditarily' in the definition of hereditary office apply to the nature of the tenure of the office and not to the way in which it is from time to time actually filled. Of course, if the hereditary office is expressly or finally abolished by Government, the property appertaining thereto would no more retain its character of watan property. (*Rul.* 13.)

Whether lapsed watan property continues to be watan property.

The resumption of commuted service watans would depend on the terms of the sanads, the principal ground of resumption being the failure of male heirs within the watandar family (*vide* s. 15). Uncommuted service watans would be liable to forfeiture under ss. 60 and 64. Government have ruled (s. 5, *Rul.* 66) that service watans are liable to be resumed if they have forever left the original watandar family and are in the hands of strangers. The correctness of this pronouncement was questioned in the High Court in the case of *Ramrao v. The Secretary of State* (P. J., 1896, 666), but was not decided upon (*vide* Appendix, Jurisdiction). It is thought that the legality or otherwise of such resumption would depend upon the fulfilment or otherwise of the condition laid down in cl. 3 of this section, *viz.*, whether the right of the particular family to hold the watan does or does not exist or is or is not established (presumably against Government). Watan holdings, like any other property, are liable to forfeiture under

Resumption and forfeiture of watans

s. 153 of the Land Revenue Code (*Rul.* 5). They can, of course, be voluntarily resigned. They are also liable to resumption under the rules concerning the resumption and continuance of service lands published along with Government Notification No. 10336, October 12, 1908 (*vide Rul.* 15 under ss. 8 to 13. *See* Appendix, Inam Tenures, for the rules.)

For the general principles underlying the law of resumption, see Appendix, Inam Tenures.

RULINGS.

Rules as to grant of Government land.

1. As regards the gift or grant of lands, the previous sanction of the Government of India should be obtained in case (1) where the value of the grant exceeds Rs. 3,000, when given as a site for the construction of Government schools, hospitals, dispensaries, or other public works, at the cost of recognised local funds; (2) where it exceeds Rs. 500, when given for any other public purpose, or to a private individual for services to be performed to the state,* (3) or where it exceeds Rs. 100 when the services are to be performed to the community, and (4) in *all* cases of grants to individuals for their private benefit irrespective of any services to be performed. Government of India Resolution, No. 1/142, February 6, 1872.

Grant of watan.

2. These coveted watans should not be given unless applicants are specially recommended for exemplary services by the Department in which they have served. No. 3699, June 26, 1876.

Ditto.

3 Applications for the grant of kulkarni watan should be submitted with discretion. No. 5427, September 5, 1877.

Ditto.

4. The working of the Act has given rise to so many difficulties that any new creation of watan right should be avoided whenever that is possible. The principle to be pursued for the settlement of the watan of the Kittur Desgat should be (1) that the resumption of watans by the Desai prior to British rule should be held to extinguish all

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* *N. B.*—This does not refer to cases in which the Local Government may have been separately authorised to dispose of lands under special rules sanctioned by the Government of India.

claims to the watan as watan under the Act. But if the family of the dispossessed watandar was in possession at the accession of the British Government, or if Mr. Nesbit in 1833 restored the watan to the *original watandar*, that should be considered as a new creation of watan rights and to cure the defect of title caused by the Desai's resumption. (2) Where Mr. Nesbit granted the service lands and emoluments to others than the original watandars they should not be treated as watandars but as stipendiary servants who have no watan rights but who serve only during the pleasure of Government, that is, so long as they give satisfaction. See *Rul* 32, ss. 24 to 32. No. 5003, September 18, 1879.

Forfeiture.

5. L. R. "Watan land is 'alienated land,' within the meaning of cl. 19, s. 3 of the Land Revenue Code and when an arrear of land revenue is due in respect of any such alienated holding, the Collector may, under s. 153, declare the holding to be forfeited to Government. When the holding has been thus forefeited, the Collector may, under s. 7, take immediate possession, and it then can either be sold or be disposed of under rules or orders made in this behalf by Government under ss. 56 and 214 (e). If the holding is simply sold by the Collector as an alienated holding, the purchaser would become entitled to the same exemption from land revenue as the defaulter enjoyed. Government will no doubt think it inexpedient to continue exemptions in this way without any necessity, and the class of cases referred to by the Collector is therefore one calling for an express order under ss. 56 and 214 (e). The Collector, when he has forfeited any such alienated holding, shall not sell it, but shall enter the land comprised therein in his records as unoccupied unalienated land, and deal with it under the law and the rules relating to land of that description. The arrear of judi will still be recoverable from the watandars by any of the other means allowed by Chapter XI of the Code, and if not recoverable at all within what Government consider a reasonable period may, if Government think fit so to direct, be written off. The loss of land appertaining to a watan will not necessarily involve the loss of the right of service. According to the definition in s. 4 of the Hereditary Offices Act, "the watan property, if any, and the hereditary office and the rights and privileges attached to them together constitute the watan." There may still be a watan, al-

though no partially exempt land is attached to it." (s. 32). Copy forwarded. No. 3016, June 10, 1880.

Lands to be resumed and part assigned to officiating patel.

6. When lands are held by non-watandari patels for service and have been alienated without the previous sanction of competent authority, they are resumable at the pleasure of Government. The Collector should therefore resume them and should assign to the officiating patel in each case so much of the land resumed including the land in his own occupation, as may be required to provide for his remuneration according to scale. If any surplus land remains after providing for the remuneration of the officiator, such surplus may be regranted to the present occupants at survey rates. The officiating patels should continue to be nominated by the Collector according to the present custom, and they should be made to understand that they hold the lands assigned to them so long as they continue to serve. It is not desirable to create new watan rights under the Act. No. 1170, February 5, 1881.

Grant of kulkarni watan.

7. The village of Kirkee in Poona District having been included in the Cantonment, there is no necessity for the services of the watandar kulkarni. Government have therefore granted him the kulkarni watan of another village. No. 2912, April 15, 1885.

Rajinama of portion of watan holding, to be accepted when and when not.

8. L. R. "The question put is, what course should a Collector pursue when an inamdar wishes to resign absolutely a portion of his holding which has been given as a subordinate inam by himself or by his predecessors to a third person and which no longer yields him,—the inamdar,—any profit. The only law applicable to such cases is contained in s. 76 of the Land Revenue Code. Under this section it is open to the Collector to refuse to allow a land-holder to resign one or more fields out of his holding when his aggregate holding is subject to a lump assessment (*vide* s. 75). This would apply to every case of an inam holding because all such holdings are, as far as I am aware, assessed in the aggregate and not field by field. The real question in such a case is not the desirability of breaking up of the large holdings of the hereditary zamindars but the justice of encouraging and assisting such zamindars to break faith with their sub-inamdars. If

a portion of an inamdar's holding has been sold to another person or if there has been a partition between a registered inamdar and one of his brethren, it would be natural that the registered inamdar should resign in favour of the purchaser or of the brother the land sold or comprised in such share, and in such a case the Collector would have no valid ground for refusing to consent to the resignation. But the present cases are ones in which an inamdar or his predecessor has without parting with his own inam right made a grant of some land in his holding to a third person and his heirs in perpetuity either entirely rent-free or on terms which are advantageous to the grantee, and the inamdar finding that the burden of paying the Government dues on the land included in such sub-grant, is greater than he can support, seeks to get rid of the results of his own or his predecessors' recklessness by having the land included in such sub-grant severed from his holding. A deal of pressure is brought by the inamdars to induce such sub-inamdars to pay them their proportionate share of the Government dues; the latter are unwilling to make any surrender of the terms on which the grant was obtained by them or their ancestors. No doubt, the inamdars will be relieved from the burden of paying the Government demand on lands from which they derive no benefit, if their resignations of these pot-inams are accepted, but they will also (in that case) be assisted to a summary settlement of the dispute between them, and the pot-inamdars, in which they will get all the advantage and the pot-inamdars, instead of continuing to enjoy the terms on which they have heretofore held their lands, will have to pay whatever revenue Government determine to take from them. I am of opinion that it is not desirable to permit such resignations. If, in any case, an inamdar is permitted to resign land which is held by a pot-inamdar, the right of the latter ceases with that of the superior holder who created it, and his relation to Government is that of a holder of unalienated land and Government may deal with him accordingly. I agree that in such a case the inamdar must equitably be allowed a reduction in his payment. In regard to district hereditary watans, the fact that inam land is resigned by the inamdar renders that land unalienated land on which the holder is liable to pay to Government the full assessment and there is no necessity for inquiry into the origin of that holder's possession. The Land Revenue Code makes no provision regarding 'registered holders of alienated land' as it does about 'registered occupants' and its provisions are generally incomplete and un-

certain concerning alienated holdings." Copy forwarded. No. 4235, May 27, 1885.

Cash allowance watan created.

9. The fund (raised by subscription) for the remuneration of the police patel is apparently a capitalised service allowance. The Commissioner was desired to state whether there was any objection to create a cash allowance watan representing the interest of the fund. He now reports that the Collector, after making inquiries of the representatives of such subscribers as have since been dead and of the surviving subscribers to the fund, has reported that there is no objection to the creation of a cash allowance watan. The views expressed above may now be acted upon. No. 3396, December 16, 1887.

Half judi

10. Commissioner: "The question is as to the imposition of half Judi on the unappropriated emoluments of watan lands of the patelki watan which was granted by the British Government in 1832 to A for repopulating the village. The imposition of half judi on unappropriated watan land emoluments, after providing remuneration for the officiator for the time being according to the sanctioned scale, was, as explained in G. R. No. 331, Jan. 26, 1860, in substitution for detailed inquiries and final settlement by the Inam Commission as to the right of holders of watans to hold such unappropriated watan land emoluments free of any tax. As this watan was granted in 1832 by the British Government, it cannot properly be argued that there is any defect in the title of the holder to hold all the unappropriated watan land emoluments free of any tax. So the judi imposed should be remitted." The opinion of the Commissioner should be acted upon. No. 9481 Dec. 3, 1892.

Extinct rights of village accountants not to be revived.

11. Government of India: "Government are still convinced from experience that it is especially hard to control or obtain good work from village accountants whose posts are hereditary, and that in some cases such officers are a positive danger to the interests of the village and the Government, of which they should be the guardian; and I am to express a hope that the influence of the hereditary system of village accountants may, when possible, be gradually reduced. Government are strongly of opinion that such rights (of watandar kulkarni) when once extinct should not ordinarily be revived. Cir-

cumstances have greatly altered since the order of Government of India was passed upon which the rule contained in s. 22, ch. 6 of Nairne's Hand-book is based, and the rule so far as it relates to hereditary village accountants may now be formally abolished." Rule cancelled. No. 5053, July 4, 1895.

12. Watan declared khalsa on resignation of the watandar. No. 3340, April 24, 1896.

13. "The third clause of s. 22 appears to be applicable in the case. The clause appears to contemplate lapsed watans as entirely at the disposal of the Paramount Power and implies that the property, (which, though lapsed, is still referred to as watan), retains its original character, merely requiring designation (with such sanction as may be necessary) of the new assignees. On a watan lapsing, the property, in the absence of any specific directions by Government to the contrary, continues, within the definition in the first para of section 4 of the Act, to be watan property as "assigned for providing remuneration for the performance of the duty appertaining to an hereditary office." The assignment for that purpose has not necessarily ceased, though the persons to whom the assignment was originally made may have failed. Watan property and the hereditary office and rights and privileges together constitute a watan. The hereditary office was vacant, pending the assignment thereof to such persons as Government might deem fit under section 22. That it had been abolished does not appear. The only argument that could be advanced in support of the proposition that the watan had ceased to exist is that "hereditary office" is defined as "an office held hereditarily". These words, however, clearly apply to the nature of the office, and not to the way in which it is from time to time actually filled. This seems clear from the words occurring in section 22 "when the right of a family to hold a *watan* does not *exist* or is not established" and from the reference to a lapsed watan as "such watan". Till the abolition of the office, the watan property would therefore appparently form part of a watan and as such could be legally dealt with under section 11 and 11-A. Section 11-A declares that watan property resumed thereunder shall revert to the watan, a phrase which under section 4 connotes the existence of (*a*) watan property, (*b*) a hereditary office, and (*c*) any rights and privileges attached to such property or office. No doubt section 11-A

Whether a lapsed watan continues to be so.

would be inapplicable if the hereditary office had been expressly and finally abolished but would not be so inapplicable merely by reason of that office being vacant or of its being for the time held by one not entitled to hold it hereditarily. The office, it seems, was and still is in existence, though no hereditary holders have as yet been declared. If this be the case, no difficulty seems to arise. There is apparently no one who could dispute the right of Government to abolish the office should Government desire to do so. The watan having lapsed, and all interests therein having escheated, the property will be, it seems, entirely at the disposal of Government. It would be improper to apply retrospectively so as to affect any vested rights or interests, any principles newly laid down by rules. But in the present case there appears to be no vested interests. Resumption is, it seems, unnecessary as the land by virtue of the lapse of the watan already vests in Government and if Government abolish the hereditary office, the Collector, under section 37, Bombay Land Revenue Code of 1879, subject to the orders of the Commissioner, may dispose of the land in such manner as he thinks fit or as may be authorized by general rules sanctioned by Government." Opinion of L. R. No. 116, dated 3rd February, 1899.

Resumption of watan sanctioned. Lands continued in possession of present occupant.

14. Collector: "The Deshpande service watan land and cash allowance were held for service by K. K's agent performed Government service upto 1893-94. Government directed that the service, in respect of which the lands and the allowance were held, was no longer required and that non-service settlement should be applied to the watan. K, however, died without heirs before the passing of the Government Resolution and consequently both the lands and cash allowance became liable to forfeiture. The lands in question have, however, been mortgaged with possession to M by the said K's husband A in 1864. This alienation was valid only during the life-time of A. Both A and K are now dead and M has no right whatever to these lands under section 5 of the Watan Act. Since the death of K all her watan property and their profits have become liable to resumption. Payment of cash allowance has been stopped. M is unwilling to part with the right of occupancy in the lands." The resumption of the watan is sanctioned. There is, however, no objection to the lands being continued in the oc-

cupancy of M on payment by him of a sum equal to 25 times the assessment for the occupancy right. No. 8578, December 5, 1903.

Land entered as government land and present holder as registered occupant.

15. Collector: "In 1846, while Satara was still under Native Rule, Y, widow of K, sold the Patilki watan land to R, the illegitimate son of her husband's uncle. In 1848, when Satara lapsed to the British Government, the Commissioner, Satara, passed an order that as the sale had not the sanction of the Native Government, the watan should only be continued as such till the death of Y, and should then attached. Y died in 1878, and the watan land was then made practically khalsa inasmuch as full assessment was taken and R was ignored as patil, an outsider being appointed on cash remuneration. But the land was not entered as khalsa on the records but continued to be treated as inam with the full survey settlement as the judi, and no steps were taken to evict R or his heirs from possession. The question now is whether the order of 1848 requires that the land should be taken out of the possession of R's heirs, which would be a very harsh measure now after the lapse of nearly 60 years since the purchase." Commissioner: "In the circumstances, sanction may be accorded to the removal of the land from the inam patrak and the entry of it as Government land in form No. 1, with the present holder as registered occupant." Sanctioned. No. 4942, June 17 1905.

Deshmukhi and other watans resumed; patilki watans continued to registered heads of families.

16. The following are the watan properties which are made the subject of the petitions under consideration:—

(1) Deshmukhi and Deshchowghulki land in 42 villages.

(2) Isafati of 2 villages.

(3) Patilship of 4 villages.

These watans were last attached by the Peshwa in 1803 pending the settlement Act by claimants to the representation of the watan, of disputes which had arisen as regards seniority. More than a century has passed without any settlement being effected, and the watan has accordingly remained uninterruptedly under attachment As regards the Deshmukhi, Deshchowghulki and Isafati watans, service is no longer required or performed. Government accordingly direct under the proviso to No. 4 of the rules published in Government Notification No. 2702 of 23rd April 1902,

that these watans with the watan property appertaining to them should be resumed. As regards the patilki watans, it appears that other persons have established their claims to serve and have been duly registered as representative watandars under Act III of 1874. The patilki watans and property appertaining to them should, therefore, not be resumed but should be continued to the families whose heads have been registered as representative watandars. No. 10361, November 1, 1906.

No right of resumption, when

17. Government have no power to resume *majumdari* watans where it dispenses with the performance of services in respect of them, if the holders are ready and willing to perform such services. *The Government of Bombay v, Damodar.* 5 B. H. C. R., 202, A. C. J.

PART V.

REMUNERATION OF OFFICIATORS

Collector to fix emoluments of officiators.

23. Subject to the provisions of this Act and of any other law for the time being in force regarding service-inams, cash allowances and pensions, it shall be the duty of the Collector to fix the annual emoluments of officiators appointed under the provisions of this Act, and to direct the payment thereof to the officiators for the time being.

Collector may assign watan property for purpose.

It shall be lawful for the Collector for this purpose to assign watan property, or the profits thereof towards the emoluments of officiators.

The existing assignments shall, until altered by competent authority, be taken to have been made under this section.

With the sanction of Government the Collector may, as occasion arises, alter the assignment and may increase or diminish it in value, such increase or diminution being made rateably among the holders in proportion to the profit derived by such holders respectively from the watan.

Government Rules.

No new line of action in fixing the emoluments of officiators is indicated, or at present desired.

Cash allowance.

Under native Government fixed cash salaries were hardly known. The cost of administration was mainly defrayed by assignment of land. It must be obvious that it was useless to expect efficient service from the hereditary village officers without payment of sufficient remuneration to them. Government, therefore, devised the following plan to meet the case, without at the same time making any demand on the general public revenue to any appreciable extent. They, in the first instance, fixed, on a consideration of the importance and requirements of the offices of patel and kulkarni of each village irrespective of the value of the watans attached to them, the amount of cash allowances required to secure efficient service. This amount was then drawn from three sources: Mamul judi, scale judi, and general revenue. Mamul judi was the amount which the watandars were in the habit of paying from before the introduction of the British rule as the annual royalty due on their watan holdings. This judi was appropriated to the payment of the cash allowance referred to above, and, as it generally fell short, was supplemented by the imposition of a fresh tax on the watans in the shape of what is called scale judi; and where these two items did not come up to the total amount of the allowance fixed in any case, the deficiency was made up from the general revenue. *Vide* Appendix, Scale Allowance and Judi.

Assigned property.

Act XI, 1843, enacted that "it shall be competent to the Collector.....to fix and assign portion of such rents and emoluments" (for the fit maintenance officiating officer). That Act, therefore, required an express setting apart of a portion of the profits as assigned for the remuneration of the officiator. The present section also imposes similar duty on the Collector. Consequently, the answer to the question whether any watan property should be considered as assigned property will depend in each case on the answer to the question whether that property was so

assigned under Act XI or is so assigned under this section. S. 73, cl. 1, requires the proceedings as to assigments to be recorded in writing. An entry to that effect in the Register prepared under s. 67 would be *prima facie*, but not, it is thought, conclusive evidence (the Act nowhere says that the entries in the Register would be conclusive evidence) of the fact; but column 25 of the Register, Form B, under s. 67, wherein the entry can be made, is kept blank in many of the Districts, and hence no information can of certainty be had from that source. It appears that assignment can also be the result of general custom (*Rul.* 5).

Imposition of scale judi, effect of.

The question whether watan lands on which scale judi is imposed should, on that ground alone, be treated as assigned property is now set at rest, the answer being in the negative (*Rul.* 8). *Rul.* 3 which answered the question in the affirmative is cancelled by *Rul.* 8. From what is stated in the preceding para, it is clear that the scale judi is only one of the *sources* from which the amount of the cash allowance is drawn, and is not itself a direct *assignment* as such allowance. It is not, so to say, earmarked as part of the allowance which as a matter of fact is invariably paid from the public Treasury out of the general cash on hand, and not of any particular fund set apart for the purpose. If such lands could be treated as assigned property, the general revenue, which supplements the deficiency, if any, in the allowance, might with no less propriety, be similarly treated. It is, therefore, clear that, though the cash allowance itself is assigned property, the watan lands and profits thereof would come under that category only if they are assigned as such under the provisions of this section or under the act of 1843. *Rul.* 8 has now settled the question once for all; but, it appears, we can even go a step further and say that the very fact that scale judi is imposed, presumably shows that the *land itself* is not assigned towards the remuneration of the officiator. On the other hand, in cases where no scale judi is imposed, the very non-imposition may well show that the full profits (*i.e.*, the

excess over the *mamul judi*, if any) of the land are reserved as emoluments of the officiator, and so in this way the land itself may fairly be presumed to be assigned property. But this is merely a presumption liable to be rebutted like any other. So the practical conclusion would seem to be that, in the absence of evidence or circumstances to the contrary, the watan lands of kulkarnis and patels (scale judi being imposed on them) are not assigned lands, while the lands of other hereditary village officers (*i.e.*, inferior) actually rendering service, *e. g.*, mahars, &c., (scale judi not being imposed on them) are assigned lands. Assigned land is inalienable, and it is essential that it should necessarily remain in the hands of the officiator or at least its full rent should be received by him (s. 7). Sub-sharers other than the officiator have no right to the office emoluments (*Rul.* 2). *Vide*, also, ss. 5, 7, 8, *et seq.*

RULINGS.

Remuneration.

1. Petitioners were watandar Kulkarnis of the original village of A, and consequently have a watan right to perform the duties and receive the remuneration of Kulkarni in both the villages into which the original village has been divided. The original emoluments of the watan have, under ordinary rules, been commuted to cash allowance fixed in proportion to the revenue, and petitioners have as good a right to perform service in E as in A. Government pay petitioners for the hereditary service they have a right to render in A and the inamdar must, in like manner, do so as regards E. The inamdar should appoint an officiator and pay him accordingly. It is presumed there is nothing in the terms of the inam which would prevent the enforcement of this order under the Act. No. 3243, June 9, 1875.

Ditto.

2. A sub-sharer in the kulkarni watan is not entitled to any share of the emoluments pertaining to the office of kulkarni. No. 1676, February 28, 1883.

Scale judi.

3. L. R "The question whether watan land on which scale judi has been imposed according to the rules for the payment of remuneration to patels and kulkarnis should be treated as land assigned for re-

muneration of an office under s. 23, should be answered in the affirmative. Watan land on which scale judi has been imposed is watan land, the profits of which have been assigned (in part at least) towards the emoluments of officers, and as such it should be treated as land assigned for the remuneration of an officiator under s. 23." Copy forwarded. No. 5986, July 24, 1885. Cancelled by No. 1284 of 16th February 1897 (*infra*, 8.)

Ditto.

With reference to G. R. No. 5986 of 1885 (*supra*, 3) the following question was put by the Commissioner, namely, "whether the whole watan land on which scale judi has been imposed according to the rules for the payment of remuneration to patels and kulkarnis or part only should be treated as land assigned under s. 23, *e. g.*, where the total value of the watan land is Rs. 50 and the amount of the scale judi is Rs. 30, whether the whole land of the value of Rs. 50 is to be regarded as 'assigned,' or whether such portion of it as is represented by the value of the judi, *i. e.*, Rs 30, is to be so regarded: L. R. "It seems that the question is put with reference to some of the provisions of Part II. But hypothetical or general questions are so likely to be misunderstood or to lead to incorrect opinions that I venture to submit that the Commissioner be asked whenever a concrete case arises to refer it with full particulars for advice." Copy forwarded. No. 5212, July 22, 1886.

Imposition of scale judi is no assignment of land.

5. L. R. "The question is whether watan land, on which judi has been imposed according to the rules for the payment of remuneration to officiating watandars in the case of patel and kulkarni watans, should be transferred to officiating watandars. Subject to the provisions of the Act and local custom the right of succession to watan property is governed by the ordinary law of inheritance. In the present case L held the field in dispute from 1858-59 to 1878-79. After his death his son G took possession and held it till 1882. The Assistant Collector then ejected him in favour of E who had been appointed officiating patel on the ground that it should be presumed that the land had been assigned as remuneration for the officiator. The Collector reversed this order and restored G. The Collector's order appears to be correct. The Assistant Collector's opinion that it should be presumed that the right to the possession of land had been assigned as official remuneration is, I think, erroneous. The presumption is the other way. The ordinary

law of inheritance from the last possessor prevails until the circumstances which require some other order of descent are proved. There is really no proof that this land was assigned as official remuneration. Such assignment could only be the result of a specific order or of general custom. As it is not suggested that the Government Records show any trace of an official order about this land, it may safely be assumed that none has ever been passed. And, as regards custom, there is no proof that by it the land has been reserved for the officiator. It is true that L and G held from 1858 to 1882 and that at the same time they successively officiated as patels, but these facts are quite insufficient to establish the custom. To do so, it would be necessary to show that for a very long series of years the possession of this land always went with the office irrespective of the ordinary law of descent, and that the existence of the custom was generally admitted by the family. I do not think the imposition of extra judi on the land to make up the scale remuneration to the officiator and the grant to the latter of a stipend in cash from the treasury affect in any way the right to possession of the land. Though the extra judi is indirectly paid to the officiator the very most that can be said is that its imposition may amount to an assignment of part of the profits as official remuneration; but it cannot in my opinion be held to be an assignment of the land *itself*. Apparently, the appeal to the Collector was time-barred, but as his order seems right on the merits of the case I think it should be confirmed. Under s. 79 Government has power to dispose of the matter as it thinks proper." Copy forwarded. No. 3774, June 22, 1887.

6. Commissioner: "Sanction of Government is necessary only when the assignments of the watan property or the profits thereof, towards the emoluments of officiators are to be altered under the last para of s. 23, but sanction does not seem necessary to the apportionment of any amount already assigned for the purpose. In this case there are no watan lands. Remuneration is paid in cash from the treasury, and it should be fully paid to the officiators. The allowance is the pay of the officiators performing service, and no sharer nor other person not officiating has any claim to participate in this allowance, and the registering officer's decision therefore seems unsupportable." It is no part of the duty of an officer settling a watan register to fix the emoluments of the officiators in the watan. As the registering

Sanction of Government.

Duty of registering officer.

officer in the present case has however done so and his decision has been confirmed by the Collector, the Commissioner has very properly submitted this case for the orders of Government. In this case no land is assigned for the remuneration of the officiators and both of the representative watandars serve contemporaneously and perform similar duties. The proposal, therefore, to divide the cash allowance equally between the officiators is equitable. The decision of the District Deputy is to that extent cancelled and the Collector should proceed under s. 23. No. 8141, October 26, 1889.

Remuneration

7. Commissioner: "In the patelki watan of the village there are two *takshims*, the Panchamsali and Banajigera, with equal rights of service; both the *takshims* serve in turns. But while the first *takshim* holds watan lands, the other receives no remuneration either in land or in cash, the lands it once possessed having been usurped by the inamdar who now refuses to make any provision for the remuneration of the officiator from that *takshim*. The question is how should the necessary funds be provided for the remuneration of the officiator. There are three courses open, *viz.*, (1) to call upon the inamdar to pay the remuneration every alternate cycle of ten years, (2) to hold the lands in possession of the Panchamsali *takshim* liable for the remuneration of the officiator irrespective of the consideration of *takshims* or (3) to pay from the public Treasury." The best course is to pay the remuneration from the public Treasury. No. 8247, November 10, 1893.

Imposition of scale judi is no assignment for remuneration.

8. In passing his orders the Commissioner acted on G. R. No. 5986, dated 24th July 1885 ruling that watan land, on which scale judi has been imposed, is watan land the profits of which have been assigned (in part at least) towards the emoluments of officiators, and that as such it should be treated as land assigned for the remuneration of an officiator under s. 23. This view is opposed to that taken in G. Rs. Nos. 3774 of 22nd June 1887 and 1550 of 23rd February 1895. The latter construction is undoubtedly correct, for under the former all watan land on which scale judi is paid would be held to be assigned for service and there would in that case be no need for making any distinction between what is specifically assigned and what is not. G. R. No. 5986 of 24th July 1885, (*supra*, 3) should, therefore, be considered as can-

celled. In this case there can be no doubt that Y and S were watandars of the same watan. The validity of the will so far as it bequeathes watan land to S is not therefore affected by section 5 (1). The contention that the right of service could be transferred by the will was withdrawn. No. 1284, February 16, 1897.

Appropriation of whole of full assessment recovered from alienee for remuneration of officiator

9. Commissioner: "In the case of a mata in the Panch Mahals, land belonging to which and assessed at Rs. 33 had been mortgaged to an outsider, only one portion of the deficiency in the patel's remuneration was made up from the amount of the full assessment levied from the mortgagee, the remainder being provided by a non-officiator of the matadar family occupying some of the mata land. Formerly the non-officiator provided the whole of the deficiency, the full assessment levied from the mortgagee being credited in full to Government. It was recommended by the Collector that the practice in such cases should be to make up the deficiency from the amount levied from the mortgagee and to call on non-officiating matadars only if this proved to be insufficient." It is contrary to the intention of Government as regards the Panch Mahals lands to take for itself what it levies as a full assessment or rent on the service inam lands. It would be proper to adopt the suggestion of the Collector to appropriate the whole of the full assessment or rent recovered from the alienees for the remuneration of the officiators. No. 3508, April 7, 1909.

Remuneration.

10. The Collector can assign the whole proceeds of a watan to the officiating person, who is entitled to retain such proceeds as his remuneration.

Bai Suraj v. Government of Bombay: 8 B. H. L. R., 83, A. C. J.

We have provided (s. 26) that the custom of the watan anterior to Act XI, 1843, shall be enquired into; that after the parties interested have had a full opportunity of adducing their proofs and urging their claims, the register is to be prepared, containing a list of those entitled in their own right to hold office. To prevent the future ramifications that must inevitably arise from the growth and multiplication of the offspring of the people thus registered, we have insisted on the principle of primogeniture and all further subdivisons with the confusion inseparable therefrom will be prevented. We have carefully guarded against encroaching on the rights and privileges of the other members of the watan except in the matter of service, and we have provided that they shall be eligible for service as deputies of the men entered in the registers (s. 53). We have attempted to relax the hard and fast rule of fixed order of rotation and have allowed the representative watandars to meet together and appoint an officiator by the voice of a majority, including the man whose turn it was to serve. These then are the means by which we hope to secure uniformity and system in nominating to these appointments, and to do away with the objectionable and demoralising practices that formerly prevailed. The provision of cl. 2, s. 73, will prove effectual in preventing decisions which have been arrived at after full inquiry, being disturbed. Proceedings of Oct. 15, 1874.

This Part and Parts VII to IX apply only to the superior hereditary offices. The duties of these offices shall be performed by the representative watandars, as determined under this Part, or by deputies or substitutes provided for in Part VIII, and by no other persons (s. 24). The duty of determining the custom of the watan as to service, and what persons shall be recognised as representative watandars, and of registering their names, is by this Act (s. 25) vested in the Collector; and s. 10 of the Land Revenue Code invests Assistant and Deputy Collectors with powers of a Collector. The Civil Courts have no jurisdiction in this matter (*vide* Appendix, Jurisdiction). In determining the above-mentioned points, the Collector shall inquire into and take into consideration the practice of the watan heretofore observed from the earliest period for which there are records (of native and British Government) or other evidence, oral or documentary including judicial decisions (*Rules.* 7, 31)

available; but in so doing he shall not be bound to recognise appointments or sub-divisions made subsequent to the introduction of Act XI, 1843, that is, since July 22, 1843, which he considers to be contrary to the (previous) custom of the watan as to service (s. 26).

The following category exhausts all the possible variations in the customs of watans as to service.

Class I. The right of service may vest in one single family as an undivided and entire right.

Class II. (*a*) The right may vest in defferent branches of the same family to be exercised at one and the same time; or (*b*) to be exercised by turns, or (*c*) in altogether different families to be exercised at one and the same time, or (*d*) by turns.

Ss. 27 to 31 read in conjunction with s. 38 give the following results :—

In the case of Class I the head of such family only shall be registered as representative watandar and no other person; and he shall be entitled to officiate for life. As to Class II (*a* and *c*) the heads of such branches or families shall each be registered as representative watandars and be entitled to serve contemporaneously for life. In the case of Class II (*b*) the heads of such branches shall each be registered as representative watandars and be entitled to office by turns and for such periods between five and ten years as the Collector shall in each case determine; but where the practice of service in successive periods is not proved to the satisfaction of the Collector to have existed at the date of the introduction of Act XI or where the practice of selection by the Collector from several branches has (under the provisions of the said Act) prevailed, the head of the eldest branch descended from the original watandar shall be registered as sole representative watandar and be entitled to officiate for life. In the case of Class II (*d*) the heads of the several families shall be registered as representative watandars and entitled to officiate by such turns and for such periods between five and ten years as the Collector may determine in each case.

Ss. 30 and 31 may be considered as provisoes to ss. 28 and 29, which with s. 27 exhaust all the possible variations (mentioned above) in the custom as to service. S. 30 requires some

service has always been performed by or on behalf of the family owning $\frac{1}{2}$ share, the head of that family alone will be registered under s. 57, cl. *c*, (s. 67, cl. *c*). as representative watandar.

S. 29. The nephew of the two-anna sharer in the illustration to s. 26 has performed the duties for 30 years during his uncle's residence at Benares and by his uncle's permission. But the nephew's share in the watan has never been officially recognised. The uncle is the head of the family to which the right of service belongs. *i. e.*, the representative watandar, and not the nephew. The nephew is only a member, not the head of a family as defined in this Act.

The Collector is satisfied that in 1842 the watan was held by two eight-anna sharers, each having a right to serve in consecutive periods and that the practice of consecutive service has continued ever since. The head of each of the two families will be registered as a representative watandar. In 1845 one of these sharers died, leaving two sons whose names were registered at the time as four-anna sharers. They have alternated with each other and with the eight-anna sharer in performing the duties. The custom of having three families with a right to serve not being thirty years old, the Collector will only register two representative watandars, *viz.*, the eight-anna sharer and the eldest of the two four-anna sharers.

The following extracts from the Proceedings of the Legislative Council explain the object and scope of these sections :—

The greatest difference of opinion has prevailed respecting the question of service by rotation. As regards kulkarnis there is no doubt that rotation has existed from of old, but as regards patels there is a wide difference of opinion entertained by Revenue Officers as to whether it is not an innovation The subject, looking to its past history, seems to be very much a case of the strongest and most influential man getting the post of officiator. When Act XI of 1843 was enacted rotation was recognized, but unfortunately no provision for preserving proper registers of share-holders was made. The result has been deplorable. The omission has given rise to a most corrupt scramble amongst all parties to obtain office. There was no authoritative list from which the nominating officer could make his selection. The consequence was that intrigue,

bribery, and corruption were rife amongst all the offices, from the Mamlatdar's up to the Revenue Commissioner's. The great object of the Bill now before us is to amend and simplify the manner in which the appointments are made. With a view to checking these evils, Government, as far back as 1866, issued executive orders for the preparation of registers and regarding the manner in which these appointments were made. We have now to consider, first, how far the registers already prepared in conformity with the orders of 1866 are to be upheld, and in the next place how far it is advisable in making new registers where no registers at all have been prepared, to interfere with past practices. I will first deal with the registers that have been prepared subsequent to 1866, and in so doing must draw attention to the amendment to s. 63 (present section 73). It will be seen that we have done all in our power to prevent unnecessary interference with registers already prepared by responsible officers after the parties have had an opportunity of appearing before them and advancing their claims. I do hope that the officers to whom the working of this Act will be entrusted will be very chary in interfering with the past and restrain that craving after uniformity which is to my mind the most unpleasant and unpopular feature in our administration. It is better that some differences of system should remain than that old squabbles once set at rest should be revived. I will now turn to the second part—namely, the preparation of new registers where none now exist. In some Collectorates the orders of 1866 have been most carefully attended to. In others, little attention has been paid to the orders, and no new registers have been prepared. The officers in these Collectorates will therefore have to deal with this matter *de novo*, and I hope that they will endeavour to interfere as little as possible with the customs of watans The words of the amendment are wide and elastic. I trust that the effect of it will be that only the names of men who by intrigue and improper means have found their way into existing registers, will be eliminated, and that the names of all who by custom and usage are entitled to the privilege will be retained:—Proceedings of August 24, 1874.

It is certain that we have neglected hitherto to lay down any precise and uniform legal rules for nominating to these offices, and that the consequence has been the prevalence of great confusion which we hope by the passing of this Bill to put a stop to.

or have in writing agreed during the inquiry made in the preparation of the existing registers, as to who are the representative watandars, and as to the order of service, then the register prescribed in this Act shall be prepared in accordance with such agreement.

Right of service to remain after relinquishment of property

32. When watan property or profits have been voluntarily relinquished without abandonment of right of service, such right of service shall be dealt with as if the watandars were still in receipt of such emoluments.

Government Rules.

In Part VI an endeavour has been made to supplement the provisions of the law existing before the passing of the Act, and to give greater form and accuracy, and consequently more binding effect to the registers already instituted by law or departmental orders, or both combined.

The representative watandar is by definition a watandar registered by the Collector as having a right to perform the duties.

The ample inquiry which took place before the passing of the Bill showed the extreme difficulty of legislating for the great number of ancient customs and recent practices, which vary much in each province and even district. *In some districts* Act XI, 1843, has very recently been applied in such a way as to increase the number of recognized sharers until the watan has become almost unmanageable. In others very careful inquiries have been made and the results registered and the shares thus settled have become generally known. It is obviously expedient to deal in different ways with these two classes. While, therefore, s. 26 provides that the Collector shall not be bound to recognize appointments and sub-divisions made subsequently to the introduction of Act XI, 1843, which he considers mere practices contrary to the custom of the watan, s. 73, cl. 2, on the other hand, indicates plainly that practices established after the careful inquiries instituted from about the year 1866 and acquiesced in since, are not to be disturbed; and Government will not be disposed to deviate from the existing registers in such instances without very weighty reasons being adduced.

Government would also draw prominent attention to the different manner in which the words "custom" and "practice" are used in the Act. The practice is by section 26 to be looked at, but so also the records; both are species of evidence of custom. This should be borne in mind where they do not coincide; in many cases it will be found that the practice since British rule began has been to appoint from one or more families, while other families have acquiesced on the understanding that their rights subsisted unaffected. This understanding is often proved by official entries; it often subsists in well-known and undisputed tradition. The Collectors will, of course, subject to the rule contained in s. 73, cl. 2, bring as much research and experience as possible to their judgment on the evidence, taking care that mere accident shall not prejudice just rights, and at the same time that mere recent practices of sub-divisions shall not be allowed to weaken the village system contrary to the proviso of s. 26.

It is necessary that particular attention should be paid, under Part VI of the Act, to decisions of the Civil Courts in suits instituted before the Act came into operation. Such decisions, Government are advised, should be accepted as evidence within the meaning of s. 26, and as conclusive evidence so far as they are consistent with the provisions of the Act.

The following rules are therefore to be observed on the point.—(1) Decisions passed by the Collector since 1866 shall not be accepted under s. 73, cl. 2, when they have been set aside or modified by the Civil Courts, but in such cases the Court's decrees shall be acted upon, so far as they may be consistent with the provisions of the Act. (II) When litigation is still pending concerning any such decision it should not be accepted, nor should any final order be passed under s. 73 until the final decree of the Civil Courts is obtained, when it should be acted upon as in the case of already existing decrees. (III) Government reserve the right of directing that previous decisions other than the above shall not be accepted in particular cases.

In the Bill the following illustrations were added.

S. 26. Three families have been officially recognized for the last 20 years as owners respectively of $\frac{1}{2}$, $\frac{3}{8}$ and $\frac{1}{8}$ share in a watan. The shares and the names of the heads of the three families will be registered as such under s. 57, cl. *d* (s. 67 cl. *d*). But if the

PART VI.

REPRESENTATIVE WATANDARS.

Duties to be performed by representative watandars

24. The duties appertaining to any hereditary office shall be performed by the representative watandars or by deputies or substitutes as hereinafter provided, and by no other persons.

Determination and registration of representative watandars

25. It shall be the duty of the Collector to determine, as hereinafter provided, the custom of the watan as to service and what persons shall be recognized as representative watandars for the purpose of this Act, and to register their names.

Previous practice to be considered in determining who are representative watandars

26. In determining what heads of families shall be recognized as representative watandars and what is the custom of the watan as to service, the Collector shall inquire into and take into consideration the practice heretofore observed from the earliest period for which there are records or other evidence available :

Provided that he shall not be bound to recognize appointments or sub-divisions which have been made subsequently to the introduction of Act No. XI of 1843, and which he considers to be contrary to the custom of the watan.

Registration of head of family as sole representative watandar

27. If it shall appear to the Collector that the custom has been for a member of one family only to serve, the Collector shall register the name of the head of such family only as the representative watandar and no other person.

Registration of heads of families as representative watandars

28. If it shall appear to the Collector that the custom has been for a member of each of several families to perform the duties either contemporaneously or for successive periods,

the Collector shall register the name of the head of each of such families as representative watandars and no other persons, and, where the practice of service in successive periods is proved to exist, he shall decide the order in which the representative watandars shall officiate.

Registration of head of eldest family as sole representative watandar.

29. *Clause* 1.—Where the practice of service in successive periods appears to have existed, but is not proved to the satisfaction of the Collector to have existed at the date of the introduction of Act No. XI of 1843, or when the practice of selection by the Collector from several families prevails, he shall determine who is the head of the eldest family descended from the original watandar, and shall register his name as sole representative watandar.

Registration of head of separate families as representative watandars.

Clause 2.—In cases where such several families are not descended from a common ancestor, the Collector shall register as representative watandars the heads of such families, and establish the practice of service in successive periods.

Registration as representative watandar of head of each family in amalgamated watan.

30. When the practice of service in successive periods has been introduced under the British rule, in consequence of the reduction in the number of officiators* or the amalgamation of watans by Government, the head of each family that formerly officiated shall be separately entered as a representative watandar.

Procedure if heads of families agree as to who are representative watandars.

31. But, if in any case described in section 29 (*of this Act*)* the heads of families at any time before the completion of the register prescribed by this Act agree unanimously in writing,

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1 * This word was substituted for "sharers" by Act V, 1886.

2 * The words in the brackets were repealed by Bombay Act III of 1886.

Dumaldars have no power of nomination.

10. It is quite clear that, as the law now stands, Dumaldars cannot have the powers of a Collector under the Act, unless they now exercise the ordinary powers of the Collector by sanad under Act XIII, 1842, or in other ways. It is admitted that the law is defective in this particular and it is proposed to amend it in the Land Revenue Code. (Since the passing of G.R. No. 2865, July 14, 1869, Dumaldars in the Deccan had exercised the right of appointing hereditary officers in their villages, but prior to that the practice had not been uniform, that is to say, nominations were made sometimes by the Inamdars and sometimes by the controlling officers of Government. In the Legislative Council assurance had been given that by the inclusion of watans in alienated villages within the operation of the Watan Act there would be no interference with the conditions under which such villages were held). No. 3096, May 25, 1876.

Contemporaneous service.

11. Contemporaneous service means service so (that is, contemporaneously) performed in the same *takshim*, and the service in watan A has not been contemporaneous but successive, as only one man has officiated at a time. The watan settlement would be:

Watan B.—one officiator permanently.

Watan A.—one officiator in rotation out of three families for terms of not less than ten years in case of patel or five in case of kulkarnis, or for life, according to whether the case fell under s. 28 or s. 29 modified by agreement under s. 31. No. 3262, June 2, 1876.

Register.

12. It was not intended by G. R. No. 2906 of 1876 (*supra*, 9), that proof of appointment under Act XI, 1843, was necessary to give a watandar a claim to officiate. It meant that when, for some reason or other, the elder branch had *never* had any connection with the watan, the existing head of the family of the second who had been connected with the watan should be registered as the representative. No. 3484, June 14, 1876.

Right of service.

13. The question (whether with reference to G. R. No. 2906 of 1876 (*supra*, 9) the existing head of the family of the second son should also be entered in column 20 of the Watan Register as head of the

family) should be answered in the affirmative. As far as the watan is concerned, the second son would become the head. No. 3809, June 30, 1876.

Period of service.

14. (Whether in preparing a new register the term of service should be calculated in proportion to the shares of the several representative watandars, the Commissioner expressing that the Collector is bound under s. 26 to consider what has hitherto been the custom of the watan as to service, and if he is of opinion that one house has hitherto served oftener or for longer periods than other, it will be his duty to confirm that custom when preparing a new register.) Government concur. Service according to proportionate value of shares of watans should, however, be avoided as much as possible, as tending to complicate the preparation of registers. No. 4987, August 31, 1876.

Contemporaneous service.

15. When it has been the custom of each of two or three *talshims* to serve contemporaneously and in one or more of such *talshims* a member of each of several families has performed the duties in successive periods, the custom as to contemporaneous service shall, subject to s. 43, be recognised, and the rights of the representative watandar or of the representative watandars of each *talshim* as to service, shall be determined under the provisions of the Act as if each such *talshim* constituted a distinct watan. The decisions already arrived at, which may not be in strict accordance with this rule, be sent up for orders. No 5873, Oct. 14, 1876.

16 A register was prepared in 1873 by the District Deputy Collector, who entered the following persons as hakdars, namely, A, B, C and D. A and D belong to one family and B and C to an altogether different family The common ancestor of B and C is four generations removed from B and three from C, and the common ancestor of A and D is three generations removed from each of them. The grandfathers of B and C separated, and also of A and D. There is no proof of service before 1839-40. The father of C served in 1839-40 and 1841-42, the father of B in 1840-41 and from 1842 to 1863, and B himself from 1864 to 1872. A served from 1844 to 1856, and D from 1856 to 1871. On an appeal the Collector struck out the name of C from the register holding that service for two years was not sufficient to establish a repre-

ment will not acknowledge that the mortgage of a *takshim* confers proprietory title (or right of service) No. 4485, Sept. 12, 1871.

Nomination of officiator by inamdars.

4. It is evident that the instructions of Government did not contemplate the case of there being more inamdars than one, and of their not being able to agree in the nomination of an officiator. The right to nominate in cases in which the shareholders in a watan cannot concur in the appointment of an officiator has been conferred on sole inamdars, subject to the confirmation of the Magistrate in the case of mulki and police patels and the privilege may be extended, subject, as in that case, to the supervision of the Collector as controlling officer under Act XI, 1843, to joint inamdars, where they agree and act as one. But where they do not, the right of nomination delegated as a favour by Government, but subject always to the confirmation of the controlling officer, must be exercised by the collector or other controlling officer under the Act. No. 3266, July 8, 1872.

Performance of service to be presumed as being in one's own right.

5. In this case the only positive evidence is in favour of petitioner's right to serve. It is shown that D, a person of whom he is the representative, did actually serve prior to 1843, and the arguments employed to show that the service D rendered was not of original right, but on behalf of or as deputy for the other branch of the family do not appear to be conclusive. The general rule should be that if the actual performance of service is not disputed, it should rest with the opposite party to prove that such service was on the part of others and not of original right, if they allege such to be the case; and if they fail to prove this, the claimant should have the benefit of the doubt. No. 4797, August 23, 1875.

Reduction in number of officiators.

6. Local officers are instructed to reduce the number of officiators on every possible occasion where their services are not actually required. In most cases they will be able to arrange this, if they use tact, by carrying out the provisions of s. 31 which can be applied, with the consent of the watandars, especially to such cases as those coming under s. 29. No. 6648, Nov. 27, 1875.

s 31.

Court's decree, how far evidence of right.

7. L. R. "S. 26 enacts that in determining what heads of families shall be recognised as representative watandars, and what the custom of the watan is as to service, the Collector shall consider the practice

heretofore observed from the earliest period for which there are records *or other evidence* available. A final decree of a competent Court determining the rights of the watandars *inter se* is *evidence* of the nature contemplated by this section, and it ought to be regarded by the Collector, as it would be by any other authority, as *conclusive* on the points with which it deals. The rules laid down in Part VI for determining who shall be recognised as representative watandars are however to some extent new, and should any of them operate to limit or vary a right of which the existence has been declared by a Court's decree upon different ground, the Collector will be bound to enforce the law, and to treat the Court's judgment as conclusive only with respect to such *facts* as are material to a correct determination, under Act, of the right to be recognised as a representative watandar." The Advocate General: "The Collector should treat the judgment as evidence under s. 26 and not go beyond it, unless he be satisfied that all the parties interested were not before the Court, or that there was, from any other cause, a miscarriage of justice. In any case the Collector should treat the judgment as *prima facie* evidence and abide by it unless it is satisfactorily impeached. Of course, if the judgment is at variance in any respect with the rules laid down in Part VI as to who are to be recognised as representative watandars, the Collector must follow the directions of the Act and adopt the judgment of the Court only so far as it establishes facts material to enable him to come to a determination." Copy forwarded. No. 1711, March 17, 1876.

Register.

8. Heads of families which have enjoyed the right of service should alone be entered in the Register No. 1957, March 27, 1876.

Right of service.

9. In a case where some generations back a man had two sons, on the second of whom, for some reason or other, the service watan devolved—on his death his son succeeded—and so on in succession through each generation, the eldest son of the original head of the family and his descendants never having had any connection with the watan, Government think that for the purpose of the Act, the existing head of the family of the second son should be registered as the representative watandar under s. 27. No. 2906, May 15 1876.

SUMMARY OF RULINGS.

1, 2. Election or nomination of officiator.

3. Mortgagee has no right of service.

4. Nomination of officiators by Inamdars.

5. Performance of service to be presumed as being in one's own right.

6. Reduction in number of officiators.

7. Court's decree how far evidence of right.

8, 12. Register.

9, 13. Right of service.

10. Dumaldars have no power of nomination.

11, 15. Contemporaneous service.

14. Period of service.

16. Service after 1843 gives no right. Transfer of right of service good, when. Practice of service determined from service after 1843.

17. Decision passed after 1866 adhered to. Sub-divisions made after 1843 may be recognised, when.

18. Eldest son of eldest branch, sole representative.

19. S. 28 and not s. 29, cl. 1, applied.

20. Junior branch may have right of service. S. 29, cl, 2.

21. Seniority.

22. Practice of selection.

23. S. 27 applicable to the case.

24. Burden of proof.

25. Previous G. Rs. examined.

26. Service after 1843 evidence, when.

27. Sub-division after 1843 recognised.

28. Acquiescence and limitation.

29. Entry of name of junior member with consent of senior, effect of. S. 79.

30. Effect of acquiescence. S. 79. S. 56. Appointment made after 1843 recognised, why. Limitation. Collector's jurisdiction. (Superseded by *Rul.* 39 A).

31. Value of judicial decisions.

32. Grant of watan. Entry of name.

33. Law as to appointment of Police patel.

34. Head of family has *prima facie* right of service. Register. Proportion of service.

35. Meaning of "several families" in s. 28.

36,37. Proportionate service.

38. Separate registers to be prepared, when.

39. Police patel.

39 A. Existing register set aside; new register ordered.

40. Idol cannot be representative watandar.

41. Framing of a register involving the revival of a watan not sanctioned.

42. Collector can determine incidentally whether one is watandar or not.

43. Presumption as to the rights of members *inter se*.

44. Adverse possession.

45. Longer period of service.

46. Eligibility for office and adverse possession.

47. Custom.

RULINGS.

Election or nomination &c. of officiator.

1. For the purpose of voting for the election or nomination under Act XI, 1843) of an officiator, a watandar is to be considered as a registered sharer in a watan and as regards eligibility to be elected or nominated the term is to include all sharers in the watan whether registered or not, and the families of such sharers. No. 2864, August 9, 1867.

Ditto.

2. Senior representatives of the principal divisions in each watan have a voice in the appointment of an officiating member. No. 47 January 4, 1871.

Mortgagee has no right of service.

3. A *talshim* having been resumed in consequence of the long absence of the original holder thereof and there being want of proof on the part of the petitioner mortgagee that he ever performed service for it, Govern-

explanation. After the introduction of the British rule, it was found that in regard to some watans the services appertaining thereto were performed contemporaneously by a larger number of co-sharers at a time than that required for the efficient performance of the services, and that some watans were so small as to warrant their amalgamation with a view to provide proper remuneration to the officiator for the time being to secure efficient service. In the former case the number of co-sharers officiating at a time was reduced to such figure as was deemed really required for the office, the co-sharers in excess of such reduced figure being given right of service by turns in lieu of their right of contemporaneous service. In this way the number of officiators *at a time* was reduced, and the practice of contemporaneous service altered, as regards the excess number of co-sharers, to that of successive service. In the latter case, that is, of small watans, the watans were amalgamated (*vide* s. 14), and such practice of service contemporaneously or successively by the co-sharers of each component watan so amalgamated was established as was deemed proper. It will thus be seen that in these two classes of cases there may be the practice of contemporaneous service in regard to some co-sharers and of successive service in regard to others. . S. 30, therefore, enacts that, where the practice of service in successive periods has been introduced under the British rule in consequence of the reduction in the number of officiators or of the amalgamation of watans, the head of each branch or family shall be separately entered as a representative watandar, and he shall be entitled to serve for life if the practice was for him to serve contemporaneously with the head of another branch or family similarly registered, or for a term if successive service was the practice.

S. 32 was enacted to meet a number of cases in the S. M. Country, in which the principal sharers had thrown up their watan property (mainly on account of their inability to pay the judi thereon), and still retained their right of service. Such watandars would of course be entitled to the cash allowances under the Wingate scale and to other emoluments not so thrown up. *Rul.* 2 under s. 56 is an instance in point.

When once the register is prepared or confirmed in accordance with the provisions of these sections, it should as a rule be regarded as final on the analogy of the rule of *res judicata* or *stare decisis*; and the subsequent devolution of the right of service would be governed by s. 36. In exceptional cases, however, Government can revise the register, like any other order, at any time, without restriction of the Law of Limitation, under s. 79 (*vide Rul.* 39 A). For form of records of proceedings under these sections, *vide* Appendix, Record of Proceedings.

Instructions for registering.

It is only the heads of families which have enjoyed the right of service that are to be registered (*Rul.* 8). Ownership of a share in the watan lands leads to a presumption of eligibility for office (*Rul.* 46); and a further presumption is that all the members of all the branches of a watandar family have a right to their terms of office in succession (*Rul.* 43). Seniority of branch does not *necessarily* convey right of service (*Rul.* 21), nor is the owner of a bigger share *necessarily* entitled to a longer period of service (*Rul.* 45). Service according to proportionate value of shares of watans is to be avoided, as far as possible, as tending to complicate the preparation of registers (*Rul.* 14), and reduction is to be made in the number of officiators, whenever possible (*Rul.* 6). Performance of service is to be presumed as being in one's own right, until the contrary is proved (*Rul.* 5). Adverse possession may, of course, come in the way of one who may otherwise be entitled to right of office (*Rul.* 44). Civil Court's judgment is binding on the Collector only so far as it does not go against the provisions of this Act (*Rul.* 7). A decision passed by the Revenue authorities in the matter of framing a register after 1866, which fulfils the conditions laid down in s. 73, cl. 2, shall not be interfered with, unless there are very strong reasons (*Rul.* 17). An idol can never be a representative watandar, being incapable of performing any duties (*Rul.* 40).

sentative right, and also on the ground that by an agreement executed by the father of C in favour of the father of B which was confirmed by an agreement by C in favour of B, and which was recognised by the Collector in appointing an officiator in 1864, the right of C's branch to the watan lands and to service was transferred to B's branch. The register was revised in 1880 by the Assistant Collector who substituted the name of E for that of A and struck out the name of D. There are three points for consideration: (1) whether E's name has been properly substituted, (2) whether C's name has been properly struck out, and (3) whether D's name has been properly struck out. (1) It is admitted E is the son of A's elder brother. He is, therefore, the representative of the eldest line, and as A admitted that his brother separated only about 15 years ago, his service from 1844 to 1856 gives him no right to be registered as a representative watandar. E's name, therefore, has been properly entered in the register. (2) As there is evidence of service for only four years prior to 1843 the service of C's father for two of those four years gives a strong support to the claim which C put forward. Assuming the agreements to be genuine there is no doubt now about the validity of the transfer. Act III by prohibiting alienation of a watan to any person not a watandar of the same watan implies that such alienation to a watandar of the same watan is valid. (3) The Collector states that D 'is said to have died leaving no descendants, in which case E is his heir. But at all events there are no records to show that D ever held office or any member of his branch previous to 1843, and his service, therefore, counts to E, whoever his heir may be, because sub-divisions subsequent to 1843 need not be considered.' But with reference to the right of E the Collector holds that as there are records to show who held office during four years only prior to 1843, the custom of the watan must be determined by the service subsequent to 1843. It was stated before the Assistant Collector that the great-grandfather of E, and the grandfather of D separated 60 years ago, and that statement has not been contradicted; and if service after 1843 is recognised as evidence of right in one case (that of E), it should be recognised in the other (that of D) also. The Deputy Collector's inquiry was imperfect and his decision regarding

Service after 1843 gives no right.

Transfer of right of service, good, when.

Practice of service determined from service after 1843.

A is inconsistent with s. 28. A revision of the register prepared by him was necessary. But before a new register is prepared, a decision should be recorded on the points of the genuineness of the agreements and whether there is no heir to D. No. 7409 Dec. 7, 1881.

17. The first decision in this case was passed in 1871 by the Deputy Collector after an investigation which fulfils all the requirements of s. 73, cl. 2. The following persons were then registered as hakdars, namely, Jain Bana A and B, Panchamsali Bana C, D and E, Kudawakkaligera Bana F and G. This decision was acquiesced in. But in 1878 the Assistant Collector revised it without recording any reason for taking the step. He considered that N, husband of A, had no right to be entered as a representative watandar, that D and E had no right to service, as they or those whom they represent did not serve before 1843, and that the widow (J) of the eldest brother of the watandars of Kudawakkaligera Bana, who separated 25 years prior to 1878, was alone entitled to be registered as the representative watandar of the Bana. His register was B, C and J. The Collector held that, as to the Jain Bana, although the separation did not take place till 1850, and although the Collector is not bound to recognise sub-divisions made after the Act of 1843, it was inexpedient to alter the register prepared in 1871 so far as it affects that Bana particularly as S, a younger undivided brother of A's husband and B, held office both before and after 1850. As regards the Panchamsali Bana he found that the branches represented by D and E had not served prior to 1843 but was of opinion that two sharers should be registered in this as in the other Banas. He proposes it would be most equitable to register one of each of those members who hold in all 2 anna 8 pies share of the watan and that therefore C and E be registered as representatives of this Bana. As regards the Kudawakkaligera Bana he found R, husband of J, was not separated from G and held that G's son M's name should be entered in lieu of J. He found F separated in 1841 and proposes F's name to be re-entered. The Commissioner is of opinion that as the branches of the Jaina Bana did not separate till 1850, the eldest representative only should be recognised. With regard to the Panchamsali Bana he holds that as D separated before 1843 and served in that year and also as C exe-

cuted an agreement in favour of D's son in 1869, the third son of D should be registered in accordance with the request of the eldest son. *Resolution*: Government are of opinion that the decision passed in 1871 should not have been interfered with. S. 73, cl. 2, provides that decisions passed subsequently to 1866 after an investigation recorded in writing and after a proper opportunity had been afforded for the hearing of claims and production of evidence, and which are recorded with the reasons therefor in the handwriting of a Collector or a Deputy shall be accepted so far as they are not inconsistent with the provisions of the Act, unless the Governor in Council shall otherwise direct. As already observed, the investigation of 1871 satisfies all these requirements, and it has not been shown the decision is inconsistent with the provisions of the Act. It is true that the Deputy recognised some sub-divisions made after the introduction of the Act of 1843, but s. 26 only provides that the Collector 'shall not be bound' to recognise such sub-divisions, if he considers them contrary to the custom of the watan, and it is laid down (in the Government Rules, *vide supra*) that 'practices established after careful inquiries instituted from about 1866 and acquiesced in since are not to be disturbed and Government will not be disposed to deviate from the existing registers in such instances without very weighty reasons being adduced.' The revision of the Assistant Collector is not, therefore, in accordance with the Act and is in direct opposition to the Rules. For that reason Government think that although some of the conclusions of the Collector and the Commissioner might have been adopted, if the register had been prepared for the first time under the Act, the decision of the Deputy which was for years acquiesced in by the parties should be accepted. The Deputy did not decide the order in which the representative watandars should officiate. It is agreed that the three Banas have equal right, and that it has been customary for them to hold in turn the offices of Police Patel of the Village N, of Revenue Patel of N, and of Revenue and Police Patel of the hamlet of N, the three offices being filled simultaneously by a member of each Bana. This order to continue, members of the different Banas succeeding each other every ten years. No. 7410, Dec. 7, 1881.

Decision passed after 1866 adhered to.

Sub-divisions made after 1843 may be recognised, when.

18. Collector: "There can be no doubt that T should be recognised as sole representative watandar, inasmuch as he is the eldest son of the eldest branch of the family and as his father served prior to 1843." The view taken is right and should be adopted. It is odd that T should so long have neglected to enforce his claim, but assuming that he is undoubtedly the eldest son of the oldest branch of the family, Government do not see how his rights can be ignored now that they are pressed. No. 90, Jany. 6, 1882.

Eldest son of eldest branch, sole representative.

19. The present dispute is between two cousins descended from a common ancestor P. They are D descended from the elder branch, and L from the younger who with his father and grand-father has served continuously from 1818 to 1871, when he ceased to serve and was succeeded by D who apparently is still serving. The question is what is the custom of the watan, for under s. 25 that must be the guide to the appointment of a representative watandar. The first fact established is that in 1820 there were three officiators in the watan, according to the custom of that period, which was joint service, now called under the Act contemproaneous service. How long this joint service continued is uncertain, but it excludes the possibility of a sole representative watandar under s. 27. Now the question is, how did the three officiators come to serve? The Collector states there is no evidence how they came to be appointed, but without this information it is impossible to decide according to the Act. If they were appointed by the Collector, as they probably were, then under s. 29, cl. 1, the Collector must determine 'who is the head of the eldest family descended from the original watandar.' If it is assumed that P was the original watandar, then D is the head of the eldest family and must be the sole representative watandar, but this involves the injustice and absurdity of depriving L of his right of service, though he and his father and grand-father have served continuously from 1818. In the absence of any evidence as to the custom of the watan, Government must rely on the fact that from 1818 there were sometimes two and sometimes three officiators serving contemporaneously, and under s. 28 the heads of both surviving families must be entered as representative watandars, that is D and L should be allowed to serve contem-

S 28 and not s. 29 cl 1, applied.

poraneously for life under s. 28. One should conduct the Police and the other the Revenue duties. No. 3732, June 9, 1882.

Junior branch may have right of service.

20. G served for seven years and his father for six years and both had voted under the Act of 1843 for the appointment of other patels, but G belongs to the junior branch of his family and therefore the Collector decided that he had no right of service and suggests that he must have served as deputy of his cousin, but this is purely a conjecture. If it were the case that junior branches of a family did not serve, his argument would have some weight, but nothing is more common than for service to run in the junior branch of a family for several generations. G holds a share of the watan and in the inquiry in 1873 he is distinctly stated to have served for 7 years *in his own right*. His name should not be omitted. B has never served, but has exercised the right to nominate other patels under the Act of 1843, and has a share of the watan. The custom of the watan is found to be selected by the Collector under s. 29, cl. 2, and the fact of the Collector not having selected B for service should not bar his eligibility to be selected when the Collector thought fit. It cannot be held that a man who had the right to vote for others could not himself have been selected by the Collector. B's name should be restored. No. 3882, June 16, 1882.

S. 29, cl. 2.

Seniority.

21. The Act does not recognise either seniority or juniority as conveying or denying a qualification to registration as a representative watandar, and nothing is more common as a custom than for the junior branch of a family to retain all the rights of service to the exclusion of the elder branch. No. 4007, June 21, 1882.

Practice of selection.

22. Government concur in considering that the custom of this watan being selection by the Collector, the heads of those families only from whom officiators were selected by the Collector are entitled to be registered as representative watandars. The practice of selection is not proved to have existed in the case of the families of A and B. Their names as well as the name of H whose family has rendered no service were accordingly properly removed from the register. No. 8398, Nov. 30, 1882.

23. Commissioner : " The recommendation of the Collector, that the name of S (struck out on the revision of the register) be again entered on the ground that the original register prepared in 1873 was acquiesced in for nearly nine years, is opposed to the custom of the watan which is for a member of one family only to serve (s. 27), and moreover G's service was subsequent to 1843 and not in his own right." Government concur. No. 359, Jan. 15, 1883.

S 27.

24. The fact that the family of M officiated in 1819 and from 1853 to 1873 and the failure of the opposite party to prove that the latter service was not of original right, justify the recognition of M as a representative watandar. No. 3834, May 19, 1883.

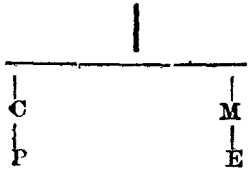
Burden of proof.

25. Commissioner : " A reconsideration of orders passed in G. R. No. 527 of 1883 in the case of Gudisagar kulkarni watan register is solicited. The sub-division in the case of this watan having taken place in 1839, the head of the family of which P was a member must be recognised as a representative watandar of his right of service. Accordingly both A and B are, in my opinion, entitled to be registered as representative watandars. The custom of the watan must be considered to be service in successive periods under s. 28. If the L. R's opinion is sound as regards this watan, the decisions by Government in the previous five cases are erroneous, for they are on all fours with this case." L. R. " The Commissioner states that 'it is an established practice that any service performed by a member of an undivided Hindoo family counts to the eldest member of the family and not to the individuals who performed it.' The five Resolutions, which he quotes to show that Government have also held this view, being all less than two years old, can hardly be taken as evidence of 'an established practice.' The first of the Resolutions, No. 3732 of 1882 (*supra* 19), is not, I think, a case in point. In the absence of any evidence as to the custom of the watan, Government held that the fact—that since 1818 there had been sometimes two and sometimes three officiators,—brought the case to which that Resolution referred, under s. 28, and directed that the present heads of the two surviving families from whom these officiators had been taken be entered as representative watandars.

Previous G. Rs. examined.

All that can be argued from that case is that when Government deemed s. 28 applicable, they directed it to be applied. No. 740 of 1881 (*supra, 16*) decided that as H was, from the pedigree he representative of the eldest line, and as S admitted that he and his brother separated only about 15 years ago, his service from 1844–45 to 1855–56 gave him no right to be registered, and that H's name was therefore properly entered in the register. It was not stated what section of the Act applied to the case ; but S had officiated from 1844 to 1856 only, and I think it was rightly held that such service could give him no exclusive right of service now under any section of the Act. H's name was properly entered, not because S's service during the above years ' counted to ' H, but because H was at the date of the Resolution ' the head of the family ' by which the service had been performed. The case decided in No. 90 of 1882 (*supra, 18*) was apparently under s. 27. Service before 1843 was alone regarded with reference to s. 26., and the name of the eldest son of the man who had served in 1830 and from 1833 to 1843 (and afterwards also from 1843 to 1867) was entered in preference to the younger son, although the latter had been officiating since 1868 upto the time of the Resolution. This decision was in strict accordance with s. 27, which required that ' the name of the head of the family only should be entered and no other person.' But the Resolution does not say that the younger brother's service ' counts to ' the elder brother. Government concurred that service since 1843 should be disregarded and that the provision of s. 27 should be followed. In No. 359 of 1883 (*supra, 23*) the disputant parties were the same as in G. R. No. 7409 of 1881. The case fell under s. 27. The younger brother S's service in this instance had admittedly not been in his own right, but on the nomination of his elder brother D and there can be no question, therefore, that the latter's son H's name was correctly entered as sole representative under s. 27. But this was not because S's service ' counted to ' him but because S had officiated merely as nominee, and he moreover was at the time of the Resolution the head of the family by which service had always been performed. The case decided in No. 8433 of 1882 fell under s. 28, and the name of the present head of each of the families which had hitherto performed the duties had to be entered. Government confirmed the Commissioner's recommendations. As regards the first family the Commissioner wrote as follows : ' No. 1 M's father served in 1818, 1820 to 1822 and

1827, and he himself served from 1844 to 1846 and from 1853 to 1865. From the evidence recorded it appears that M separated from his elder brother C in about 1849 and as C was the head of the undivided family, M's service from 1844 to 1846 was on account of the head of the family (C) and therefore P, son of C, must be recognised as representative watandar. The service of M from 1853 to 1865 being subsequent to 1843, and as he constituted a separate branch of the family in 1849, the Collector has very properly (s. 26.) refused to recognise M's son E as a representative watandar.' Into this opinion of the Commissioner in regard to M's family I am unable to concur. The relationship and service were as follows :—



In 1849 M separated from his brother, and so far as he and his brother are concerned, the custom both previous to and since his separation has been for him to officiate and not his brother. As long as the father was living the question could not arise, but since his death the invariable custom has been for M to serve, C and his son never served, whether before or since 1849, the service has been in the younger branch of the family and not in the elder. It is stated in s. 4 that the word 'family' includes each of the branches of the family descended from an original watandar and that the term 'head of a family' includes the chief representative of each branch of the family. Therefore, under s. 28 E as the chief representative of one of the two branches of the family descended from N in which alone the duties have been performed, was in my opinion entitled to be entered as representative watandar. There is no warrant in the Act for saying that M's service from 1844 to 1846 (before his separation) was on account of the head of the (undivided) family. The Commissioner also held that under s. 26 the Collector rightly refused to recognise M's service from 1853 to 1865, because it was subsequent to 1843. That section only empowers the Collector to decline to recognise appointments made subsequently to 1843 *which he considers to be*

contrary to the custom of the watan. How can it be said that M's appointment in 1843 was contrary to the custom of the watan? It was in strict accordance with the only precedent obtainable before the Act of 1843 was introduced. I admit that the evidence of custom is slight in this case, but it is the only evidence that exists and such as it is tells in favour of the younger branch and not of the elder branch of N's family. Of the five G. Rs. quoted by the Commissioner it thus appears to me that four do not establish precedents for the rule formulated by him, and that the fifth, which was passed upon the recommendation of the Commissioner, recognised such a rule but was to that extent incorrect. In the Gudisagar case, to which this correspondence relates, the enforcement of such a rule would be more obviously unjust than it was in the last mentioned case. The Gudisagar watan was acquired in 1818 by four undivided brothers. Each of these brothers has descendants who share the watan property, but the watan was granted in the sole name of the youngest of the four brothers and from that time to the present he and his children only have ever performed the duties of the office. The Commissioner's rule would ignore this custom—which has limited the right of service exclusively to the one brother, who was instrumental in obtaining the grant of the watan, and to his branch of the family, and would make the descendant of the eldest of the four branches of the family representative watandar. The Commissioner appears to hold that a 'branch of a family' only comes into existence within the meaning of the Act, when there is a partition and a separation of one of the members This is not, I think, necessary. The respective descendants of the four brothers in the Gudisagar case constitute in my opinion four branches of the original family notwithstanding that they are not (or they are not all) separate in their estate. The argument by which the Commissioner seeks to bring the Gudisagar case under s. 28 and not under s. 27 is very curious. He says that the youngest brother separated from the others in 1839 and that as he is bound, with reference to s. 26, to recognise this sub-division, the present head of the separated family must be held to be one representative watandar and as the youngest brother's service previous to 1839 was 'not on his own account but was on behalf of his eldest brother' this eldest brother's descendant must be recognised as a representative watandar also and 'the custom of the watan must be considered to be service in successive periods under s. 28.' But I would ask where is

there any warrant in the Act for saying that previous to 1839 the youngest brother's service was on account of the eldest brother? The custom of the watan has been the same both before and since 1839, and if the separation of the youngest brother had taken place subsequently to 1843 the Collector would still have been bound to recognise it, for there was nothing in it 'contrary to the custom of the watan.' The only reasonable course appears to be that which I have previously advised and which Government have approved, *viz.*, to recognize that the youngest branch of the family has the sole right of service under s. 27." Government see no reason to alter the decision in No. 527 of 1883. No. 9540, Dec. 26, 1883.

Service after 1843, evidence, when.

26. The Collector was wrong in ignoring altogether the evidence of service subsequent to 1843, inasmuch as the villages came under the British rule about that very year and as no proper record of service performed before that year was forthcoming. No. 5478, July 9, 1884.

Sub-division after 1843 recognized.

27. The family of R has been further subdivided, but the subdivision having taken place so recently as 1878 need not be recognized. From the facts it is clear that all the subdivisions of different branches with the exception of one took place prior to 1843 and must therefore be recognised (s. 26). Difficulty arises only in the case of B whose family subdivided in 1852. This subdivision, however, does not appear to be contrary to the custom of the watan and may be recognised. The custom appears to have been for a representative of each of several families to perform service for successive periods and the watan should therefore be registered under s. 28, the heads only of those branches of families which have actually served being entered as representative watandars (notwithstanding the fact that there was no clear proof of the service in regular succession). No. 5479, July 9, 1884.

Acquiescence and limitation.

28. L. R. "The person T, who claims the watan, is the daughter of R, and is married to a stranger. Her father was the grandson of N who owned this and other watans, and had six sons, who are still represented by their several descendants. The family property appears at some time to have been divided amongst

N's sons or their descendants, and 'it is admitted by all' the Collector says 'that the watan now under consideration fell to the share of' the youngest sons's son R. But when R died in 1850 leaving no male issue, the watan was transferred to the family descended from N's eldest son and has since been in the continuous enjoyment of that family. If T had a right or interest in the watan she did not claim it, but slept on her rights until 1884, when for the first time she petitioned the Collector to recognise her as the sole representative watandar. It is not necessary to consider whether under the law which was in force in 1850 T was or was not entitled to inherit. Her claim to it is now clearly barred by limitation, and for the purposes of s. 27 the Collector can only recognize the family descended from N's eldest son as the one family of which it is the custom for a member to serve. Previous to 1850 N's youngest son's family used to serve, but since then that family has been replaced by the eldest son's family under a title which T is now debarred from questioning." Government concur. No. 619, Jan. 22, 1885.

Entry of name of junior member with consent of senior, effect of.

29. L. R. "R is living and as he is the eldest son of the deceased K there is no question that, under ordinary circumstances, he should be recognised as the representative watandar and that he would be succeeded on his death by his son B. But it seems that Y the second son of K is a man of superior intelligence, and that R who is rather the reverse consented 20 years ago to the khata being entered in Y's name and has never since taken any personal part or interest in the watan affairs. In 1870 a watan register was prepared under the departmental orders and the right of service was entered in Y's sole name. In 1875 this same entry was confirmed under the Act. Now (1884) for the first time B has applied that either his father or he may be declared the representative watandar in preference to Y. Government should not, as a rule, revise orders under s. 79, which have been so long in force as the one in question. B's age is not stated, but if he has only recently attained his majority, there is a good reason for the delay which has occurred; and on the other hand it would have been unsafe for him to wait till his father's or Y's death before making any representation to Government for fear that his silence might be construed into tacit

S. 79.

acquiescence. The entry of the watan in Y's name 20 years ago was made with R's consent. He and Y and a third brother came to this arrangement, when they were still living as unseparated brethren, by mutual consent. This was a family arrangement with which Government will probably not think it desirable that there should be any interference, especially as Y was evidently the most fit person to hold office; and there is here one additional reason for Government's declining to deal with the case under s. 79. Moreover, it is R and not his son who is entitled under the Act to be the representative watandar. So long, therefore, as he is alive B has no claim to have his name entered. B's application should be refused. But a father cannot, by Hindu Law, will away his son's interest in the ancestral estate. On the death of R, therefore, B will have a legitimate claim to the entry of his name as representative watandar, inasmuch as Y's name stands only through the acquiescence of R, and Y's title will cease on R's death. Or if Y should predecease R and the latter is then still unwilling that the entry should be in his name, B and not any son or heir of Y will be entitled to be representative watandar. The above is under the supposition that the watan is still the common property of R and Y. The Collector states, however, that the two brothers separated in 1877. If this means that there was a partition of the family property and if in such partition the watan fell entirely or exclusively to Y, then of course neither R nor B has any longer any interest in the watan which must henceforward be regarded by the Collector as vesting in Y's branch of the family alone. But if the separation was merely a separation in house and food without any formal partition, what is written above holds good." Government decline to interfere on the application of B. No. 692, Jan. 23, 1885.

Effect of acquiescence.

30. L. R. "The first point is whether the case is a fit one for Government to take up and deal with under s. 79. It is not denied that the right of service has been uninterruptedly exercised by the Desai's family since 1847. In 1861, the original watandars endeavoured to assert their right of service, but the Collector and the Commissioner decided against them, and no subsequent attempt was made to establish their claim till 1883, notwithstanding that a watan register was prepared under departmental orders in 1868 and revised under the Act in 1880. The original watandars allowed the

proceedings of both the years to occur without any protest or appeal and now after the revised register has been in force for three years they petition to have it set aside. No doubt the petitioners were minors for some years, but one is now 26 and the other 24 years old, so that in 1880 at least they were both of age. In such circumstances the Civil Courts would certainly decline to revise their proceedings or the proceedings of inferior Courts, and I do not think it is expedient that Government should use the power under s. 79 to disturb a state of things so long acquiesced in and settled. The case appears to be one of those contemplated by s. 56, namely, when by custom 'the right to perform the duties of an hereditary office is vested in a family distinct from that of the original watandar.' According to that section, the Assistant Collector, if he found the custom established, was bound to recognise it and to register the head of the Desai's family as representative watandar. It may be said that under s. 26 the Assistant Collector was not bound to recognise appointments made subsequently to 1843 and which he considers to be contrary to the custom of the watan. But, in the absence of any application or protest by the original watandars, this point did not arise, and even the Collector has not ascertained very clearly what was the custom of the watan prior to 1843. But even had this point been raised and had it been found that the appointments since 1847 were contrary to the previous custom of the watan, the Assistant Collector would have been quite justified in declining to unsettle a custom which has been maintained for years far beyond the period of limitation for suits and which has been tacitly acquiesced in for more than 20 years by the original watandars. The decision of the High Court is that the Act does not give the Collector jurisdiction to determine who in disputed cases shall be the watandars within the meaning of the Act; it merely gives him jurisdiction to pronounce who amongst the watandars shall be representatives. But this decision is hardly applicable here, where there is no dispute as to who are the original watandars, and the question as to service is one under s. 56 which it is within the competence of the Collector to decide." Government decline to interfere. No. 989, Feb. 2, 1885. Superseded by No. 4424 of 1894 (*Rul.* 39A, *infra*).

S. 79.

S. 56.

Appointment made after 1843 recognised, why

Limitation.

Collector's jurisdiction.

Value of judicial decisions.

31. The Collector is not bound by the Act to accept a judicial decision as conclusive; but when the question the Collector has to decide has been brought out in the Civil Court and a judgment of the highest tribunal has been passed, the Revenue authorities properly consider that they should be guided by that judgment. This is the view which has been taken by Government in this case (when it was previously before them), and the petitioner was informed that he must first obtain a review of the judgment of the High Court. The High Court have refused to grant the review. Under these circumstances Government decline to order the case to be re-opened by the Revenue authorities. No. 2949, April 27, 1885.

Grant of watan.

32. Commissioner: "The circumstances of the case are peculiar. The local authorities appear to have recognised the original watandar as the watandar patel of the village of Bendigeri since 1855, and it would be hard to deprive the family now of watan right. The Collector's proposal to recognise the watan under the Act be approved by Government. As regards the entry of names of the representative sharers, the Collector recommends that N, the eldest representative of the family, be alone recognised. In the old register framed in 1867 the names of four brothers were registered as each having a 4 anna share. One of them B now prays tha as all the sharers agree to the four names being entered, they should all be recognised as representatives under s. 31. As the Act now stands, N, if he were registered as the sole representative watandar, can alienate shares of his right in favour of his brothers; there would not, therefore, seem to be any objection to comply with R's request, as N is an assenting party to the arrangement." It appears that the patelki-watan of Bendigeri was with several other watans resumed by the Kittur Desai in 1797. From the time of the accession of British rule upto 1853 the watan service in the village was performed on behalf of Government by members of a family now represented by G. But in 1855 the watan duties were entrusted by Government to another family now represented by N, as that family established their claim to be original watandars by a decree of the Civil Court Under this arrangement members of N's family have served since 1855. In 1881 proceedings for the settlement of this watan were held by the

Assistant Collector, when, besides the representative of the families of G and N, one Y also put forward his claim to watan rights. N and Y each based his claim on the ground that his family was the real watandar family, while G claimed on the ground that his family were appointed to be hereditary deputies (*mutaliks*) on behalf of Y's family. The Assistant Collector rejected the claim of Y and G, and held that N alone had the claim. He, however, decided in accordance with the principles laid down for the settlement of the watans of the Kittur Deshgat in G. R. No. 5003 of 1879 (s. 22 *Rul.* 4) that there was no patelki watan of the village regulated by the Act, and that the claim of N's family to any watan rights was, consequently, inadmissible. The Collector concurs in that view and recommends that the principles laid down in the above-quoted G. R. should not, in the peculiar circumstances of the case, be applied strictly to this watan, and that the claim of N, the senior representative of the original watandar family, to watan rights be recognised as a special case. The Commissioner suggests that not only N, but also his three brothers, be recognised as representative watandars as all the brothers agree in the adoption of such a course. The adoption of the suggestion would however be opposed to the provisions of the Act. On a consideration of all the circumstances Government is pleased to sanction the Collector's recommendation and to direct that as a special case the watan register should be prepared as recommended by the Collector. No. 4528, June 6, 1885.

Entry of name.

33. L. R "The provisions of s. 6, Reg. XII, 1827, which remained in force till the passing of Bombay Act VIII, 1867, were as follows: 'The police of each village shall be under charge of the patel or chief manager of the revenue thereof and shall be conducted as prescribed in Ch. VI. The officer shall be furnished with a written commission, but in the event of his occasional absence, the duties shall be carried on by the person next to him in responsibility and influence at the village. When the village revenue management is divided among different persons the Magistrate shall select one of them to take charge of the police, and if the revenue arrangements are of such a nature as not to devolve particularly on any person resident at the village, the Magistrate shall select one residing therein to perform the duty.' The next law on the subject was

Law as to appointment of police patel

s. 5, cl. 2, Act VIII, 1867, which provides that 'in making the appointment (of police patel) the Magistrate shall have due regard to the provisions of Act XI, 1843, or other Acts in force for regulating the services of hereditary officers so far as the same may be applicable; but when the revenue patel is not appointed police-patel and more persons than one claim by reason of hereditary right to perform the duties, in rotation or otherwise, it shall be lawful for the Magistrate of the district to appoint the most fit from among their numbers.' The second sentence of this clause is not quite free from ambiguity, but I think it is clear that in the cases in which the revenue patel is not appointed police patel the Magistrate's choice is restricted to persons who claim by reason of hereditary right to perform the duties by rotation or otherwise when there are such claimants. This of course implies that the claimants must have hereditary right to perform the duties, for a mere allegation of such right will not satisfy the requirements of the section. It cannot properly be said that a person claims by reason of hereditary right if he merely alleges such right without possessing it. A difficulty arises as to the meaning of the expression 'the duties.' Looking to Reg. XII one might be inclined to hold that the words related to the revenue duties and that it was only from among persons who rightfully claimed by reason of hereditary right to perform the duties of revenue patel that the selection could be made. It might be said considering s. 6 of the Reg. that no one could possibly claim of hereditary right to perform the duties of police patel unless he was also entitled to perform the duties of revenue patel. But I think, the expression must refer to 'the duties of police patel' and the answer to the above objection must be that s. 6 of the Reg. must not be construed too literally, that the expression 'village revenue management' meant no more than the patelki administrative headship of the village which was originally one office, and that the section simply intended that one of the patels was always to be given a sanad empowering him to take charge of the village police and the Magistrate was not to appoint an outsider so long as a patel resident in the village was available. I do not think it meant to prohibit the appointment of any patel to whom custom did not assign a share in the duty of collection of the revenue, though such would have been its effect if it had been understood in its narrowest sense. In practice, however, I think, it must have been liberally interpreted, for instances are numerous in

the Deccan and North Gujarath where the offices of revenue and police patel have always been held by separate families or separate branches of the same family. Probably in this respect the customs of various villages and various parts of the country differ considerably. In his famous report of 1819 the Hon. Mountstuart Elphinstone writes: "The patels are the most important functionaries in the villages and perhaps the most important class in the country. Their office and emoluments are hereditary. The patel is head of the police and of the administration of justice" The statement of the Collector quoted in G. R. No. 4157 of 1886 that the office of police patel was created by the English Government appears inconsistent with the above extract which is supported by several other reports written about the same time, and the conclusion arrived at in the same Resolution, though it may have been correct in the particular instance, cannot be accepted as of general application. Probably in most cases the patelki watan with its various revenue and police functions was originally the property of a single family but, as pointed out by Mr. Elphinstone, sometimes partners were admitted, and this may account for the existence of separate *takshims* in some villages belonging to families of different castes. When such partition took place the duties may have been divided, and even where no alienation of any watan occurred and no family of outsiders was admitted into partnership, it is easy to imagine that by custom the police duties may have been assigned to one branch of the family and the revenue functions to another It was probably to provide for contingencies of this sort that the wording of s. 5, Act VIII, 1867, was made to point directly to the hereditary principle recognised in Act XI. 1843, rather than to attempt to associate the office of police patel invariably with that of revenue patel. According to my view, then, s. 5 binds the Magistrate to appoint as police patel the person having the sole hereditary right to that office if there is one, but in case there is no such person and there are two or three claimants having an hereditary interest in the office, the Magistrate is not bound to follow the particular order of rotation but can select from among them However, he would not be justified in selecting from a branch which in consequence of some ancient alienation or family custom has long lost its right to perform police duties. The question appears to me then to be entirely one of custom, and that can be decided by the Collector when preparing the watan register. S. 25 imposes on him the duty of determining the custom of the watan as to service and in the re-

gister he can note down any rules or limitations which are authorised by custom. In cases in which there are disinct *takshims* belonging to radically different families and attached to different offices, there is no objection to treating the several *takshims* with their respective offices as distinct watans. But where the different branches of the family spring from one original watandar it does not appear necessary to do so. The heads of the families can be registered as representative watandars of one watan. If the Collector thinks that one branch has by custom acquired the sole right to serve as police patel he can register such right, and the Magistrate who makes the appointment of the police patel will be bound to recognise it under the first sentence of the clause of the Police Act quoted above. It will be observed that the mere fact of registration as a representative watandar does not necessarily include the right to discharge at some time or other every function of patel, for, in each case it is the duty of the Collector to determine the custom of the watan after consideration of the practice heretofore observed. The patelki was probably one, but in many villages it is now broken up into several parts though at the same time the whole taken collectively may still be treated as one office and the descendants of the original watandar may still collectively be deemed to discharge the duties for which the watan was conferred upon their ancestor, and may therefore properly be registered as representative watandars of one watan notwithstanding that each is entitled to perform one particular portion of the duties. In regard to *takshims* held by separate families the case is somewhat different. There must at some period have been a creation of a distinct office probably with the sanction or in consequence of the interference of the sovereign power; and all connection between the several fragments of the old watan appears severed. The various families have no reversionary or other interest in each other's *takshims*; and each constituted for all practical purposes a separate watan which probably it would be found convenient to recognise as such in the registers. For the above reasons I think the question whether the petitioner can be granted the exclusive right of performing police duties may be answered in the affirmative provided it is found that by invariable custom her family has always discharged the functions of police patel and a decision to that effect is passed either by the Collector under s. 25 or by Government under s. 79." Copies forwarded for guidance. It is not to be understood that Government accept the view of the L. R. that the office of police patel as now constituted was always

associated with that of revenue head of village in all parts of the Presidency. No. 5902, September 2, 1887.

34. L. R. "The pedigree shows that according to the ordinary rules of descent N is entitled to a 4 anna share in the watan, and his father's name has been registered in column 20 of the new register as the head of a family. But in column 22 his name was not entered as a representative sharer. The omission of his name was wrong. *Prima facie* the presumption would be that as the head of a family in the watan, he was entitled to serve and there is nothing to rebut this presumption, or to show that he has lost his rights either by custom or by partition or otherwise. It is true that his family is not shown to have actually performed service since 1824, but from 1842 to 1867 service was performed by different members of the family under *mukhtyarnmas* from most of the heads of families in both branches of the watan. The *mukhtyarnamas* of 1842, 1845 and 1850 were signed by K (grand-father of N) who also signed the register of 1867 (along with all other heads of families) in which his right to serve was acknowledged and a period assigned for such service. It is therefore impossible to contend that the custom of the watan debars his family from service. Although the records from 1824 to 1843 do not show that any member of it performed service, it must be remembered that the record of service in those years is defective, and that the right of this family to serve was clearly acknowledged by the other shareholders in the *mukhtyarnamas* of 1842 and in the register of 1867. N's name should therefore be entered in column 22 as representative sharer of the senior branch. As regards column 23, though by descent he is a 4 anna sharer in the the watan and might therefore be expected to be entitled to corresponding length of service, still as the *mukhtyarnama* of 1842 and the register of 1867 treat his family as entitled to serve only to the same extent as those of two other share-holders, it will be better in recording custom as to service to adhere on this point to the register of 1867. These arguments apply equally to L and G in the junior branch. They, however, have not petitioned the Commissioner and may have accepted the Collector's decision recognising M as sole representative watandar in that branch. Therefore before any order is passed in their favour, the Collector should ascertain whether they wish the mat

Head of family has *prima facie* right of service.

Register.

Proportion of service

ter to be re-opened, and if so, whether M has any objection to offer." Copy forwarded for guidance. No. 1865, March 20, 1888.

Meaning of "several families" in s. 28

35. D was the head of the senior and A of the junior branch of the same watan family. "Family" includes each of the branches of the family descended from an original watandar provided that no sub-division shall be recognised except as provided in s. 26; and "head of family" includes the chief representative of each branch of the family. S. 26 provides that the Collector shall inquire into and take into consideration the practice of the family, but he is not to recognise appointments or sub-divisions subsequently to Act XI, 1843, which he considers to be contrary to the custom of the watan. The evidence recorded proved that service had been performed prior to 1843 in both the branches of the family, and D and A, the heads of the two branches, were on recommendation of the Commissioner recognised by Government as representative watandars. The Commissioner is correct in his opinion that the words "several families" as used in s. 28 do not necessarily mean families descended from different ancestors. The definitions of "family" and "head of family" support this view and have been acted upon by Government. Government therefore refuse to reconsider the decision. No. 5399, July 27, 1889.

Proportionate service.

36. The register should be amended as recommended by the Commissioner, namely, that the petitioner who was an 8 anna sharer should be granted an equal and alternate right of service with the other two branches of the family who owned 4 anna shares only. No. 8195, November 19, 1890.

Ditto.

37. The record of service submitted with these papers shows that the three families had served in three successive years from 1846 to 1848. From 1848 to 1852 No. 1 served 5 years, then No 2 for 1 year, No. 1 for two years, *i. e.*, up to 1855-56; for the next year an outsider seems to have served and then from 1857-58 to 1865 there is a blank. From that year forward up to 1879-80 each family had a term of five years. Mr. Keyser's decision, based on no apparent grounds, in 1879-80 introduced the very complication which the Government Resolution of 1876 was intended to avert. In these circumstances it seems to Government that there is no such evidence, as to custom of the watan, as is required to determine that

one family should serve for longer terms or oftener than another, and it is established that for the 15 years preceding Mr. Keyser's decision each family had served for successive terms of five years. Having regard therefore to the orders laid down in 1876 (Government Resolution 1937, 31st August 1876), it seems to Government the fairest course is to direct that custom of service in this watan is not proportionate in length or frequency to the value of the respective shares, but that families 1, 2 and 3 should serve in equal periods of rotation. No. 7369, Oct. 6, 1891.

Separate registers to be prepared, when.

38. Commissioner: "The conditions of the rights of service, if they can be substantiated, point to there having been (probably in the first generation after the original watandar) a distinct division of one watan into two. If so, the register has not been rightly prepared. Instead of one register showing one watan divided into two equal shares with distinct and separate rights of service in different villages, there ought to be two registers one for kulkarni watan of U, showing B as the sole representative watandar with the sole right of service, and the other for the kulkarni watan of C showing G as the sole representative watandar. Then in spite of being descended from one original ancestor, B and G would be heads of separate families in possession of separate watans; each of them would be an outsider, as much as any one else, in respect of the watan not belonging to himself, and neither of them would have any preferential claim over any other outsider to be appointed to serve in that watan. My opinion is that the register should be looked into again. If the distinct and separate rights by villages can be proved, then it should be re-settled in the way indicated above. If not, then it should be finally settled in much the same form it now stands, but it would probably be better and more in accordance with the law not to recognise any separation of the right of service according to villages (which apparently cannot be carried back by distinct evidence beyond 1841) but to declare the two sharers to have the equal right of alternate service in each of the two villages." Government approve of the course recommended. No. 6234, August 2, 1892.

Police patel.

39. It appears to Government that, when in cases the division of the offices of revenue and police patels in a village has been embodied in a watan settlement register subsequently confirmed by the Commissioner or

appeal or otherwise, the requirements of cl. 1, s. 5, Act VIII, 1867, may be held to have been sufficiently complied with. But in view of the opinion of the Legal Remembrancer, attention is specially drawn to provisions of the clause above referred to, and it is directed that, where it is the practice to appoint separate officiators for the performance of the duties of revenue and police patels respectively, and the separation of these offices has not already been made or confirmed by the Commissioner, steps should be taken to obtain that officer's formal recognition of such arrangement. No. 1285, February 16, 1894.

Existing settlement of register set aside and new register ordered to be framed.

39 A. There are sufficient grounds to warrant Government to reconsider their previous orders (G. Rs. Nos. 989 of 1885, *vide* Rul. 30, *supra* and 1968 of 1886) in the case and to decide the case on its merits. It appears that the kulkarni watan was created by a former Government before the village was granted in inam to the Desai family, that both the watan property and watan rights were upto 1847 in the enjoyment of the family of the original grantee of the watan, now represented by the appellants, and that the watan property has still remained in the possession of the watandar family, but that the right of service in the watan has since 1847 been in the enjoyment of the inamdar family. The Desai family has no valid title to the service rights in the watan and notwithstanding the adverse enjoyment of those rights by that family since 1847, the representatives of the original watandar family are entitled to be recognised as representative watandars. Government direct in supersession of their previous orders in the case that the existing settlement of the kulkarni watan register should be set aside and that a new register should be prepared. No. 4424, May 19, 1894.

Idol cannot be representative watandar.

40. Advocate General: "It is clear from the whole Act that a representative watandar must be a person capable (apart from cases of unfitness such as are mentioned in ss. 45 and 46) of performing the duties of the office appertaining to the watan. Special provision is made for the performance of those duties in the case of a representative who is a minor (s. 37), or who is a female (s. 51). In the absence of any provision for the case of a deity or idol, I think that the legal fiction by which an

idol is in a limited sense regarded as a kind of human entity cannot avail to contravene the plain intention of the Act as above stated. Inasmuch, therefore, as a deity or idol is, even if regarded as a personality, incapable of performing any duties, it is not in my opinion legal to register such a personality as a representative watandar." Concurred. The Deputy Collector's order directing that in future the officiators should be nominated and appointed by Government not interfered with. No. 7903, Oct. 5, 1895.

Framing of a register involving the revival of a watan not sanctioned.

41. Commissioner: "The kulkarniki service of the village was, upto 1857, performed hereditarily by members of the family of R as watandars. In the year 1858 S, son of R's uncle, was appointed kulkarni of the village. In the order of appointment the Collector stated that the family possessed no watan lands and that the appointment as kulkarni of S was made on behalf of Government. S performed service till 1863 when R was appointed, and he has been performing the duties as *Amani*. In 1875, the Collector, (on appeal), refused to order the framing of the Watan Register of the village on the ground that there were no watan lands for the kulkarni service. He, however, directed that his order would not affect the practice then followed, *i. e.*, of appointing a member of the said family, if fit, on behalf of Government. As regards Watan lands, the family of R possessed some in the year 1817 and they were resumed in 1820 probably owing to the inability of the watan holder for the time being to pay judi. R applied for revision of the Collector's order of 1875 and to recognise the right of his family to hold the kulkarni post hereditarily. It is apparently the fact that service has been performed in one family and that at one time there was watan land; it appears therefore that the order of 1875 was probably erroneous. There are many cases in which the right of performing the service hereditarily has been recognised although there no watan land existed. The absence of land does not necessarily imply that there could be no right of service, because the definition of watan especially includes the case of there being no watan property." It appears that in 1858 the Collector declared that there was no right of service in the village and again in 1863 the appointment was made as *Amani*. To direct now the framing of a register would be to revive a watan which was declared extinct 47 years ago, which is contrary to the orders passed in G. R. No. 5053 of 4th July 1895. In the

circumstances Government decline to interfere with an order passed nearly 30 years ago. No. 1156, February 11, 1905.

Collector can determine incidentally whether one is watandar or not.

42. Government are of opinion that the Collector can incidentally determine whether a particular individual is a watandar or not, where a finding on that point is necessary for finally deciding upon the right to office, &c. His finding, however, is open to be revised and set aside by the Civil Courts. Government do not think that this is a case in which action can be taken by the Collector, under section 6, to get the question of watandarship determined. The Commissioner's order that the whole of the patilki and kulkarni watan lands shown in the Alienation Settlement Officer's No. 24 dated 9th January 1865, should be entered as such in the watan register and that so much of these kadim watan lands as is required for the emoluments of the officiators should be recovered from the Jaghirdars in possession, which is in accordance with the provisions of the Watan Act, is upheld. No. 10129, October 7, 1908.

Presumption as to rights of member *inter se.*

43. The position of the plaintiff as a member of a watandar family is admitted. The presumption with reference to such a family is that all the members of all the branches have a right to their terms of office in succession. This presumption in this case is not rebutted by the long tenure of office by the father of defendant, because such a tenure of office was *not inconsistent* with the right of the plaintiff's branch to take the duties in their turn. It is not proved that the office descended even for one generation exclusively in the defendant's branch; all that appears is that he has come in after his father, and his succession is disputed. The selection of his father by the then inamdar in 1817 proves nothing in favour of an exclusive right; it was quite consistent with the existence of those rights diffused throughout the family, which generally subsisted, and which the British Government made the basis of the arrangements provided for by Act XI. The decree is therefore confirmed. *Hanmantgavda v. Bhivangavda.* 11 B. H. L. R., 235.

Adverse possession.

44. "If the plaintiff, G, being united in interest with T, had been necessarily represented, in the absence of a special agreement by T, while T was patel, his right would not of course have become practically extin-

guished by limitation, and thus it is that the plaintiff, V in the other suit has been enabled to succeed, but here no union of interest has been averred as the foundation of the plaintiff's right. He has claimed merely as representative of a separated branch against which T's tenure of the office was always adverse." *Giriapa v. Jakana.* 12 B. H. L. R., 172.

Longer period of service.

45. "The plaintiff's being entitled to two shares might be a reason why the Collector under Act XI, if the two sharers could not agree as to the person to officiate, might have exercised his discretion in favour of the plaintiff by assigning to him a longer period of management than to the defendant; but we do not see that it was at all imperative on the Collector to have done so, or that the plaintiff has established any such right, either by custom or otherwise, in himself as owner of two-thirds of the watan, to entitle him to a declaration from a Civil Court that he has a right to a double period of exercise of the office. *Bhawani v. Bhawani.* 12 B. H. L. R., 232.

Eligibility for office and adverse possession.

46. An admitted ownership of a share in the lands appurtenant to a patelki watan leads to a *prima facie* presumption of eligibility for the office of patel; and the exercise by the Collector of his right, under Act XI, to appoint one of the several coparceners to officiate as patel is not a denial of the eligibility of the others, and does not, therefore, give to the one so appointed a possession adverse to his coparceners. *Lingangowda v. Malangowda.* 1 Bom., 533.

Custom.

47. "The practice for the eldest member of a patel family to officiate is not the usage of a single family but of a large number of families forming an important class of the community, and such custom, if clearly proved, may well be regarded as part of the usage of the country which by s. 26, Reg. IV, 1827, the Courts are bound to enforce. *Sangambasapa v. Sangapa.* P. J., 1879, 257.

Notice of adoption if heir has been adopted prior to passing of Act.

33. In any case in which, before the coming of this Act into force, any registered representative watandar or his widow shall have adopted an heir, notice of the same shall, within twelve months from the coming into force of this Act, be given by or on behalf of such adopted

heir to the Collector, who shall register the name of such heir accordingly.

But if such adoption shall be shown to have been or shall subsequently be set aside by decree of a competent Court, the Collector shall remove such name from the register.

Notice of adoption when heir adopted after passing of Act.

34. In any case in which, after the coming of this Act into force, any registered representative watandar or his widow shall adopt an heir, report of such adoption shall within three months be made to the Collector by such watandar, or by his widow, or in case of their death then by such adopted heir, or by the guardian of the latter, and the Collector shall register the name of such heir accordingly.

But if such adoption shall subsequently be set aside by decree of a competent Court, the Collector shall remove such name from the register.

Procedure if notice of adoption not duly given.

35. In any case in which (*a*) notice or (*a*) report of such adoption shall not be made as herein directed, the Collector shall not recognise the same without the production of a certificate of heirship, or of a final decree of a competent Court establishing the validity of such adoption.

Government Rules.

When on enquiry it appears to the Collector that there are strong reasons for doubting the fact or legality of an adoption reported to him under s. 34, he may make an order suspending registration of the name of the alleged adoptive heir, until such time as the adoption is declared valid by a competent Court; Provided that in any such case he shall fully record the grounds of making such order

a—a These words were inserted by Act V, 1886, s. 7.

and shall communicate them to any party concerned, and provided that he may at any time for sufficient reason set aside such order and direct registration of the name or further enquiry as he may think suitable.

In the Bill the provisions of ss. 33 to 35 did not appear, a proviso only having been added to the definition of "watandar" in s. 4 to the effect that "provided that in cases of adoption made since the village came under Government by any watandar head of a family of the degree of patel and kulkarni or of higher degree the Government has assented to such adoption." After much discussion, the definition was finally passed as it now stands, and ss. 33 to 35 were put in in Part VI.

Effect of non-recognition by Collector.

Ss. 33 and 34 provide for a conditional recognition by the Collector of an adoption made by a representative watandar or his widow, if the fact is duly notified to the Collector within the specified time; whilst s. 35 enacts that if no due notice is given, the Collector shall not recognise the adoption without the production of a certificate or decree of a Civil Court establishing the validity of the adoption. It is, therefore, obvious that the absence of notice does not invalidate an adoption but only prevents its recognition by the Collector. The section does not expressly state whether this non-recognition is to extend for all the purposes of the Act or is to be limited to the purpose of registration as heir or representative watandar. The latter restricted meaning appears to be the correct interpretation. Ss. 33 and 34 lay down that on due notice the Collector shall register the name of such heir accordingly. Presumably, therefore, the penalty of omission to give notice ought to be commensurate with this provision, and ought not to be more severe. A wider interpretation of the section would lead to a number of anomalies Suppose A, a representative watandar of a branch of a family adopts B but fails to give notice, and subsequently C, a member of another branch of the same family, sells his watan lands to B. In such a case ought not B be deemed a watandar of the same watan within the meaning of s. 5? Were he adopted by a non-representative watandar, there is not the least doubt that

he would be so considered, no notice being required to be given to the Collector in the case of an adoption by such a watandar. There is nothing in the reason of the thing to render B's position worse merely because his adoptive father is a representative watandar. The section says the *Collector* shall not recognise adoption, this is altogether different from a prohibition against the recognition of the adoption by *any judicial authority* whatsoever. The section itself is, therefore, clear on the point. It is the inclusion of the provisions of these sections in the last clause of the definition of "watandar" in s. 4, that gives room to doubt the correctness of the above interpretation. The wording of the clause is, however, merely inclusive—"It (the term watandar) includes a person &c."—and not exclusive-by running in some such sort as the following, namely, "It shall *not* include a person adopted in whose case the conditions specified in ss. 33 to 35 are not fulfilled." As sections 33 to 35 refer solely to *representative* watandars, the clause cannot apply to *non-representative* watandars in whose case no notice of adoption need be given to the Collector. It would be an invidious and unreasonable distinction to deny the status of an adopted son in the one case and to admit it in the other. The distinction would, moreover, be superfluous, and futile too, as on the production (as to which section 35 does not prescribe any limit of time) of the specified decree of a Civil Court, everything done on the basis of non-recognition of the adoption will have to be set aside. Further, it has been ruled that where there is no dispute among the watandars as to the adoptee's claim, provisions of s. 35 need not be enforced and the adoption may be recognised, though no notice of it was given in time (*Rul.* 3). It, therefore, appears from their language and object, as also from their context and inclusion in Part VI—headed Representative watandars,—that the sections should be construed in the limited sense stated above on the analogy of the case of *Vasudeo v. Ramkrishna*[*]

Definition of watandar, s. 4.

[*] In the said case it was held that the provisions of Act II, 1863, s. 6, cl. 2, as to non-recognition of adoption by any Civil Court, relate only to the assessability of lands when raised between Government and a claimant for exemption.

(2 Bom., 529) in interpreting a similar prohibition contained in Act II, 1863. The clause, referred to above, in the definition of "watandar" may fairly be construed to mean that the term includes a person adopted &c., subject to the restriction that for the purposes provided for in Part VI the conditions in ss. 33 to 35 should have been fulfilled.

Binding force of ss. 33 to 35.

The Collector is bound to recognise an adoption on due notice under s. 33 or on due report under s. 34 or failing both, on the production of a final decree of a competent Court establishing the validity of the adoption under s. 35. In a case where, notwithstanding the production of an heirship certificate, the Collector had refused to recognise an adoption, Government declined to interfere under s. 79 in view of the fact that the adoption was found to be invalid (*Rul.* 11). It should be borne in mind that no sanction of the Collector to an adoption is necessary, what is necessary being only the notice, report, &c., provided for in ss. 33 to 35 (*Rul.* 4, 12, 13). A female representative watandar can adopt equally as a male one (*Rul.* 8). If a representative watandar makes an adoption and dies, it is not necessary that his widow must give notice of the adoption; it would be quite enough if the adoptee or his guardian gives the notice (*Rul.* 9).

Government intervention under s. 79.

It is not thought necessary to give here the Hindu Law of Adoption (as was done in the previous edition), as it is found to be of but little use in the working of this Act.

RULINGS.

On due notice being given, name to be registered

1. Watandar, as defined in s. 4, includes "a person adopted by the owner of a watan or part of a watan" subject to ss. 33 and 35. S. 33 appears to have been intended to enact that if any watandar who is or was head of a family or chief representative of a branch of a watandar family (or his widow) has adopted an heir before the Act came into force, notice of such adoption must be given to the Collector within 12 months of the Act coming into force; and if this is done, the adoption is conditionally recognised and the right of the heir to be registered is

admitted as if he had been a born son of his father by adoption. No. 5559, Sept. 24, 1881.

Notice of adoption by other than representative watandar or his widow.

2. L. R. "Strictly speaking, the terms of s. 34 are not applicable to the circumstances of this case, because the adoption has not been made by a registered representative watandar or his widow. But the adoption has been made by the widows of the deceased son of the present representative watandar with his approval, and the adopted son becomes by virtue of the adoption the heir of the present representative watandar in preference to the widows who have adopted him, and if he survives him, will be entitled under s. 36 to be registered as representative watandar in his stead. In these circumstances the Collector should register the name of the adoptive boy as heir, on the ground that the provisions of the Act have been as nearly complied with as was possible. S. 34 requires that the name of an adopted son should be registered as heir merely. If notice of the adoption is made at a time when the adoptee is by virtue of his adoption at once entitled to be registered as representative watandar, he should be so registered; but otherwise his registration as representative watandar will take place, under s. 36, only on the death of the existing representative watandar." *Copy forwarded.* No. 5846, July 19, 1884.

Undisputed adoption may be recognised though due notice not given.

3. L. R. "No doubt, the words of s. 33 clearly prohibit the Collector from recognising any adoption of which notice has not been given as provided in ss. 33 and 34, unless upon production of a certificate of heirship or of decree of a competent Court establishing the validity of such adoption. Where there are or are likely to be disputes amongst the watandars themselves, either as to the fact or as to the validity of an alleged adoption, this provision should be strictly enforced. But if the question affects nobody but the alleged adoptee and the Government, it is competent to Government, if they think fit, to dispense with the necessity for a strict compliance with the law, and when the adoption was made with the Collector's sanction (before the Act came into force) and notice of it was not given under s. 33 through oversight merely, there would be good reason for not insisting upon the observance of the letter of the law. On the other hand, if there is no dispute amongst the watandars as to the adoptee's

claim he will have no difficulty in obtaining a certificate. Some trouble and some expense are all that it will require." Provisions of s. 35 need not be enforced in this case provided there is no dispute among the watandars as to the adoptee's claim. No. 6102, July 30, 1884.

Sanction not necessary.

4. L. R. "I would note that there seems to be an erroneous notion that sanction is necessary to an adoption. S. 35 only requires the Collector to withhold his recognition of an adoption unsupported by a decree or certificate if notice thereof has not been properly given. If notice is given in time the Collector is bound to register (the adoption)." Copy forwarded. No. 3090, April 27, 1889.

Minor can adopt.

5. L. R. "There is no ground for holding that a widow of the age of 15 or 16 is incompetent to adopt, and for the purposes of s. 34 the Collector should recognise such an adoption, if there is no other objection to his doing so." Copy forwarded. No. 8851, Dec. 22, 1891.

Effect of adoption after registration.

6. Commissioner: "The question is whether a person (G) who has been actually registered as a representative watandar ceases to be such on his adoption into another family; and if so, whether only one person can be registered in his place or whether his share may be divided between the two other sharers, his uncle and first cousin, son of an elder uncle. In my opinion the relationship of G to his family of birth ceased immediately on adoption, and his uncle has a preferential claim to the inheritance." Government consider that in the case of an adoption occurring after a register has been framed, the share of the person adopted should pass to the person who would have been entitled to be entered in the register had the adoption taken place before the register was framed, *i. e.*, in this case to the next heir to G's father B, or failing any heir to B it should be treated as if B had died without heirs before the register was framed.* No. 6380, July 30, 1894.

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*As the rights of an adopted son to the property of his natural family cease with his adoption, his share should, it seems, be dealt with as if there has been an intestate succession or survivorship to it on the date of the adoption.

7. Collector: "The entry of K's name to the watan of H, his natural father, as well as G, his adoptive father, was clearly irregular. If the adoption be valid K can have no title to his natural father's watan; whereas if it be not valid, he cannot inherit the adoptive father's watan" K's adoption having been duly reported, the Collector is bound to recognize it under the provisions of s. 34, until it is set aside by a decree of a competent Court. The District Deputy Collector was aware of the fact of the adoption when he passed his order regarding the entry of K's name in lieu of that of his natural father H. The Deputy Collector should have directed the entry of the name of any other heir of the deceased H. In the circumstances the order passed by the District Deputy Collector may be cancelled: No. 8671, November 10, 1904.

Cannot inherit watan in natural and adoptive family.

8. B succeeded to her mother V whose name had been entered as representative watandar after the death of her husband for Patilki watan. B. adopted N, her daughter's son, during her husband's life-time and sent a notice of adoption under s 34. L. R. "There is nothing in s. 34 to prohibit a *female* representative watandar, whose name is registered, from taking advantage of that section. The Collector is bound to register the name of the reported adopted heir even though he may consider the adoption invalid. In the present case the adoption seems *prima facie* valid. It is made by B not to her father, but to herself and her husband with the consent of her husband The existence of a religious motive is not essential to the validity of an adoption." Government concur. No. 7146, Sept. 4, 1905.

Female representative watandar can adopt.

9. Notice of L's alleged adoption was given, but by his natural father and not by the representative watandar or his widow. Under s. 34, the notice must be given by either one or other of these if alive. But with reference to L's contention that the words 'in case of their death' in s. 34 mean 'in case of the death of one of them'—there is something to be said. S. 34, if analysed, reads "in any case in which any representative watandar shall adopt an heir, report of such adoption shall be made ...., by such watandar" and "in any case in which any registered watandar's widow shall adopt an heir report of such adoption shall be made.... by such watandar's widow." The

Notice not by representative watandar or his widow but by natural father.

use of the term "widow" implies the death of the watandar before the adoption, and it is not necessary in the opinion of Government that if the representative watandar himself adopts, his widow should report. But clearly in this case the adoption of L is doubtful, and that of S was probably invalid. The name of the representative watandar's widow should, therefore, be entered. No. 3742, April 18, 1906.

Adopted son registered as representative watandar in lieu of adopting widow.

10. Commissioner: "As by the Hindu Law the son adopted by the widow succeeds at once to all the rights which he would have had, if he had been the natural son of his adopted father or had been adopted during his life-time, he would seem to be entitled to be registered as a representative watandar at once in place of the widow. And even if the adopted son were not entitled to have his name entered, there would be no advantage in keeping the widow's name on the register as representative watandar against her will, for the wishes of all parties are in this case at one with the general policy of Government to exclude females as far as possible from the management of a watan. Government may be pleased to order the registration of the adopted son as representative watandar in place of the widow." Sanctioned. No. 8646, Sept. 7, 1906.

11. Collector: "Applicant claims to be registered as representative watandar through her husband T, the adopted son of C, a representative watandar. Her main contention is that as her husband had produced a Civil Court heirship certificate, the Collector was bound to recognise him. The Collector, however, was not bound to recognise the claim of T as the adopted son and heir of C merely because he produced a certificate, when he had good grounds for doubting T's title. Inquiry showed that T's parents were dead when he was given in adoption. The adoption was *ab initio* invalid. An heirship certificate is generally granted on a very summary inquiry. In the present case the point on which the Collector rejected the claim of the adoptee does not seem to have been discussed and decided (in the Civil Court). There was no reason for the Collector to get the certificate cancelled. It was sufficient if he refused to act upon it. Government cannot be

bound by an order passed in a proceeding, to which they were not a party. In the circumstances, the Collector was justified in declaring the watan as lapsed to Government. The petitioner may, therefore, be referred to the Civil Court." Commissioner: "Under ss. 35 and 36 the Collector was bound to enter the name of the petitioner's husband on the production of an heirship certificate, and if he was of opinion that the adoption was invalid, he should have proposed the institution of a regular suit to have it set aside." L. R. "S. 34 provides for the conditional recognition by the Collector of an adoption. On a report being made within three months of such adoption the Collector is *bound* to enter the name so reported and the entry can only be altered by a decree of a competent Civil Court. Section 35 provides a procedure for such recognition where notice is not given: in such cases the Collector 'shall not recognise the adoption without the production of a certificate of heirship or the final decree of a competent Court.' The Legislature clearly intended in both cases to leave all questions as to the factum or validity of an adoption to the Civil Courts. Section 34 must be interpreted as leaving the Collector no discretion to refuse to recognise an adoption duly reported. Under section 35, if the requisite certificate or final decree is produced, the Collector is equally bound to recognise the adoption. It may be noted that sections 34 and 35 deal primarily with the recognition of adoptions, not necessarily with any question of succession. The succession to a deceased representative watandar is dealt with by section 36. The duty of registering the name of the heir is cast on the Collector—there is nothing in the section to exclude cases of succession by adoption. Where the adoption (as in this case) has not been recognised during the lifetime of the representative watandar and the time allowed for the recognition of an adoption under section 34 has elapsed, it is obviously right and proper for the Collector to insist on the requirements of section 35 being complied with, but if that is done he is, in my opinion, bound to recognise the adoption under section 35, and still more clearly bound to register the name of the adopted son as heir under section 36. The Legislature clearly intended to leave disputes of the nature indicated in these papers to the determination of the Civil Courts. The reason for insisting on the production of an heirship certificate under section 35 is clearly that after the lapse of time there is more difficulty in ascertaining

No discretion for Collector in recognising adoption under ss 34 and 35.

the truth and more reason to apprehend the possibility of fraud. In the majority of cases the claimants will look after their own interest: this is an exceptional case where Government is entitled to succeed by escheat if the adoption is not proved. This circumstance cannot, however, in any way alter the interpretation of the law. Government can equally with any private individual contest the grant of a certificate of heirship or file a regular suit to avoid the effect of such certificate, but the fact that the Collector is the agent of Government does not free him from the duty of carrying out the provisions of the law. As to the merits of the claim, I observe that the claimant does not urge the validity of the adoption, while the Collector says that both parents were dead, in which case the adoption was undoubtedly invalid. So far as the case calls for any action, this is clearly the cardinal point. If the adoption was invalid, there seems no reason for Government to interfere on behalf of the claimant. In fact, it would be expedient to resist the claim if possible. If, on the other hand, the adoption is valid, then the petitioner has reasonable grounds for complaint. But the facts are not clear. For the present, I may remark that it does not necessarily follow that Government are bound to recognise either legally or morally an invalid adoption because the correct course to contest it was not taken in the first instance." Government concur with the L. R. that there is no reason to interfere on behalf of the claimant. No. 12446, December 23, 1909.

Government interference under s. 72.

12. A formal adoption is not invalid because it has not received the sanction of the ruling power, and (where the ruling power does not interfere) an adoption without such sanction entitled the adopted son to succeed to property of the nature of service watan. "After consulting the authorities quoted on either side we have come to the (above) conclusion." *Ramchandra v. Nanaji*, 7 B. H. C. R., 26, A. C. J.

Sanction of Government not necessary

13. The sanction of Government to an adoption by a kulkarni or his widow, or by a coparcener in a kulkarniship or his widow, is not necessary to give it validity, nor has Government any right to prohibit or otherwise intervene in such an adoption. "What may be or have been the right of Government to regulate adoption by the owners of

Ditto.

principalities, is a point which it is unnecessary to consider. We have here simply to deal with the office of kulkarni and its appendant rights or watan. No authority either in a text book of Hindu Law nor in the reports has been cited to show that the sanction of Government to an adoption by a kulkarni is necessary to give validity. It has been argued that Government ought to have a voice in such a matter in order to insure itself succession of suitable officers. No such right of intervention in adoption was claimed for Government by Act XI, 1843, when, if such a right existed, we might fairly expect to find that it would have been recognised ; and ss. 33 and 34 of Act III are inconsistent with the existence of any such right. The provisions of these sections seem to be in accord with the passage in Steele's Hindu Law, where it is said : 'It is enjoined that notice of an adoption should be given to the Raja, though no provision appears in case of his disapprobation.' Those Acts make sufficient provision for securing to Government the services of competent officers, so that the objection suggested above does not arise. In the case of *Ramchandra* (*supra*, 12) the defence was that the adoption had been disallowed by Government but the defence failed in the High Court." *Narhar v. Narayan.* 1 Bom., 607.

Suit under s. 35 to be confined to obtain a declaration only.

14. S. 35 only contemplates the intervention of a Civil Court for the purpose of establishing the right of the claimant to be registered as the adopted son of the deceased registered watandar. When the claimant's suit is not limited to that object, but asks for a declaration of his share in the watan, and of his title to have his name entered in the watan register, the suit is beyond the jurisdiction of the Court. " *Khando's* case (Appendix, Jurisdiction) shows that since the passing of the Act III of 1874, Civil Courts will not declare that persons are entitled to share in a watan, solely with the view to inducing the Collector to place them on the register. S 35 contemplates (as above given). It is true that the Court cannot make a declaration of plaintiff's right to a one-fourth share without first determining whether he is the adopted son. But the declaration prayed for would, on the above authority, be beyond the Court's jurisdiction, and, consequently, no decree could be made in the suit as at present framed, in which plaintiff's title as adopted son could be embodied." In other words, the suit failed because plaintiff prayed, not for a declaration establishing his

adoption, but for one declaring that he was entitled to a one-fourth share in the watan, and to have his name entered in the watan register. *Balkrishna v. Babaji*, 9 Bom, 25.

Death of representative watandar to be reported, name of heir to be registered

36. When any representative watandar dies, it shall be the duty of the patel and village-accountant to report the fact to the Collector; and the Collector shall, if satisfied of the truth of the report, and subject to the provisions of section 2 of Bombay Act V of 1886, register the name of the person appearing to be the nearest heir of such watandar as representative watandar in place of the watandar so deceased.

Provided that—

(1) in determining who is the nearest heir for the purposes of this section the rule of lineal primogeniture shall be presumed to prevail in the watan family;

(2) in any case where the deceased watandar was not a sole representative watandar, if his nearest heir is not a member of the branch of the family to which the deceased watandar belonged but is another representative watandar of the same watan or is a member of the branch of another representative watandar of the same watan, the share entered in the register against the name of the deceased watandar shall—

(*a*) if there is only one remaining representative watandar of the same watan who is descended from the same original watandar as the deceased, pass to that remaining representative watandar,

(*b*) if there are more than one such remaining representative watandars, be divided among such remaining representative watandars in proportion to their shares,

and the register shall be corrected accordingly;

(3) if at any time any person shall, by production of a certificate of heirship, or of a decree or order of a competent Court, satisfy the Collector that he is entitled to have his name registered as the nearest heir of such deceased watandar in preference to the person whose name the Collector has ordered to be registered, the Collector may, subject to the foregoing provisoes, cause the entry in the register to be amended accordingly.

This section was substituted by Act III, 1910, for the original section which ran as follows :—

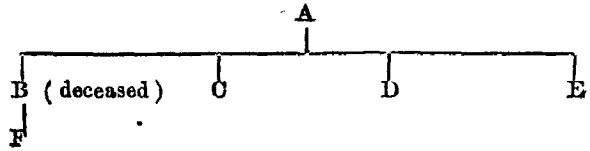
36. *When any representative watandar dies, it shall be the duty of the patel and village-accountant to report the fact to the Collector; and the Collector shall, if satisfied of the truth of the report, register the name of the eldest son or other person appearing to be nearest heir of such watandar as representative in place of the watandar so deceased.*

A certificate of heirship or a decree of a competent Court shall, until revoked or set aside, be conclusive proof of the facts stated or determined in such certificate or decree.

Object of amendment.

The main object of this amendment is "to declare that for the purpose of registration under section 36 succession by 'lineal', as opposed to 'ordinary', primogeniture should be the recognised rule, in the absence of an established custom to the contrary in the case of any particular watan. This appears to have been the intention of the framers of the Act, for in the course of the proceedings of the Legislative Council underlying the Act it was stated that "to prevent the future ramifications that must inevitably arise from the growth and multiplication of the offspring of the people thus registered, we have insisted on the principle of primogeniture, and all further subdivisions with the confusion inseparable therefrom will be prevented." (*Vide* Proceedings of 15th October 1874). Though, however, this was effected as regards the primary registration of representative watandars under Part VI of the Act, yet the terms of section 36 contain nothing which clearly recognises the rule of lineal primogeniture, and have in fact been otherwise interpreted. The ordinary Hindu Law as regards impartible

property such as watans is also unsettled on the point. Thus whereas Mr. Mayne in his 'Treatise on Hindu Law and Usage' is inclined, on a consideration of the decided cases, to think that the rule of 'ordinary', as opposed to 'lineal', primogeniture should be presumed to prevail in such a case, Mr. Ghose in his 'Principles of Hindu Law' takes a directly contrary view. And even though the Civil Courts might favour the rule of 'lineal', rather than 'ordinary', primogeniture, as being part of 'the usage of the country' in the case of certain watans, still clear evidence of such usage would probably be held necessary before the rule of lineal primogeniture could actually be applied to any such watan. In these circumstances, it is considered desirable to make an express declaration in favour of the rule of lineal primogeniture; and it is believed that this will be in consonance with the prevailing practice and sentiment of those concerned. At the same time, to safeguard other rights, the declaration is put in the form of a presumption, which can be rebutted by proof of a custom to the contrary. The term 'lineal' primogeniture is a well-understood term and no definition of it has therefore been attempted. The object of the proposed omission of the words "eldest son or other" in section 36 is to preclude the possible construction of these words as including the eldest living son and so excluding the son of a predeceased eldest son as in the following example:—



If the words are retained, it might conceivably be held that, in spite of the presumption raised by the section, C, the eldest of the surviving sons of A, should be preferred to F, the heir according to lineal primogeniture." (Statement of Objects and Reasons accompanying Bill No. II of 1910).

The following extracts from the speeches in the Legislative Council will further explain the object of amending s. 36:—

"The intention of proviso (1) to s. 36 is to secure that in the devolution of representative watandarships the rule ordinarily prevailing shall be that of lineal primogeniture. The provision leaves

it open for the ordinary rule to be departed from whenever it is proved to the satisfaction of the officer holding an inquiry that there is a contrary custom in the watan, *i. e.*, that it has been the practice to register the name of the nearest heir by proximity even when he does not happen to be the head of the family by lineal primogeniture. The most familiar case is that illustrated in the Statement of Objects and Reasons, where the question of succession lies between the grandson and the brother of the deceased. According to the new provision the succession will be secured in the generality of cases to the grandson. This we believe to have been the intention of the framers of the Watan Act and to be in accordance with the general sentiment of the country. The decisions of the Courts are not quite clear, but on the whole seem to lean to this view. As regards the sentiment I may mention that in the earlier years of my service I had to frame a large number of watan registers and to decide questions similar to this pretty frequently. I always decided for the grandson, and do not recollect any instance of my decision being interfered with or even seriously called in question. There have, however, been instances of contrary decisions largely based upon what I believe to be erroneous views of the law, and in some of these cases the registering officer has given succession to the brother, even although the latter was willing to give away to the grandson. In these circumstances we have thought it right to have declared in the law what the custom of the country undoubtedly is in the great majority of cases, and to secure devolution in conformity with the general policy of the Act".—(*Hon'ble* Sir John Muir Mackenzie, March 12, 1910).

" The right of succession will pass to persons whose names are entered in the Government register already as representative watandars and I do not think any reasonable expectation of anyone else will be disappointed, because the connection between an extinct family through the chain of succession down to the next branch will be so uncertain and so difficult to trace that nobody will have any reasonable expectations that it will come to them except the persons themselves. Then there is another advantage which is secured and that is that the question of the lapse to Government will very seldom arise. As long as any connection at all is considered to exist between the extinct branch and the family, if there are people bearing the same name and in the same watan, they will be presumed to be descended from the same original

watandar and the share will be divided without question." (*Hon'ble* Mr. Carmichael, June 27, 1910.)

"It is feared that the ordinary Hindu Law is going to be disturbed by proviso (2). As regards that, in order to avoid any confusion of thought, let it be clearly understood that ordinarily watan property is divisible under the Hindu Law and that by the legislation, which is now proposed, no settled rule or enjoyment of succession will be disturbed. There seems to be an impression that, supposing a representative watandar has three sons among whom the watan property is divisible according to Hindu Law, by our adopting the rule of lineal primogeniture the watan will go to the eldest son. There is only one object for which this amendment is sought to be made and it is to enter on the register, which the Collector is bound to keep under the Watan Act, the names of representative watandars. That is the sole object of s. 36. Suppose A, a representative watandar, dies leaving three sons B, C & D. The Collector has now to put somebody in his place. Who is that somebody? It is B, the eldest son of A, and his name is accordingly entered on the register. But that does not mean that C and D lose their shares in the watan property. If that is borne in mind, I submit that the feeling in the country is very clear, so far as the question of a representative watandar is concerned, and it is that the right should go to the eldest representative of the senior line. There is no rule of Hindu Law which we are going to disturb, nor are we going to disturb any rights in watan property which members of a watandar family enjoy. The only thing we are going to do is to facilitate the introduction of the successor's claim in the Collector's register." (*Hon'ble* Mr. Chaubal, ditto.)

"The familiar case that occurs is this. We have a watan of four 4-anna branches descended from the original watandar. The four branches have each one representative watandar. They serve in rotation for five years and 4 annas is entered in the register as the share of each. One branch with a 4-anna share becomes extinct. The practice hitherto in a long series of cases, a practice which has been acquiesced in cheerfully by the watandars —until quite recently they have not remonstrated with Government, they have not remonstrated at all—has been that when one share becomes extinct it is divided up among the other three and they serve alternately in periods of five years with shares of 5 annas 4 pies each. In such cases, if one has to find the nearest heir,

one has to descend into the mists of antiquity and the result is to cause uncertainty and disputes. What we require for the purposes of our Watan Act—that is, particularly to determine who is to have the right of service—is something very simple and something very certain, and for this reason we prefer to legalise the method which has been adopted with the sanction of Government and to the satisfaction of the watandars who have been concerned rather than go into all the intricacies of Hindu inheritances and encourage a great deal of litigation in the Civil Courts. Our difficulty is this, that in all these matters of watan succession you will find some method which has been worked out in practice and has been found satisfactory to the watandars, but suddenly you run on some hidden rock in the Civil Courts, and find that for the purpose of the devolution of property the Hindu Law of inheritance lacks that simplicity and certainty that we require when we wish to determine who are the people to hold an hereditary office. The line that is being taken up by Government is far from unreasonable and one which in no way interferes with any principle of the devolution of property. The object is merely to preserve as far as possible the general principles on which the succession to representative watandarships is based, according to the principles laid down by the original Act"—(*Hon'ble* Sir John Muir Mackenzie, June 28, 1910).

"The reason for proviso (3) is that the Courts in granting certificates are very prone to lose sight of the custom of primogeniture in the devolution of watans, *it is not convenient therefore* to have the Collector absolutely bound by their decision as he is under the present law."—(Ditto, March 12, 1910.)

"It is proposed to give discretion to the Collector to accept or not the certificate or decree of a Civil Court and to act or not to act upon it. In many cases these decrees are given in respect of ordinary watan property. The Courts follow the ordinary Hindu Law in respect to them and the Collector in all cases where there is any dispute as to the nearest among two heirs is always glad to have the assistance of the Civil Court to help him in determining which is the proper person to enter in the register. But there are two classes of cases that have come up for decision and have occurred in practice. The first is the case where there is only one representative watandar and his family becomes extinct, and a claim is made by some person who is outside the watan altogether. This person has gone to the Civil Court and got a certificate of heirship

but the enquiry of the Civil Courts in regard to heirships is often very perfunctory. In many cases nobody has any interest in the watan and it may not have come to the notice of Government that any proceedings are going on. It is quite right that powers should be given to resist in the public interest any such unfounded claim being set up to the watan. Another class of cases is where the name has been properly entered by the Collector as successor to the watan and years afterwards some one produces a Civil Court decree or heirship certificate saying that he was the heir. It seems quite right that the Collector should have power to refuse to disturb the person who has been in possession." (*Hon'ble* Mr. Carmichael, June 27, 1910).

"Let us see what the object of proviso (3) is. A Civil Court has absolutely nothing to do with the question as to who is the representative watandar. What a Civil Court does, is that if in any watan family there are four members A, B, C and D, it declares who out of these is the next representative of the senior branch. As to the rest, at the most, it will say that each has a four anna share. But beyond that a Civil Court has never gone. It has been repeatedly decided by the High Court that you cannot go to the Civil Court and ask for an order, saying that you are the representative watandar. Any such order from the Civil Court is absolutely out of the question. The legitimate object of proviso (3) only confines itself to those cases which come in under provisoes (1) and (2). Supposing, for instance, a person dies and there are two persons each of whom claims to be the next representative of the senior branch, the Collector, after making inquiries, says that A is the next representative of the senior branch and puts his name on the register. But the defeated rival can go to a Civil Court, produce all evidence that he can bring, and after a full inquiry the Court may give a declaration that as between A and B, B belongs to the senior branch. After that he may bring the decree of the Civil Court to the notice of the Collector and say: "Here is the decree of the Civil Court which ought to satisfy you that between A and me I really belong to the senior branch. It was upon deficient inquiry that you entered the name of my opponent on the register." I think it is only fair that the Collector should recognise a decree of that kind. But I will also say that I do not think there can be any case in which for the purpose in view, namely, registering the name of the representative watandar, a certificate of heirship or

an order from a Civil Court has any pertinence whatsoever. I do not think that a Civil Court can ever give a certificate that a certain person is entitled to represent watan. You can clearly get a decree—a declaratory decree—that A, B, C, or D belongs to the senior branch, and if such a decree is brought before the Collector, I think the Collector ought to correct the register accordingly."—(*Hon'ble* Mr. Chaubal, ditto).

Old law

Under the replaced section the law was briefly this. When a representative watandar died, the village officers reported the fact to the Collector, who registered the name of the person appearing to him, under the ordinary law (subject since the passing of Act V of 1886 to the provisions of s. 2 of that Act), to be the nearest heir as representative watandar in place of the deceased. The said s. 2 postponed females, other than the widow of the last holder, and persons claiming through females to male members of the family qualified to inherit. A certificate of heirship or a decree of a Civil Court was, for the purpose of such registration, conclusive proof of the facts stated or determined therein. And the Collector was bound to respect it if produced before registration, but if produced afterwards the question whether the register should or should not accordingly be corrected rested with Government under s. 79 (*Rul* 14). As only one name had to be registered, the name of the one nearest in relationship to the deceased, and where there were several such, the most senior of them was substituted in the register. This was *ordinary* as opposed to *lineal* primogeniture and had its most vivid examples furnished by cases arising under the Mahomedan Law which recognises no right of representation.* In some recent cases, however, Government ruled succession according to lineal primogeniture which they thought was more in consonance with the intentions of the Act than the other rule (*Ruls.* 14, 17). Recently also in cases where a representative watandar of one

* "It is a fundamental principle of Mahomedan Law that if any of the children of a man die before the opening of the succession to his estate, leaving children behind, these grand-children are entirely excluded from the inheritance by their surviving uncles and aunts. (*Moola Cassim v. Moola Abdul*, 33 Calc., 173.)

takshim died without leaving any issue or other heir qualified to inherit within the limits of his *takshim*, his share as representative watandar was divided among the representative watandars of other *takshims* (*Ruls.* 26 to 33) instead of entering it in the name of his nearest heir in one of the other *takshims* as a strict interpretation of this section would have required (*Rul.* 31). Such cases were, so to say, taken out of the scope of the section (*Rul.*32) and the share of the deceased representative watandar was treated as a lapse to Government and divided among the representative watandars of the remaining *takshims* (*Rul.* 31). The Collector was bound to determine who was the nearest heir and register his name of his own motion; no claim was necessary to be put forward by the heir (*Rul.* 12). He could not leave the question of determining the heir of the deceased representative watandar open pending decision of the Civil Court (*Rul.* 13). The procedure contemplated by the section was very summary. Enquiry beyond the contents of the village officer's report was not obligatory (*Rul.* 12). The section prescribed the course which was to be observed ordinarily, *i. e.*, where there were heirs of a deceased representative watandar, and the only question was which of them was entitled to be recognised as the representative in his place. For the uncommon case of there being no person in whom the right of inheritance appeared to the Collector to vest, the section made no provision, but in such cases the Collector as the representative of the Crown might treat the watan of the deceased as an escheat to the State (*Rul.* 5).

Present law.

The determination of the nearest heir is *expressly* subject under the new section (as it was *impliedly* under the old section) to the provisions of s. 2 of Act V of 1886. In the new section the words "eldest son or other person" appearing in the old are omitted in order to preclude their possible construction as including the eldest living son and so excluding the son of a predeceased eldest son—a construction which would be contrary to the principle of lineal primogeniture laid down in the section. Three provisions are added to the section. The first two give rules for

determining the nearest heir by the Collector and the third defines the extent of the binding force of Civil Courts' certificates and decrees in this behalf.

Proviso 1

The first proviso enunciates the principle of lineal primogeniture as the presumptive rule of law applicable to all successions under the section, inasmuch as although Government had applied this principle in some recent cases (*Ruls* 14, 17) the generality of cases hitherto disposed of have gone on the other principle—namely, that of ordinary primogeniture—(*Ruls.* 9, 16, 17, 21). This change has been introduced in order to bring the law of devolution of representative watandarships in conformity with the intention of the Watan Act and the general sentiment of the watandars in the Country. The rule of lineal primogeniture is to be presumed in the case of every watan, but, like any other presumption, can be rebutted. If it is proved to the satisfaction of the Collector that a contrary custom, *i. e*, that of ordinary primogeniture exists in a particular family, he shall give effect to it. But in all other cases the rule of lineal primogeniture (its meaning will be explained later on) will be his guide. This rule, being what it is, is likely to bring in in course of time a larger number of minor and immature representative watandars and to require an occasional dive into antiquity to find out the most senior line entitled to succeed.

Division of *takshim* among remaining *takshims*.

Proviso (2) deals with cases in which a representative watandar of one out of several *takshims* dies without leaving any issue or other nearest heir within the limits of his *takshim*. His share shall be divided among the representative watandars of the remaining *takshims* who are descended from the same original watandar as the deceased. According to the old law his share would have passed in the ordinary course to his nearest heir in one out of the remaining *takshims*, be he a representative watandar or only an ordinary member of one of those *takshims*. Within the last few years (since 1894, it appears), Government had introduced the system of dividing the extinct *takshim* among the representative watandars of the remaining *takshims* (*Ruls.* 24

to 32"). But there having been no warrant for such a course under old s. 36, Government had to have recourse to a round-about way, *viz.*, that of treating the share of the deceased representative watandar as a lapse and then dividing it among the representative watandars of the remaining *takshims* (*Rul.* 31). So, in order to simplify matters, proviso (2) was added. This would save the registering officer from an amount of bother and trouble in picking out the nearest heir from outside the particular *takshim*; there would not be room left for uncertainty and disputes; and the number of representative watandars would be gradually reduced. The proviso applies in the case of a representative watandar of one of the several *takshims* dying *without leaving the nearest heir within the limits of his own takshim.* If the nearest heir is a member of his *takshim* or if he was the sole representative watandar the proviso has no application. If there are two representative watandars out of whom one dies without leaving the nearest heir within the limits of his own *takshim*, his whole share would necessarily go to the survivor (clause *a* of the proviso); while if there are more than two representative watandars out of whom one dies, his share would be divided amongst the remaining representative watandars (clause *b* of the proviso).

Must belong to same family.

The representative watandar to whom the share of the deceased can pass or the representative watandars amongst whom it is to be divided must belong to the same watan and must be *descended from the same original watandar* as the deceased. If they are not so descended, they will have no right to the share of the deceased and proviso (2) ceases to apply. It is thought that in such a case and also in the case of a sole representative watandar dying without leaving any male member of his family qualified to inherit, the female and other members postponed by s. 2 of the Act of 1886, who but for such postponement would have succeeded, would come in, there being *ex hypothesi* no male

members of the family * qualified to inherit within the meaning of this proviso and s. 2. In the absence of such postponed heirs the collaterals, if any, of the *original* watandar (not to be confounded with those of the deceased, as *ex hypothesi* he has left none) and their descendants would come, if they be entitled to succeed under the ordinary law of succession (*vide* No. 9626 of 1907 under s. 2 of Act V of 1886), and so on. If there is absolutely no heir of any class recognised by the ordinary law, the share would go to the Crown as the ultimate heir to all heirless property ; it cannot pass under this proviso to any of the representative watandars of other *takshims*, if he is not descended from the same original watandar, nor under the general law if no sort of relationship to the deceased entitling him to inherit is established ; *e. g.*, when the deceased belongs to a kunbi *takshim* and the other representative watandar to a Lingayat *takshim*.

Deleted sub-clause 3.

It may be noted in this connection that in the Bill of the amending Act, there was a third sub-clause (c) to proviso (2) which ran as follows:— "If there is no such remaining representative watandar, be equally divided among the representative watandars not descended from the same original watandar as the deceased." Of course, there ought to have been representative watandar or a member of the branch of a representative watandar of the same watan who could have been the nearest heir of the deceased (*vide* proviso 2) in order to bring a case under this sub-clause (*c*), *i. e.*, it would have been applicable only if the representative watandars referred to therein were descended from the collaterals of the *original* watandar, but not if, as given above, one belonged to the kunbi *takshim* and the other to the Lingayat *takshim*. If this sub-clause had been passed, the share of the deceased would have been divided as was pro-

*In this connection it seems that the word *family* in "male member of the family qualified to inherit" appearing in s. 2 must be construed to mean, for the purpose of this proviso and to secure all possible harmony between the proviso and the section, not an individual branch only but all the branches together (*as one single unit*) of the family descended from an original watandar.

vided therein, while now, in the cases that would have fallen under it, only one person, the nearest heir, would succeed under the general law. The select committee omitted the sub-clause for the following reason:—"It is difficult to understand what would be the exact operation of this paragraph in connection with the context; and as we are of opinion that paragraphs (*a*) and (*b*) will sufficiently meet the needs of the case, we have omitted paragraph (*c*)."

In proportion.

In the Bill in sub-clause (*b*) of this proviso, the word "equally" was used for which now appear the words "in proportion to their shares." If, for example, there are 3 representative watandars having 8 anna, 4 anna and 4 anna shares respectively, and the second dies, his share would now be divided proportionately between the first and the third representative watandars, namely, the former would get 2 annas 8 pies share, while the latter 1 anna 4 pies share only. If the word "equally" had been allowed to remain, the shares in the above case would have had to be 2 annas for each of the two.

S 36 concerned with devolution of right of service only. No concern with devolution of Watan property.

It should be borne in mind that neither the old nor the new section 36 has anything to do with the devolution of watan property, which would be governed by the law of the parties (Hindu, Mahomedan, &c.) subject to s. 2 of Act V of 1886. *S. 36 only deals with the devolution of the right of service*—the right of representative watandarship—for which Government have found the ordinary law to be unsuited in certain cases to guard public interests. The right of service may go to one person, while the other watan property may go to a quite different person. The section introduces no change in the law of devolution of this latter property.

Binding force of decree, &c., of Civil Court.

Under the 2nd paragraph of the old section, a certificate of heir-ship or a decree of a competent Court was binding on the Collector who could not go against it, even when he thought it was wrong. He was bound to give his decision in accordance with the certificate

or decree, if it was produced before him at the time of the inquiry which was ordinarily a summary one. It appears he had no power to change the entry in the register on the subsequent production of a certificate, &c. It was for Government to correct the register in such cases under s. 79 (*Rul.* 14). Under the new section, however, the inquiry, before the Collector will have necessarily to be comparatively full and regular as proviso 3* takes away the binding force of the Civil Court's decree and vests the Collector with the final word in the matter. If such a decree is produced during the inquiry, the Collector would use it as only a piece of evidence—in the generality of cases a very strong piece of evidence, it is true, but all the same in none unquestionably conclusive by its own force. If produced later, the Collector would have the same discretion: he may correct or refuse to correct the register according as he thinks it fulfils or does not fulfil the condition laid down in the proviso in this behalf. If he elects to correct, he can now do so himself without a reference to Government. The decree must be one deciding the question of preference with due regard to the provisions of provisoes 1 and 2 as between the applicant and the person whose name the Collector has ordered or is going to order to be registered; any other decree, order or certificate will be next to useless. There is no limit of time for the production of such a decree, but unreasonable delay will perhaps be an element of consideration by the Collector in the exercise of his discretion (*cf. Rul.* 14). The Collector has no power to amend the register on the production of any other piece of evidence. He cannot leave the question of registration open pending the decision of a Civil Court, there being no change in the law in that respect. Neither is it necessary for the person who may be the next representative watandar to take any initiative in the proceeding before the Collector.

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* During the discussion of the Bill there was a proposal in the Legislative Council to substitute "shall" for "may" in this proviso, but it ultimately fell through.

Lineal primogeniture.

The definition of the term 'lineal primogeniture' was insisted upon in the Legislative Council, but "the term being well understood," Government did not think it necessary to define it. The term is, however, explained in a foot-note to the Statement of Objects and Reasons accompanying the Bill of the amending Act as follows :—

"Descent by lineal primogeniture means continual descent to the eldest member of the eldest branch, in exclusion of nearer members of younger branches. And descent by ordinary primogeniture means descent to the nearest member by proximity of degree whether of the eldest or a younger branch."

The text-writers on Hindu Law are not quite definite and agreed on the subject of the law of primogeniture. Mayne thus sums up the law (7th ed., p. 743):—

1. Where an estate descends to a single heir, in a coparcenary under Mitákshara law, the presumption is that it will be held by the eldest member of the class of persons, who would hold it jointly if the estate were partible. (This will be ordinary primogeniture if the competition is only between collaterals—such as full and half-brothers—in union with the deceased and both ordinary and linea primogeniture if it be between the issue of the deceased—such as his living sons, grandsons or great-grandsons whose fathers are dead—as in this connection the term issue includes sons, grandsons and great-grandsons and is regarded as forming one line.)

2. In cases not governed by the Mitákshara law of survivorship, the heir will be the eldest member of those persons who are nearer of kin to the last owner than any other class, and who are equally near to him as between themselves. (This is ordinary primogeniture.)

3. Special evidence will be required to establish a descent by lineal primogeniture, that is, by continual descent to the eldest member of the eldest branch, in exclusion of nearer members of younger branches.

4. The presumption as to primogeniture of either sort may be rebutted by showing a usage that the heir should be chosen on some other ground of preference.

Ghose in his Hindu Law after referring to a Privy Council case (*Muhammad Ali v. Hosein Khan*, 26 Calc., 90.) says that lineal primogeniture is the rule and the other an alternative, and expresses an opinion that it would be simpler if the ordinary Hindu Law of succession applied to impartible estates, subject to the modification that if there are more than one person who would be the heir, the eldest among them takes, if they are of the same line, and the representative of the senior line takes, if they represent different lines (2nd ed., pp. 815—17).

Tentative general rules of succession under the section

The section by proviso (1) adopts the rule of lineal primogeniture in its strictest form, that is to say, in cases of direct or collateral succession no descendant of a younger branch can take until all the elder branches are exhausted (*Mohesh Chander v. Satrughan*, 29 Calc., 343 at p. 353). The section is as yet much too new, and somewhat complicated too, to readily lend itself to the formulation of a set of general rules, definite and unquestionable, deducible from its provisions. It is, however, hoped that the following rules, tentatively and diffidently framed, would be of some use in practice:—

(1) If the deceased has left any male issue (*i. e.*, sons, grandsons, great-grandsons, *&c.*, descended through males), the nearest heir will be the eldest living male representative of the most senior line, irrespective of age and degree of descent. For instance, if the heirs are (*a*) a youngest son, (*b*) a grandson representing an elder son, and (*c*) a great-grandson representing the eldest son, (*c*) and not (*a*) or (*b*) will be the nearest heir entitled to registration.

(2) If the deceased has left no male issue and was a member of a joint family, the nearest heir will be the eldest living united coparcener determined according to the rule of lineal primogeniture. For instance, if the coparceners be a younger brother, and nephews, being the sons of an elder pre-deceased brother, the nearest heir will be the eldest nephew.

(3) If the deceased has left no male issue and was not a member of a joint family, the nearest heir will be his widow. The widow is not postponed by s. 2 of Act V of 1886, but she cannot, it is thought, come before (2), as united coparceners having by birth a joint interest in the office-right exclude the widow (who in such a

case is entitled to maintenance only) by right of survivorship. *Vide Raja Rup Sing v. Rani Baisni* (7 All., 1, P. C.).

(4) In the absence of all the above, the eldest nearest collateral according to lineal primogeniture succeeds :—

(*a*) if the deceased was a sole representative watandar ; or

(*b*) even if the deceased was a fractional representative watandar, provided the other representative watandars are not descended from the same *original* watandar as the deceased ; or

(*c*) if such collateral be—in cases where the original family is divided into branches represented by different representative watandars—a member of the deceased's branch.

But if such collateral be another representative watandar, or a member of the branch of another representative watandar, of the same watan descended from the same original watandar as the deceased, then

(i) if there is only one such representative watandar, he and not the nearest heir in his branch will take the whole, but

(ii) if there are more than one such remaining representative watandars, the share will be divided proportionately between them (the nearest heir in the particular branch, if he be not himself a representative watandar, being excluded).

(5) In the absence of all the above, females of the deceased's family and persons claiming through females, postponed by s. 2 of Act V of 1886, will come in according to the rule of lineal primogeniture.

(6) In their absence, collaterals, *&c.*, of the *original* watandar (not be it noted of the deceased himself as they have already come in under 4) will come in according to the law of lineal primogeniture.

(7) And lastly, the Crown will take as the ultimate heir.

It is hardly necessary to remark that no claimant who is not an heir under the ordinary law is entitled to come in. The section presupposes (in paragraph 1) such heirship and only prescribes a particular order of succession amongst such heirs. These rules refer solely to Hindu law, similar ones can be framed on similar lines (*mutatis mutandis*) under Mahomedan and other laws. In view of this radical change in the law it is thought

unnecessary to give here a short summary of the Hindu Law of Succession as was done in the previous edition of this book.

The Rulings given below all relate to the old s. 36.

RULINGS.

Production of certificate.

1. Commissioner: "Sanction solicited to the entry in the name of B of the 8-anna shares in the patilki watan which were declared khalsa by the Assistant Collector in 1876, B having obtained a certificate of heirship declaring him to be legal heir of the late proprietor." Sanctioned. In future in cases in which alienations of watans are liable to be perpetuated, or in which Government is otherwise interested, the Government Pleader should be instructed to watch the proceedings of each case in the Court, and the Collector should see that the evidence of heirship tendered is trustworthy. No 945, Feb. 15, 1881.

Duty of Collector.

Ditto.

2. The duty of ascertaining whether or not Government have an interest in any particular application for certificate of heirship cannot be cast on the District Judges. The mode of publishing proclamations by Civil Courts appears to Government amply sufficient to enable the Collectors to give effect to G. R. No. 945 of 1881. No. 2818, May 19, 1881.

Daughter takes absolute estate.

3. L. R. "A daughter takes by inheritance an absolute estate just as a son does, but, if the estate be watan, the interest therein is so far limited by express enactment as provided in s. 5. No. 7789, Nov. 7, 1882.

Succession of widows and daughters.

4. L. R. "The answers to the questions put are: (1) The senior of the five widows by precedence in marriage should be the representative watandar. (2) The eldest daughter should be recognised as representative watandar. (3) A daughter does not inherit so long as a widow survives; the widow, therefore, has been rightly recognised as the representative watandar. There is no difference as regards the right to inherit between a *lagna* wife and a *pat* wife. (4) If the family is divided as regards other property but undivided as regards the watan, the family must be regarded

as undivided, in which case the three brothers are, in preference to the daughters, the deceased's heirs; and the eldest of them should be recognised as representative watandar. The term nearest heir which is used in s. 36 is not a very accurate one; but looking to the fact that only one person's name can be registered in the room of that of a deceased representative watandar, whilst there may frequently be several co-heirs of the deceased, all equally near to him in relation, the meaning of the Act is not doubtful. Thus, in a previous report the opinion was submitted that the Collector should register the elder of two daughters of a deceased female representative watandar as the representative watandar in her stead and Government approved of this advice The context shows that what the section means is that the Collector should recognise as representative watandar the senior amongst co-heirs of the same degree of relationship and the nearest relation amongst heirs of different degrees of relationship. And by senior I do not mean the eldest in age, because a second or third wife is often older than her predecessor or predecessors; but I mean the one who, whether by birth or marriage, first acquired the status which gave him or her the right of inheritance" Copy forwarded, No. 3530, May 2, 1884.

The law of lapse and procedure thereon discussed.

5. L. R. "The provisions of s. 36 prescribe the course which is to be observed by the Collector ordinarily, *i. e.*, when there are heirs of a deceased representative watandar, and the only question is which of them is entitled to be recognised as the representative in the place of the deceased. For the uncommon case of there being no person in whom the right of inheritance appears to the Collector to vest, the section makes no provision; but in such a case the Collector as the representative of Government is clearly entitled to refuse to recognise any claim which he deems to be unfounded and to treat the watan of the share of the deceased as lapsed. S. 22 shows that it was contemplated by the Legislature that watans or parts of watans will occasionally lapse to Government, and it cannot have been intended that under s. 36 the Collector should be compelled to recognise the claim of a person to succeed as heir merely because he produces a certificate of heirship, notwithstanding that the Collector may have good reason for questioning his title. A certificate is granted under Reg. VIII, 1827, upon a very summary inquiry and frequently *ex parte*. The

Civil Courts themselves do not regard the orders passed in such inquiries as final; the person to whom the certificate is granted is merely held to be *prima facie* heir. In every case in which the Collector considers that there is no person entitled to succeed to a watan, he is justified in declaring such watan lapsed. This declaration may be made by him as soon as his inquiries satisfy him on the point, but whether he should arrive at a conclusion and declare a lapse of his own authority or after reference to the Commissioner or Government is an administrative detail as to which it is open to Government to prescribe such rules as they think fit. The declaration of a lapse and the appropriation of the watan to which such declaration applies as the property of Government, will involve Government in liability to a civil suit at the instance of any person who deems himself entitled to succeed to the property as the heir of the deceased, and there is no bar to such a suit except the 12 years' limitation rule. If, therefore, a person comes forward within the above period and lays claim to the property, his claim ought not to be set aside because he did not appear sooner or because the watan has already been treated as a lapse, but his claim ought to be inquired into as that of a person who may hereafter sue Government in the Courts, and if he has obtained a certificate of heirship, that fact should be regarded as indicating that he has some evidence in support of his claim. Whether such a claim should be finally resisted or admitted depends of course on the merits of each case There is nothing in the Act that prevents its being admitted and the claimant's name being registered under s. 36 at any time" Government doubts the necessity for any formal rule. Cases of the nature in question are very rare and a Collector may be trusted to exercise his own discretion in dealing with them. If any person whose claim is rejected is dissatisfied, he will naturally appeal to Government. No. 10054, Dec. 22, 1884.

Succession of illegitimate sons.

6. L R. "Amongst Sudras the right of succession undoubtedly devolves on illegitimate sons in the absence of legitimate sons, sons' sons, or sons' sons' sons." No. 104, January, 75, 1885.

7. Commissioner informed that he and the Collectors are bound to act in accordance with the existing law as interpreted by the Bombay High Court until such law is modified by a legislative enactment. It is not possible to interfere with the action of the law of inheritance until the Bill to amend Act III is passed. No. 5916, July 21, 1885.

High Court's statement of law of inheritance binding on Collector.

8. Government do not approve of the suggestion to exclude (by legislation) from succession to watans the illegitimate sons of a watandar. If it be the custom that illegitimate sons should not succeed to watans, that custom can be proved in the Court and will over-ride the ordinary Hindu law. No. 10, Jan. 26, 1886.

Succession of illegitimate sons.

9. L R. "The Act requires the previous practice to be ascertained—(s. 26), and then prescribes the course to be taken in the following cases: (*a*) If the custom has been for a member of only one family to serve, the head of that family is to be registered—s. 27. (*b*) If the custom has been for each family contemporaneously or successively to supply an officiator, the name of the head of each family is to be registered—s 28. (*c*) If (1) successive service appears to have been recognised but cannot be proved to have been in existence in 1843, or (2) the practice has been for the Collector to select, then the head of the eldest family descended from the original watandar is to be registered—s. 29. It is to be noted the Act makes no provision as to what is to be done when service has been limited to one branch and that branch becomes extinct. In such a case apparently the devolution would be according to ordinary principles of Hindu Law. In the present instance it does not appear to be disputed that the watan was impartible and that succession was regulated by the rule of primogeniture. The Collector's view, assuming that primogeniture regulated the succession, is that in a case of collateral succession the nearer would take before the remote. This appears to be consistent with Hindu Law. Seniority in age and nearness of kin must unite. The petitioner does not seem to rely solely on the seniority of his branch, and has therefore insisted on the fact that his ancestor B was in existence at the date of the late holder's death, and was nearer of kin than C (through whom the other party claimed). But he is mistaken in

Nearness of kin and seniority in age rule succession.

saying that the heirs of the husband to succeed on a widow's death are those in existence at the death of the husband and not those in existence at the death of the widow. There is, therefore, no room for the allegation that the person to succeed the late owner was the senior next of the kin at the time he died. The heirs are the heirs of the husband of course, but those who would have been his heirs if he had lived till his widow died, her life being regarded as a prolongation of his. It is not denied that in 1876 when the widow died, the petitioner did not unite in himself the two legal requisites of seniority in age and nearness of kin, and the Collector was, therefore, right in preferring the branch to which C belonged." Copy forwarded, No. 3090, April 27, 1889.

Legitimacy and illegitimacy.

10. L. R. "The question raised is whether one R, born only one month after the marriage of his mother with one G, can, for the purposes of inheritance, be regarded as the son of G, the mother having been formerly the wife of another man J. Ordinarily under Hindu law a son born in wedlock is held legitimate though begotten before it. Such a son was called *Sahodha*. A presumption of legitimacy would also arise under s. 112 of the Evidence Act. If R's mother and G were *sudras*, R would succeed to G's rights, even as his illegitimate son, provided that the intercourse was not adulterous and unlawful in which case he cannot claim inheritance. It is not stated that the birth of R took place before the dissolution of the marriage between R's mother and J, or so soon after as to make it impossible that he should have been the son of G by intercourse other than adulterous. The presumption, therefore, is that R was the son of G and entitled to succeed to him; and it is for those who dispute that right to sustain the onus of showing that R was the offspring of bigamous or adulterous intercourse. It is impossible to venture an opinion as to the question of fact whether R was the son of J or G. Whether R was the offspring of intercourse, which would bar his inheritance, would seem to depend on the interval between the dissolution of the first marriage and R's birth, and in case of any doubt, R is entitled to the benefit of it." L. R.'s No. 393, June 1, 1892.

Succession of *naikin*.

11. L. R. "Assuming the facts to be as stated, *viz.*, that the deceased *naikin* P (a representative watandar of a patelki watan) has left no kindred but her sister's daughter T, that the family is governed by the

Mahomedan law, and that there are no other claimants except one C who claims as the adopted daughter of P, there does not seem to be any room for doubt that T should succeed. According to Mahomedan law, an adoption confers no right of inheritance; sister's children are included in the third class of distant kindred; and it is only in default of the four classes of distant kindred and persons acknowledged by the deceased as kinsmen and in the absence of a will, that the property will escheat to the public treasury, but this only when no individual has the slightest claim." Copy forwarded. No. 575, Jan. 20, 1893.

12. L. R. "The family owning the watan in question was formerly a joint family of three brothers G, D and R. G's name was entered as the representative watandar of the watan, and when he died, D's name was entered. When D died, R applied to have his name entered; but died before orders were passed. The Assistant Collector eventually ordered that the name of B, widow of D, should be entered. L, widow of G, appealed to the Collector. R's widow made no claim. The Collector ordered that the name of L should be entered. B, now in turn, appeals to the Commissioner, who, on the authority of G. R. No 7192, Sept. 5, 1885 (*vide* under Part XIII)—which rules that a decision in appeal should proceed only on the points raised in the appeal,—refrains from dealing with the appeal and refers the matter to Government. He is of opinion that the name of R's widow should have been entered. I think this view is correct. The law governing the rights of the individuals concerned appears to be this. The widow of the last deceased brother takes the estate. The widows of the other brothers are entitled to maintenance only. R's widow is, in the language of s. 36, the nearest heir to the family property, the watan included, and her name must be entered as sole representative watandar. It makes no difference that she has not put forward her claim. The law does not require an heir to do so. By s. 36 the village officers are to report the death, and the Collector is bound then to enter the name of the person appearing to be the deceased's nearest heir. Nor does the fact that R's application was not disposed of before his death affect the question. His name should have been entered whether he applied or not. But taking matters as they stand, R's widow is nearest heir to D as sole heir to her husband R who was heir to D. The procedure contemplated by s. 36 appears to be very summary. Enquiry beyond the contents of the village officers' report is not obligatory. But any one aggrieved by an order

Meaning of *nearest heir.*

The procedure is summary.

under the section has his remedy in the Civil Court by applying for a certificate of heirship or by suit." Government direct that the name of R's widow be registered as sole representative watandar. No. 7371, Sept. 25, 1895.

13. Commissioner: "L, a representative watandar, died, leaving no lineal heir. In the enquiry which followed, several persons belonging to the watan family claimed to be recognised as nearest heir to the deceased. As the question appeared to be one of disputed inheritance, the Assistant Collector referred all the claimants to the Civil Court. When it became the turn of deceased L to officiate, the Assistant Collector appointed R to officiate on behalf of Government, as the dispute regarding L's heir was still undecided. The law on the subject of the entry of the name of a representative watandar's heir is contained in section 36, which lays down that when any watandar dies, the Collector shall register the name of the eldest son or other person appearing to be the nearest heir of such watandar. Under this section, it was obligatory to determine which of the claimants was the nearest heir to the deceased and to enter his name accordingly in the register, leaving any one aggrieved by his order to prove his claim in the Civil Court. Had the enquiry shown that there was no heir to the deceased, he should have declared the share of the deceased to have lapsed, but under no circumstances was it open to him to postpone his decision in the matter till the question of heirship was taken to, and decided by, the Civil Court. The order appointing a deputy on behalf of Government is also open to objection. It is only when a representative watandar fails to nominate a fit person to officiate or when he is a lunatic or a man of general bad character, &c., that the law allows the Collector to appoint a deputy. But there is no provision authorising the Collector to make such an appointment in a case like the present in which the representative watandar is dead and no one has been recognised as his heir, such a contingency not having been contemplated by the Act. Both the orders should be cancelled and the Collector directed to enter in the register in place of L the name of the person who may appear to him to be her nearest heir and then to hold fresh proceedings for the appointment of an officiator." Sanctioned. No. 4595, July 14, 1898.

Collector bound to determine the nearest heir and register his name

Appointment of deputy on behalf of Government.

14. It appears to Government that the last sentence of s. 36 relates only to the proceedings of registering the name of the heir; and if a certificate of heirship or a decree is then produced, the Collector must act on it; but the Collector is not bound to alter the register years after it has been framed because a certificate of heirship or decree affecting private property is produced, and has no power to alter it at all on that account, although, if a Court distinctly decreed that a person not registered was heir to watan rights, Government would no doubt be moved to direct a new inquiry after calling for the papers. Whenever a decision under s. 36 appears, owing to the subsequent production of the certificate of heirship or for any other cause to be erroneous, Government will be prepared, on due cause shown, to take action under s. 79. The entry of D's name in the register as representative watandar in succession to A appears to be in substantial accordance with *the intentions of the Watan Act.* Government see no reason to interfere with that entry. No. 7063, November 4, 1898.

Collector has no power to alter register once framed on production of certificate &c.

15. Commissioner: "The last male holder of a kulkarni watan died without male issue and was succeeded by his widow. She died in 1879 and was succeeded by her daughter A, who died in 1897 without issue. The Collector directed the parties claiming the watan to establish their claims by regular suit in the Civil Court. This order was not warranted by s. 36. As decided in G. R. No. 4595 of 14th July 1898 (*supra*, 13), it was obligatory on the Collector to determine which of the claimants was the nearest heir of A and to enter his name in the register. He was not justified in leaving the question of heirship open, pending a decision of the Civil Court. His order should be cancelled. Two persons claim the watan on the ground of their descent from the family of the last male holder, but they are not descended from the original acquirer of the watan but are merely his collaterals. The line of the original acquirer is extinct. The watan must, therefore, now devolve on A's relations on her husband's side. The most senior of these relations is K. Sanction may be accorded to the entry of the name of K in place of A in the watan register." Sanctioned. No. 2224, April 1, 1901.

Collector cannot leave question of heirship open pending Court's decision

16. R and not B is entitled to succeed to the watan on the principle of Hindu Law that except in the case of a man's own male issue, the nearer Sapinda always excludes the more remote. No. 8963, Dec. 27, 1901.

Nearer Sapinda excludes more remote.

17. *Commissioner:* "R, representative watandar in the patilki watan, died without issue. It appears that D stands nearer in degree of relationship to R than T, but represents a branch younger than that of T. G. Rs. Nos. 4319 of 29th May 1885 and 7063 of 4th November 1898 (*supra*, 14) have approved of succession according to seniority of line while later G. R. No. 8963 of 27th December 1901 (*supra*, 16) upholds succession by seniority of degree." G. R. No. 8963 of 27th December 1901 governs the case; the orders of 1885 and 1898 are not in point. No. 605, January 26, 1904.

Succession by seniority of degree.

18. The Kulkarni watan was entered in the name of W, who died leaving no issue, male or female. B's family officiated for upwards of 56 years as deputy kulkarnis of the representative watandars. W having no power to alienate the watan without the sanction of Government, the deed of gift in favour of B's father is invalid. Therefore the watan should be entered in the name of Government, but so long as members of the family of B are fit and willing to serve, they should be appointed to officiate in preference to other outsiders. But B should clearly be informed that there is no watan and that no claims to serve as of right can be recognised. No. 10515, Dec. 27, 1905.

Watan entered in name of Government.

19. L. R. "A was daughter of D and X who were the representative watandars immediately preceding her, X's family being the original watandar family. It appears that X left no heirs except D, his widow, who accordingly succeeded him taking a restricted estate. This passed on her death to her husband X's heir A, who took an absolute estate and became a fresh stock of descent. As D died in 1883, A's claim was unaffected by the provisions of Bombay Act V of 1886, postponing females The question for opinion, therefore, is whether the registered representative watandar G, or the appellant R, is A's heir, or whether, on the other hand, the watan lapsed to Government as claimed by the Commissioner. In my opinion G and not the appellant R is heir to A's watan

Devolution of watan on new family is no reason for lapse to Government.

estate and the watan has not lapsed to Government. From what has been said above it appears that A inherited the watan estate from her father, a male. The present view of law is that the descent of woman's property inherited from a male, is not, as formerly held, the same as for a man's property, but is the same as a woman's *Stridhan*. The watan estate, therefore, devolves on A's husband, and his nearest *Sapindas*. G is clearly a *Sapinda* of A's husband and as no nearer *Sapinda* appears to exist, he is the heir to A's watan estate and not the appellant R who claims through females. So long as there is a legal heir, there can be no lapse to Government. The Act does not provide for a lapse in case the watan *devolves* upon a new watandar family through inheritance to a female. It only provides against *alienations* to persons not watandars of the same watan. Unless, therefore, this particular watan is held under a sanad containing special restrictions, I am respectfully of opinion that G's name has been correctly entered as representative watandar and that no case of lapse appears to have arisen." Government concur. No. 1266, February 8, 1906.

Illegitimate son.

20. The illegitimate son of the kunbi representative watandar by a Mahar woman has no right to inherit the Kunbi patilki watan. No. 8271, August 29, 1906.

Nearness of degree governs succession.

21. W, a representative watandar Kulkarni, died without leaving any issue or a widow. He left behind him his 3rd and last brother B and his predeceased 2nd brother's son G. L. R. "I think the Collector's decision directing the entry of the name of B in place of W was correct. He has to ascertain who were the heirs of the deceased representative watandar according to Hindu Law and to select from amongst them the nearest as provided by section 36. The meaning of the term 'nearest heir' has, in my opinion, correctly been explained in L. R.'s report accompanying G. R. No. 3530 of 2nd May 1884 (*supra* 4). The question here is as to the succession to a representative watandar or in other words to the impartible right to officiate in the hereditary office and is governed by section 36. The question is not as to the succession to the partible landed property or cash allowances attached to the watan, the right to the former of which would depend on the terms of the settlement under Act VII of 1863, and the right to the latter on rule 2 of the rules under the Pensions Act. It must, of course, at the same time be

understood that the right to officiate and the right to the landed property or cash allowances are subject to the provisions of sections 5 and 7 of the Watan Act and section 2 of the amending Act V of 1886." Copy forwarded, No. 2512, March 9, 1907.

No preference for whole blood to half blood.

22. As there is no custom favouring the whole blood at the expense of the half blood, and as both are equally distant in relationship, the person to be preferred is the first born of the two. No. 2532, March 11, 1909.

Females have right of succession.

23. The law in the Bombay Presidency recognises the right of females to hold *mujumdari* watans, males being appointed by them to perform the services. "The general law being such, it lay on the other party to show that this is a special case. But it is not shown in any way that the watan in dispute was granted in any peculiar manner, and that the condition was that it might be resumed on failure of male heirs." *The Government of Bombay* v. *Damodar*. 5 B. H. L. R., 209, A. C. J.

Ditto.

24. Since the passing of Act XI, 1843, a female can inherit a *majumdari* watan. "On s. 20, Reg. XVI, 1827, it was ruled that, the spirit and letter of the Reg. providing that the emoluments should be strictly considered as the official remuneration of the person filling the office, a female could not hold a *mujumdari* watan. But since the passing of the Act of 1843 that interpretation is no longer operative. The reason for that interpretation, namely, that the allowance must be regarded as strictly the official remuneration of the person filling the office, is no longer applicable, now that a female is allowed to appoint a deputy to perform service, and *a fortiori* it is inapplicable in cases like the present in which no service is to be performed at all." *Bai Suraj* v. *Government of Bombay*. 8 B.H. L. R., 83, A. C. J.

Illegitimate son. Limitation for suit for declaration by heirs.

25. Among Shudras governed by the Mitakshara an illegitimate son is not entitled to succeed collaterally in the family of his father in preference to legitimate heirs. G, the holder of a Patilki watan, died in 1893. He left surviving him his widow R. In 1899, the Defendant, representing himself as the heir of G, got his name entered in the Collector's books as the next watandar. R died in 1903. The Plaint-

iffs, the heirs of G, filed a suit in 1906, praying for a declaration that they were the heirs to the watan and not the defendant. The lower Courts held that the claim was not barred under Article 120 of the Limitation Act *Held*, confirming the decree, that the plaintiffs' right to sue for a declaration would not accrue until R's death, whose existence at any time between G's death and her own would have defeated the suit for a declaration by the plaintiffs, on the ground that she had a vested right as the nearest heir of the last watandar. *Ravji v. Sakuji*, 12 Bom. L. R., 204.

Share of representative watandar of one takshim divided amongst representative watandars of other takshims.

26. Commissioner: "B, one of the three representative watandar Kulkarnis, died leaving no widow nor any issue (nor any heir in his own *takshim*) behind him. The watan lands and the right of kulkarni service must devolve on the remaining two representative watandars. Orders may be passed directing the entry of the kulkarni right of service in equal shares in the names of both and the entry of the land which formerly stood in the name of the deceased in the joint names of both." Sanctioned. No. 7737, October 22, 1897.

Ditto

27. Commissioner: "G, the last representative watandar of one of three takshims, died without any issue (or without any heir in her *takshim*). Following the principle laid down in G.R. No. 7737 of 1897 (*supra*, 26), I am of opinion that G's share in the watan should be equally divided between V and X." The share of the third takshim should be divided equally between X and V as representing the first and second takshims. No. 7321, October 17, 1902.

Ditto.

28. Collector:—"The representative watandar of the third *takshim* in the patilki watan having died, the name of the representative watandar of the 5th *takshim* was entered as the nearest heir. The right of service should, according to G. R. No. 7737 of 22nd October 1897 (*supra*, 26), go to existing representative watandars in equal portions. I may observe that according to the said G. R., on the death of one representative watandar, the heirs being other representative watandars (of whom one must be nearer of course, one more distant) the lands as well as right of service are entered jointly in the names of the two representative watandars, but it is not necessary

to raise this question in the present case, the important matter being to see that one family does not get more turns of service than others." The right of service of the third *takshim* should be divided equally among the representatives of the remaining four takshims. No. 5523, July 19, 1904.

29. Collector: "B, a representative watandar of the Kulkarni watan, died, leaving no lineal heir, male or female. Two other representative watandars of the same watan claimed to be her nearest heirs and produced certificates from the Civil Court declaring them to be joint heirs of the deceased, D's branch being noted as the elder. The Assistant Collector ordered the name of D to be entered as a representative watandar in place of the deceased, holding that he belongs to the eldest branch of the family. The case is on all fours with those referred to in G. Rs. Nos. 7321 of 17th October 1902 and 3064 of 23rd April 1904 (*supra*, 27, 28) and the appellant S is entitled to share equally with D in the Kulkarni *takshim* of the deceased. On the death of a representative watandar, it is competent to the Collector, under the provisions of section 36, to enter the name of the eldest son or other person appearing to be the nearest heir of the watandar as representative watandar in place of the deceased. With regard to the term 'nearest heir' occurring in section 36 it is laid down in G. R. No. 3530 of 2nd May 1884 (*supra*, 4) that the Collector should recognise as representative watandar the senior amongst co-heirs of the same degree of relationship and the nearest relation amongst heirs of different degrees. The opinion of L. R. there quoted is based on the fact that only one person's name can be registered by the Collector. The Collector can modify the Assistant Collector's orders, if he find that the order appealed against is not in accordance with law as laid down in section 36. It is for Government to pass orders for the division of the share of the deceased between two other representative watandars who are co-heirs." Collectors can act in such cases without reference to Government in pursuance of the general orders passed by Government. No. 8164, October 22, 1904.

Ditto.

30. N, one of the four representative watandar sharers in the Kulkarni watan died without any heirs, male or female, in his *takshim*. His share should not be entered in the name of the nearest in degree

Ditto "

amongst the other sharers, but should be equally divided among the three surviving sharers. No. 11528, Dec. 6, 1906.

31. Collector: "After D's death, an inquiry as to her heirs was made, but there being no male heir in the *branch*, the name of R, the representative watandar of the next immediate of the five branches of the watan was entered to the deceased's share as nearest heir by degree. S, the daughter in-law of the deceased, had no right to the watan as she was not the widow of the last male owner." L. R. "The question is whether a female member of a recognised branch of a watan family should be postponed in the order of succession to the part of the watan held by that branch to male collaterals in the other branches descended from the original watandar. The question turns on the interpretation of the term 'watan family' under section 4 of Act III of 1874 and section 2 of Act V of 1886. Now in the present case there is only one 'watan' within the meaning of section 4, because there is only one hereditary office as held in the case of *Ramangavda v. Shivapgavda* (22 Bom., 601), and *Yeshwant v. Satyanna* (2 Bom, L. R. 420) (*vide* under s. 4). But there can be said to be either one 'family' descended from the original watandar or several 'families' composed each of a recognised branch of the family of the original watandar. This follows from the inclusive and therefore inconclusive form of the definition of family in section 4 read with section 26. The question is therefore not free from difficulty. But in view of the fact that the expression used is 'watan family', the comprehensive 'family' descended from the original watandar and not the limited 'families' composed each of the branches of the family of the original watandar was, to the best of my judgment, contemplated by section 2 of Act V of 1886. The interpretation of the words 'male member of the family qualified to inherit such watan', should, so far as I am able to judge from the general terms of the section, be 'qualified male member of the watan family.' The words occur at the conclusion of clause 1 of section 2 of Act V of 1886 Attention is invited to the general intentions of Bombay Act V of 1886, which were to postpone succession of females in order to keep the watan as far as possible in the family of the original watandar. With regard to the claims in this case of collaterals of the other branches of the family of the original

Ditto.

Meaning of watan family under section 2 of Act V of 1886

watandar, it is observed that R of the fourth branch had a better right than the collaterals of the other three branches, who were in degree more distant collaterals of the family of the original watandar. The precedents in G. R. No. 7321 dated the 17th October 1902 and others (*supra*, 26 to 30) were not, it is submitted, in accordance with Hindu Law as contemplated by section 36 of the Watan Act." Government accept the view of the law stated, but they do not see sufficient reason to depart from the practice which has been followed in the various cases dealt with in their Resolutions (*vide supra*, 26 to 30), in pursuance of the advice of the Law Officers of Government. In accordance with this practice the deceased D's share in the Kulkarni watan in question should be treated as a lapse to Government and divided equally among the representative watandars of the remaining four *takshims*. The watan registers should be amended accordingly. No. 4323, April 29, 1907.

Ditto.

32. Commissioner : " Section 36 does not apply to a case in which one of the branches of a watan family has become extinct. A Civil Court's certificate of heirship does not entitle one, in such a case, to have his name entered in place of the deceased. I recommend that the share of the deceased be ordered to be divided proportionately among the other sub-sharers of the same *takshim*." Sanctioned. No. 4876, May 19, 1909.

Share of representative watandar of one takshim cannot be divided amongst representative watandars of other takshims, if there is heir in his own takshim.

33. G and J were each a representative watandar in the second takshim in the kulkarni watan. J died in 1905. The Collector directed that J's share should be divided equally among the other sub-sharers including G. (All the sub-sharers except G were representative watandars of the first takshim). It seems obvious that if there is a remaining representative watandar in the 2nd takshim he would necessarily be a nearer heir to J than any of the members of another takshim. The Collector's order should be reversed and J's share should be transferred to G. No. 9737, October 7, 1909.

Guardian of minor watandar to perform duties of minor.

37. When any head of a family or representative watandar is under the age of eighteen years, his guardian may, subject to the provisions of section 51 (*of this Act*) exercise all powers and perform all duties conferred and imposed by this Act.

The words in the brackets were repealed by Act V, 1886.

The term guardian is explained at page 23. Under the Indian Majority Act IX, 1875, s. 3, the age of minority is 21 years in case of a person of whose person or property a guardian has been or shall be appointed by any Court of Justice, or who is under the jurisdiction of any Court of Wards; and 18 years in other cases. This Act fixes 18 years as the age of minority for all persons without any distinction.

PART VII.

PERIODS OF SERVICE.

Representative watandars to serve for life or for fixed periods of five or ten years.

38. Subject to the provisions of sections 45 and 46, representative watandars shall be entitled to office for the following periods, respectively, (namely):—

(*a*)	in cases falling under section 28 or section 29, clause (2), or section 30 or section 31, in which the representative watandars are entitled to office contemporaneously, and in cases falling under section 27 or section 29, clause (1),	for life.
(*b*)	in cases falling under section 28 or section 29, clause (2), or section 30 or section 31, in which the representative watandars are entitled to office in successive periods,	for such period as the Collector shall in each case determine, the same being not less than five nor more than ten years.

This section was substituted by s. 8, Act V, 1886, for the original section which ran as follows :—

The periods during which a representative watandar shall perform the duties shall be as follows :—

In watans registered under section 27, the first clause of section 29 and section 31 of this Act, the period of service shall be for life.

In watans registered under section 28, the second clause of section 29 and section 30 of this Act, the period of service, if contemporaneous, shall be for life; and if in successive periods, the period shall be fixed at the discretion of the Collector, but for a patel shall be not less than ten years and for a Kulkarni not less than five years.

The words "subject to the provisions of ss. 45 and 46" are inserted in this section in order that the provisions of those two sections may not be deemed to be superseded. There was a great variety of opinion as to the periods for which patels and kulkarnis should hold office in the cases specified in cl. (*b*) of the section. The Select Committee left the period to be determined in each case by the Collector, provided that it was not to be more than ten years or less than five, as that appeared to be the most widely approved of several proposals, and was likely to be convenient and fair in practice. There had always been a great obstacle to settlements by agreement of the parties themselves under s. 31, namely, that when such agreements were made, s. 38 required the period of service to be for life. There appeared no valid arguments in support of such a provision; so the period of service in such cases is now enacted to be the same as it is in similar cases settled by the Collector. The provisions of this section have been already referred to in the notes on ss. 24 to 32.

Term of service.

1. Petitioner should be allowed to serve now in his own account; his previous service as deputy is no bar. No. 1391, March 6, 1875.

D.tto.

2. Commissioner: "The question in this case has arisen in consequence of the disqualification of Y, one of the two representative watandars, whether the appointment for life of Y, which according to the register is irregular, the custom of the watan being rotation for ten years, is to be respected even though he has become disquali-

fied, and whether he is to be allowed to appoint a deputy for the remainder of his life, or the time at which he became personally unfit to serve is to be regarded as the starting point when the rotation system, directed by the register, should begin." L. R. "I presume that the watan was deemed at the time of the settlement to fall under s. 28. If so, it was incumbent upon the Collector (1) under that section to decide the order in which the representative watandars shall officiate, and (2) under s. 38 to fix, at his discretion, the period of successive service. Presuming the period of successive service was so fixed at ten years, it follows that when the present incumbent had served ten years, his period was over, and as he has now served, it is said, 25 years, he ought clearly to vacate in favour of the other representative watandar. He ought indeed to have been required to do so before now." Copy forwarded. No. 2095, March 13, 1883.

Ditto.

3. In the absence of evidence to show that owners of larger shares of Kulkarni watan served for longer periods in proportions of their shares, the term of years must be the same for all the sharers or representative watandars. No. 6333, Sept. 6, 1886.

Meaning of words 'in each case.'

4. L. R. "The words 'in each case' in s. 38 (*b*) must be read as equivalent to the expression 'in the case of each watan,' and not as meaning 'on the occasion of each appointment.' The old section said, 'the period shall be fixed at the discretion of the Collector,' but did not clearly say whether that discretion was to be exercised at the preparation of the register or on the occasion of each appointment. It has, however, been generally understood to mean that the term of service was to be fixed once for all at the preparation of the register; and in the proceedings connected with the passing of the Bill I can see no intention to alter that practice." No. 2793, May 8, 1888.

Procedure on death of officiator.

39. In the event of the officiating watandar dying before the expiration of his fixed period of service, his heir shall, subject to the provisions of Part VIII (*of this Act*), be entitled to officiate for the remainder of that period.

Election of officiator in rotation watan.

40. *Clause 1.*—In the case of a watan in which the representative watandars are entitled to perform the duties in successive periods, the Collector shall, on the occurrence of the term of any such representative watandar to perform the duties, issue a notice to the whole body of registered representative watandars calling upon them to appear before him at a certain time and place to elect an officiator, or such number of officiators as may be required by the Collector under the provisions of section 43 (*of this Act*).

Clause 2.—If not less than three-fourths, including the watandar whose turn it is to officiate, of the representative watandars appear at the appointed time and place and unanimously nominate a fit and proper person or persons being a watandar or watandars of the same watan, the person or persons so nominated shall be entitled to officiate in the place and for the period of service of the representative watandar whose turn it is to perform the duties.

Clause 3.—If the person or persons so nominated be other than the representative watandar whose turn it is to perform the duties, he or they shall, for all the purposes of this Act, be deemed to be the duly appointed deputy or deputies of the said representative watandar.

Mode of appointment if representative watandars fail to nominate officiator.

41. If in the case of a watan in which the representative watandars are entitled to perform the duties in successive periods, the representative watandars shall not appear at the time and place appointed under the provisions of the last preceding section, or shall fail to nominate an officiator, or the requisite number of officiators, unanimously, then the provisions of this Act as to service by the representative watandar entitled to officiate and as to appointment of deputies shall apply.

The words in the brackets in ss. 39 and 40 were repealed by Act V, 1886.

The following extracts from the proceedings of the Legislative Council, 9th Oct 1874, explain the object of s. 40 :—The Hon'ble Colonel Anderson : " As regards single watans the matter is disposed of. In rotation watans it is proposed to fix the rotation once for all, which certainly will have the effect of preventing any intriguing as to the order in which the representative watandars are to officiate. It is perfectly immaterial to Government who fills the position of officiator so long as fit men are procured, though undoubtedly the best men would be preferable Some of the Collectors allege that fixing the order of rotation finally will have the effect of preventing the best men from being always got. In fact, they consider this regulation to be too hard and fast and that it will have the effect of doing away with all interest on the part of the watandars as to who shall officiate in the watan, inasmuch as the whole thing will be reduced to a certainty. This interest in the affairs of a watan should not, I think, be done away with. As far as such interest can be created, it is desirable to allow it full play. Watandars as a rule have not much to think about. The succession to the duties of a watan has hitherto been a subject of great interest with them, and it is not altogether advisable to deprive them of that interest and give them nothing whatever to think about so far as public life is concerned. It is asserted that the amendment I propose will be entirely inoperative, as no representative watandar with a turn to officiate would be induced to forego his turn. But I doubt that assertion. A representative watandar may be too old or too young, or one afraid of assuming heavy and responsible duties, and who would be glad to see somebody else do them. At the same time, he would be very unwilling to confess that he did not feel equal to performing the service and would prefer a deputy appointed. He would probably rather attempt to fulfil the duties himself, and therefore we would have a man serving who certainly would not be the fittest person to do the duties of the watan justice. I think it would be much better to give him an opportunity of getting a substitute in the way proposed by the amendment. All the watandars would meet and point to so and so as the best man to officiate, and if the Collector's voice were thrown in the debate, I doubt not that the most suitable person would, as a rule, be appointed as officiating

watandar. This would at the same time preserve some electoral privileges to the people, and induce in them a public spirit which would be well for them and for Government. The three-fourths cannot actually turn out the man who is entitled to officiate; the representative watandar must agree before any election can take place."

The Hon'ble Mr. Chapman: "Practically, then, the representative watandar will always have the power of electing his own deputy." The Hon'ble Colonel Anderson: "I do not mean to say that in a little trumpery watan, the privilege contained in the amendment would be great; but in the case of larger watans it would be looked forward to with some interest by the watandars. It may give rise to some corruption, but corruption and *khatpat* in elections are not unknown in England as well as in India. As far as *khatpat* itself goes, I do not think it advisable to stop it altogether. When it is external *khatpat* it ought to be interfered with, but as to internal *khatpat* it might be left alone, for it amuses the people and does no harm to us, as it exists entirely among themselves. I think the amendment is decidedly a move in the popular direction." The Hon'ble Mr. Rogers supported it because it would cut the ground from under the feet of those who argued that it would be unjust to make the whole body of watandars responsible for the acts of one person.

Government Rules.

S. 40. When the Collector has defined the order of service to be that of successive periods, the representative watandars are entitled to elect an officiator. The procedure meets the views of many of the Revenue officers, who hoped that the best and most influential men would be elected by the good sense of the watandars. It is most desirable that this safeguard should be preserved and the popular custom maintained; the Government believe that the influence of the Collector and his Assistants, otherwise secured by the power of veto, will be sufficient to prevent grossly improper election, without interfering with its many advantages.

Agreement between watandars.

1. An agreement between two members of a patel family that they are to officiate in turn is not illegal as being opposed to public policy. The Court will not, however, compel the actual patel to vacate office under such an agreement as long as his appointment under Act XI, 1843, is unrevoked (no reasons

are given, and the ruling does not seem sustainable now.) *Vaku v. Pandu.* 6 B. H. C. R., 243.

Ditto.

2. The plaintiff and his co-sharers in a Kulkarni watan entered into an agreement in 1869 for the performance of the duties of the watan by the several sharers in turn. The agreement provided that if any of the sharers prevented the nomination of a sharer to officiate in his turn he should pay Rs. 100 as damages to the person thus excluded from office. The plaintiff alleged that in 1883 it was his turn to officiate, and that the defendants instead of electing him in accordance with the agreement nominated another person, who was confirmed in the appointment by the Collector Plaintiff, therefore, sued to recover Rs. 100. *Held*, that the agreement could not be enforced by a civil suit, as it was opposed to the policy of s. 40, which contemplated a free election of an officiator by the whole body of the registered representative watandars to whom the Collector issues his notice,—an election unfettered by any promises made beforehand by any of the sharers. The decision in *Sitaram* (s. 5, *Rul.* 36) does not govern this case. All that was really decided in that case was that the assignment of the income of the village was not in contravention of s. 5. This claim is directly opposed to the policy of s. 40 and also not entertainable in a Civil Court." See the same case under Appendix, Jurisdiction. *Naro* v. *Mahadev.* 12 Bom., 614.

PART VIII.

OFFICIATING WATANDARS AND DEPUTIES.

Representative watandar to perform duties of office.

42. Every representative watandar whose duty it is to officiate shall, if a fit and proper person, perform the duties of the hereditary office himself on being so required by the Collector, but may be permitted by the Collector to appoint a deputy.

Collector to determine number of officiators required.

43. The Collector shall determine the number of officiators required for the proper performance of the duties of any office from time to time, and for this requirement may call upon the representative watandar

aforesaid to appoint a sufficient number of fit and proper persons as deputies, or may direct service in successive periods by representative watandars who have hitherto served or are serving contemporaneously.

Government Rules.

With reference to s. 42 it should be remembered that it is the wish of Government that representative watandars should serve in person and that, as a rule, the appointment of deputies should only be permitted in cases in which the watans are owned by Sirdars of so high a rank that they could not be reasonably expected to serve in person. The determination of the number of officiators required should be made by the Collector under s. 43, with much regard to the condition of family as well as to the needs of the village. Neither in this nor in any other matter is general or rapid change desirable. With a view to preserve the family and to secure the most respectable servants, it is provided that deputies must be watandars except in particular contingencies. The broad application of the term watandar to collaterals should not be lost sight of.

The duties of patel and kulkarni are too multifarious and minute to admit of a convenient statement here. Besides the customary ones mentioned in the opening part of the Introduction, the Land Revenue Code, the Police and Sanitation Acts prescribe some further duties. S. 43 empowers the Collector to direct at any time service in successive periods in lieu of contemporaneous service entered in the register, but not *vice versa*.

RULINGS.

Inamdar has no right of nomination.

1. An inamdar has no right of nomination and all G. Rs. on this point issued prior to the passing of the Act must be considered cancelled where they conflict with the Act. No. 4165, July 23, 1875.

Ditto.

2. It should be pointed to the applicant (Chairman of the Deccan Dumaldars' Association) that Act III is now the law of the land and must be obeyed in inam as well as *kaalsa* villages. Where inamdars have had the privilege of appointing, they should, when a nomination has to be made, be allowed to be present, and their wishes should,

as far as the law allows, be treated with consideration. No. 5522, Sept. 29, 1875.

Person in debt disqualified, when.

3. A person in debt and in jail is incompetent to serve. No. 3136, June 3, 1875.

Ditto.

4. No such principle as that a watandar who is in debt is ineligible to serve was laid down in the above G. R. In a particular case it was represented that a watandar who was half his time in the Civil jail was not able personally to perform the duty properly. Government approved the decision that he should be required to appoint a deputy. No. 4235, July 27, 1875.

Partizanship, bar to appointment.

5. All Magistrates should be instructed that a watandar who has clearly shown a partizan feeling in notorious disputes in a village should not be considered "a fit and proper person" (as contemplated in s. 42) to perform the duties of an hereditary office, and Magistrates should abstain from making any appointment that would give one party an advantage over the other. No. 7807, Dec. 28, 1877.

Existing appointments, good.

L. R. "The repeal of Act XI, 1843, has not the effect of cancelling from the date on which Act III came into force all appointments lawfully made under the former, the periods of which have not yet expired. It is a rule that in the absence of provision to the contrary an Act which is repealed is considered as if it had never existed. But transactions past and closed are always excepted from this rule. Nothing

Act not retrospective.

but clear and express words will give a retrospective effect to a statute, and however much the present tense may be used in it, it must be construed as applying only to future matters, and every statute, which takes away or impairs vested rights acquired under existing laws, or attaches a new disability in respect of transactions or considerations already past, must be presumed, out of respect to the Legislature, to be intended not to have a retrospective effect." No. 515 Jan. 24, 1876.

Turn of office.

7. A, by his dismissal, has lost his turn of service and the turn of B must be considered to have commenced, the custom of service being for one officiator to serve by rotation. Government concur in this view which is supported by the wording of s. 59. No. 1692, March 23, 1881.

Alternate service.

8. The groups of three villages each not being equally remunerative, Government ordered that the petitioner should have the groups alternately irrespective of their shares. No. 9071, Nov. 17, 1884.

Nomination by Government

9. The question is whether Government should exercise their right of nomination to the lapsed share of a watan, if they have done so heretofore. If any such right has been exercised by Government it should be continued. No. 7300, September 1885.

Power of Collector under s 43.

10. As s. 43 empowers the Collector "to determine the number of officiators for the proper performance of the duties of any office from time to time," and to arrange the order of service, Government concur in considering that their sanction is not required in cases where increase in the number is required. No. 8104, Dec. 5, 1888.

Ditto.

11. Commissioner: "Under s. 43 the Collector has the power to determine the number of officiators and to 'direct service in successive periods by representative watandars *who have hitherto served or are serving contemporaneously.*' This provision meets the difficulty that where two kulkarnis serving contemporaneously are at enmity, the villagers become partizans of one or the other, and the whole village is divided against itself.' Government concur. No. 9060, December 11, 1893.

Power of Collector under ss 42, 43, and 45

12. S. 45, as amended by Act V, 1886, specifies certain cases in which the Collector shall refuse to accept service from representative watandar or his nominee, but it is not clear that it necessarily follows from this that the Collector is bound to accept an officiator in all other cases not falling within the scope of that section. The latter cases seem to be governed by ss. 42 and 43, under which the Collector is bound to accept service only when the watandar or his nominee is a "fit and proper person". Under the provisions of these sections it is apparently within the discretion of a Collector to refuse to accept the service of a watandar or his nominee, who, although not absolutely disqualified under s. 45, is not considered to be fit and proper in other respects. The point is, however, a doubtful one and will be noted for consideration when the Act is amended. No. 4421, May 12, 1893.

13. Commissioner: "The notice issued by the Assistant Collector was for the appointment of a deputy only. The representative watandar accordingly appeared and nominated S who had already been officiating as as kulkarni, and was, therefore, a fit and proper person, and this fitness of the deputy was strictly speaking the only point legally before the Assistant Collector. The representative watandar, however, failed to satisfy the Assistant that he would provide proper *potgi* for the remuneration of the deputy, and was therefore required to serve in person. I doubt the legality of this procedure as the Act makes no provision for the rejection of a nominee on the ground on which the rejection took place in this case." The representative watandar should not have been called upon to serve himself after having received a notice to appoint a deputy and having nominated a fit and proper person. If adequate emoluments are not given, the defect may be remedied by other proceedings; the indirect method adopted in this instance is not a proper one. No. 539, January 17, 1896.

After issue of notice representative watandar not to be asked to serve himself.

14. In registering a watan it is not necessary to say anything about the performance of the police patel's duty in the way of assigning the right to it to any person. Under s. 43 the Collector determines the number of officiators required for the duties, *i. e*, he says one officiator can do all the duties, both revenue and police, or the village being large, two officiators are required contemporaneously. But he does *not* say, of these A is to do the revenue and B the police duties. When the Magistrate appoints a police patel under Act VIII, 1867, s. 5, he respects the settlement of officiators as far as he can. Thus Government decided in No. 7127, December 20, 1875, that when there are two officiators, the Magistrate gives the sanad of police patel to whichever of the two he pleases. No. 4157, June 10, 1886.

Appointment of police patel.

15. (As to the question whether in any circumstances a representative watandar who is registered as having a right to the office of police patel should be considered to possess the right to appoint a deputy under Part VIII). In practice there are two classes of cases—(1) when the office of police patel has been customarily given to the revenue patel. In such cases the representative watandar if fit for revenue office will presumably be also fit for police duty and no question of nomination of a deputy will arise. If he is not qualified for the

Appointment of deputy for police patelship.

revenue duty and is allowed to appoint a deputy, the Magistrate can either select a police patel from the other representative watandars if any, or if there are none, or none fit, can invest the deputy with the office of police patel. (2) When the office of police patel is held as a separate watan from that of revenue patel. In this case if there be only one representative registered by the Collector and he is unfit to serve, but not unfit to nominate a deputy, the Magistrate should call upon him to nominate under Part VIII. If there be more than one representative registered by the Collector, and the watandar whose turn it is to serve is not fit, the Magistrate may appoint any other registered representative, and if none fit, may call upon the watandar whose turn it is to serve to nominate a deputy under Part VIII. No. 3057, April 25, 1889.

Selection for office as police patel.

16. In making appointments of revenue and police patels Collectors and Commissioners should exercise their discretion so as in the first instance to select for office as police patel the representative watandar who appears to be the fittest to hold that office, and to continue him in office so long as he remains the fittest, wherever the two offices of police and revenue patel are separate. Where the duties of revenue and police patel are exercised by one and the same person, it should always be considered whether there is likely to be distinct gain in efficiency by the separate appointment of a police patel, and whenever it is decided that such gain will result, a separate police patelship should be made, and the most efficient representative watandar appointed to it in the manner already indicated. Where no representative watandar has been found of the requisite efficiency, an efficient deputy should be appointed as prescribed by the orders passed in G. R. No. 3057, dated 25th April 1889 (*Supra, 15*). No. 7742, August 14, 1906.

Right of appointment of police patel.

17. As a matter of fact the right of appointment or nomination to the police patelship of the village vested in, and was exercised solely by, the petitioner's family. There being nothing in G. R., (J. D.,) No. 5945 of 7th November 1891 to prevent the continuance of this right, subject to the conditions laid down, the orders of the local authorities, appointing N jointly nominated by all matadars of the village, should be reversed and fresh proceedings should be held for the

appointment of a police patel. G. R. (J. D.), No. 487, January 23, 1909.

44. (*Repealed by Act III of 1910.*)

The section stood thus :—

"If any requisition of the Collector under sections 42, 43, 46 or 48 of this Act, is not complied with within two months from the date thereof, the Collector may himself appoint a deputy or deputies."

The provisions of the section have been incorporated in amended section 49 (*c*).

Collector when to refuse service of representative watandar or of deputy nominated by him.

45. The Collector shall refuse to accept the service of any representative watandar of any person nominated by a representative watandar to be his deputy, if such representative watandar or person

(*a*) is under eighteen years of age ;

(*b*) has not passed such educational test, if any, as Government think fit from time to time to prescribe in this behalf ;

(*c*) has attained sixty years of age, except when such person's appointment or continuance in office is specially permitted by the Collector ;

(*d*) is in the opinion of the Collector disabled by lunacy or imbecility of mind, or by deafness, blindness or other permanent infirmity of body ;

(*e*) has been adjudged by the Collector after a summary inquiry held in accordance with the provisions relating to summary inquiries contained in the Bombay Land Revenue Code, 1879, to be of general bad character ;

(*ee*) is considered by the Collector to be unfit for office on the ground that he is a wilful defaulter in respect of land-revenue or any sum expressly

declared by any law for the time being in force to be recoverable as an arrear of land-revenue ;

(*f*) has been sentenced by a Criminal Court to imprisonment or whipping for an offence punishable with imprisonment for a term exceeding six months, or to transportation, such sentence not having been subsequently reversed or quashed, and whose disqualification on account of such sentence has not been removed by an order the Governor in Council is hereby empowered to make, if he shall think fit, in this behalf ;

(*g*) declines to forsake, whilst officiating, some other employment which is, in the opinion of the Collector, incompatible with the due discharge of the duties of the office ;

(*h*) has been removed from office or declared to be ineligible for re-employment under section 58, unless his re-employment is expressly sanctioned by Government.

The section stood originally thus :—

The Collector may refuse to accept the service of any representative watandar whose duty it is to officiate, or any deputy nominated by him, if the Collector has good reason to believe after due inquiry that such watandar or deputy is of known bad character or is unfit, by reason of physical or mental inability, or by reason of other employment or calling, to perform efficiently the duties of the office.

It was first amended by Act V, 1886, and now with the addition of clauses (*ee*) and (*h*) made by Act III of 1910 forms the present section.

The words " in the opinion of the Collector " in (*d*) enable the Collector to accept the service of any person whose disability from infirmity of body does not appear to him to come in the way of the performance of the duties required. Clause (c) pro-

vides that the service of a representative watandar or a deputy should not be refused on the ground of his bad character unless he has been adjudged so after a summary inquiry within the meaning of the Land Revenue Code. As a village officer who is himself a contumacious defaulter in the payment of land revenue &c., cannot be expected to exercise influence over the villagers in the matter of the collection of land-revenue, &c; and as a contumacious defaulter does not come under "a person of general bad character" under sub-clause (*e*) (*vide Rul. 10*), sub-clause (*ee*) has been added to meet such a case and gives the Collector discretionary power to refuse to accept service from him.

This sub-clause stood thus in the Bill:—"Is considered by the Collector to be unfit for office on the ground that he is a defaulter within the meaning of section 147 of the Bombay Land-revenue Code, 1879, or that there is due from him to Government any sum expressly declared by any law for the time being in force to be recoverable as an arrear of land-revenue." But as "the exclusion of an officiator for default in payment where there is no indication of contumacy, appeared to be an unduly stringent measure, the operation of the clause was confined (by the Select Committee) to cases of wilful default." Habitual money-lending by watandar kulkarnis is held to be incompatible with the due discharge of the duties of the office, while that by Patils is not necessarily so, though in special cases it may be so held (*Rul.* 15). The first part of the provisions of old S. 59, with the necessary addition consequent upon the amendment in s. 58, is incorporated in sub-clause (*h*) newly added.

RULINGS.

Probationary appointments, illegal.

1. L. R. "S. 45 authorises the Collector to refuse to accept the services of a person if he has good reason to believe after due inquiry 'that such person is unfit to perform efficiently the duties of the office.' Had the Legislature intended that the Collector might accept a person's service temporarily in order to test his fitness, it would have been easy to employ language which would express that intention. The section merely points to an inquiry before a person's service is accepted at all, and probationary appointments are not in accordance

with the Act. The whole tenor of the Act is in the direction of making final appointments for fixed terms so as to prevent frequent changes and the trouble and local excitement they involve." Copy forwarded. No. 4433, June 3, 1885.

Educational test in case of Kulkarni.

2. The reports furnished show that no foundation exists for the belief that a class of persons exists who earn livelihood by moving from village to village writing up the account books of the village kulkarnis, and also that in many cases the kulkarnis are not competent accountants and are not fitted by education or training to discharge efficiently the duties of their office. It is doubtless true that as a body the watandar kulkarnis are, as accountants and Government officers, inferior to the stipendiary Talatis of Gujerath and the Konkan. In view of the actual circumstances of the case, of the facts that the watan property consists mainly of lands, that there are numerous sharers and sub-sharers in the watan, that the office is hereditary for the village, and that in many instances it is only held for a limited number of years and by rotation, it would seem impossible to carry out a project which apparently involves the transfer of watandar kulkarnis from one village to another and redistribution of the emoluments of the office. Nor has any sufficient cause been established for increasing the remuneration of watandar kulkarnis by further cash payments. Government consider that the efficiency of the village service can be improved by requiring proof before any watandar is appointed to be kulkarni that he is competent to discharge satisfactorily the duties of the office. The candidate for office should satisfy the appointing officer that he is able to read and write well, is a fair arithmetician and possesses some knowledge of the system of village accounts. S. 45 empowers the Collector to refuse to accept the service of any representative watandar or deputy if he has reason to believe that such watandar or deputy is unfit owing to mental inability to perform efficiently the duties of the office; a watandar therefore who has not been educated sufficiently to do the work of a kulkarni is mentally unfit to officiate as such and may be rejected. The Collector should ascertain by examination if the persons now serving are sufficiently qualified, and if not, deputies under s. 46 should be appointed. No. 8805, Dec. 15, 1882.

3. The test should consist of an examination in the following subjects: (1) Reading and writing the vernacular of the District, (2) Mathematics upto simple interest, (3) knowledge of Hope's Forms, (4) capability to draft a short report regarding something that has taken place in the village. Three years from the date of G. R. No. 8805 of 1882 (*supra*, 2) should be the limit within which the watandar kulkarnis should pass the examination. No. 6631, August 15, 1883.

Ditto

4. A knowledge of the rules for the inspection of field boundary-marks is made an additional subject of the kulkarni's Examination. No. 8420, Nov. 15, 1883.

Ditto.

5. The orders of Government on the subject are:—(1) From the date of G. R. No. 8805 of 1882 (*supra*, 2) every person about to be appointed officiating kulkarni or deputy must first pass the prescribed test. (2) Any person officiating at the date of that G. R., who is reported to be wanting in the necessary educational qualification should be called upon to comply with the test, and if he fails he should be removed as incompetent. (3) The rule 2 should be applied only to officiators who have more than five years to serve at the date of that G. R. (4) That G. R. should be enforced after three years have elapsed from the date thereof, so that watandars may have time to prepare themselves for the examination. The rules should not be applied too rigidly to watandars who were officiating in December 1882. They should not be subjected to the test unless they are believed to be absolutely incompetent from want of mental training. But with this limitation the rules should be applied to those appointed for life as well as to those appointed for a shorter term. A knowledge of Cattle Trespass Act and rules (thereunder) may be added to the subjects of the examination. A paper on the part of the Land Revenue Code and subsidiary rules which concern the duties of the village officers may also be added as a voluntary subject at the discretion of the Collectors. No. 3686, May 8, 1884.

Ditto.

6. There are two cases, *viz.*, those defined respectively in (1) and (2) of G. R. No. 3686 of 1884 (*supra*, 5). For case (1), the examination should be as nearly as possible just before the time when a watandar is about to enter office, so as to test his fitness at that time. If the

order is applied thus, it is not necessary to allow candidates to come up badly prepared when their turn of office is remote and make repeated attempts to pass. For case (2), three attempts might be allowed but should not be claimed as a right, because if an officiator is found to be altogether incompetent, he ought to be removed at once. (This order was passed on a representation that candidates often presented themselves ill-prepared). No. 4545, June 25, 1886.

Ditto.

7. The proposal that those persons who fail to pass in one subject only should be allowed to appear again after a reasonable time to pass in that particular subject, the appointment of deputies being made temporarily by Government, is approved. No. 1249, February 14, 1889.

Educational test for patelship.

8. Commissioner: "Ability to read the Village Police Act, to write a short report on an ordinary matter, and to read simple manuscript, may be considered sufficient qualification; and the Collector should have the power to dispense even with this simple test in cases in which he thinks it advisable to do so. We do not think that any regular examination need be held. A patel's qualifications can always be ascertained prior to his nomination." These views meet with the approval of Government. No. 2718, May 2, 1888.

White leprosy no bar to officiation.

9. Commissioner: "D is permanently deaf and one B was appointed to officiate as deputy on behalf of D. B was removed from the office on the ground that he is affected with white leprosy. The order is opposed to the views expressed in G. R. (J. D.), No. 3254 of 13th August 1889 and must therefore be reversed, as white leprosy does not invalidate persons from serving Government in a public capacity." Government concur. No. 593, January 23, 1897.

Contumacious default.

10. A contumacious defaulter in payment of land revenue cannot be held to be a person of 'general bad character.' The advisability of amending the law in that direction is being considered. No. 982, January 29, 1907.

Disqualification arising from conviction.

11. No man who has undergone penal servitude should be appointed to a place as officiator or deputy. No. 6752, December 1, 1875.

Ditto.

12. G, having been convicted of theft, cannot be allowed to serve personally, but may appoint a deputy. No. 2643, May 2, 1876.

Ditto removed.

13. Collector's recommendation (that the disqualification, arising from the sentence of imprisonment passed on one G, for an offence under s. 323 of the Penal Code, may be removed by an order under s. 45 (*f*), the offence being of a trivial kind) is sanctioned. No. 8082, November 3, 1892.

Ditto.

14. Collector: "The details of the offence committed by V, a representative watandar, are not known, but it has been alleged that the assault in question was the result of a dispute between relatives about chillies. V is now about 45 years of age and was, therefore, at the time of the offence about 20 years of age. I do not think that an offence of this kind indicating hot temper rather than depravity, committed by a mere boy, should deprive him 25 years afterwards of the right, which he possesses as representative watandar, to officiate as patel of his village." The Governor in Council is pleased to remove the disqualification. No. 8238, November 24, 1903.

Habitual money-lending by kulkarnis and patels.

15. It is desirable to apply sections 45 and 46 to any watandar kulkarnis who habitually engage in money-lending, but they need not be applied to watandar patels unless it is considered that such occupation interferes with the proper discharge of their official duties. No. 2668, April 22, 1902.

Re-employment of dismissed officer sanctioned.

16. Commissioner: "S, a member of the kulkarni watan family, was convicted on 8th June 1882 of rioting and causing hurt under sections 147, 149, and 323 of the I. P. Code and sentenced to four months' rigorous imprisonment and Rs. 50 fine, and in consequence of this he was by G. R. removed from office under s. 58 and declared incapable of serving Government again in any capacity. Since then he has done very excellent unpaid service in connection with

plague and census, and has been recommended by various officers for the removal of the stigma. The disqualification entailed by section 45 (*f*) in consequence of the criminal conviction may be removed and sanction of Government may be given under section 59 to his re-employment in his hereditary office of kulkarni in case he be nominated again as deputy." In view of the opinions expressed by the local officers in favour of the dismissed kulkarni, the Governor in Council is pleased, in recognition of the highly commendable unofficial service rendered by him subsequent to his dismissal in 1883, to cancel Government Notification No. 1643 dated 2nd February 1883, declaring him incapable of serving Government again in any capacity. It should be distinctly understood that the cancellation of the Government Notification referred to is intended as a measure of condonation of past punishment won by long subsequent good conduct. The recommendations made by the Commissioner are sanctioned. No 845, February 1, 1905.

Power to remove officiator or deputy of representative watandar who becomes unfit to officiate.

46. If an officiator at any time becomes unfit to officiate for any of the reasons specified in section 45, the Collector shall remove him from office and, subject to the other provisions of this Part, appoint another officiator.

A deputy appointed by a representative watandar may at any time be removed from office by the Collector at the request of the representative watandar, if, in the opinion of the Collector, there are good grounds for such request.

Procedure when representative watandar is rejected or removed.

47. If a representative watandar whose duty it is to officiate is rejected or removed under section 45 or 46, he may, subject to the provisions of section 49, appoint a deputy:

Provided that, whenever such representative watandar ceases to be disqualified under section 45, he shall become entitled, if otherwise fit, to serve in person in supersession of any such deputy, or to serve in person or

(subject to the provisions of section 42) to appoint a deputy in supersession of any deputy appointed by the Collector.

Procedure when a deputy is rejected or ceases to officiate.

48. If a deputy dies or resigns, or is rejected or removed by the Collector under section 45 or 46, the representative watandar whose duty it is to officiate may himself, if otherwise fit, perform the duties in place of such deputy or, subject to the provisions of sections 42 and 49, appoint another deputy.

Cases where Collector, instead of the representative watandar, shall appoint a deputy.

49. The Collector, instead of the representative watandar whose duty it is to officiate, shall himself appoint a deputy in any of the following cases :—

(*a*) where the representative watandar is disabled by lunacy or imbecility of mind from appointing a deputy ;

(*b*) where the representative watandar is disqualified under clause (*e*), (*f*) or (*h*) of section 45, whether or not he was a representative watandar at the time of his incurring such disqualification ;

(*c*) where the representative watandar fails to comply with any requisition of the Collector to serve in person or to appoint a deputy under section 42, 43, 47 or 48, within two months from the date thereof ;

(*d*) where the first person nominated by the representative watandar is rejected under section 45, and the second person nominated is also rejected under that section ;

(*e*) where the representative watandar declines to appoint a person as his deputy in accordance with section 53 ;

(*f*) where a deputy appointed by the Collector under any of the above clauses dies or resigns.

50. (*Repealed by Act III of 1910.*)

S. 46 originally stood thus :—

In the event of any representative watandar whose duty it is to officiate being or becoming unfit by reason of other employment or calling, or physical incompetency, the Collector shall call upon him to appoint a deputy, and in case of his mental incompetency, shall himself appoint a deputy. In the event of a deputy so becoming unfit, the representative watandar, unless himself mentally incompetent, shall be called upon to appoint another deputy in his place.

It was amended by Act V of 1886 as follows :—

If a representative watandar whose duty it is to officiate is, or at any time becomes, unfit to officiate for any of the reasons set forth in the last preceding section, the Collector shall call upon him to appoint a deputy, or, if he is disabled by lunacy or imbecility of mind, the Collector shall himself appoint a deputy.

If a deputy so appointed becomes unfit to officiate for any of the reasons aforesaid, the Collector shall call upon the representative watandar to appoint another, or himself appoint another, as the case may be.

A deputy appointed by a representative watandar may at any time be removed from office by the Collector at the request of the representative watandar, if, in the opinion of the Collector, there are good grounds for such request.

The present section is substituted by Act III of 1910. Ss. 47, 48, and 49 are also substituted by Act III of 1910 for the original sections which ran as follows :—

47. Whenever a representative watandar whose duty it is to officiate ceases to be disqualified under the provisions of sections 45 and 46 of this Act he shall become entitled, if otherwise fit, to serve in person or to appoint a deputy in supersession of any deputy appointed by the Collector.

48. In the case of any nomination of a deputy, the Collector shall allow a second nomination to be made in case of his rejecting

the first nomination, and, if he shall reject the second nomination, he shall himself appoint a deputy.

49. The representative watandar whose duty it is to officiate may himself, if otherwise fit, perform the duties in place of any deputy removed or rejected by the Collector, or deceased.

while section 50 ran as follows :—

When a representative watandar has been rejected as being of general bad character, or removed on account of grave misconduct under the provisions of section 58 of this Act, the Collector himself may nominate and appoint a deputy.

Opportunity has been taken to remodel sections 46—49, the arrangement of which is at present most confusing, with the consequential repeal of sections 44, 50, and 59.—(Statement of Objects and Reasons accompanying Bill No. II of 1910.) In each of the old ss. 44, 46, 48, 50, 53, and 59 there were certain contingencies under which the Collector was empowered to appoint a deputy, instead of the representative watandar whose duty it was to officiate. All these are now grouped together in s. 49, of which

Cl. (*a*) deals with the case referred to in old s. 46,
Cl. (*b*) " ss. 50 and 59,
Cl. (*c*) " s. 44,
Cl. (*d*) " s. 48,
Cl. (*e*) " s. 53,

and Cl. (*f*) is a general one dealing with a new point.

The following table shows approximately the sections in the amended Act corresponding to the old sections :—

Old sections.	Corresponding new sections.
S. 44.	S. 49 (*c*).
S. 46.	Ss. 46, 47 (para 1), 49 (*a*).
S. 47.	S. 47 (para 2).
S. 48.	S. 48 (part), 49 (*d*).
S. 49.	S. 48 (part).
S. 50.	S. 49 (*b*) (part).
S. 53 (para 2).... ...	S. 49 (*e*).
S. 59.	S. 45 (*h*), 49 (*b*) (part).

There was some doubt as to whether an officiator who was dismissed from office under s. 58 when he was not a representative watandar, should be held to be debarred, under old s. 59, from nominating a deputy, when he became a representative watandar and his turn of office came, the words used in the section being 'in case he be a representative watandar.' Government, it seems, favoured the view of holding him to be debarred (*Rul.* 5), and the point is now cleared by the words 'whether or not he was a representative watandar at the time of his incurring such disqualification' in the corresponding s. 49 (*b*).

RULINGS.

Ground for appointing another deputy under s. 46.

1. The fact that a near relation of the representative watandar had recently come of age and was fit to serve constituted "good grounds" for a request by the representative watandar to remove the officiating deputy and appoint the near relative. No. 6189, August 13, 1904.

Right of nominating deputy.

2. L. R. "The question is whether a person who is not a representative watandar under the watan Act of 1874 and who was appointed under the old Watan Act, XI of 1843, to serve as patel for life (and continued so to serve till 1890), has a right to nominate a deputy when he is disabled from serving in person. The appointment of G for life under Act XI of 1843 was actually recognised when the register was framed under Act III of 1874, for he was allowed to continue serving though he was not entered as a representative watandar. Moreover his appointment under the Act of 1843 was not affected by the Act of 1874, for it has already been decided that the latter Act had no retrospective effect (*cf.* G. R. No. 515 of 24th January 1876). The fact that G was not recognised as a representative watandar under Act III of 1874 would not deprive him of his lawful rights under the old Act. As already stated, his rights were actually recognised without any dispute till 1890. Under section 11 of Act XI of 1843, G would have the right of appointing a deputy during his life time." Government concur. No. 444, January 20, 1898.

Nomination of officiator by Government.

3. When a village officer is dismissed after being convicted of a crime in the conduct of the duties of his office, and the nomination of his successor devolves on Government, no near relative, such as father, son or brother, should be appointed. No. 692, February 28, 1860.

Ditto.

4. Commissioner: "The Assistant Collector refused to appoint the petitioner, because there was the danger of his being under the influence of his dismissed father, and because if the petitioner were appointed the penalty imposed upon his father would be practically nil, as the interests of both were identical. I agree with the Collector on the abstract question that it is hard that the sins of the father should be visited upon the son; but it must be pointed out that this view is not in consonance with the orders in G. R. No. 692 of 1860." No. 7590, Oct. 17, 1893.

Right of nominating deputy

5. Petition from D stating that he was dismissed from the office of kulkarni by G. R. in 1876; that he has now become the representative watandar kulkarni in lieu of his deceased father; that he has been appointing deputies to officiate for himself; that his right to do so has been recently questioned by the Collector; and that the Collector's order has been confirmed on appeal by the Commissioner, and praying that the orders passed may be cancelled. G. R. "Government decline to interfere on behalf of D." No. 5190, May 28, 1906.

6. Commissioner: "Before B's adoption by S, and while she (S) was the registered representative watandar, on her term of service arriving, she nominated one C as her deputy. But as B's name was on adoption substituted for hers in the watan register as a representative watandar, it was held that the term of appointment of C had ceased with the cessation of the right of S by whom he was appointed as her deputy; and proceedings were taken for the appointment of a deputy on behalf of minor B. A notice was issued calling on the parties to nominate a deputy in December 1894, and at the request of B's natural father the appointment was adjourned to a further day on which B's guardian failed to attend and the Assistant Collector sanctioned the continuance of C in his post. On appeal by B's guardian the Collector held that

the name of B should have been entered as heir only, on the ground that S had not obtained Government sanction under s. 5 to the alienation of the right of service to B, the mutation of names in the watan register being treated as an alienation. The points for consideration are : (1) whether the appointment made by the Assistant Collector is in accordance with s. 44, (2) whether he was or was not bound to consult the wishes of S in her capacity of guardian of B, or, if she was not the guardian, to consult whatever person was the guardian, (3) whether the Collector has authority to decide questions not raised in appeal, (4) whether his finding that the adopted son cannot be entered as representative watandar until the death of S is correct, (5) whether the mutation of names in the watan register amounts to alienation, and (6) whether the Collector, having once confirmed in appeal the mutation of names, has power to review his own order. As to (1), the Assistant Collector had no authority to make an appointment on his own motion until the expiration of the prescribed two months. As to (2), it was incumbent that the wishes of the adoptive mother or whoever may have been the guardian should have been consulted ; and it should not have been assumed that, because S had appointed a person on her own behalf, she would appoint the same person on behalf of B. The circumstances might be so changed that, even in making a second appointment on one's own behalf, she would find it necessary to appoint another man ; much more so when the capacity is changed. As regards (3), the question whether the name of B had been properly entered in the watan register was not raised in appeal. The Collector seems therefore to have had no power to pass an order on that point.—G. R. No. 7192, September 5, 1884 (*vide* Part XIII). As regards (4 and 5), the Collector's finding appears erroneous. The widow adopted a son to her husband and not to herself ; consequently under G. R. No. 5846, July 19, 1884, (ss. 33-35, *Rul.* 2), the adoption should have immediate effect. As regards (6), the Collector had already confirmed the order of mutation of names. He has now cancelled that order. This appears *ultra vires* under G. R. No. 5922, August 19, 1886 (given

Nomination made before expiry of prescribed two months invalid.

Wishes of representative watandar to be consulted.

Point not raised in appeal, not to be decided.

Adoption is no alienation.

No power of review.

under Part XIII). Proceeding should therefore be held *de novo.*" The recommendation is sanctioned. No. 6556, August 28, 1895.

Appointment of deputy on behalf of Government.

7. Commissioner . " It is only when a representative watandar fails to nominate a fit person to officiate or when he is a lunatic or a man of general bad character, &c., that the law allows the Collector to appoint a deputy. But there is no provision authorizing the Collector to make such an appointment in a case like the present in which the representative watandar is dead and no one has been recognised as his heir, such a contingency not having been contemplated by the Act." Government concur. No. 4595, July 14, 1898.

Female cannot officiate, but may nominate deputy

51. No female shall perform in person the duties of any hereditary office ; but if a representative watandar, or the guardian of a representative watandar, she may appoint a deputy.

Collector to appoint deputy when officiator suspended.

52. During the suspension of an officiating representative watandar or deputy, and during any vacancy, the duties shall temporarily be performed by a substitute, whether a watandar or not, appointed by the Collector.

Temporary appointment of officiator.

1. It would save trouble if the officiator, whose term is about to expire, were continued in office pending the settlement of his watan. No. 1871, March 23, 1876.

Ditto.

2. In modification of G. R. No. 1871 of 1876 (*supra* 1) it is directed that vacancies in watans of which the new registers have not been prepared by the Assistant or Deputy Collectors, should be filled up by appointing the person whose term appears on the old register, provisionally that if the new registers should be prepared before his term expires and his claim to serve should be rejected, he is to vacate in favour of the watandar to whom the Assistant accords the right, unless he should appeal. Should the Assistant continue such watandar in office, his appointment shall be made under

s. 38 to continue from the date he was provisionally appointed: No. 7412, October 23, 1882.

Deputy must ordinarily be a member of the same family as the representative watandar whose duty it is to officiate.

53. Except as is otherwise provided in the last preceding section and in section 56, and, except as the Governor in Council shall by a general or special order from time to time otherwise direct, every deputy appointed under this Act shall be a member of the same family to which the representative watandar whose duty it is to officiate belongs, if there be a member of such family fit and willing to officiate, or, in default of such member, a watandar of the same watan who is fit and willing to officiate, and who is descended from the same original watandar as the representative watandar whose duty it is to officiate.

The section originally stood thus :—

In all other cases, except as provided in section 56 of this Act, none but a watandar be appointed as deputy, whether by the Collector or any representative watandar if there be a watandar of the same watan fit and willing to serve, and in the event of the representative watandar declining to appoint a watandar as his deputy, the Collector shall himself appoint one. When the Collector himself appoints a deputy under the provisions of section 50 of this Act, he may, if Government so direct, appoint other than a watandar.

It was amended by Act V of 1886 as follows :—

Except as is otherwise provided in the last preceding section and in section 56, and except as the Governor in Council shall by a general or special order from time to time otherwise direct, every deputy appointed under this Act shall be a member of the same family to which the representative watandar whose duty it is to officiate belongs, if there be a member of such family fit and willing to officiate.

If a representative watandar declines to appoint as his deputy any such person as aforesaid, the appointment shall be made by the Collector.

The present section is substituted by Act III of 1910.

The provisions of the 2nd para of the section, as it stood before its present amendment, are embodied in new s. 49 (*e*) and that para is repealed.

"The additional provision will secure uniformity of rulings where much vexatious diversity has prevailed, and will prevent the appointment as deputies of persons not belonging to the watan, a practice which is certainly contrary to custom and sentiment, but which has been facilitated by the restrictive definition which is given to the word 'family,' a definition which seems to exclude even persons descended from the same original watandar, when he belongs to a family which has not been accorded separate registration under the Act." (Proceedings of the Legislative Council, March 12, 1910.)

"The existing law has been interpreted that each representative can make a nomination when he wishes but he is limited to his own branch of the family if there is a member ready and fit to serve. It was ascertained and very carefully brought out in Select Committee that the general feeling of watandars is that this field of choice should be extended to the watandars from the original watandar family and that the members of the representative watandar's branch should have the first choice, and if there was no one among them who could be selected, the junior members of every branch should have the opportunity to serve." (Ditto. June 27th, 1910.)

"An addition has been made to s. 53 to meet the case of a member of the family of the representative watandar whose duty it is to officiate refusing to do so." (Statement of Objects and Reasons.)

Meaning of 'family'.

The word 'family' as used in the first clause of the Gordon Settlement Sanad or s. 2 of Act V of 1886 is held to include collectively all the branches of a family descended from an original watandar (*vide Rulings* under s. 15 and s. 2 of Act V). But for the purposes of s. 53, it is held to be restricted to a particular branch having an independent right of registration, each branch being treated as a distinct family, with the result that, under the section as it stood before its recent amendment, when there

was no person fit and willing to officiate in the particular *takshim*, to which the representative watandar belonged, a pure outsider could be appointed as deputy to the exclusion of fit members of the other *takshims*, &c., (*Ruls.* 5, 7, 8, 11, 12, 16, 17). Opinions of L. R. do not seem to favour this restriction of meaning (*Ruls.* 6, 18). Under the present section, if there is no person fit and willing in the particular *takshim*, preference shall have to be given to a watandar of the same watan descended from the same original watandar as the representative watandar. It would be only on failure of such a watandar that a pure outsider can now be appointed. This practically removes the obstacle that was placed in the way of the members of the other *takshims* by the restricted meaning put upon the word 'family'. In the Bill there was another provision at the end of the section running thus :—" or in default of such a watandar, any watandar of the same watan who is fit and willing to officiate ; " but it was omitted in the Select Committee for the following reasons :—

" Although it is in consonance with the law and practice applying to watans to require that the deputy, if not a member of the representative watandar's family, should be a watandar of the same watan descended from the same original watandar, we do not think that this principle can be held to extend to other watandars of the same watan."

The section enables Government in special cases, as, for instance, when persons of high rank are the representative watandars, to dispense with the necessity of none but a watandar of the same watan being appointed a deputy. A male member of the family of the representative watandar in the *male* line only is a member of his family ; a person descended through a female is not so (*vide Rul.* 27, G. R. No. 6680, Oct. 6, 1888, under s. 15). A husband can be appointed a deputy by his wife, not because he is a watandar of the same watan (*Rul.* 4 appears to be incorrect), but because he and the wife form, according to general law, one family. The succession of females *e. g.*, daughters being postponed to that of males, the nomination of husband as a deputy will not be a matter of frequent occurrence. It has been stated above that a branch of a family admitted to an independent right of registra-

tion is a *distinct* family for the purpose of this section. By independent right is meant the right which has been recognised by the Collector under s. 26, and not merely a right of service which happens to be transferred from one branch of the family to another by inheritance subsequently to the framing of the watan register (*Rul.* 10). The Collector is bound, equally with the representative watandar, by the provisions of s. 53, so that he, when nominating a deputy, must choose a member of the representative watandar's family, if there be one fit and willing, and in default of such a member, a watandar of the same watan &c., (*Rul.* 13). The provisions of s. 53 do not come in the way of a guardian being appointed a deputy for his ward; the guardian need not be a member of the family of the ward &c. (*Rul.* 14).

RULINGS.

Before amendment of 1886.

Nomination of outsider as deputy

1. The Act should be strictly adhered to and the nomination by the female watandar of a man who is not a watandar being illegal should be considered null and void. No. 4165, July 23, 1875.

Ditto.

2. It is not clearly admitted by the Vinchurkar that he has no concern in the police *takshim*, and he cannot nominate an outsider unless the watandars who hold that *takshim* are unwilling to serve. Such unwillingness on their part might be inferred from the statement that they agreed to the nomination of an outsider made by the Vinchurkar to the office of the revenue patel. Should they have, however, subsequently withdrawn their consent, Government do not think that the nomination of an outsider by the Vinchurkar can be legally allowed so long as the watandars of the police *takshim* cannot be induced to renew their consent. In those cases in which the Vinchurkar is the sole watandar, there can be no impediment to his nomination of an outsider. No. 1370, March 2, 1876.

Ditto.

3. L. R. "Whether a sole representative watandar, in this case H. H. the Maharaja Scinde, who is the only surviving watandar of his own *takshim*, and who, notwithstanding that there were several watandars living belonging to the other *takshims* of the watan, has

always been allowed before the Act was passed to appoint a stranger as his deputy, is now bound under s. 53 to appoint one of these latter watandars if there be one of them fit and willing to serve? This question I would reply in the affirmative. The custom has been for a member of one family only to serve, and under ss. 27 and 25 this custom is recognised by the registration of the name of the head of this family as the sole representative watandar. S. 24 enacts that the duties of the office 'shall be performed by the representative watandars or by deputies or substitutes *as hereinafter provided*, and by *no other persons*'. The deputy of a representative watandar can therefore only be appointed as subsequently provided in the Act, and none but such a deputy or a substitute or the representative watandar himself, can perform the duties. Amongst the subsequent provisions of the Act specially relating to deputies is that contained in s. 53, which is to the effect that, except in certain cases which are not now in question, '*none but a watandar shall be appointed as deputy*,' whether by the Collector or any representative watandar. Nothing could be more distinct than the language of this section, and the definition of the word 'watandar' in s. 4 is such that any person belonging to any *talshim* who has an hereditary interest of any kind in the watan must be held to be a watandar for the purposes of s. 53. It is true that ss. 25 and 26 require the Collector to determine 'the custom of the watan as to service,' but the context shows that the custom of the watan as to the particular watandars or families entitled of their own right to serve is meant, and not the custom as to nomination of deputies by such persons." This opinion should be acted upon. No. 3043, May 22, 1878.

Nomination of husband as deputy.

4. As under the Mayukha daughters take by inheritance not only absolute but several estates, and consequently, when not having any issue, may dispose of such property during life or may devise it by will, the husband of a daughter must be deemed "a person having an hereditary interest in a watan" within the meaning of s. 53, and therefore she may appoint her husband to be her deputy. (The Notes and *Rulings* on s. 4 would show that a husband cannot be deemed to be "a person having an hereditary interest in a watan," merely because his wife has inherited the watan). No. 2318, April 8, 1882.

After amendment of 1886.

5. Commissioner: "The District Deputy justifies his arbitrary order by ruling that the word 'family' in s. 53 may be taken to be the family of the acquirer of the watan. The confusion of ideas is obvious. If the families are ruled to be distinct by the settlement of the register (in this case the names of the heads of four branches of the watan family were entered as representative watandars), they cannot be treated as forming only one when an appointment has to be made." The appointment cancelled. No. 5068, July 19, 1890.

'Family' restricted to *kutakam*.

6. L. R. "The facts are that G and B are descended from a common ancestor, but the kulkarni watans of the two villages are owned in equal shares by the two so-called distinct families, of which they are now respectively the heads. The definition of the word 'family' in s. 4 governs the case. 'Family' is therein said to 'include each of the branches of the family descended from an original watandar'. If, therefore, the watans in question originally belonged in their entirety to the common ancestors of the two present families, those two families are within the meaning of s. 53 one family. But if each of the present families acquired its half share in the watans otherwise than from a common ancestor, then G is not a member of B's family within the meaning of s. 53." L. R.'s No. 1512 of 1891.

Meaning of 'family'.

7. Commissioner: "It is clear that in the case of families (whether descended from a common ancestor or not) separately entered in the watan register as having each the right of service, the choice of a deputy is restricted to the members of the respective families so registered." Government concur. No. 7590, October 17, 1893.

'Family' restricted to *kutakam*.

8. If families descended from a common ancestor are admitted to independent right of registration, they should be treated as distinct families for the purpose of s. 53. No. 802, January 31, 1895.

Ditto.

9. If S is fit, it does not appear why the sole representative watandar should not be allowed to appoint him, nor indeed what legal powers Government have for refusing to accept his nomination. There is only

Who is 'a member of the family'?

one representative watandar who represents the entire family descended from the common ancestor, and the fact that S belongs to that family is not disputed. The resignations of 1844, to which reference is made in the proceedings, if they are valid at all as a bar to the recognition of the rights of S's branch, seem to be valid only to the extent of extinguishing independent right of service in that branch, and so obviating the necessity for appointing a separate representative watandar for that branch. They cannot operate to prevent S from being a member of the family or make him any more ineligible to serve as a deputy than any other member. No. 2132, March 16, 1895.

Meaning of independent right of registration

10. Commissioner: "The kulkarni watan register of the village of C contains the names of N, A and S as representative watandars. It being the turn of A to serve, she nominated one J, a member of the branch of S. N objects to this nomination on the ground that J did not belong to the same family as A. It is evident that J does not belong to the same branch to which A belongs, while, on the other hand, N is the brother of A's husband, and therefore belongs to the family of A. It is true that N is also a representative watandar. He has got a four-anna share in the right of service as the nearest heir of R who died without issue, and who had also executed a will in favour of N. It would therefore appear that the right of service belonging to R was transferred to N through inheritance. In G. R. No. 802, 1895 (*supra*, 8) Government have ruled that if the families descended from a common ancestor are admitted to independent right of registration, they should be treated as distinct families for the purpose of s. 53. By independent right of registration is meant that right which has been recognised by the Collector under s. 28 and not merely a right of service which happens to be transferred from one branch of the family to another by inheritance subsequently to the framing of the watan register. In this case N belongs to A's branch and is not deprived of any privileges thereof by succeeding as heir to R, which is his self-acquired property under Hindu Law, and is distinct from his ancestral claim (as member of A's branch)." The recommendation of the Commissioner should be acted upon. No. 139, Jan. 7, 1896.

'Family' restricted to *taksim*.

11. There is no authority in the Act for the restriction suggested by the Collector (which was to the effect that (1) a deputy must be a member of the same branch in which the appointment lies, if there be

one, (2) if there be no fit person in that branch, a man of any other branch must be appointed so long as he belongs to the watan family, (3) in the absence of either of the above, then only can a pure outsider be appointed as deputy). It has been decided that for the purpose of s. 53 the branches of the families, to which the representative watandars who have independent rights registered severally belong, are separate families. If no member of the family to which the representative watandar whose duty it is to officiate belongs is fit and willing to officiate, any other fit person may be appointed. No. 1182, February 7, 1896.

Ditto.

12. Commissioner: "On the occurrence of a vacancy caused by the expiration of the period of service of the officiator, an election was held under section 17 of the Matadar's Act, when M was elected by the majority of voters. The District Deputy Collector, rejecting M, appointed V nominated on behalf of R whose family's turn it was to enjoy the right of office, to be deputy revenue patel. The Collector held M to be a member of the said family and appointed him to be revenue patel. There are two distinct matadar families —one represented by L and the other by R. M apparently belongs to the former and not to the latter. Thus the election having failed, the right of office vests in the representative matadar R. There are only two male members in R's family They are minors and their guardian is a female. She has therefore nominated V as deputy for her son R. V is, as required by Section 21 of the Matadar's Act, a member of a matadar family of the same village (represented by L). I recommend that V be appointed deputy revenue patel for R." Sanctioned upon the authority of G. R. No. 1182 of 7th February 1896 (*vide Rul.* 11) in which the principle asserted is that branches of families to which representative watandars who have independent rights registered severally belong are separate families. No. 4181, June 17, 1899.

Appointment of deputy by Collector is subject to s 53

13. An appointment of a deputy by the Collector under section 44 is subject to the provisions of section 53 and consequently V, son of the representative watandar, who is fit and willing to serve, should be appointed a deputy in preference to an outsider. The decision that V was unfit to serve because his father did not appear or send an attorney before the Assistant Collector to appoint a deputy is entirely unreasonable. No. 6122, June 25, 1906.

14. L. R. "A guardian of a representative watandar stands in the shoes of the representative watandar under section 37, and, (though he himself may not be a watandar of the same watan), does not appear to be affected by the provisions relating to deputies contained in section 53 of the Watan Act." The guardian should be appointed to officiate as deputy for his ward. No. 7392, July 27, 1907.

Guardian of minor representative watandar not affected by s 53.

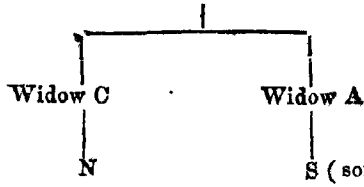
15. S is the sole representative watandar in all four villages. In the village E, T has been registered as head of a family ; in the other three villages no one has been so registered. Seeing that the genealogical tree must be the same for all four villages, the cause of this difference is difficult to conjecture. There has evidently been no distribution of the watan of the four villages amongst the several branches of the family, so as to make the watan of any one village separate from the watan of the other villages, for the sole representative watandar in all four villages is the same individual. A person who is a member of the sole representative watandar's family in one village must therefore be a member of his family in the other villages also, even though he has not been recorded as a head of family in those other villages, as he has been in the case of the one. In the circumstances Government are pleased to direct that T belongs to the family of S and has therefore a better claim to the appointment as deputy than an outsider in the case of all four villages. No. 12673, Dec. 12, 1908.

Whether 'a member of the family' or not.

16. There has been a division of a watan covering six villages amongst the several branches of the family, so that a separate watan has been constituted for each village (or group of villages) which has been allotted to one branch. V is head of one branch and holds the watan of one village X; two villages are held by B and D, and to the branch represented by these two A belongs. The latter is therefore not a watandar of the watan of the village X for the purpose of section 53. The Collector's order appointing A in preference to an outsider nominated by the guardian of V should be cancelled. No. 12676, December 12, 1908.

'Family' restricted to kutshum.

17. Commissioner: "J



Amendment of register and appointment of deputy.

The watan register in 1875 shows the kulkarni watan as jointly held by C and A, who are now respectively represented by N and S (5 years by rotation). S nominated his sister's son T as his deputy, but this nominee was rejected as being an outsider and N appointed to be S's deputy by the Assistant Collector. I recommend (*a*) that the watan register be amended by entering an eight-anna share separately against each of the two representative watandars, thus creating two separate *talshims*; (*b*) that the Assistant Collector's order be cancelled and fresh proceedings be ordered to be held for the appointment of a deputy." Sanctioned. No. 1172, February 4, 1909.

Test for nomination as deputy.

18. L. R. "The applicant S and the respondent B are descended from one N. S is the sole representative watandar of the kulkarni watan of Kotkanhalli. As such, he is the representative watandar whose duty it is to officiate. For reasons which are sufficient he wishes to nominate a deputy, and has named one X. The respondent B claims that he is entitled to be nominated. His claim is based on section 53. There is no other basis for it. The question, therefore, is simply this—Is B a member of the same family to which the sole representative watandar belongs? The Collector's order is based on a finding that B is a "*bhaubund*". Undoubtedly he is so, but that is not necessarily tantamount to saying that he is "a member of the same family" for the purposes of the Act. The question is—what is the meaning of these words? It was apparently the intention of the Legislature to define "family" in section 4, but unfortunately the definition is not exhaustive. It is said that "family" *includes* "each of the branches of the family descended from an original watandar". It follows that if in this case there is a "family" and each of the branches of such family is descended from an original watandar of the kulkarni watan of Kotkanhalli, then for the

Definition of 'family' considered.

purposes of the Act they are included in the same family. In other words the question is whether there is in each branch of the family an original watandar. Whether it is necessary that such original watandar should be the common ancestor is a question which presents considerable difficulty, and one which it is not necessary to decide for the purposes of the present reference. It is at least clear that before B can be held entitled to act as deputy he must prove his descent from an original watandar. No doubt, as the definition is not exhaustive, the word "family" must be understood in the ordinary sense of that term, but even so, having regard to the subject matter of the Act, it would be a straining of language to hold that the collaterals of the acquirer of a watan are, *qua* that watan, members of the same family. In my opinion, therefore, unless B is descended from an original watandar, he is not a member of the same family for the purposes of section 53. There is nothing to show how or when the Kotkanhalli watan was acquired. In 1823, the grand-father of S did the work. There is no mention in the pedigree or elsewhere of the collateral branch as possessing any interest in this watan, while in the other watan in which the register was settled two years later, they put forward their claim. It is likely that the Kotkanhalli watan was acquired at a later date than the other watan, and by the applicant's branch alone. I cannot see that there is any presumption that the common ancestor must have been the original watandar of the Kotkanhalli watan. There has been no attempt in the past to assert that B's branch was in any way interested in the Kotkanhalli watan. That they own a share of 8 annas in the other watan appears to me beside the point, unless it is shown *aliunde* that there is any connection between the watans of these two villages. Nor in my opinion does the fact that B would apparently succeed on the extinction of S's branch possess any significance. As a matter of fact he has not "a hereditary interest" in the sense that that term is used in section 4. He is not "a watandar of the same watan" by virtue of his relationship to S, for what he has is not "an interest acquired by inheritance" but a mere *spes successionis*. Unless his family has an interest in the watan he has no interest in law in the estate. The test is whether the proposed deputy is a "member of the same family" as the representative watandar. In my opinion he is not. The test is not relationship only." Copy forwarded. No. 7025, July 20, 1909.

54. When the Collector appoints a deputy, it shall be for a term not exceeding five years.

Term of appointment of deputy

When a watandar entitled to officiate appoints a deputy, it shall be for a term not less than five years, or for life.

The term of appointment of a deputy shall cease and determine on the right of his principal ceasing, or on the death of his principal, and any appointment of a deputy on behalf of a representative watandar under the age of eighteen years shall terminate on the attainment by such representative watandar of that age.

Government rule. When the Collector appoints a deputy the term should be five years.

1. On the general question whether a watandar may appoint a deputy for the unexpired portion of his term if it be less than five years, Government concur in the view that s. 54 does not appear to be opposed to permitting a watandar, who has resigned office owing to inability to serve, to nominate a deputy for the remainder of the term which is less than five years. As regards however, this particular kulkarni, Government agree in considering that the kulkarniship having been resigned for the purpose of taking office in another village, he should be deemed to have vacated it. No. 451, Jan. 20, 1888.

Deputy may be nominated or unexpired portion of the term, when.

2. Commissioner: "The period of service of the preceding representative watandar (Y) expired in January 1894. R, whose was the next turn to officiate, alleges that he applied three or four times to the District Deputy requesting that he might be allowed to appoint a deputy. His deputy K was at least appointed nine months after, for a term of five years commencing not from the date of nomination but from the date of the expiration of the period of Y. During the interval K who was also deputy of Y acted as kulkarni. The question is whether K's term as deputy of R for a period of five years commences from the date of the expiry of K's term as deputy of Y or from the date of his appointment. Under

S. 54 and not s. 38 applies to period of office of deputy.

s 38 the period of appointment of an officiator should not be less than five years, but the period of the present appointment is really 4 years and 3 months only. The Collector states that as K whom the petitioner (R) has nominated as his deputy had already been officiating for nine months, that period can be included in the period of five years constituting the petitioner's term. It is true that in this particular case the representative watandar whose turn it is to serve has nominated as his deputy the same man who was already serving as the nominee of the representative watandar who enjoyed the preceding term and whose term had really expired nine months previously. But had the petitioner appointed a different man, the period of appointment would naturally have had to commence from the date of appointment and the outgoing deputy could not have been considered to have been serving as the deputy of the petitioner during the nine months. I am therefore of opinion that the appointment of K should date from the day it was made" The Commissioner has wrongly quoted s. 38 as applying to the case. That provision affects the term of office of representative watandars only, whereas the question raised relates to the term of office of a deputy. Under s. 54 the term of appointment of a deputy should not be less than five years. But the appointment is made by the watandar entitled to officiate. The order of the District Deputy purports to make an appointment, but in the circumstances he could only accept the appointment made by the representative watandar As R appointed the man who had been performing the duties from the date of the commencement of his term of office, the appointment may reasonably be held to have been made with effect from that date. Moreover, the term of appointment of a deputy ceases on the right of his principal ceasing, and although the fact is not distinctly stated it would seem to be implied that R is entitled to a term of office for five years commencing 14th Jan. 1894 and ending 13th Jan. 1899 ; and his appointment of a deputy could not therefore have effect after the latter date. There appears no sufficient reason to interfere. No. 9851, Dec. 11, 1895.

Officiator if absent or ill may appoint substitute.

55. In the event of temporary absence or illness, an officiator may arrange with any fit person for the temporary conduct of the duties, but shall be liable in the penalties prescribed in section 57 to 61 (*of this Act*)

The words in the brackets were repealed by Act III of 1886.

Head of family when to be treated as watandar.

56. When the hereditary right to perform the duties of an hereditary office as deputies of the original watandar is vested in a family distinct from that of the original watandar, the custom shall be recognised, and the heads of the family entitled to perform the duties shall be registered and treated as representative watandars.

The proper place of this section, dealing as it does with the right to recognition as representative watandar, seems to be in Part VI. The section contemplates cases in some measure converse to those in s. 32. Here, the watan property may have remained with the original watan family, but the right to office has passed away from it, and become vested in another family as its hereditary deputy; whilst in s. 32 the right of service is retained by the watan family though the watan property has been surrendered.

The section applies only to cases wherein the hereditary right of service as hereditary deputy has become vested in a family distinct from the original watan family, and not to cases where the office is claimed, not in the capacity of hereditary deputy, but adversely or in some other way, either by a branch of the original watan family, or by a different family.

Before the introduction of the British legislation, a hereditary deputy could be created by the incumbent of a watan for the time being or by the ruling authority from which the original family derived its title to the watan (*vide* notes on s. 5, p. 32). But, since the passing of the Regulation of 1827, no such deputy can be created either by a watandar, or, it is thought, by Government, as the Act does not contain any such reservation in their favour.

As the principle of the law which creates and governs agencies is quite opposed to their having any hereditary quality (*vide* s. 5, *Rul.* 64), very clear proof would be required to establish a right under this section. The best proof would, of course, be a sanad or other written grant (*vide Rul.* 2); failing

that, the right can be made out by long, consistent and clear practice (*Bhimapaiya v. Ramchandra.* P. J., 1896, 549). But mere service even for a very long time would not be sufficient, unless it leads to the irresistible conclusion that that service must have been performed as a matter of fact, and was not the result of mere favour or sufference. If the right of service is claimed adversely to the original watan family and not under a derivative title, it would have to be decided according to the provisions of Part VI.

RULINGS.

Object of Section

1 This section was inserted to meet cases in Dharwar in which the original watandars had disappeared entirely, and the hereditary deputies were to all intents and purposes the *de facto* watandars. No. 7127, December 20, 1875.

2. The hereditary patelship of the village of M was originally vested in the family of the Desais, which is now represented by B. But there is no evidence that any member of that family actually served, and it is probable that people in the position of Desais would not think it becoming to their dignity to serve personally. Actual service is said to have always been performed by a member of the families now represented by K, S and R. The officiator, however, appears to have been always nominated by the Desai. The point now at issue is whether the three persons abovementioned have a hereditary right to perform the duties as deputies of the original watandar, and are, therefore, entitled under s. 56 to be registered as representative watandars. The village lapsed to Government in 1848-49. In the next year the Desai resigned the watan land on the ground that the quit rent was too heavy, but in the paper of relinquishment stated that the right of service was retained. In 1851 the agent of the Desai wrote to the Collector that the Mahalkari was appointing an officiator on the nomination of the deputies (*Mutaliks*), and the Collector, after considering a report from the Mahalkari to the effect that members of the families of those deputies had been performing service for 200 years, directed that they should be considered hereditary deputies (*kadim mutaliks*), but that the nomination should be made by the Desai. After some objection the father of K executed an agreement to pay

Watan property may be resigned, retaining right to office.

Rs. 5 per annum to the Desai, and was appointed to officiate from 1852 to 1862. In the meantime, however, a question was raised about the police patelship of a hamlet of M, and a report was called for about the patelship of M, upon which the then Collector in 1856 directed that 'as the Desais do not enjoy watan,' they should not be allowed to nominate, and that the deed of nomination of 1852 should be cancelled In 1870 the then Collector held proceedings with the view of preparing the register. After considering the above facts he held that the right of service could be separated from the watan property and might be separately enjoyed, and decided that the Desai is the sole watandar patel with both right of service and of nomination to service, and that the families of the other claimants are the *kadim mutalika* of the Desai patelki watandars, and that if the Desai fails to serve personally and is to select an officiator, the Desai is bound to select an officiator from amongst the above 'members of *kadim mutaliks* or their heirs.' He at the same time directed that the respective rights of the *kadim mutaliks* should be determined by the Assistant Collector. The Desai appealed to the Commissioner against the above order as far as it allowed to certain families the right of serving as hereditary deputies. In consequence of a decision of Government in another case, which will be presently referred to, the Commissioner rejected the appeal, though his own opinion was in favour of allowing it. In 1880 the Assistant Collector prepared the register in accordance with the decision of 1870, and entered R, K and S as representative watandars, and recorded that there should be two officers, and service should be in equal rotation in periods of ten years. The Desai appealed to the Collector, who held that the Desai is entitled to be registered as sole representative watandar, but as the decision of 1870 satisfies the requirements of s. 73, the proceedings have been forwarded to Government for orders. The Commissioner is of opinion that unless the provisions of s. 56 is to be a dead letter, the register must remain as prepared by the Assistant Collector. The other case, which has been referred to, is that relating to the kulkarni watan of the same village. In 1870 the Collector gave a similar decision in that case, the Deshpande being recognised as representative watandar, and the member of another family as a hereditary deputy. The Commissioner thought that the right of the hereditary deputy should not be recognised, but Government concurred in the view of the Collector.

An appeal was made to the Secretary of State, who in his despatch No. 42 of 1874, stated that as a rule a *mutalik* is not an hereditary officer, that the Deshpande having been decided to be the holder of the watan, it was for the opposing party to produce a sanad appointing one of his ancestors to be a *mutalik* as a hereditary officer and the fact that the memorialist was declared to have the right of performing the duties himself is inconsistent with the idea that his deputy could be an hereditary officer. It was, therefore, directed that the memorialist should be regarded as sole kulkarni with power to exercise his own discretion in the choice of a deputy. Since the above decision was given Act III has come into force, and s. 56 provides for the recognition of a hereditary right to perform the duties of an hereditary office as deputy. Government are, however, of opinion that no such right has been proved in this case. So far as the record goes, the decision that such a right exists rests solely on the report of a Mahalkari that the duties had been performed for 200 years by a member of one of the three families. Even if that statement were regarded as proved, it would not necessarily show the existence of a hereditary right, the fact that the choice extended to three different families being evidence to the contrary. It is also stated that in 1734 an agreement was passed by the Badshah in favour of the Desais, which gave them full power to appoint *mutaliks* whenever they liked. There is the same inconsistency in the decision of 1870 in this case as in the one referred to by the Secretary of State, for, while it is declared that the Desai has a right of nomination to service, the preparation of the register in accordance with the decision of 1870 necessarily deprives the Desai of all right whatsoever; the fixing of the rotation of service amongst those who claim to be hereditary deputies precludes the Desai alike from serving, if he chose to serve, and from nominating. The Desai should be registered as sole representative watandar, and allowed to appoint any deputy who is fit to perform the duties. No. 3267, May 10, 1882.

Right to hold office as hereditary deputy should be supported by sanad.

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PART IX.

PENALTIES.

Punishment of officiators.

57. It shall be lawful for the Collector to suspend any officiator from office during inquiry into alleged misconduct, and to punish any such officiator for misconduct or neglect of duty by suspension from office for a period not exceeding six months, or by fine not exceeding the fourth part of the annual emolument provided for the officiator.

The order of the Collector shall be final in such cases, except when the penalty is inflicted on an hereditary district officer.

S. 57 is introduced mainly with the idea of giving Collector's power over watandars who neglect their work, or refuse to live in the village, for it is impossible for patels or kulkarnis to do their work properly unless they live in their villages.

Collector may remove officiator with sanction of Government.

58. It shall be lawful for the Collector, with the previous sanction of Government, in case of fraud, the wilful framing of incorrect records, habitual neglect of duty, or other grave misconduct on the part of an officiator, to remove him from office, *or, if he has ceased to officiate, to declare that he is ineligible for re-employment in any hereditary office except with the sanction of Government.*

The words *....*were added by Act III of 1910. The object of amending the section is "to declare ineligible for re-employment in any hereditary office, without the sanction of Government, any person who has been guilty of grave misconduct while officiating, but who has ceased to officiate before his misconduct was discovered." Under S. 58, as it stood before its amendment, an officiator who had ceased to officiate at the time of the passing of the order could not be punished. The section only authorised the removal of the officiator, but when

the officiator was not at all in office, how could he be removed? When he was not removed under s. 58, his employment could not be prohibited under s. 59, neither could he be deprived of the right of appointing a deputy. Government had to allow him to be re-appointed and to consider his case afterwards (*Rule* 5, 9). In order to remove this defect in the law, s. 58 is amended so that an officiator who has ceased to officiate can now be declared ineligible for re-employment.

Dismissal of hereditary police patel.

There was some doubt as to whether an hereditary police patel (who was, or who was not, also a revenue patel) could be dismissed with the sanction of the Commissioner under old s. 9 of the Bombay Village Police Act (VIII of 1867) or whether in virtue of the hereditary nature of office, he could be removed from it only with the previous sanction of Government under s. 58 of the Watan Act (G. R. No. 3543, May 12, 1904). Act IV of 1905 has settled the point by adding an express provision to the effect that Government sanction is necessary in case of the dismissal of an hereditary police patel.

It should be noted that s. 58 deals with the misconduct of an officiator only.

RULINGS.

Dismissal.

1. Dismissed hereditary officers should not be called by the titles of their old offices in official documents. No. 1511, May 14, 1844.

Ditto.

2. Non-residence in his village is not sufficient ground for the dismissal of a patel where the village is small and no inconvenience has resulted to the public service from non-residence. No. 8, January 3, 1865.

Ditto.

3. The responsibility of the patel for knowing whether Government trees had been cut down in his village must be enforced; a patel was accordingly dismissed who pleaded that trees had been cut down without his knowledge. No. 1583, March 28, 1877.

Ditto.

4. A watandar who has undergone penal servitude for official misconduct will, in all probability, if not certainly, be removed from office under s. 58 and, if so removed, would under s. 59 be ineligible for re-employment or continuance in any hereditary office except with the sanction of Government. No. 646 (J. D.), January 30, 1878.

Officiator who has ceased to officiate after misconduct.

5. N is not officiating at present as patel and sanction to his dismissal from office is not requisite. Government cannot now prohibit under the Watan Act his re-appointment in future to serve as patel, but if he is ever re-appointed in turn, his misconduct should be brought before Government for consideration and orders whether he should not forthwith be dismissed from office. No. 4299, June 7, 1883.

Dismissal.

6. L. R. "S. 7, Act XI, 1843, empowered the Collector, with the approval and sanction of Government, to dismiss an officiating hereditary officer from his office 'in cases of misconduct or incompetency.' S. 57 of Act III empowers the Collector to inflict minor punishments on an officiator for ordinary misconduct or neglect of duty, and s. 58 enables him, with the sanction of Government, to remove an officer from office 'in case of fraud or other grave misconduct.' S. 7 of Act XI and s. 58 of Act III do not, therefore, apply to precisely similar cases; and it would be hard to visit upon a watandar, who had been removed from office under the former section for ordinary misconduct or incompetency, the consequences which s. 59 reserves for those removed from office for grave misconduct. Moreover there is nothing in the Act which indicates that the Legislature intended that removals from office under Act XI should be equivalent to removals under the more restrictive provisions of the present Act." Government concur. No. 6518, September 1, 1883.

Dismissal for grave misconduct.

7. The patel seems indeed to have been fortunate in escaping conviction in the Sessions Court. It seems in any case to be established that the patel falsely denied signatures which are clearly his and acknowledged the collection of the money, and that there is no escape from the conclusion that he either misappropriated

the money or made a false accusation against the kulkarni, if the surmise of the Sessions Judge that the money was not collected at all is correct. In either case there was grave misconduct justifying dismissal. The patel should accordingly be dismissed under section 58 and be declared incapable of serving Government again in any capacity. No. 6425, October 13, 1900.

Taking part in political meeting. No action necessary.

8. Collector: "The patel and kulkarni signed, in their official capacity, a circular invitation to the leading residents to attend a meeting to discuss the policy of Government under the Land Revenue Code Amendment Bill in respect of forfeited holdings. A meeting for the purpose was subsequently held in the kulkarni's house and he and the patel took a leading part in the proceedings. These two men were then selected by the meeting or else nominated themselves, to attend a meeting in Bombay to discuss and presumably criticise the action of Government. They obtained casual leave on various pretexts. As a matter of fact they went to Bombay and attended a meeting. They say they were not aware that they should not have done so. They have transgressed the standing order of the Viceroy in Council that no officer of Government may take part in the proceedings of a political meeting (Home Department letter No. 11-Public 679-88, dated 18th March 1890)." Commissioner: "No action is necessary. First, because hereditary village officers do not appear to come within the meaning of the standing order referred to. Secondly, because the hereditary village officers, from time immemorial, have not only been the representatives of Government to the villagers, but have also exercised the rights to bring the wishes or grievances of the people to the knowledge of the authorities. Lastly, because the right of public meeting has not been denied to the people and the people speak through their patels. The Bill was one affecting the tenure of land and the free discussion of it was welcome. It would be well if at *jamabandi* the Collectors and their Assistants took the opportunity of explaining the new Act and the policy of Government to the assembled patels. This, not repression, is the way to meet the agitation of interested sections of the community." Government entirely concur in the views expressed by the Commissioner, who should be requested to instruct all District Officers to utilise convenient opportunities for explaining to the ryots the objects and policy of the recent measure. No. 6933, October 2, 1901.

9. As V is not officiating at present as kulkarni, sanction to his dismissal from office is not necessary. The attention of the Collector should be invited to the orders issued in G. R. No. 4299 dated 7th June 1883 (*supra*, 5), and he should be directed to follow that precedent, if V, being a representative watandar, ever comes forward to officiate or to appoint a deputy. Sanction is accorded under s. 60 of the Act, to the forfeiture during V's lifetime of his share in the kulkarni watan of Mahalunga. No orders are necessary as regards the dismissal of S, as he is not a representative watandar, and as under section 45 (*f*) of the Act, it is open to the Collector to refuse to accept service from him as deputy for a representative watandar. No. 11317, November 19, 1907.

Officiator who has ceased to officiate after misconduct

10. Commissioner: "N was a representative watandar, officiating as kulkarni in his own turn. The Assistant Collector found him grossly negligent of his duties inasmuch as he was incurably lazy and careless and untruthful also. He found him disqualified to serve as kulkarni owing to the moral incapacity of laziness and called on him to appoint a deputy. There is nothing to show under what section this order was passed. The only section under which an officiator can be punished for laziness is, I think, section 57. Section 46 obviously does not apply, and if it be held that N's neglect of duty was 'habitual' within the meaning of section 58, the previous sanction of Government is necessary. I should have advised the reduction of N's sentence to one of fine but for his untruthfulness in statements made in appeal. Under the circumstances I would advise that Government declare N to have been guilty of habitual neglect and sanction his removal from office under section 58." It appears that the petitioner's case was one for disposal under sections 57 and 58, and not under sections 45 and 46 as was erroneously held. Treating it accordingly and taking into consideration all the circumstances of the case, Government accept Commissioner's recommendation and accord sanction under section 58 to the removal of the petitioner from office with effect from the date of the Assistant Collector's order. The attention of the Commissioner should be drawn to the orders of Government as to the unsuitableness of fine as a punishment. No. 5596, June 5, 1908.

Punishment for habitual neglect comes under s. 58 and not under ss. 45 or 46. Government sanction necessary.

59. (Repealed by Act III of 1910).

The section originally stood thus :—

59. Whoever is removed from office under the preceding section shall be ineligible for re-employment or continuance in any hereditary office, except with the sanction of Government, and in case he be a representative watandar, and his period of performing the duties recurs, the appointment of a deputy under the provisions of Part VIII of this Act shall, on the recurrence of such period, be made by the Collector and not by him.

The provisions of the section are embodied in ss. 45 (*h*), and 49 (*b*).

Government may direct forfeiture of a watan.

60. When any representative watandar, or any deputy or substitute appointed by him, is convicted by a Criminal Court, not inferior to a Court of Session, of any offence in the discharge of his official duties, or of any of the offences specified in the second schedule, or of the abetment of any such offence, and such conviction is not subsequently reversed or quashed, the Governor in Council may direct the forfeiture of the whole or of any part of* any watan in which he has an interest.* Such forfeiture may be either absolute or for such period as the Governor in Council thinks fit.

The words * ... * were substituted for the words "the watan" by Act III of 1910. The section before its amendment by Act V of 1886 stood thus :—

When any representative watandar or any deputy or substitute appointed by him is convicted by any Court of Session of any offence in the discharge of his official duties, it shall be lawful for Government to direct the forfeiture of the whole or any part of the watan or of the profits thereof.

It was first amended by Act V, 1886 and subsequently by Act III, 1910. The object of its recent amendment is "to extend its operation to all property in which the convicted person may have an interest as a representative watandar.". Forfeiture

under s. 60, before its recent amendment, was restricted to the watan of the particular village in connection with which the offence was committed, the word used being "the watan" (*Rul.* 7). Now it is extended to the watans of all villages in which the offender has an interest. All the watans (not only the share of the offender in them, but the shares of all subs-harers) in which the offender has any share are liable to forfeiture. Of course, the section does not lay down that this penalty *shall* be inflicted. It shows the maximum limit of the penalty that can be inflicted, if Government, in their discretion, choose to do so. Government have, it would appear, very rarely, if at all, gone the length of forfeiting the shares of all sharers for the offence of one under the section as it stood before its amendment; neither would they go the length specified in the section as it now stands, unless there are peculiar and exceptional circumstances justifying the step (*e. g.* participation of the sharers in the offence committed), forfeiture of life-interest or absolute forfeiture of the share of the offender being a sufficient penalty in ordinary cases. The power given by the section is reserved to meet the case of any grave disregard of the law where it may be necessary to enforce the common and joint responsibility of the whole body of watandars concerned.

From the wording of the section it is clear that when a deputy is appointed by the Collector, the forfeiture will not take place.

To the offences specified in the second schedule by Act V, 1886, has been added by Act III of 1910, the offence of 'harbouring robbers and dacoits' (216 A, I.P.C.).

The following extracts explain the principle of joint liability laid down in the section :—

The Hon'ble Mr. Chapman: "I wish here briefly to refer to the one point regarding which there has been a difference of opinion in the Council, namely, the principle of joint responsibility, and to say that we have merely re-enacted the provisions of the existing law. There is no fear of this power being exercised by Government in a harsh and hasty manner. Looking, too, to the organisation of native village society, where every man's character

and persuits are so well-known to his neighbours, I believe it would be impossible for any systematic or organised crime to be perpetrated and shielded by the Government village officers without the cognizance of the other watandars; and I think, therefore, it would be impolitic to relieve them from the responsibility of giving information. This principle of responsibility has been laid down for the first time in the case of the crime of cattle poisoning, of which the *Mhars* of the village are often believed to be guilty, either from motives of revenge on account of non-payment of their dues, or in order to obtain the skins of the animals. This is a crime which is most difficult to detect and punish, and which entails the most ruinous consequences on the ryots. Here the power of punishment is reserved to the Government alone, and will certainly never be exercised except in very flagrant and extreme cases." (Proceedings, Oct. 15, 1874.)

The Hon'ble Mr. Naylor: "Misbehaviour on the part of watandars could be very summarily dealt with under the former (native) rule, and I have explained that watans are continuable or resumable by our own Government under such rules as they from time to time think proper to make. By ss. 9 and 12, Act XI, 1843, the Legislature further specifically provided that, in the event of an hereditary officer or his deputy being convicted by a Sessions Court of fraud or malversation, or of any offence in the conduct of the duties of the office, the Governor in Council might direct the confiscation of the watan, either wholly or in part. The reproduction of this provision in Act III excited considerable discussion in this Council, but s. 60 of the Act was eventually passed by a majority in terms very similar to those of the older enactment. One of the objects with which this Bill was introduced was 'to vest in Government a large permissive power of forfeiture for the purpose of enforcing the responsibility of the watandars for the good conduct of the officiators in certain cases.' The recommendation of the majority of the Select Committee is merely to add to s. 60 the offences specified namely treasonable offences connected with the screening and harbouring of offenders. By the common law of the country, property held from the State for service may be resumed or continued at the pleasure of Government. The provision of Acts of 1843 and 1874, in regard to forfeiture, is therefore a restriction upon the power of Government and not an investment of the Governor in Council with a new power,

Hereditary officers differ from other revenue officers chiefly in this respect that, whereas the latter are remunerated by stipends paid to them monthly in cash, the former derive their emoluments from certain landed estates and cash allowances assigned to their families hereditarily for this purpose. If a stipendiary servant is guilty of a grave offence, he is summarily dismissed by Government, and he and his family are deprived of all the benefits, present and future, which they would have continued to enjoy but for that offence. The effect of the forfeiture of a watan is precisely the same to a watandar family, except that it is far more reaching, because it deprives the heirs as well as the present incumbents of their remunerative service. But the contract of service with a stipendiary servant is made by Government with him alone. In the other case the right of service vests in the entire family, and Government permit the non-officiating members of the family to hold and enjoy portions of the property originally assigned for the remuneration of the office. It is, therefore, only reasonable and fair that some responsibility should rest upon the non-officiating members of a watandar family, and the only remedy which Government seeks to enforce against them is this, that when the officiator is tempted to go or is going wrong, they should not stand aloof and say, that is not the business of theirs, but that they should advise and remonstrate with him, and bring the strength of their influence upon him to keep him in the path of duty, and if their efforts in this direction fail, that they should give timely information to the proper authorities of the course he is pursuing. It will be said that one or more of the non-officiating watandars may not be present at the time, or that there may be other circumstances which render their connivance or acquiescence in the delinquencies of the officiator impossible. This is no doubt true. But the provision does not say that the Governor in Council *shall* forfeit the entire watan in the eventualities contemplated. It says 'the Governor in Council *may* direct the forfeiture of the *whole or of any part* of the watan' and that 'such forfeiture may be either absolute or for such period as he thinks fit'. Hedged about with these precautions, the provision enables the Governor in Council to adjudge forfeiture to such extent as the particular case merits, and the history of the past 40 years does not warrant us in fearing that any misuse will be made of this highly salutary power." (Proceedings, Oct. 6, 1886.)

The following additional extracts explain the object and scope of the recent amendment :—

The Hon'ble Mr. Carmichael : " Section 60 lays it down that where a representative watandar or his deputy or substitute has been convicted of any offence in the discharge of his duties or of any serious offence specified in the second schedule and the conviction is upheld, the watan may be confiscated or may be forfeited to Government for such period as Government may choose to order. Cases have arisen where a watandar who has offended and has been convicted of offences specified and described in section 60 in respect of one watan has been found to be holding shares in several other watans. A man who has been found to be unfit to hold any interest in one watan is surely unfit to hold an interest in other watans and it is proposed to take power to forfeit his share in any watan in which he has a share. The usual practice is to forfeit only his share but the section certainly gives power to forfeit the whole watan whether it is his share or the whole, but that power has not been used. I don't suppose any cases can be quoted in which the full power has been used—certainly not in recent years—but it is advisable to have the power in reserve in case of any grave disregard of the law where it might be necessary to enforce the common responsibility of the watandar." (Ditto June 27, 1910.)

The Hon'ble Mr. Chaubal : " In respect to section 60, of which so much is said, I think Honourable Members either will not take to themselves the credit of utilizing their own experience or do not give credit to Government for ordinary fairness when they say that the amendment is fraught with serious consequences. If you will look at the law as it now stands, you will find that forfeiture of the whole or part of the watan is a penalty which may be incurred under the present law. Therefore forfeiture of the whole watan is not a penalty which we are now introducing for the first time by the proposed amendment. The present law is that the whole of the watan may be forfeited. The only change, which is sought to be introduced, is at the end of the section, where the words are : " forfeiture of the whole or part of any watan in which he has an interest." That is the whole change sought to be introduced. I submit to the Honourable Members that if during the last so many years that the Act has been worked in the Presidency, they have not been able to quote a single

instance in which a representative watandar or his deputy or his substitute has been convicted of any offence and Government have forfeited the whole watan, I do not see what ground there can be for suggesting that any serious consequence would follow the amendment of the section in future. The section says that if a person who is convicted enjoys title to three watan villages, the penalty need not be confined to the particular village in respect of which he is convicted. You will admit that his interest in, or title to one village is as good as his interest in, or title to another village, and there is no reason why his punishment must be confined to one particular village or watan. At the same time there is great reason why Government should have this power of extended forfeiture. It is only optional for Government to exercise this power or not. It is not fair to argue that when a representative watandar will commit an offence, Government will unreasonably deprive others of their property although they may not have participated in the offence. I do not think anything of the sort will ever happen, because nothing of the kind has been done in the past. One can easily conceive a case in which, when a representative watandar's deputy is found guilty, he has been instigated by his principal to commit the offence ; and similarly a substitute may be instigated to commit a crime by his representative watandar. It is easy to imagine that, and if Government after full inquiry are satisfied that it is so, I do not think any member would venture to say that Government's arm should not be long enough to reach that person. It is for this reason that the section is there and I do not think we need have any apprehension about its being made the occasion for any unjust punishment." (Ditto.)

The Honourable Sir John Muir Mackenzie :—"The clause is in reality no more severe that than the existing law. There are certainly very extreme cases in which Government may feel obliged to forfeit the whole of the watan, in which case, no doubt, innocent sharers may be liable to suffer, but these cases are extremely rare. I doubt very much whether a single case has occurred up to the present. But there are cases in which the whole watan holders might be privy to or even have instigated the offence of which the particular watandar or representative watandar has been found guilty. For instance, a whole family of patels might be privy to the harbouring of dacoits in the village. Government ought still to have a free hand in such cases to forfeit the whole

watan. The general point to remember for which we contend is this · where Government already have the power to forfeit the whole or any part of the watan, no part of the watan rights of the offending watandars ought to be excluded from the operation of such power. For instance, let us put it in this way. A man and his sharers have together a watan of the value of a hundred rupees, Rs. 50 in village A and Rs. 50 in village B. An official watandar of this watan commits an offence in respect of the affairs of village A. Government ought to have the power to apply these forfeiture penalties to the whole Rs. 100. If the powers are too severe the question of restricting those powers ought to be dealt with by separate enactment but while those powers remain, it is illogical to confine the application to only Rs. 50 and not to the whole Rs. 100. Supposing the Rs. 100 had been in only one village, there would be no question that Government had power to forfeite that. It is a mere accident that the value of Rs. 100 happens to be divided between two villages of Rs. 50 each. If Government had not this power you would have a family of patels or kulkarnis in one village able to continue the harm they have been doing in another. The position is entirely illogical. In actual practice proposals to forfeit watans or parts of watans come up in two classes of cases, one in which the offender is the representative watandar, the other in which the offender is his deputy. A good deal of objection has been expressed against injuring the representative watandar on account of the offence of his deputy. Our contention, however, is that the contingent liability of the watan family as a whole, including the representative watandar for the offence of the deputy, is a necessary and logical incident of the watan system. Under that system the right of performing the duties of the office is conferred by the State on a single family. In return for the enjoyment of this exclusive right the family is made jointly responsible in cases of gross misconduct by the officiating member. It is the business of the whole family to see that a deputy provided is of good character, and to be careful not to give the opportunity of serving in that watan to a man who does not merit entire confidence, and does not possess the entire confidence of the family which he represents. The State surrenders its free choice of a man to do the work of the village on the understanding that the family accepts responsibility for finding a man of decent character. I accept responsibility when the man is found guilty of grossly criminal misconduct. In the absence of such an understanding no Government would give up its free

choice of an officiator in favour of a particular family. The above is the theoretical basis on which this power to forfeit watans even in case of misconduct of a deputy appointed by a representative watandar has been conferred on Government by the law. I need hardly say the power is of no recent origin. This power existed in the times of Native Rule and was exercised far more drastically and more frequently than the British Government would ever dream of using it. I imagine that the Peshwas, if any watandar did something offensive to Government, would not have hesitated to forfeit the whole watan. There are instances on record of the attachment of watans for years and years for trivial matters, *e. g.*, a dispute among the shareholders as to succession on which the present Government would never dream of taking action. Government hesitates before confiscating even the life-interest of an individual watandar in the watan and even when the question of forfeiting the life-interest of a father when the offending deputy is his son has arisen, great scruples have been shown. I do not think there need be any apprehension that the provision in the Bill will be enforced either frequently or with undue severity." (Ditto.)

RULINGS.

1. The punishment of village hereditary officers for delinquencies to be briefly notified to the patels and kulkarnis throughout the Collectorate. No. 2065, May 31, 1838.

Punishment to be published.

2. Under s. 82, the Governor in Council is pleased to direct that whenever any representative watandar or any deputy or substitute appointed by him is convicted by a Criminal Court not nferior to a Court of Session of any offence in the discharge of his official duties or of any of the offences specified in the second schedule, or of any abetment of any such offence, the Collector shall after the period of appeal has expired or after the decision of the appeal in case an appeal has been made, report the circumstances with his opinion thereon in order to enable Government to decide what action, if any, shall be taken under s. 60. No. 2793, May 3, 1888.

Conviction to be reported to Government.

Sanction.

3. No sanction whatever is required to the prosecution of a police patel, whether hereditary or otherwise. But the prosecution of a hereditary revenue patel for an offence committed in his official capacity requires the sanction of Government. No. 3619, June 25, 1874 (Superseded by *Rul.* 4, *infra*).

Ditto

4. The Commissioner of the Division shall be the only authority other than Government empowered to sanction the prosecution of a revenue or police patel who by virtue of any enactment is not removeable from office without the sanction of the Local Government. No. 4710 (J. D.), August 18, 1909. (Supersedes *Rul.* 3, *supra*)

Committal to Sessions

5. All criminal charges against officiating watandars or deputies of offences in the discharge of their official duties should, if the evidence is such as is likely to secure a conviction, be committed to the Court of Sessions. No. 3444 (J. D.), June 16, 1879.

Forfeiture.

6. The dismissal of T (patel) is sanctioned, but as the offence (dishonestly receiving stolen property in the commission of a dacoity) of which he was convicted was not "in the conduct of the duties of the office," Government do not consider the watan can be legally confiscated. No. 3405, July 4, 1874.

Ditto.

7. L. R. "The power of forfeiture conferred upon Government by s. 60 extends only to the particular watan in discharging the duties of which an offence has been committed." In accordance with this opinion the order about forfeiture should be applied to the kulkarni's share in the watan of C village alone. The order of the kulkarni's dismissal in both villages, however, holds good. Forfeiture of interest in a watan clearly includes forfeiture of right of service (s. 4). The Collector should now appoint a deputy to officiate as directed in s. 50. The deputy should ordinarily be a member of the watandar family, if there be a member fit and willing to serve. No. 9628, December 5, 1884.

Dismissal.

Ditto.

8. S, the sole representative watandar of the patilki watan was convicted in the Sessions Court and sentenced to one year's rigorous imprisonment under section 409, I. P. Code. The dismissal of S from the

post of revenue patel is sanctioned. The forfeiture of his interest in the watan should be under the provisions of section 60 and should be absolute. No. 12, August 28, 1905.

Forfeiture of life-interest of officiator and deputy for misconduct of deputy

61. All deputies appointed under this Act shall be subject to the same rules in the performance of the duties of their offices, and to the same penalties, except as otherwise provided, as the representative watandars themselves are subject to when officiating, and, in the case specified in section 58 of this Act, it shall be lawful for Government to direct the forfeiture of the life-interest in the watan of the representative watandar entitled to officiate, whether the officiator, guilty of misconduct, be such representative watandar himself or a deputy appointed by him.

Life-interest can be forfeited under s. 61, only if the officiator is dismissed or declared ineligible under s. 58 (*Ruls.* 4, 5).

RULINGS.

Forfeiture.

1. The life-interest of the watandar can be forfeited under s. 61, only when the dismissal is made under s. 58. The forfeiture cannot, therefore, be enforced when, as in the present case, the deputy is dismissed under Act VIII, 1867, as amended by Act I, 1876. No. 7711 (J. D.), Nov. 19, 1886.

Ss. 58 and 61 applicable to misconduct of officiators.

2. Collector: "B was serving not in person but by a deputy. He will retain this right to appoint a deputy on his release from jail unless his watan is attached. I recommend that the life-interest of B in the patelki watan may be confiscated." As sections 58 and 61 are applicable in the case of misconduct of officiators only, the recommendation cannot be acted on. It may be pointed out that if B is adjudged by the Collector to be of general bad character, as two convictions would apparently furnish grounds for holding him to be, it will be open to the Collector under section 50 to appoint a deputy. No. 7440, Oct. 11, 1897.

3. Collector: "Representative watandars when they appoint outsiders as deputies take from them some part of their remuneration as owner's rightful dues. It is possible that the representative watandar's choice is influenced by the largeness of the sum offered by the deputy. What a deputy pays to the representative watandar he must think of recouping for himself by fair or foul means. Deputies are more reckless than the representative watandars. In view of these facts, the need of trustworthy village officers is great, and unless a few examples are made by forfeiting life-interest of watandars under section 61, the deputies will continue to be selected more for the amount of the consideration they will pay than for fitness for the post which they are to fill." In the present case the statement of the representative watandar shows that he had good ground for believing the accused to be a man of tolerably honest character as he had served for 15 years without any imputation of fraud. The record, however, of the officiator shows that he was not a satisfactory worker, and the representative watandar cannot altogether escape responsibility for giving a bad deputy. In the circumstances, the Collector should call on the representative watandar himself to perform service under section 42. If he agrees to serve, he should be accepted. As he is an assistant school master, he is presumably fit. If he refuses, the Collector should himself appoint a deputy under the authority conferred by section 44. No. 7284, July 30, 1906.

Responsibility of representative watandar for deputy.

4. Collector: "B, an officiator, was convicted when he was no longer in office. Consequently Government were not asked to sanction his removal under s. 58. S. 61 says that, *in the case specified in s.* 58, it shall be lawful for Government to direct the forfeiture of the life-interest in the watan of the representative watandar entitled to officiate. In G. R (J. D.), No. 7711 of 1880 (*supra*, 1) Government evidently treated the words 'in the case specified in s. 58' as meaning 'in the case of the officiator being dismissed under s. 58'. If this meaning be allowed, there is no impediment to the forfeiture of B's life-interest in the watans. If it be held that this is not the meaning of the section, the section ought to be amended." There is no doubt about the meaning of s. 61 as explained in G. R. (J. D.), No. 7711 of 1880. There is no

Amendment of s. 61 not necessary.

necessity to amend the section, as the amendment to s. 58 will remove the difficulty referred to No. 6166, July 9, 1910.

Order to be passed after investigation.

62. No order shall be passed under this Part except upon perusal of the judgment of a Court or after investigation recorded in writing.

PART X.

INFERIOR VILLAGE HEREDITARY OFFICES.

Application of Part X.

63. This part applies only to hereditary village-offices of lower degree than that of patel or kulkarni.

Powers granted to Collector.

64. The Collector is empowered, subject to the general control of Government—

(*a*) to register the names of individual watandars as holders of the office, or to register it as held by the whole body of watandars :

(*b*) to determine, when individual names are so registered, the rights, duties, and responsibilities among themselves of the persons so registered, and the mode in which they shall be selected to perform the duties, whether by selection by the Collector or by defined rotation, or by election by the watandars, or otherwise, as may be expedient :

(*c*) to require, in cases where the registration is made in the name of the whole body of watandars, that they appoint so many fit

persons as may be necessary to perform the duties which the Collector may assign to them severally and jointly ; such appointment to be made within a reasonable time to be previously fixed and notified to them by the Collector ; in default of such appointment being made, the Collector may himself appoint :

(*d*) to provide for and enforce the joint responsibility of the whole body for the neglect of duty or misconduct of any of their number or their representatives ; and, in cases where the crime of cattle-poisoning is prevalent, with the sanction of Government to attach, during the pleasure of Government, the watans of the person whom he may have reason to believe to have been guilty of, or to have connived at, the commission of the crime :

(*e*) to pass orders in regard to appointment, remuneration, period of service, suspension, fining and dismissal of persons officiating, the grant of leave of absence and other matters of discipline not expressly provided for by this or any other law for the time being in force.

Cl. (*d*) lays down for the first time the principle of joint responsibility in the case of the crime of cattle poisoning (*vide* pp. 190 and 354). The following are in ordinary parlance styled as inferior village watandars :—the Mahar, Shetsanadi, Walikar, Talwar, Kolkar, Metgar, Naikwadi, Korabu, Natikar, Dalwai, Barkera, Nad-talwar, &c. Whether they are really so or not will depend upon their offices (1) being hereditary and (2) being connected with watan duties as

defined in s. 4. Mahars admittedly are such village servants. As to Shetsanadis and Walikars, Government have declared their offices to be non-hereditary (*vide* Notes on s. 4, p. 10). There is not any well-marked distinction between the respective duties of the above mentioned officers. All of them serve under the general orders of the patil and kulkarni as assistants in the civil administration of the village. It being thought inexpedient or rather impossible to enact any hard and fast rules of general application to regulate the service rights of the inferior watandars, the Act has given a free hand to the Collector in these matters. Inquiries into the revision of remuneration of inferior village servants—hereditary and non-hereditary—were directed by Government in their Resolution No. 5921 dated the 21st July 1905, and orders about the revision of the remuneration of certain classes of servants in some of the Districts were passed in G. Rs. No. 10372 dated 27th October 1909 and Nos. 207 and 208 dated 18th January 1910.

RULINGS.

Succession.

1. In the case of service watans (*e g., talwarki*) below the rank of patelki and kulkarniki it should be ruled that legitimate male issue should, in the first instance, be considered as nearest heirs, in failure of such heirs the male issue of prostitute daughters of the family may be selected, but in no case should any woman who has become a prostitute be recognised as heir. G. R. No. 283, January 22, 1858, modified accordingly. (It is doubtful whether this is correct law). No. 2266, May 5, 1874.

Offices of *talwar* and *naikwadi* hereditary offices.

2. Commissioner: "As the lands assigned for the offices of *talwar* and *naikwadi* in this case have been entered in the Government accounts under the head 'hereditary village servants'; and as these servants have been in other Districts treated as watandars, and watan registers have been prepared accordingly, the Collector's order declaring the offices of *talwar* and *naikwadi* to be non-hereditary should be cancelled" The recommendation is approved. No. 2056, March 14, 1895.

Remuneration of village officers. Settlement of judi leviable on service inams held by inferior village servants useful to Government.

3 It should not be left undetermined whether or not and village servants are watandars; sections 65 and 67 require that registers shall be kept of the former. There appears to be no reason why No. 1 of the rules sanctioned in G. R No. 7651 dated 28th December 1877 should not be applied to all watandar village servants. The distinction between ancient and recent assignments is as regards them unnecessary and based on no substantial ground. In the case of inferior village servants who are not watandars, the principle hitherto followed is to exempt them from a specified amount of assessment and there is no reason why this principle should not be continued. The Commissioner may have power to reduce judi payable by watandars, if the remuneration is insufficient, but the judi should in no case be increased beyond what is admissible under the rule above referred to. No. 6241, August 16, 1895.

Appointment, &c., of inferior village police officers.

L. R. "There is no provision of law authorizing the appointment by the District Superintendent of Police of inferior village police officers,—by which, I presume, is meant officers of lower degree than that of police patel. On the other hand the Bombay Village Police Act and the Watan Act make full provision for the appointment, punishment and dismissal of such officers by the District Magistrate and the Collector. Nor can the power to appoint inferior village officers be delegated to the District Superintendent of Police." Copy forwarded. No. 6804, (J D.), September 25, 1895.

Presumption in case of *maharki* watan.

5. There is a presumption that *maharki* watan lands belong to all the sharers in the *maharki* watan or to a particular branch of it. Such presumption is however displaced, if one branch of the family or member of a branch is shown to be in possession of the lands for a considerable time. It will then lie on the other side that such possession does not indicate separate ownership, by proving that he or his branch has enjoyed a share of the profits of the lands. *Shravan v. Keshav.* P. J., 1896, 705.

6. L. R. "In certain talukdari villages, lands were alienated by the Thakor to certain persons (Rawanias, Mukhis, and Agewans for the performance of the duties of certain services. A small

quit-rent was paid to the Thakor. It would appear that the Mukhis and Agewans are in the habit of passing annual agreements to the Thakor. Government were of opinion that the police work was improperly performed and therefore took action under s. 30 of Act VI of 1888. The result was an increase of the cost, which fell upon the Thakor At the same time the holders of the alienated lands paid no more than before. An attempt was made to recover the increased cost from them under s. 86 of the Land Revenue Code. This failed Government suggested that the Japtidar should move the Collector—(1) to determine whether the land is watan land and held for the performance of the duties of Rawania. If so,—(2) to appoint officiators under ss. 43 and 44 of the Watan Act, and to proceed under s. 23 of that Act to assign or to move Government to sanction the assignment of a contribution by the holders of the Rawania watan lands towards the remuneration of officiators. If the Collector's inquiry shows the land not to be watan land, then—(3) to proceed under rules 4 and 6 under Act VII of 1863. Act VII of 1863 appears to me to be clearly inapplicable. It is, as the preamble says, an Act intended to settle 'the relative rights of Government and the holders' as regards certain lands. I can find nothing in this Act empowering Government to settle the relative rights of the holders of villages and their alienees. Assuming that Act III of 1874 is applicable, the first question is whether the holders of these alienated lands are "watandars." The first essential is that there shou'd be a "watan." Now the existence of a watan postulates (A) an hereditary office and (B) watan property. The questions which must be answered before the existence or non-existence of these two elements can be determined are —A—(1) Is there an office? (2) Is it held hereditarily? (3) Are the duties connected with the administration or collection of the public revenue or with the village police or with the settlement of boundaries or other matters of civil administration? —B—(1) Is the land held, assigned or acquired for providing remuneration for the performance of the duty appertaining to an hereditary office? If all these questions can be answered in the affirmative, the holders of these lands are watandars. Presumably the holders of these lands do in a certain sense hold "an office," though whether that office is anything more than private service is open to doubt. As to whether these offices

Act VII of 1863 inapplicable.

Essentials of a watan.

are hereditary or not, this is purely a question of fact. Rawanias do not hold their office hereditarily. It follows that Rawanias are not watandars. The Mukhis and Agewans are tenants-at-will. It is obvious, then, that the land is not assigned for the performance of an hereditary office. It is therefore not watan property and *qua* that land the holders are not watandars. From the facts it is difficult to hold that the duties are connected with the village police, and if they are not so connected, the question of compensation to the Thakor ceases to exist. It is also very doubtful whether these services are anything more than private service. It is however, in my opinion, open to doubt whether Act III of 1874 applies to these lands. It may now be taken as well settled that a talukdar is the absolute proprietor of his estate. For p rposes of his own he has carved out a subordinate estate. These grants are private transactions between the talukdar and the grantees. It is impossible for Government to step in and say "these lands are watan lands" without depriving the talukdar of his right to resume, should a lawful occasion arise, and so far as such lands go, the p ovisions of the Act would conflict with the absolute proprietorship, which is one of the terms on which the talukdar holds his estate. It would therefore appear to be at least open to doubt whether Act III of 1874 is applicable at all (*vide* s. 1, para 2). The present question relates wholly to the relations between the talukdar and alienees of the talukdari lands, and Government have consistently declined to recognise such alienations or to interfere with them in any way. The talukdar can best be left to enforce in the Civil Courts what ever rights he may have against the alienees. The main conclusions may be thus stated :—I.—Act VII of 1863 does not apply to these lands. II.—It is very doubtful whether Act III of 1874 applies. III.—If that Act does apply, then —(i) Rawanias are not watandars as the office is not hereditary. (ii) It is not established that the services attached to these lands are such as are contemplated by s 4, para 3, of that Act. IV.—It is apparently not in accordance with the policy of Government to recognise such alienations or to interfere as between the talukdar and his alienees." Copy forwarded. No. 4378, May 14, 1910.

Question of fact.

Applicability of Act III 1874 discussed.

PART XI.

THE REGISTER.

Collector to prepare and keep register

65. The Collector shall prepare and keep all registers necessary for the purposes of this Act in the form which Government may from time to time prescribe. There shall be one register of lands and allowances in consideration whereof liability to perform service exists, and another of lands and allowances in respect of which no such liability exists.

Non-service register what to contain.

66. In the register of lands and allowances the holders whereof are exempt from service, the Collector shall specify—

(*a*) the area of the lands, the survey-number and assessment, the quit-rent leviable, and the nett revenue alienated by Government :

(*b*) the amount and nature of the cash or other allowances, and the source from which they are payable :

(*c*) the terms of the settlement under which the exemption is enjoyed :

(*d*) the names of the parties to such settlement with Government as indicated in the sanads issued to them :

(*e*) such other particulars as Government may from time to time order to be recorded.

Service register what to contain.

67. In the register of lands and allowances in consideration whereof liability to serve still exists, the Collector shall specify—

(*a*) the area of the lands, the names of the occupants, the survey-number and assessment, the quit-rent, if any, leviable, and the nett revenue

alienated by Government, the amount and nature of the cash or other allowances, the source from which they are payable, and the land and allowances assigned, for the remuneration of officiators :

(*b*) the names of the heads of families and of the representative watandars :

(*c*) whether the service is performed by one representative watandar or otherwise : if by several in successive periods, the order in which they are to succeed each other :

(*d*) the proportional share of the watan possessed by each head of family which may be expressed in annas or fractions of a rupee :

(*e*) the number of officiators required to perform the duties :

(*f*) the nature of the settlement of inferior village watans referred to in Part X (*of this Act*)* :

(*g*) such other particulars as Government may (from time to time) order to be recorded.

Register to be corrected.

68. The register kept under this Act shall be corrected or added to on the occasion of any change being made in accordance with the provisions of this Act in the particulars above specified.

The Registers now kept are those prescribed in G. R. No. 1515, Sept 8, 1875, which directed that a strongly bound Register Book should be printed in the Central Press for each taluka, and corresponding pages sent loose, in order that a copy of the entries relating to each village, (which should be kept on separate pages), might be sent to the village for record. The Registers are divided into tabular Forms A and B given below. As to entries in Regis-

* The words " of this Act " were repealed by Bombay Act III of 1886.

ters *Vide* s.5, *Rul.* 39, s. 15, *Ruls.* 12, 16, 18, 19, 20, 25, 28, ss. 24 to 32, *Ruls.* 13, &c.

Form A is for non-service watans. Form B is for service lands and allowances, and is sub-divided into (*a*) Register for patels, (*b*) Register for kulkarnis, (*c*) Register for inferior village servants.

Form A.

Register of Lands and Allowances, the Holders whereof are exempt from service, prepared in accordance with s. 66, *Taluka Zillah*

Column 1 Description of watan, *e. g.*, Desai, &c., 2 Running number in each class, 3 Form of the Settlement under which the exemption is enjoyed, *e. g.*, hereditarily, &c., 4 Names of the Parties as indicated in the Sanad *i. e.*, names of the District Hereditary Officers and Inferior Village Servants, 5 Number and date of Sanad or Government Authority, 6 Names of the present Holders, 7 to 24 Details of income attached to the watan: 7 Name of the village, whether Government or alienated, 8 Survey number or Mamul number where there has been no survey, 9 Area of the land in Acres or Bighas, 10 Assessment, 11 to 15 Deduct Judi leviable by Government: 11 Old Judi or quit-rent, 12 Settlement Judi, rate of, 13 Amount of ditto, 14 Total Judi, 15 Net revenue alienated by Government, 16 to 23 Cash: 16 Nature of the allowance, 17 Amount, 18 to 21 Deduct Judi leviable by Government: 18 Old Judi, 19 Settlement Judi, rate of, 20 Amount of ditto, 21 Total Judi payable to Government, 22 Net amount received by watandars, 23 Source from which payable, 24 Total of columns 15 and 22, 25 Such other particulars as Government may from time to time order to be recorded, s. 66 (e), 26 Remarks showing the alterations made in regard to any of the entries in the preceding columns (s. 68).

Inferior village servants, who are neither useful to Government nor to the village communities, have been subjected to a judi or quit-rent equal to half the value of their holdings which have been converted into private properties agreeable to G. R. No. 2785, July 23, 1864; consequently they are not to be entered in this Register. All District Hereditary Officers, who, having accepted the summary settlement, have been exempted from service, should be entered in this Register in the manner above shown. There are village servants, such as Sutar, Lohar, &c., who, though of no use to Govern-

ment, are of use to the village community, and whose holdings have not been converted into private properties but subjected to a quit-rent of 4 annas in the rupee. These servants should be entered after District Hereditary Officers, though they are not watandars proper (*Rul.* 2).

Form B.

Register of Service Lands and Allowances, in consideration whereof liability to serve still exists, prepared in accordance with s. 67,

Taluka *Zillah*

Column 1 Number, 2 Name of the village, 3 Government or alienated, 4 Revenue, 5 Population, 6 Description of Watan, 7 to 17 Details of the Watan Emoluments: 7 Names of the occupants as entered in the Revenue Accounts, 8 Survey Number or Mamul number where there has been no survey, 9 Area of the land in Acres or Bighas, 10 Assessment, 11 to 14 Deduct Judi leviable: 11 Old Judi, 12 Judi levied for remuneration according to scale, description of, *e. g.*, Wingate's scale, half Judi on the excess, &c. 13 Amount of the said Judi, 14 Total Judi, 15 Net Revenue alienated by Government. 16 Amount of emoluments in cash or kind, 17 Source from which the same is payable, *e. g.*, from Government Treasury, from the Judi as per column 13, additional from Government Treasury to make up the scale remuneration, &c, 18 Total (Land and Cash) of Columns 15 and 16, 19 Heads of Families in the watan, Serial Number of, 20 Their names, 21 Shares of the watan possessed by each head of family in annas, 22 Names of Representative Sharers, 23 The Custom of the watan as regards service, namely, whether service has been in one family or performed by members of several families, either contemporaneously or in successive periods, if in the successive periods, the order of service, 24 Number of officiators (both for revenue and police duties), 25 Remuneration assigned to the officiator, in Land, 26 Ditto, in Cash, 27 Total emoluments—Columns 25 and 26, 28 Such other particulars as Government may order from time to time to be recorded, s. 67 (*g*), 29 Remarks showing the alteration made in regard to any of the entries made in the preceding columns, s. 68, *e. g.*, Column 10: Rs. 2 decrease has occurred in the assessed value of survey No. 200 owing to land having been taken up for a road, &c.

This form relates to all actual service watans, those of district hereditary officers, if any, those of patels, kulkarnis, and inferior

village servants. In regard to the last class the entries in cols. 17, 20, 23, 25, 26 may be as follows:—col. 17 Grant paid by former Government to be paid out of (land revenue; Amount to be paid out of) judi levied from useless village officers exempted from service; Baluta haks, &c., col. 20 Head of family unknown, so whole body of watandars, registered, 23 Whole body of watandars. The watandars to appoint, from time to time as required, so many fit persons as may be necessary to perform the duties assigned by the Collector, s. 61 (*c*), col. 25 The Land in col. 9 is held by the whole body of Mahars, col. 26 The cash allowance shown in col. 17 to be equally divided among the officiators; &c., &c.

Col: 22—Heads of families, who enjoy the right of hereditarily performing the duties agreeably to s. 56, are to be entered in this column, but with a view to distinguish them, a note to that effect should be entered below their names. Col. 25 is left blank in many of the Districts, so that it cannot be ascertained, from a look at the Register, which lands are assigned for the remuneration of officiators and which not. Entries in the Registers are nowhere in the Act said to be conclusive evidence of the facts recorded, though they would be *prima facie* evidence. (*Vide* Notes on S. 23).

RULINGS.

1. *Sutars*, &c., though of no service to Government, are of use to the village communities and therefore subjected to a quit-rent equal to one-fourth the value of their watans. The forms of the registers will show that the village servants of this class are to be entered in the non-service register. No. 5238, Sept. 14, 1875.

Non-service Register.

2. Commissioner: "In form A for registering lands and allowances of holders of non-service lands the lands, &c., of village servants such as *Kazis*, *Joshis*, and those of obsolete village servants, *e. g.*, *Sutars*, *Lohars*, have been shown. The inams of the latter have been converted into *private* property subject to the payment of judi of 8 annas in the rupee, and Government have ruled in G. R. No. 5705 of 1831 that provisions of the Act are not applicable to the former. It is, therefore, anomalous to enter the lands of either of these classes in the registers prepared under the Act." Commissioner C. D. "Does not agree. It is true that the definition of the term watandar in s. 4 has been held to be inapplicable to *Kazis*, &c.,

Ditto.

whose services have been dispensed with; still having regard to the provisions in ss. 15 and 16 there can be little doubt that the holders of these obsolete offices were intended by the Legislature to fall under the scope of that definition. For, if the holders of 4 and 8 annas judi service inams were excluded from the operation of the Act, there would remain no servants to whom s. 16 could be applied. If, then, it be granted that the holders of such service inams are watandars for practical purposes, it is evident that information regarding their holdings must appear in the register kept under s. 66. The fact that some of these holdings have been converted into private property, does not seem to affect the question" Government see no reason to altering the form A. No 1061, Feb. 4, 1885.

Entry in columns 20 and 22.

3. Commissioner. "In the first place, it is pretty clear that 'head of family' and 'representative watandars' are titles distinct from each other and which may or may not be attached to the same person. It is frequently the case that service has been held for some generations by the members of a younger branch of the watan or *talshim* or even by a family of out-siders. Suppose such practice is sufficient to establish a custom, the 'head of the family' will be the eldest member of the eldest branch of the family, while the 'representative watandar' will be the eldest of the family in which service has been held." The register itself shows that the same names as are entered in column 22 as representative watandars need not necessarily be entered in column 20 as heads of the families. It is impossible to lay down a general rule on this point. When the original family or eldest branch has ceased to have any connection with the watan at all, the name of the head of it will not be entered at all in the register. When a connection still subsists, the head of that family will appear in column 20, but whether or not also in column 22 must depend on the decision passed under Part VI. Cases under s. 56 are generally clear, the head of the original watan family is entered in column 20, the hereditary deputy in column 22." No. 7127, Dec. 20, 1875.

Entry of name,

Heads of families which have enjoyed the right of service should alone be entered in the register. No. 1949, March 27, 1876.

5. The Collector's book is kept for purposes of revenue and not for purposes of title, and the fact of a person's name being entered in the Collector's book as occupant of land, does not necessarily of itself establish that person's title, or defeat the title of any other person. Consequently the mere entry of the name of one parcener as the occupant or owner is not a sufficient ground for an action by a coparcener against the Collector. But if the Collector improperly enjoins the plaintiff from taking or other parties from paying to the plaintiff his share of the rent or profits, an action may be maintained against the Collector. *Futma v. Darya.* 10, B. H. C. R 187.

Entry of name as occupant, effect of.

6. As ss. 19 and 20, Reg. XVI 1827, impose a duty on the Collector to make out records of all watan lands, if, in so doing, he excluded the names of persons whose interests were affected by such inclusion, such persons have a right to call on the Civil Court to exercise the jurisdiction over the Collector's official acts, which is given by s. 6 of the Reg. If an entry or change of entry in the register of watans had no particular effect no cause of action could lie against the Collector (Such suits and others against the Collector are now governed by the Revenue Jurisdiction Act of 1876). *Raghavendra v. The Commissioner.* P. J., 1877, 259.

Ditto.

7. As the law does not impose on the Collector the duty of determining between inamdars and watandars the duty of keeping a correct record of their respective rights and obligations, no particular value could attach to his entry of a watan as ancient or as modern. His calling the watan either *kadim* or *Jadid* would not in any way affect the right of the inamdar as against the watandar, or even be admissible as evidence of those rights. No cause of action, therefore, exists against the Collector in such a case. *Bhagawa v. The Collector.* P. J., 1877, 327.

Ditto.

8. In preparing the register, the Collector's duty as determined by s. 67 is confined to specifying the names of the heads of families and the proportionate part possessed by each head, and is in no way concerned with the rights of the members of a particular branch *inter se*. *Govind v Bapuji.* 18 Bom., 517.

S. 67.

PART XII.

MISCELLANEOUS.

Service to be performed by watandars

69. All watandars of whatever denomination whose liability to serve has not been commuted are legally bound, subject to the provisions of this Act, to render such service as has been customary or as is required by law.

Government Rules.

This section imposes on the hereditary officers the duty of rendering both customary services and those specifically required by law. Where doubts exist, Government will determine under s. 83.

It is impossible to attempt to give here all the customary services attached to watans of different sorts; but a fair idea of the same may be gathered from the first part of the Introduction.

Service.

The Desaí pays full assessment on his service land, and has hitherto not been required to perform service. He should not be required to give service for the future. No. 6752, Dec. 1, 1875.

Watan records the property of Government

70. All records which have been or may be prepared by any watandar or by any officiator in an hereditary office in pursuance of the duties of the office, or by order of a superior officer or of the present or former Government, are hereby declared to be the property of Government, and the Collector may enforce their production or the production of any State records in the possession of a watandar or of an officiator, in accordance with the provisions of sections 25 and 26 of the Bombay Land Revenue Code, 1879.

In order to amplify the powers of the Collector this section was substituted by Act V, 1886, s. 14, for the original section which was: All records which have been or may be prepared by any watandar in pursuance of the duties of the office, or by order of his superior officer, or of the present or former Government, are hereby

declared to be the property of Government, and the Collector is hereby empowered to demand their production.

This section is introduced because it is necessary that records prepared by a hereditary officer should be within the reach of Government. It has been found that Desais and hereditary district officers of that description had prepared certain revenue documents during the time of the late Government, and were using them to uphold their own claims to hold certain lands free, and that when the British Government officers wished to see these documents, the hereditary officers alluded to would not give them up. The principle seems to be a just one, that all records of that description ought to be the property of the State and should be used only for State purposes. Proceedings of Legislative Council, Sept. 30, 1873.

Village account papers in alienated villages are private property of inamdar.

L. R. "The petitioner objects to an order issued by the Commissioner under s. 70. The order recites that the papers prepared by watandar patels and kulkarnis are the property of Government and are, therefore, to be brought and kept in the Taluka Kacheris and disposed of in accordance with the existing rules for sorting village records. It appears that the petitioner's village has been brought under the Summary Settlement, and is therefore his private property. S. 1 of Act III declares that the Act extends to all villages alienated or otherwise, so far as its provisions shall not conflict with the terms on which any alienated village may have been secured to the holder thereof. When a village has become the private property of its holder, the papers and records prepared therein concern the holder alone and do not in any way affect the rights or interests of Government, and cannot be regarded as the property of Government. It would conflict with the terms on which the village is secured to the holder, if he could be called on to produce accounts and papers relating to his private property, and therefore, s. 70 does not extend to such villages. So far as any of such records may affect questions of general administration unconnected with the private rights of the holder, such for instance as the registers of births and deaths, their production may be legally enforced under the section. The object of the section appears to be to prevent the fabrication of documents to support claims to hold land free. When a village has already been declared private property, it is clear that the necessity for this precaution no longer exists." Copy forwarded, No. 5383, July 27, 1889.

71. With regard to hereditary offices not inferior to that of patel or kulkarni, it is hereby declared that every head of a family shall have the privilege of signing the abstract of village-land and revenues or other village papers which it may be customary for him to sign.

Watandars may sign village records

The privilege of signing village-papers, where it has been customary, is preserved to heads of families whether representative watandars or not. This concession to the feelings of an influential class shall be worked in the spirit in which it was enacted.

Government Rules.

The privilege of signing the revenue accounts is greatly prized, not so much on account of the emoluments, as on account of the social position which the privilege confers upon the holder. Proceedings of Council, Sept. 27, 1873.

PART XIII.

PROCEDURE AND APPEALS.

72. *Clause* 1.—It shall be lawful for the Collector or other officer conducting an investigation under this Act to take evidence, and in sections 193 and 228 of the Indian Penal Code the words "judicial proceeding" shall be taken to include any proceeding under this Act.

Evidence to be taken.

Clause 2.—Every person who shall have been summoned to give evidence or to produce any document in his possession, by the Collector or other officer conducting an investigation under this Act, shall be legally bound to attend or to produce such document.

L. R. "There appears to be no power to issue a warrant of arrest against a person who refuses to attend in answer to a summons to give evidence under the Hereditary Offices Act. But it will be noted that the Land

No power to issue warrant

Revenue Code gives no such power in such cases. In view of the penalty for disobedience to a summons (s. 174 of the Indian Penal Code) it is doubtful whether such power is necessary." Copy forwarded. No. 3847, April 28, 1910.

73. *Clause* 1. Except as hereinafter provided in clause 2 of this section, no order under Part III (*of this Act*) directing commutation of a watan, or under Part V (*of this Act*) assigning the remuneration of officiators, or under Part VI (*of this Act*) determining the custom of the watan as to service and what persons should be registered as heads of families or representative watandars, or under Part VII (*of this Act*) determining the periods of service, shall be passed, unless after an investigation recorded in writing and a proper opportunity afforded for the hearing of claims and the production of evidence.

Orders under Parts III V, VI and VII to be passed after investigation in writing

In each such investigation, and in removals from office under section 58 (*of this Act*) the Collector or other officer shall record his decision with the reasons therefor in his own handwriting.

Clause 2. Unless the Governor in Council shall otherwise direct, decisions passed subsequently to the year 1866 after an investigation recorded in writing, and after a proper opportunity had been afforded for the hearing of claims and the production of evidence, and which are recorded with the reasons therefor, in the handwriting of a Collector or his Assistant or Deputy, shall be accepted, in so far as they may not be inconsistent with the provisions of this Act, in lieu of fresh investigation and decision under this Act for the purpose of framing the register required in section 67 (*thereof*).

Certain decisions passed since 1866 to be accepted in lieu of fresh investigation.

If any details necessary for the said register have not been recorded in any decision of the nature described above,

but are forthcoming from the evidence taken in connection with such decision, they may be supplied from such evidence in lieu of fresh investigation for the completion of the register.

Such details as may not be forthcoming shall be obtained by such further investigation as the Collector may deem necessary.

The words in the brackets were replaced by Bombay Act III of 1886.

1. The wording of cl. 2 is strict and should be adhered to. March 13, 1876.

Cl. 2.

2. Registers which profess to have been unanimously agreed to by the shareholders before the passing of the Act, but which have not been prepared and recorded in the handwriting of a Collector or an Assistant Collector, are illegal. No. 1557, March 13, 1776.

Ditto.

3. L. R. "A decision satisfies the requirements of cl 2, if (1) it has been recorded with the reasons therefor in the handwriting of a Collector or his Assistant or Deputy, (2) it has been preceded by an investigation in writing (not, it seems necessarily by the same officer who passed the decision), (3) it has been passed subsequently to 1866, and (4) before it was passed, a proper opportunity had been afforded for the hearing of claims and production of evidence. It is not imperative that the proceedings should be recorded in English, or even that the decision itself should be in English, so long as it is in the handwriting of the officer. Where there has been a decision which fulfils the above conditions, it is immaterial whether that decision was passed on appeal or as an original decision In this case the Collector closed his proceedings by merely recording an agreement made by the parties in his presence. That agreement is probably binding upon all the parties to it, and ought, therefore, to be enforced so far as it is not inconsistent with the Act. But here there is no 'decision with the reasons therefor' recorded by the Collector which can be used for the purpose of cl. 2. Although all decisions which do fulfil the above conditions may be used in lieu of fresh investigation, cl. 2 expressly empowers the Government to 'otherwise direct,' so that if Government concur with the Commis-

Ditto.

sioner that such decisions as are the subject of this reference ought not to be accepted, they have the power to prohibit their being so used." Government concur in the general view of the law. But in the present case it will be right to take proceedings *ab initio*, as the inquiry was conducted in a perfunctory manner, and the Collector has not formally recorded a 'decision with the reasons therefor' as he should have done. No. 3985, August 7, 1878; *vide* also, ss. 24 to 32, *Rul.* 17.

74. The proceedings of the Collector shall be under the general control of the (*Revenue*) Commissioner (*appointed under Regulation V of 1830, or other law in force for the time being*) and of Government.

Control of proceedings of Collector.

The words in the brackets were repealed by Bombay Act III of 1886.

1. Commissioner: "As to the power of the Commissioner to call for a report, Government have already passed distinct orders in G. R. No. 5878 of 1881, and it will obviate misunderstanding if Government pass a similar order in regard to his power to direct further inquiry or to order additional evidence to be taken." Government concur. No. 7816, Oct. 22, 1883.

Power of Commissioner.

2. (As regards the proposal that some rules for the admission by the Commissioners of applications for review should be laid down), Government see no reason to direct any modification of the system now in force or to hamper the discretion of the Commissioners in the exercise of the power conferred on them by law and under the various orders of Government. Even the most experienced Collectors may occasionally err—as would appear to have been the case in this instance,—and it is most necessary that the Commissioners should retain and when necessity arises make use of the power of supervision which they at present possess. The Commissioner's supervision in watan cases is a valuable safeguard which cannot be dispensed with. No. 5399, July 27, 1889.

Ditto.

Mamlatdar may make investigation under Part X.

75. The Collector may require any investigation under Part X (*of this Act*) to be made by a Mamlatdar or Mahalkari, but the decision thereon shall be made by the Collector.

The words in the brackets were repealed by Bombay Act III of 1886.

No appeal to lie save where specially provided.

76. No appeal shall lie from any order made under section 64, clause (*e*) (*of this Act*) before final order, nor from any order registering any fact specified under section 67, clauses (*b*), (*c*), (*d*) and (*e*) (*of this Act*) where the effect of such order is merely to register the same facts as are already recorded in the existing registers kept according to law or under the orders of Government.

Appeals.

77. Except as hereinbefore provided, one appeal only shall lie from every decision passed after investigation recorded in writing by a Collector, or by an Assistant Collector or Deputy Collector (*empowered under the provisions of Bombay Act I of 1868*).

Such appeal, if from the decision of an Assistant Collector or Deputy Collector (*so empowered*), shall lie to the Collector, and shall be made within sixty days from date of the order appealed against.

Such appeal, if from the decision of the Collector, shall lie to the (*Revenue*) Commissioner, and shall be made within ninety days from the date of the order appealed against.

In computing the above periods the time required to prepare a copy of the order or decision appealed against shall be excluded.

Copy of order to accompany petition of appeal. Appeal may be summarily rejected.

78. Every petition of appeal shall be accompanied by a copy of the order or decision appealed against : and it shall be competent for the officer before whom the appeal is presented

to reject the appeal if on perusal of the petition it appears to him that there is no sufficient ground for questioning the correctness of the decision, or for interfering with the order appealed against.

The words in the brackets in ss. 76–77 were repealed by Bombay Act III of 1886.

Under s 10 of the Land Revenue Code, Assistant and Deputy Collectors have power to investigate into watan cases.

Govt Rules

The rules as to appeals place decisions of the Revenue officers on much the same footing as those of magistrates of the first class; there is more safeguard of written proceedings than under the former law, and thus more finality is secured.

Admission of fresh evidence in appeal is to be regulated by the procedure laid down in the Civil Procedure Code. The provisions relating thereto in the new Code of 1908 are given under Order XLI, Rules 27 to 29 and run as follows:—

Provisions for admission of fresh evidence in appeal according to Civil Procedure Code.

27. (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if (a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or (b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced or witness to be examined. (2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

28. Wherever additional evidence is allowed to be produced, the Appellate Court may either take such evidence, or direct the Court from whose decree the appeal is preferred, or any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court.

29. Where additional evidence is directed or allowed to be taken, the Appellate Court shall specify the points to which the

evidence is to be confined, and record on its proceedings the points so specified.

RULINGS.

Limitation in appeal.

1. L. R. "As to the question whether a decision passed by a Collector on an appeal under the Act admitted after it was time-barred would be legally valid, Ch. XIII of the Land Revenue Code relates to appeals, from any decision, &c., 'or any other law for the time being in force,' and s. 206 provides for the admission of an appeal under that Chapter after the period of limitation on sufficient cause being shown for not presenting the appeal within such period; and no appeal lies from an order passed under that section admitting an appeal." (The decision would, therefore, be legally valid). No. 1920, March 22, 1882.

Admission of fresh evidence

2. Admission of fresh evidence in appeal should be regulated by the procedure laid down in the Civil Procedure Code. No. 6981, Sept. 1, 1884.

Decision in appeal to be confined to points raised.

3. (Whether when a Collector hears a watan appeal he has authority to modify the original decision as may seem to him proper, notwithstanding that the appeal in itself does not apply for such modification.) As regards the question of procedure in watan appeals a Collector or Commissioner can only pass his decision on the points raised in appeal, but when a decision appealed against is found not to be in accordance with law in respect of points other than those raised on appeal, the proceedings in the case should be submitted with the Commissioner's opinion to Government for revision under s. 79. No. 7192, Sept. 5, 1885.

No power of review.

4. L. R. "I concur in the opinion that a Collector has no authority to review a decision passed by himself. Government have directed that the admission of fresh evidence on appeal should be regulated by the rules under the Civil Procedure Code on the point. This order as it does not confer on the Collector's any new powers which they do not possess under the Act, there is no objection to it. But it is not competent to Government to direct that Collectors may review their own decisions; the Act provides ample means for correcting any erroneous decision which may have been passed." Government concur. No. 5922, August 19, 1886.

5. L. R. "The Collector reversing an order of his Assistant refused to allow one N to officiate as a kulkarni because six years ago N's brother had been convicted of breach of trust. The Commissioner dealt with the matter on appeal and reversed the Collector's order. The Collector has now raised the question whether an appeal lies. S. 73 is not exhaustive in its enumeration of investigations requiring record in writing and though it does not require an order refusing the service of a representative watandar to be so recorded, s. 45 (*e*) as amended by s. 9, Act V, 1886, does. The order of the Collector was entirely *ultra vires*, as s. 45 only contemplates such a refusal in the case of a representative watandar who is personally of bad character, and such refusal must be preceded by a summary inquiry regulated by s. 195 of the Land Revenue Code, in which a minute of proceedings must be recorded in the Collector's own hand and must embrace the material averments of parties. I think, an appeal in this particular case would lie from the Collector's order to the Commissioner. For that order was a new and substantive order passed in a matter requiring investigation. Although it purported to be passed in appeal it was really not an order that could legally have been passed by the Collector in his appellate capacity, but one which would fall under a distinct section of the Act, in the exercise of a distinct and special power requiring an investigation for which a special procedure is prescribed, and which, under s. 196 of the Land Revenue Code, become what his Assistant's proceeding was not, a judicial proceeding. I therefore think that his refusal to accept the service of N was a substantive and original order in itself and that an appeal lay to the Commissioner. I think the general control given to Commissioners by s. 74 would not warrant their interference in particular instances but only the giving of general instructions. The power of revising or modifying orders, when no appeal lies, vests in Government alone under s. 79." Copy forwarded. No. 5365, July 27, 1889.

Second appeal.

6. The Act does not expressly provide for an appeal except in the case of decisions passed after investigation recorded in writing. On the other hand it does not deny the right of appeal except in the case specially enumerated in s. 76. S. 203 of the Land Revenue Code enacts that an appeal shall lie from any decision or order passed by a

Ditto.

Revenue Officer under any law for the time being in force in the absence of an express provision of law to the contrary. I cannot think there can be the slightest room for doubt that s. 203 had in contemplation decisions and orders which might be passed under Act III. The provisions of Act III were actually embodied *in extenso* in the second draft of the Code as Ch. III thereof, and in redrafting those sections the greatest care was taken to specify in each section whether a summary or a formal inquiry should be made before passing a decision or order. In this draft which was printed with comments of all the officers consulted, Mr. Naylor remarks (s. 268) that "the object of these sections has been to secure a proper investigation and regularity and uniformity of procedure in all matters in which Revenue Officers are called upon to exercise judicial or quasi-judical functions, and thus to remove one great objection which now exists to barring the cognizance of any such matters by the Civil Courts, *viz.*, that under the existing law, Revenue Officers are bound by no rules of procedure and may, if they choose, decide upon the most important questions, not only in the absence of those concerned, but also without making inquiry or hearing any evidence at all." Copy forwarded. No. 8506, Nov. 8, 1889.

7. Commissioner: "In cases of *whatever description* in which an investigation is made and decision recorded by an Assistant or Deputy Collector it is held that *no* second appeal lies, and if the Commissioner finds that a failure of justice has occurred, he submits the papers to Government for orders under s. 79 with his own recommendation." This system is in accordance with law. No. 623, Jan. 25, 1895.

Ditto.

79. Government may call for and examine the record of the proceedings of any officer for the purpose of satisfying itself as to the legality or propriety of any order passed, and may reverse or modify the order as shall seem fit, or, if it seem necessary, may order a new enquiry.

Government may call for proceedings.

Government may delegate all or any of its powers under this section, except the power to revise an order made by a Collector under section 25, to any Commissioner, and such Commissioner may thereupon exercise such powers within

the local limits of his jurisdiction, subject to the revisional powers of Government under this section, and to any restrictions that Government may deem fit to impose.

Paragraph 2 is added by Act III of 1910. The addition is intended to carry out a small measure of decentralization and will save many petty references to Government.

The power of revision under this section is more extensive than that vested in the High Court. Government can under this section go into a question of fact. The action of Government under the section is not subject to any law of limitation. The power can be exercised at any time. Government have freely exercised this power, *vide*, esp., *Rulings* on Parts II, VI, &c.

Government rules under Part XIII

It is hoped that the defined procedure set forth will simplify investigations. The Collector's proceedings are, by s. 74, under the control of the Revenue Commissioner, and for this reason, and in order to secure discussion, some uniformity and reference to general as well as local reasons, Government direct that all references, reports and returns relating to watans on which Government have to pass orders should be forwarded through the Revenue Commissioner, and submitted with his remarks or opinion. S. 79 gives Government a general power of revision, which will be exercised where decisions are passed contrary to the provisions of the Act The Revenue Commissioner should report such cases. This decision, it is to be observed, gives Government alone * the power of calling for cases; and on the principle of *expressio unius est exclusio alterius* neither the Collectors nor the Revenue Commissioners have the power to call for cases which are not brought before them by regular appeal, since the decision of an Assistant or Deputy Collector under the power vested in him (which must be delegated to him under s. 10, Act V, 1879) is as good and as conclusive as that of the Collector himself, and is not therefore liable to be reviewed by the latter. Government consider it, however, desirable that the Revenue Commissioners and Collectors should be empowered to call for cases disposed of under the Act by

* The rules refer to the section as it stood before amendment.

officers subordinate to them even if no appeal be presented, and under s. 81 of the Act this power is hereby conferred on the officers named. Should it be put in force it will not be in the Collector's or Revenue Commissioner's power to review or alter the decision, but only to report upon it to Government under s. 79.

Procedure.

Commissioner, when forwarding to Government a case for revision under s. 79, should, when the interests of the person in whose favour the decision of the lower Courts operates will be injuriously affected if the Commissioner's recommendation is adopted, give him an opportunity of making any representation upon it which he thinks necessary for a fit appreciation of his case. No. 5381, July 3, 1885.

Notice how to be served.

80. Service of any notice given under this Act shall be deemed to have been made by the notice being affixed in writing to the wall of the village *chavdi* or other public place in the village not less than seven days before action is required to be taken by any person thereon.

This mode of service appears defective and inadequate, though it does not seem to have called forth any loud complaints. Government expect their officers not merely to cause notices to be served under this section but to take such other measures as are likely to be effectual for securing the presence of parties interested.

Notice not duly served.

Commissioner: "The notice was affixed to the Chavdi of the village of Avat only, while the appointment was to be made for Avat and two other villages. Section 80 lays down that service of a notice given under the Act shall be deemed to have been made by the notice being affixed to the village Chavdi. The wording of the section is not very clear, but it would be correct to hold that under this section a notice referring to watans in several villages must be affixed to the Chavdis of all the villages. The mode of service of a notice as prescribed by section 80 is very defective and inadequate, and does sometimes lead to hardship especially when the person to whom the notice is issued is a woman living at a place other than the village in which her watan is situate. I would therefore suggest that Government may lay down a rule that a

notice under the Watan Act should generally be served on the person to whom it is directed or on his duly authorised agent, and that service of such a notice in the manner specified in section 80 should be accepted as sufficient only when the person to whom the notice is directed is purposely evading its personal service or when personal service cannot be effected without serious inconvenience and delay. The notice cannot be held to have been duly served on the petitioner, and I recommend that the appointment of G should therefore be cancelled and a fresh appointment ordered, giving sufficient notice to the representative watandar." Recommendation sanctioned. It does not seem necessary to make another formal rule under the Act. Officers holding proceedings should not merely cause notices to be affixed to the Chavdi under section 80, but take such other measures as are likely to be effectual for securing the presence of parties interested, either by adopting a procedure similar to that prescribed in section 191, Land Revenue Code, or in such other way as may seem proper under the circumstances. No. 6302, Oct. 3, 1898.

Recoveries how made.

81. All recoveries of profits from land, assessments, emoluments or penalties under this Act may be made as provided by any law for the time being in force relating to the recovery of the land revenue.

Vide Ch. XI of the Land Revenue Code.

Government to frame rules.

82. Government may frame rules not inconsistent with this Act for the guidance of its officers in cases not expressly provided for, and may from time to time modify or revoke any such rules.

The rules framed by Government under this section are given under the different appropriate sections. This section

only empowers Government to make rules '*not inconsistent with this Act*' and for the guidance of its officers '*in cases not expressly provided for*;' any rule, therefore, in excess of this power would be *ultra vires*. For example, a rule requiring watandars to report to the Collector the terms of alienations to outsiders, would not be binding on them and failure to comply with it would not affect the legality of the alienation. (*Vide* also Notes on ss. 8 to 13 p. 98.)

Government desire that the Collectors should, in suggesting general rules, adhere, as far as the Act permits, to existing arrangements, except where serious reason exists for alteration, or where trifling changes lead to more general uniformity.

Orders to be in English.

1. All orders under the Act should be in English. No. 3073, June 11, 1879.

Return of documents.

2. When any party in a watan case who has filed any document in evidence applies to have such document returned to him, the document may be returned. But in every such case a copy of such document properly certified and made at the expense of the applicant shall be substituted for such document in the record of the case. No 148, Jan. 11, 1886.

Copies of G Rs. to be furnished to parties.

3. In watan cases copies of G. Rs. affecting parties to those cases should as a rule be supplied by the Collectors to parties in such cases who apply for them. It may occasionally arise that the Collector has doubts as to the propriety of giving copies, e. *g.*, when in the preamble the opinion of the Legal Remembrancer is embodied. In all such cases the Collector before giving the copy should report the case for the orders of Government. No. 6430, Sept. 11, 1886.

Government to determine duties of hereditary officers.

83. Except as is otherwise provided in section 18 (*of this Act*) Government shall have power, in cases where doubt exists, to determine what duties appertain to any hereditary office.

The words in the brackets were repealed by Bombay Act III of 1886.

Grant of powers to special officer

84. The Governor in Council may from time to time confer on any officer specially selected for the purpose, *or, so far as concerns any alienated village, on the holder or on any of the holders of such village or on any agent of the holder of such village,* all or any of the powers and duties which under this Act are required to be performed by a (*Revenue*) Commissioner or a Collector, and may authorize the delegation to any Mamlatdar or Mahalkari of the power to fine hereditary village officers in sums not exceeding two rupees.

Powers and duties conferred under this section shall be exercised or performed subject to such conditions, if any, in addition to those specified in this Act, as the Governor in Council shall from time to time think fit to prescribe, and any order conferring powers and duties under this section may at any time be cancelled by the Governor in Council.

..... * These words were inserted by Act V, 1886, while the word 'Revenue' before 'Commissioner' was repealed by Act III of 1886.

Previous to the passing of Act III Government permitted inamdars in certain circumstances and subject generally to confirmation by the Collector or Magistrate to nominate officiators, but the absence of any provision authorising such procedure in the Act had prevented its being followed since. The Select Committee, therefore, made provision in this section to restore inamdars, &c., to the position which they held previous to the passing of Act III, and to permit of their being invested with any powers or duties under the Act for which they might show themselves qualified.

1. The power of a Collector under the Act with regard to the preparation of registers may be conferred on the Chief of Vinchur. No. 3442, June 12, 1876.

Conferring power on Chief of Vinchur.

2. Government confer on the Honourable Meherban Narayanrao Govind Jaghirdar of Ichalkaranji in respect of Gavse, Chandgade and Hunshal in the Belgaum District and Mhapan in the Ratnagiri District, all the powers of a Collector under the Watan Act, with the exception of the powers relating to the alienation of watan lands. No. 430, Jan. 12, 1909.

Ditto. on Jaghirdar of Ichalkaranji.

3. The Collector may delegate to a Mamlatdar the power of fining village officers subject to a right of revision, and subject to any limitation, laid down by law or rule which the Collector may think fit to impose. No. 2116, March 13, 1883.

Delegation to Mamlatdars.

4. The power of fining applies to revenue officers only, and does not override the provisions of the Village Police Act, section 9 of which expressly limits the power of fining police patels to 1st Class Magistrates. Mamlatdars cannot fine patels for neglect of their police duties. No. 1953, March 15, 1893.

Power restricted to revenue officers.

5. Government are pleased to authorize a Collector to delegate to any Mahalkari in his district the power to fine hereditary village officers in sums not exceeding Rs. 2, subject to the conditions laid down in G. Rs. Nos. 2116 of 13th March 1883 and 1953 of 15th March 1893, (*supra* 3, 4). No. 5891, August 28, 1903.

Authorising delegation to Mahalkaris.

85. Nothing in this Act contained shall be deemed to affect Bombay Act VIII of 1867 or any other law for the time being in force, defining the duties and powers of village-officers or imposing penalties for misconduct ; and all references in such laws to Act XI of 1843 shall be taken as made to this Act.

Act not to affect Bombay Act VIII of 1867.

SCHEDULE.

(This Schedule has been repealed by Act XII of 1876.)

Number and year.	*Subject or title.*	*Extent of repeal.*
Reg. XVI of 1827.	*Hereditary District and Village Officers inclusive of Village Accountant ... ...*	*Ss. 19 and 20.*
Reg. V of 1833.	*For declaring all Hereditary District and Village Officers when entrusted by virtue of their offices with the charge or collection of the public money to be officers of receipts, and liable to certain penalties for embezzlement, and for providing for the recovery of public money from such officers; for extending the provisions of clauses second, third, fourth and fifth, sec. XI, Reg. XVI of 1827, to certain native officers on the Collector's establishment, and for admitting the employment of Deputies of Hereditary District Officers in other cases than those laid down in section 18, Reg. XVI of 1827 ... ...*	*Section 4.*
Bombay Act XI of 1843.	*For regulating the service of Hereditary Offices under the Presidency of Bombay ..*	*So much as is not already repealed.*
Bombay Act III of 1862.	*To amend Act XI of 1843 ... ...*	*The whole Act.*

SECOND SCHEDULE.*

Offences referred to in section 60.

	Description of offence.	Sections of the Penal Code under which punishable.
(1)	Every offence described in Chapter VI of the Indian Penal Code ...	121, 121 A, 122-124, 124 A, 126-130.
(2)	Causing disappearance of evidence of any offence committed, or giving false information touching it to screen the offender, when the offence committed is a capital offence, or punishable with transportation for life or imprisonment for ten years	201
(3)	Harbouring an offender, if such offender's offence be capital, or punishable with transportation or imprisonment for ten years ...	212
(4)	Taking gift, etc., to screen an offender from punishment, if such offender's offence be capital, or punishable with transportation for life or with imprisonment for ten years	213
(5)	Harbouring an offender who has escaped from custody, or whose apprehension has been ordered, if such offender's offence be capital, or punishable with imprisonment for ten years	216
(6)	Harbouring robbers and dacoits ...	216 A

*The Schedule was first added by Act V, 1886, and further amended by the addition of a 6th offence by Act III, 1910.

SECTION 2* OF ACT V OF 1886.

Female members to be postponed.

2. Every female member of a watan family other than the widow of the last male owner, and every person claiming through a female, shall be postponed in the order of succession to any watan, or part thereof, or interest therein, devolving by inheritance after the date when this Act comes into force, to every male member of the family qualified to inherit such watan, or part thereof, or interest therein.

Widow's interest.

The interest of a widow in any watan or part thereof shall be for the term of her life or until her marriage only.

S. 2 explained.

S. 2 of the Bill supplies an important omission in Act III. That Act repealed the section of Reg. XVI, 1827, in which it was enacted that watan property shall not leave the family in which the office is vested, but did not substitute any provision for barring inheritance by, or through, females, this being the commonest means by which watan property is liable to leave the family to which it originally belonged. It was held by the Sadar Diwani Adawlut in 1832, that, according to the spirit and letter of the Reg., a female could not hold a watan. This ruling, which was in complete harmony with the feeling of the watandars themselves, was for many years the law. But in 1868 it was decided by the High Court that inasmuch as Act XI, 1843, permitted females to appoint a deputy to perform service, the Legislature had recognised their right to hold watan, and that the Sadar Diwani Adawlut's ruling was no longer applicable (*vide Rul.* 24 under s. 36). The effect of case-made law was felt but slowly in the mofussil, and it is only of late years that frequent successions of females to watan property have attracted attention. From the very nature of the tenure, it is obvious that watan property ought only to be found in the hands

* The provisions of the amending Acts, V of 1886 and III of 1910 have been incorporated in Act III of 1874 at the appropriate places, but as s. 2 of Act V of 1886 is an altogether new provision and cannot be incorporated in the main Act, it is given here separately.

of males, they alone being competent to perform the services required by the State. Moreover, the grant having been made to a certain family, it would be quite equitable for the State to step in and resume a watan, whenever, owing to the failure of males in that family, the property should be on the point of vesting in another family for whose services the State made no bargain, and in whose selection it had no voice. This was the principle on which it was first proposed in the Bill, that females should be altogether excluded from the inheritance of watan property. The full inquiries, which have since been made, establish very clearly that the feeling against females being allowed to inherit watan property is a general one throughout the Presidency; but they also show that the general wish is not that they should be entirely excluded, but merely that they should be postponed in the order of inheritance to all males. In other words, the wish is, that the males should be preferred to females, but that even females should be preferred to the State. From a popular point of view this is not an unnatural state of feeling; and the Select Committee, seeing that the probability of lapse to the State is *remote* whilst watandars and their widows may freely adopt sons, have thought best to yield it. We have not thought it desirable to depart from the usual rule of not interfering with vested rights, and the provision regarding females will not operate retrospectively. (Proceedings of the Legislative Council, Oct. 6, 1886).

Meaning of family.

Where there are several branches of a family descended from the same original watandar, there can be said to be either one family of several families composed each of a recognised branch. This follows from the inclusive and therefore inconclusive form of the definition of family in s. 4 read with s. 26. The expression used in this section (s. 2) is 'watan family,' and in view of this fact it has been ruled that the comprehensive family descended from the original watandar and not the limited families composed of each of the branches of the family is contemplated by this section (*vide Rul.* 31 under s. 36, page 301); so that watan property would go to a qualified male member of another *takshim* descended from the same original watandar in preference to a nearer female heir (other than the widow of the last male holder) of the same *takshim*. But the expression must be

limited to the branches descended from the original watandar. If they are not descended from the same original watandar, then they would not come under the definition of family in s. 4 which, on the *expressio unius* principle, excludes such branches; neither would a member of one branch in such cases be qualified to inherit, according to general Hindu law, property belonging to a member of another branch (not descended from the same original watandar) (*Rul.* 12), (except in the case where the members are descended from the same common ancestor, though not from the same original watandar). The female heir of the same branch is entitled, in all such cases, to inherit watan property in preference to a remoter male heir of another branch. Among the members of the same branch, a male heir would be invariably preferred to a female one (except, of course, the widow of the last male owner). The devolution of the right of service would be further governed by the provisions of s. 36 (*vide* Notes on s. 36).

Succession to a female watandar.

It was thought that when a female watandar died, her successor should be a member of the family of the original watandar and not her own heir according to Hindu law (*Ruls.* 5, 10), but it is now settled that a person entitled to succeed her should be her own heir according to Hindu law, subject, of course, to the provisions of this section (*Ruls.* 11, 14).

Meaning of *through*.

The word 'through' implies mediate succession only such as that of a grandson to his maternal grandfather, and not immediate succession such as that of a son to his mother (*Rul.* 1).

Claims of widow.

The saving clause in favour of the widow of the last male owner does not mean that every widow of the last owner shall succeed in defiance of Hindu Law, but only that the Hindu Law rights of such widow, *if she has any*, shall not be postponed as in the case of other females' rights (*Ruls.* 7, 8).

Adoption by mother.

Under general Hindu Law a mother can adopt a son after the death of her son dying without any issue or widow, but if the watan estate, on the death of the son, vests under this section in any male heir

preferable to the mother, then the mother's adoption would not divest the estate once vested in the male heir and would be ineffective as regards the watan property (*Rul.* 13, *vide* also *Rul.* 20).

Application of section.

The section applies to Desaigiri and other watans in Surat, Broach, &c., though they have been settled as absolute private property, because they still continue to be watans as defined in s. 4 (*Rul.* 9, *vide* also *Rul.* 21). It has no application to Joshi, &c., who, though styled as watandars in ordinary parlance, are not watandars as defined in s. 4 (*Rul.* 19). The section has no retrospective effect (*Rul.* 18).

RULINGS.

Meaning of *through*.

1. L. R. "The word 'through' in this section implies some intermediate link between the claimant and the last holder, and does not apply to the case of a son claiming his mother's property as such. It can hardly be said that a person claiming direct from the last holder in whom the whole estate had vested claims through such holder." The Advocate General: "I agree that the words 'claiming through' cannot apply to immediate succession such as that of a son to his mother, but only to mediate succession such as that of a grandson to his maternal grandfather." No. 2793, May 3, 1888.

Meaning of *last male owner*.

2. L. R. "S. 2 enacts that with one exception, every female member is to be postponed to every male member qualified to inherit. This provision is obviously intended to operate, whilst there are both male and female members of the family entitled, under the law of inheritance applicable to them, to succeed to the watan property. It deprives it of all meaning to hold that it operates only when no male member of the families qualified to inherit any longer survives. I am therefore unable to concur in the opinion that the one female excepted by the section from its operation, *viz.*, 'the widow of the last male holder', can only claim the benefit of the exception, when, owing to failure of male heirs, the property would otherwise lapse to Government. The section, in my opinion, applies at every succession by inheritance to watan property. If, according to the law of the parties, a female would on any occasion

succeed, she, unless she be the widow of the last male member of the family who owned the property, is to be postponed in the order of succession to every male member of the family qualified to inherit." Advocate General: "I agree in the above. The words 'last male owner' do not mean, as suggested by the Commissioner, only the last surviving representative of the watan family." Copy forwarded. No. 6402, September 16, 1891.

Order of succession.

3. "The word 'family' is defined in section 4 as including each branch of the family descended from an original watandar, *i. e.*, a person having an hereditary interest in the watan. It would thus appear to exclude collaterals not descended from the acquirer of the watan. No doubt a collateral, though not descended from an original acquirer, would, on the extinction of the acquirer's family, be entitled to succeed in preference to Government as *ultimus hæres*. As a *Samanodaka*, *i. e.*, an agnate not beyond the fourteenth degree, he would certainly bar escheat; for even a *bandhu* could do that. "The object of section 2 would be not that females should be entirely excluded, but merely that they should be postponed in the order of inheritance to all males, in other words, that the males should be preferred to females, but that even females should be preferred to the State." This would no doubt imply that females were intended to come in as only when Government would otherwise come in as *ultimus hæres*, and would thus be postponed to any male who could possibly succeed, in preference, to the estate, including of course a *bandhu*. But it is submitted, that this was not the deliberate intention of the Legislature, which is more accurately expressed by the words "male member of the family qualified to inherit." Those words would certainly exclude a *bandhu*, though entitled in preference to the State, and would seem also inapplicable to a collateral not descended from the original acquirer who, though he might, if the family were extinct, have a right to succeed, would acquire that right not as a member of the family qualified to inherit, but by reason only of the extinction of the family as defined in section 4." Opinion of L. R. No. 303, March 13, 1895.

Succession.

4. Collector: "R, one of the representative watandars, died unmarried in 1884 leaving behind him his mother. The District Deputy Collector transferred the watan land together with the right of service to the name of S, the other representative watandar, as being the

male heir entitled to succeed to the watan property left by the deceased R. The widowed mother of the deceased prays that the decision may be reversed and the watan entered in her own name in place of her deceased son, contending that the senior branch of the family now represented by S has no interest in or connection with her share in the watan property. She further alleges that she intends to adopt a son in accordance with the wishes expressed by her deceased son to perpetuate the continuance of the line of the branch. A watandar has life-interest in the watan property and he can accordingly alienate or otherwise dispose it of as he likes. The man whose name has been ordered by the District Deputy to be entered can exercise his right and cause a deal of hardship, if he so minded, to the widow and the son whom she wishes to adopt. These latter persons have no remedy against the disposal of the property during his life-time and will have to suffer a great loss. In such cases it would be quite equitable to allow a reasonable time to the widow for adopting a son for her deceased husband, before making any changes in the register. I am of opinion that the name of that adopted son ultimately will have to be entered in the place of his collateral." Government Resolution No. 5026 of 14th July 1886 holding that a widow cannot adopt a son to her husband who has died leaving a son surviving him, contains no general ruling, but merely deals with a particular case. In future the judgment of the High Court in *Gaudapa v. Girmalappa* (19 Bom., 331) holding that a mother is competent to adopt when her son has died leaving no widow or other heir nearer than herself, will be taken into consideration on a similar question arising. But in the case refered to by the Collector, the question dealt with in the judgment does not arise at all. The widowed mother had made no adoption when the substitution of name was made, and the order of the District Deputy Collector is quite in accord with section 2 of Act V of 1886. No. 3616, May 4, 1896.

Ditto to female.

5. L. R. " V appears to have been the original watandar. He died leaving two sons S and D, and hitherto the watan has been in the possession of the heirs of S. S's grandson died in 1874 leaving a widow (who died in 1881) and a daughter X. The watan was registered in the name of X and continued to be so till her death in 1893. X's only son, Y, died in 1892 leaving behind him a widow L. The Collector has registered the watan in the name of L but her claim

is contested by one A, the great grandson of D, the second son of the original watandar under section 2 of Act V of 1886. There is no doubt that this Act applies to the case under discussion as X died long after it came into operation. The question is "should L be postponed to a male member of X's father's family under the said section?" X obtained an absolute estate in the watan as inheriting the same from her father and the estate would have passed to her own heirs and not to those of the preceding owner if the general Hindu Law was to be applied. The same principle would have applied in the case of a watan devolving on the heirs of X, if the devolution had taken place before Act V of 1886 came into force. L would then have been the rightful owner of the watan. The operation of this Act, however, postpones her claim to the devolution of the watan, and the Statute creates a disability which did not formerly exist. L's husband having predeceased X, she does not inherit this watan in terms of the first part of the section as 'the widow of the last male owner' but she comes under the second part and 'claims through a female', *i. e.*, X. The section is imperative, that 'every person claiming through a female' shall be postponed in the order of succession to any watan to every male member of the family qualified to inherit such watan.' The words 'claiming through' have been interpreted to apply not to immediate succession, such as that of a son to his mother, but only to mediate succession such as that of a grandson to his maternal grandfather. L's case falls under the latter clause and she must be held to be claiming through a female, *i. e.*, X. It then remains to ascertain whether A comes within the requirements mentioned in the last paragraph of section 2, *i. e.*, if he is a male member of the family qualified to inherit such watan. The word 'family' has been defined by section 4 and it 'includes each of the branches of the family descended from an original watandar.' Looking to this definition A is a male member of the family qualified to inherit such watan. Under these circumstances A has prior claim and L's right will have to be postponed to his right." Copy forwarded. No. 2770, April 8, 1897.

6. Advocate-General: "High Court held that Aisha became the owner of her share in the watan and this share devolved on Fatubibi also as owner and from her a new line of descent would commence. S. 2 of Act V of 1886 would apply to this extent that preference would

Ditto.

be given among her heirs to males over females." Copy forwarded, No. 2129, March 23, 1899.

Ditto of widow.

7. "P claimed as the widow of the last holder of a watan. Her husband's nephew claimed as an undivided member of the family: P could, under Hindu Law, claim nothing but maintenance, and could not succeed as widow to a separate estate for no separate estate exists for her to claim. Section 2 most clearly contemplates that, except as therein specially provided, a watan should devolve by inheritance according to the law (or custom having the force of law) of the parties. Indeed there could be no other law to regulate devolutions, if the ordinary law of inheritance as applicable to the family did not govern watans "devolving by inheritance." Hindu Law therefore applies and Hindu Law would not in this instance give the widow anything. The section in question does not say that every widow of the last owner shall succeed in defiance of Hindu Law; but only that the Hindu Law rights of such widow, *if she has any*, shall not be postponed, as in the case of other females' rights." Opinion of L. R. No. 368 of 23rd, March 1899.

Ditto

8. L. R. "As the family is undivided and the widow is, therefore, not her husband's heir but only entitled to maintenance under Hindu Law, the saving in favour of the widow of the last male owner contained in section 2 does not apply to the case. (*cf. Krishnaji v. Tarawa*. 24 Bom., 484, *infra* 20)." Copy forwarded. No. 1556, March 5, 1903.

Application of section to watans alienable as private property.

9. Commissioner: "The Desaigiri watans in Surat and Broach have been subjected to settlement and turned into absolute private property by the orders contained in G. Rs. Nos. 1584 of 25th April 1867, 59 P of 26th July 1867 and 3929 of 14th Nov. 1867. On the examination of the monthly statements of alterations in the Cash Alienation Lists of the Surat District, a question has arisen whether succession to such watans is governed (1) by the provisions of section 2 of Bombay Act V of 1886, or (2) by the ordinary law of succession. The High Court of Bombay in *Bai Jadav v. Narsidas*, 25 Bom., 470 (*infra* 21) have held that though these watans can be treated as absolute private property for purposes of transfers and alienations, they are subject

to the restrictions imposed by section 2 of Act V of 1886 as regards succession. The application of section 2 to watans of this nature would be contrary to the intention of Government and to the sanads issued which are analogous to summary settlement sanads. I presume that I can give effect to the intention of Government by executive orders recognising female heirs in cases coming before me." L. R. "The course proposed is open to serious objection. The only remedy is to amend the Act." Copy forwarded. No. 3430, April 27, 1905.

Succession to female.

10. Petition from C (a collateral male from the family of the original watandar) stating that on the death of S, daughter of the last representative watandar, the Assistant Collector directed his name to be entered as representative watandar; that on appeal the Collector reversed the order of the Assistant Collector and directed the name of F, husband of S, to be substituted for that of S; and that the Commissioner confirmed the Collector's order; and praying that the orders passed by the Collector and the Commissioner may be cancelled and that of the Assistant Collector restored. "Government are of opinion that it is clearly the intention of the Watan Act that the watan should as far as possible be kept in the original family, and they see no adequate reason for departing from the view on this point to which effect has been previously given in G. R. No. 2770 of 8th April 1897 (*supra*, 5). The term 'family' in section 2 of Act V of 1886 must be interpreted as defined in the principal Act III of 1874 and is clearly limited to descendants from an original watandar. The petition of C should accordingly be allowed." (This G. R. is practically cancelled by No. 2129 of 27th February 1907, *infra*, 11). No. 4240, May 24, 1905.

Ditto.

11. The suit filed by F, whose claims were set aside in G. R. No. 4240 of 24th May 1905 (*supra*, 10) and others against the Secretary of State for India in Council, C the successful petitioner in the above G. R., and others, was decided by the District Judge in favour of F, to the effect that he was entitled to have his name registered as watandar patel and kulkarni. Advocate-General "The only question is whether F who is a male and also the nearest heir of S, the deceased watandar, whose title to her *takshim* dated from a

period prior to the passing of Act V of 1886, is excluded from succession by the terms of section 2 of that Act in favour of a collateral male belonging to the family of the original watandar. As S was the absolute owner of her interest and as F is her nearest male heir and does not claim through a nearer female heir, the sex of the deceased watandar cannot affect his right of inheritance. It is a question of immediate and not mediate succession. The point appears to be covered by authority (*Rahimkhan v. Fatu Bibi*, 21 Bom., 118, *infra*, 18). Such cases can only arise where the question is as to succession to a female watandar, who acquired an absolute interest in the watan prior to the passing of Act V of 1886. They cannot be very numerous." Copy forwarded. (This G. R. practically cancels G. R. No. 4240 of 24th May 1905, *supra*, 10). No. 2129, Feb. 27, 1907.

Meaning of *watan family*.

12. The two *takshims* of the kulkarni watan are quite different from each other, the surname of the first *takshim* being different from that of the second *takshim*. The representative watandar of the second *takshim* died leaving behind him two daughters but no male heirs or widow. L. R. "In my opinion, if (as appears to be the case) B and the deceased R are not descended from a common original acquirer of the watan, B is not a "member of the family qualified to inherit" R's part of the watan, within the meaning of section 2. This follows both from the definition of "family" in section 4 of the Watan Act, which on the *expressio unius* principle excludes branches which are not descended from an original watandar, as well as from the fact that under Hindu Law B would not be qualified (*i. e.*, entitled) to inherit R's property, even if he had left no daughters. The case referred to in G. R. No. 4323 of 29th April 1907 (*vide* page 301) is different, as there the two branches in question were descended from a common original watandar. The principle laid down in section 2 cannot legitimately be extended beyond the express terms of the enactment." Government approve. No. 9626, Oct. 1, 1907.

Effect of adoption by mother on death of son.

13. B, the widow of K, a representative watandar Desai, adopted X on the condition that she was to continue in the enjoyment of the watan until her death ; X's name was entered in the Government accounts ; he died unmarried in 1902 ; B then adopted a second son R and applied to the Collector to enter R's

name as representative watandar in the Government accounts; the Collector entered the name of Y, a distant collateral. The Commissioner directed the village officers to pay the rents to Y. L. R. "It appears that under Hindu Law, a second adoption like the one in question is valid, but that such an adoption does not divest an estate which has already vested in an heir of the first adopted son other than the adopting mother. In this case, under the operation of section 2 of Act V of 1886, on the death of the first adopted son, the watan became vested in Y and the subsequent adoption would not affect this devolution. I would, however, point out that by virtue of the special agreement with the natural father of the first adopted son X, B has probably a right to remain in possession of the watan estate during her life-time, and that right will also probably subsist against the collateral Y, whose name has been ordered to be entered in the register. If so, the Commissioner's order that the village officers should hand over to Y all rents voluntarily paid by tenants encroaches upon this right of B. Government have no real concern with the actual possession of the watan (which is one held under a Gordon settlement), so long as there is in existence a male heir who satisfies the conditions on which Government have guaranteed the continuance of the watan, and so long as the watan is not improperly alienated." Copy forwarded. The Commissioner should be requested to consider the propriety of revising his order about the payment of rents. No. 4638, May 8, 1908.

Succession to female.

14. Commissioner: "V, one of the representative watandars of a kulkarni watan, died before the passing of Act V of 1886 and was succeeded by his daughter S. The latter died in 1907, and the Assistant Collector directed the entry of the name of one K, son of S's husband's brother. B, the other representative watandar, applies to have the order set aside. The order passed by the Assistant Collector is contrary to the instructions of Government in G. R. No. 4240 of 24th May 1905 (*vide supra*, 10). I beg to recommend that B be declared the sole representative watandar; on S's death without male issue, the inheritance must revert to the male members of the original watan family." Government doubt the correctness of G. R. No. 5240 of 24th May 1905. In view of the decision in the case referred to in G. R. No. 2129 of 27th February 1907 (*vide supra*, 11), Government cannot interfere with the decision in the present case. No. 2253, March 3, 1909.

15. Commissioner: "Section 2 of Act V of 1886 says that every female member of a watan family (other than a widow) is to be postponed to every male member of the same family who is qualified to inherit the watan; and therefore it is important to ascertain what the word 'family' means. According to the definition of the word in the Watan Act, 1874, which is distributive and not collective, every branch of the family descended from an original watandar is itself a family, and this is the view which Government has always taken for the purposes of section 53 of the Act. No person is regarded as qualified to act as deputy in one branch of a watan family if he belongs to another so long separated that it is recognised as a *takshim*, or would have been so recognised if it had proved its title to perform service at the settlement. But whatever definition of family is good for section 53 must obviously be good for section 2 of Act V of 1886: there can be no legal ground for creating an artificial distinction between the two cases. V, B's husband, and L, the present claimant against X, are each separated by four generations of ancestors from the primitive head; and seeing that there has been a total separation in interests and property since 1838 it cannot be doubted that, if a watan settlement had been made in this case, the lines, to which V and L belong, would have been recognised as separate *takshims* and therefore separate families. It is equally clear that X's husband, Z, would have been recognised as belonging to the same family as V, for they were cousins. This being so, it would appear that section 2 of Act V of 1886 gives L no right of inheritance in the branch to which B belongs, for he is not a member of her watan family. The Commissioner therefore requests authority to order X's name to be entered in place of B's, there being no male survivor of that family." As only one sanad was issued, there is only one watan family comprising all the heirs of G, the original acquirer of the watan. L is a male member of the family qualified to inherit the watan and under section 2 of Act V of 1886 he excludes not only the rival claimant, X, but also Y who claims through a female, the sister of V. L's name should therefore be entered in place of that of B. No 10036, Oct. 16, 1909.

Meaning of *family*.

16. Collector: "Whether the words 'other than the widow of the last holder' in s. 2 debar a second widow of the last male holder of a watan from succeeding to a watan on the death of the first widow, who succeed-

Succession of second widow.

ed to the watan on the demise of her husband without male issue." L. R. "As the singular must be held to include the plural, it follows that the rights conferred by section 2 of Act V of 1886 are not confined to any one widow of the last male holder. Such widows, however many, have the right of succession given by that section. Their relative rights *inter se* depend upon the ordinary rules of Hindu Law. Generally speaking, they inherit jointly with a right of survivorship among themselves." Copy forwarded. No. 3743, April 25, 1910.

Order of succession.

17. Brother's sons are entitled to succeed to watan property in preference to a daughter under s. 2. *Ramabai v. Rangrao.* P. J., 1894, 287.

Succession to female.

18. S. 2 is in its terms made not retrospective and the Act has been so construed in *Bai Hariganga* (*vide* p. 66). A watan having devolved (in 1851) on the widow and a daughter of a deceased Mahomedan as his heirs, and each having become owner of her share in it in so far as a watan can be held in ownership, *held* that on the death of the widow in 1890 leaving no qualified male heirs, the daughter was entitled to succeed as her heir. "On the death of the widow her heirs were entitled to succeed, males probably in preference to females, but we need not consider that. The defendants are not her qualified heirs, and therefore cannot succeed. It is argued that they are qualified heirs in the original watan family, but that does not constitute them qualified heirs to succeed to the lady. *Rahim v. Fatu.* P. J., 1895, 371.

Application of section.

19. This section applies solely to watandars as defined in the Act, and not to sutars, &c., who are also in ordinary parlance called watandars. *Yesu v. Sitaram.* P. J., 1896, 181.

Adoption by widow other than the widow of last male holder.

20. A watan belonged to two brothers R and B. At B's death R became the last male holder; on his death his widow L held the watan till her death in 1892. Upon her death B's widow T adopted the plaintiff in 1893, who now filed a suit against the defendant to whom the watan had passed on the death of L as a male member of the family. *Held*, that the plaintiff was not entitled to succeed. For where there is a male member qualified to inherit, he inherits, and a widow other than a widow of the last

male owner acquires no rights by succession or inheritance and consequently she cannot create, transfer or revive any right by adoption. "The express object kept in view was to prefer even remote male heirs to females in the order of succession and female heirs were allowed to come in as heirs with a view to avoid escheat. The effect of the Act is, therefore, obviously not a mere postponement in the order of time, but a preference of one set of heirs to others. There is, therefore, no vested right created as regards watan property in the female heir other than the widow of the last owner..... The chief object was to ensure that watan property should be in the hands of male heirs, who can render personal service in preference to females." *Krishnaji v. Tarawa*, 2 Bom L. R., 276 ; also, 24 Bom., 484.

Applicability of the section to commuted watans in Guzerat.

21. Watans in Guzerat do not cease to be watan property held in connection with an hereditary office as defined in section 4, simply because a service settlement has been effected; and the word 'watan' used in section 2 of Act V of 1886 is not to be understood in a restricted sense by reason of such settlement. "It is quite clear that, unless by reason of the settlement, watan property ceased to be watan, the new section 2 would apply. The definition of hereditary office expressly includes offices where the services have ceased to be demanded. In section 5, clause 2 also treats watan as watan property even though a service settlement had been effected either under section 15 or before that section came into force. A distinction should be made between the power of alienation without sanction of Government referred to in section 5 and the new rule of succession laid down in section 2. As far as the power of alienation is concerned, there can be no doubt that clause 2 of section 5 would not apply to Guzerat watans, where the settlement recognised the right of alienation without sanction, but such settlement did not change the nature of the property, merely because service was not demanded. It continued to be watan property held in connection with a hereditary office. Though the restriction about alienation without sanction did not apply to such settled watans in Guzerat, the particular change in the rule of succession was a different matter, and it applied to all watans whether settled or not settled, whether in the Guzerat or in the Deccan." *Bai v. Narsilal*, 3. Bom. L. R., 249 ; also 25 Bom., 470.

TEXT OF THE ACT.

Bombay Act III of 1874.

As Amended by Acts V of 1886 and III of 1910.

Preamble.

WHEREAS it is expedient to declare and amend the law relating to hereditary offices; it is hereby enacted as follows:—

PART I.

Preliminary.

Title and application.

1 This Act may be called the "Bombay Heriditary Offices Act."

It extends to the regulation districts and to all villages therein, whether alienated or otherwise, so far as its provisions shall not conflict with the terms on which any alienated village may have been secured to the holder thereof.

Nothing in this Act shall affect the powers of Government to deal with any watan or parts of watans, or with the profits thereof, respectively, under Act No. XI of 1852, or Bombay Acts Nos. II and VII of 1863, or any other law at present in force with respect thereto.

2. *(Repealed by Act XII of 1876.)*

3. Parts VI, VII, VIII and IX shall not apply to hereditary offices of lower degree than patel or kulkarni, nor to watans appertaining to such offices.

4. In this Act, unless there be something repugnant in the subject or context,—

"watan property" means the moveable or immoveable property held, acquired or assigned for providing remuneration for the performance of the duty appertaining to an hereditary office; it includes a right to levy customary fees or perquisites, in money or in kind, whether at fixed times or otherwise; it includes cash payments in addition to the original watan-property made voluntarily by Government and subject periodically to modification or withdrawal:

"hereditary Office" means every office held hereditarily for the performance of duties connected with the administration or collection of the public revenue, or with the village police, or with the settlement of boundaries, or other matters of civil administration; the expression includes such office even where the services originally appertaining to it have ceased to be demanded :

the watan-property, if any, and the hereditary office and the rights and privileges attached to them, together constitute the watan :

"watandar" means a person having an hereditary interest in a watan; it includes a person holding watan-property acquired by him before the introduction of the British Government into the locality of the watan, or legally acquired subsequent to such introduction, and a person holding such property from him by inheritance; it includes a person adopted by an owner of a watan, or part of a watan, subject to the conditions specified in sections 33 to 35 :

"family" includes each of the branches of the family descended from an original watandar: Provided that no sub-division shall be recognised except as hereinafter provided in s. 26 :

"head of a family" includes the chief representative of each branch of a family :

"representative watandar" means a watandar registered by the Collector under section 25 as having a right to perform the duties of an hereditary office :

"officiator" means the person actually performing the duties of an hereditary office for the time being, whether he be a representative watandar or a deputy or a substitute appointed under any of the provisions of this Act :

"guardian" means a relation or other person to whom the care, nurture or custody of any child falls by natural right or recognized usage, or who has accepted or assumed directly the care, nurture or custody of any child, or in case of dispute the holder of a certificate of guardianship from a competent Court ;

PART II.

Watan Property and Profits thereof.

(1) Without the sanction of Government it shall not be competent—

Prohibition of alienation of watan and watan rights.

(*a*) to a watandar to mortgage, charge, alienate or lease, for a period beyond the term of his natural life, any watan, or any part thereof, or any interest therein, to or for the benefit of any person who is not watandar of the same watan ;

(*b*) to a representative watandar to mortgage, charge, lease or alienate any right with which he is vested, as such, under this Act.

(2) In the case of any watan in respect of which a service commutation settlement has been effected, either under section 15 or before that section came into force, clause (*a*) of this section shall apply to such watan unless the right of alienating the watan without the sanction of Government is conferred upon the watandars by the terms of such settlement or has been acquired by them under the said terms.

6. *Clause 1.*—In any case in which it shall appear to the Collector that the institution of legal proceedings is requisite or desirable with respect to any watan, or the estate, property, funds or affairs thereof, the Collector shall certify such case in writing under his hand to the Commissioner, together with such statements and particulars as in his opinion may be requisite or proper for the explanation of such case, and thereupon the said Commissioner, if upon consideration of the circumstances he thinks fit, shall authorize the Collector to institute and prosecute in the name of the Collector such legal proceedings as may appear requisite or proper for the protection of the watan, its estates, property, funds or affairs, by suit or petition in any Civil Court having jurisdiction in the matter. The cost of such proceedings, unless recovered from the opposite party, shall be paid out of the funds of the watan.

Collector may institute legal proceedings for protection of watan.

Clause 2.—The Collector may, if he thinks fit, proceed as provided in sections 8, 9, 10, 11 or 13 in lieu of instituting or prosecuting legal proceedings under this section.

Collector may proceed under ss. 8 to 11 or 13.

Watan—assigned as remuneration not alienable without sanction.

7. Watan-property assigned under section 23 as remuneration of an officiator, and the rofits of watan-property so assigned, shall not be alienated or assigned to any person whatever without the sanction of Government.

Watan property passed into possession of person other than officiator liable to contribution for remuneration of officiator.

8. Whenever any watan or any part thereof, or any of the profits thereof, whether assigned as remuneration of an officiator or not, has or have before the date of this Act coming into force passed by virtue of, or in execution of, a decree or order of any British Court into the ownership or beneficial possession of any person other than the officiator for the time being or has or have before such date passed otherwise than by virtue of, or in execution of, a decree or order of any British Court into the ownership or beneficial possession of any person other than such officiator; or

when any watan, or part or profits thereof, not being assigned as remuneration of an officiator, has, after the date of this Act coming into force, passed by virtue of, or in execution of, a decree or order of any British Court or otherwise, into the ownership or beneficial possession of a watandar other than such officiator;

such watan or any part thereof, or any of the profits thereof, shall be liable under the orders of the Collector to contribution for the remuneration of such officiator in like manner and to the like extent as if no such decree had been passed or no such transfer had taken place.

Collector may declare alienation of watan property to be under certain circumstances null and void.

9. *Clause 1.*—Whenever any watan or any part thereof, or any of the profits thereof, whether assigned as remuneration of an officiator or not, has or have, before the date of this Act coming into force, passed otherwise than by virtue of, or in execution of a decree or order of any British Court, and without the consent of the Collector and transfer of ownership in the revenue records, into the ownership or beneficial possession of any person not a watandar of the same watan, the Collector may, after recording his reasons in writing, declare such alienation to be null and void, and order that such watan or any part thereof, or any of the profits thereof, shall from the date of such order belong to the watandar previously entitled thereto, and may recover and to such watandar any profits thereof accordingly.

Clause 2.—If such part of a watan be land, it shall be lawful for the Collector, instead of transferring the possession of the land, to demand and recover the full rent ordinarily paid by tenants of land of similar description in the same locality, and the amount so recovered, shall be considered as the profits. The decision of the Collector as to what is the full rent shall be final.

Collector may in case of land recover full rent.

10. When it shall appear to the Collector that by virtue of, or in execution of, a decree or order of any British Court any watan or any part thereof, or any of the profits thereof, recorded as such in the revenue records or registered under this Act, and assigned under section 23 as remuneration of an officiator, has or have after the date of this Act coming into force, passed or may pass without the sanction of Government into the ownership or beneficial possession of any person other than the officiator for the time being; or that any such watan or any part thereof, or any of the profits thereof, not so assigned, has or have so passed or may pass into the ownership or beneficial possession of any person not a watandar of the same watan, the Court shall, on receipt of a certificate under the hand and seal of the Collector, stating that the property to which the decree or order relates is a watan or part of a watan, or that such property constitutes the profits or part of the profits of a watan, or is assigned as the remuneration of an officiator, and is, therefore, inalienable, remove any attachment or other process then pending against the said watan or any part thereof, or any of the profits thereof, and set aside any sale or order of sale or transfer thereof, and shall cancel the decree or order complained of so far as it concerns the said watan or any part thereof, or any of the profits thereof.

Civil Court on Collector's certificate to remove attachment on watan property assigned as remuneration of officiator.

11. When any alienation of the nature described in section 10 shall take place otherwise than by virtue of, or in execution of, a decree or order of any British Court, the Collector shall, after recording his reasons in writing, declare such alienation to be null and void.

Collector may declare null and void alienation of watan property made after passing of Act.

11 A. The Collector shall either summarily resume possession of all property to which an order of a Court passed on receipt of his certificate under section 10, or his own declaration under section 11, relates, or assess it at the rate prescribed in clause (2) of section 9, as he may think fit, and the said property shall thenceforward revert to the watan.

Resumption of property to which an order made under s 10 or s. 11 applies

12. It shall be lawful for the Collector, whenever it may be necessary, in carrying out the provisions of sections 8, 9 and 11—

Powers of Collector to carry out provisions of sections 8, 9 and 11.

(*a*) to summarily evict any person wrongfully in possession of land, or

(*b*) to levy any rent due by any person in the manner that may be prescribed in any law for the time being in force for the levy of a revenue demand.

13. Watan-property assigned as remuneration of an officiator under section 23 and the profits of such watan-property are not liable to process of any Civil Court.

Watan assigned as remuneration not liable to process of Court.

On receipt of a certificate under the hand and seal of a Collector, to the effect that certain property designated therein is watan property so assigned, the Court shall remove any attachment or other process placed on, or set aside any sale of, or affecting, such property or the profits thereof.

14. *Clause* 1.—It shall be lawful for a Collector, for reasons to be stated in writing, to combine two or more watans held for the performance of similar services in the same village or parts of the same village.

Combination of hereditary offices.

Clause 2.—(*Repealed by Act XVI of 1895*).

PART III.

Commutation of Watans.

15. *Clause 1.*—The Collector may, with the consent of the holder of a watan, given in writing, relieve him and his heirs and successors in perpetuity of their liability to perform service upon such conditions, whether consistent with the provisions of this Act or not, as may be agreed upon by the Collector and such holder.

Commutation of service.

Clause 2.—(*Repealed by Act XVI of 1895*).

Settlement on whom to be binding.

Clause 3.—Every settlement made or confirmed under this section shall be binding upon both Government and the holder of the watan and his heirs and successors.

Who is a "holder."

Clause 4.—The word " holder " for the purposes of this section includes any sole owner or the whole number of joint owners or any person dealt with as representative of the persons beneficially interested or entered as such in the Government records at the time of the settlement.

Right of individuals to exact customary service from village-servants not affected.

16. Nothing in the last preceding section shall be held to affect any rights of individuals or village-communities to exact such service as may be customary from village-servants whose watans were originally granted or are now held for the performance of such service but who have been relieved by Government of liability to perform such service to the State.

Assesment of amount of payments in alienated villages.

17. When all or any of the property of a watan consists of payments of whatever description, whether in money or kind, made by jagirdars, inamdars, mehwassi chiefs, or others owning or occupying immoveable property wholly or partially free from assessment, the Collector may from time to time determine the amount of such payments recoverable: Provided that no larger demand shall be made than one equivalent to the amount that would be payable under the scale in force for the time being in the case of Government villages.

Appointment of panchayat to define rights and duties of certain classes of watandars.

18. When all or any of the property of a village-watan of lower degree than that of patel or kulkarni consists of a right to levy in money or kind directly from individuals, it shall be lawful for the Collector, on the application of any person interested, to cause the nature and extent of such right and of the duties, to be performed, and the persons, families or classes liable to make payment and to perform the duties, to be defined in writing by a panchayat of five persons, whereof two shall be appointed by the villagers, two by the watandars, and one, who shall be sar-panch, by the Collector.

The decision shall be in accordance with the opinion of the majority of the panchayat: Provided that, in case the villagers or the watandars fail to nominate members within seven days, the Collector shall appoint such members as may be required to constitute a panchayat of five:

Provided also that in case the panchayat do not come to a decision within seven days from the appointment of the sar-panch, the Collector may himself pass a decision.

The decision of the panchayat or of the Collector, as above provided, shall be final and binding on all persons or classes whose rights, duties or liabilities have been submitted to such decision.

Mode of fixing amount payable when profits of watan fluctuate.

19. Whenever, on failure of the Panchayat to come to a decision, the Collector, acting under the last preceding section, passes a decision, and it appears that the profits of the watan or part thereof are of fluctuating amount, or are payable in kind, it shall be lawful for the Collector to determine the amount payable and to decide whether the payment shall be made in kind or money.

Validity of settlements made prior to passing of Act.

20. Any settlement of the nature described in section 17, 18 or 19 made before the Act coming into force, by a Collector or other officer duly authorized by Government, shall have the same force as if made under this Act.

Settlements for such period as Government may direct.

21. Settlements of the nature described in sections 17, 18 and 19 made after this Act comes into force, shall be made for such periods as the Governor in Council may from time to time direct.

PART IV.

Creation and Lapse of Watans.

Creation of new watans.

22. When no watan exists, it shall be lawful for Government to create one and in so doing to assign, subject to such sanction as may be required by any law, or order of the Governor-General of India in Council for the time being in force, such property of Government as to Government may seem fit.

Such watan shall be subject to all the provisions of this Act and the watandars shall exercise the powers and perform the

duties conferred and imposed by this Act or any other law for the time being in force.

When a watan or part of a watan has lapsed or has been confiscated or otherwise lawfully resumed by Government, or when the right of any particular family to hold a watan does not exist or is not established, it shall be lawful for Government, subject to the sanction mentioned in the first clause of this section, to assign such watan or part of a watan to such person or persons as to Government may seem fit.

PART V.

Remuneration of Officiators.

23. Subject to the provisions of this Act and of any other law for the time being in force regarding service inams, cash allowances and pensions, it shall be the duty of the Collector to fix the annual emoluments of officiators appointed under the provisions of this Act, and to direct the payment thereof to the officiators for the time being.

Collector to fix emoluments of officiators.

It shall be lawful for the Collector for this purpose to assign watan-property, or the profits thereof, towards the emoluments of officiators.

Collector may assign watan—property for purpose.

The existing assignments shall, until altered by competent authority, be taken to have been made under this section.

With the sanction of Government the Collector may, as occasion arises, alter the assignment and may increase or diminish it in value, such increase or diminution being made rateably among the holders in proportion to the profit derived by such holders respectively from the watan.

PART VI.

Representative Watandars.

24. The duties appertaining to any hereditary office shall be performed by the representative watandars or by deputies or substitutes as hereinafter provided, and by no other persons.

Duties to be performed by representative watandars.

25. It shall be the duty of the Collector to determine, as hereinafter provided, the custom of the watan as to service and what persons shall be recognized as representative watandars for the purpose of this Act, and to register their names.

Determination and registration of representative watandars.

26. In determining what heads of families shall be recognized as representative watandars and what is the custom of the watan as to service, the Collector shall inquire into and take into consideration the practice heretofore observed from the earliest period for which there are records or other evidence available.

Previous practice to be considered in determining who are representative watandars.

Provided that he shall not be bound to recognize appointments or subdivisions which have been made subsequently to the introduction of Act No. XI of 1843, and which he considers to be contrary to the custom of the watan.

27. If it shall appear to the Collector that the custom has been for a member of one family only to serve, the Collector shall register the name of the head of such family only as the representative watandar and no other person.

Registration of head of family as sole representative watandar.

28. If it shall appear to the Collector that the custom has been for a member of each of several families to perform the duties either contemporaneously or for successive periods, the Collector shall register the name of the head of each of such families as representative watandars and no other persons, and, where the practice of service in successive periods is proved to exist, he shall decide the order in which the representative watandars shall officiate.

Registration of heads of families as representative watandars.

29. *Clause 1.*—Whether the practice of service in successive periods appears to have existed, but is not proved to the satisfaction of the Collector to have existed at the date of the introduction of Act XI of 1843, or when the practice of selection by the Collector from several families prevails, he shall determine who is the head of the eldest family descended from the original watandar, and shall register his name as sole representative watandar.

Registration of head of eldest family as sole representative watandar.

Clause 2.—In cases where such several families are not descended from a common ancestor, the Collector shall register as representative watandars the heads of such families, and establish the practice of service in successive periods.

Registration of heads of separate families as representative watandars.

30. When the practice of service in successive periods has been introduced under the British rule, in consequence of the reduction in the number of officiators or the amalgamation of watans by Government, the head of each family that formerly officiated shall be separately entered as a representative watandar.

Registration as representative watandar of head of each family in amalgamated watan.

31. But, if in any case described in section 29 the heads of families at any time before the completion of the register prescribed by this Act agreed, unanimously in writing, or have in writing agreed during the inquiry made in the preparation of the existing registers, as to who are the representative watandars, and as to the order of service, then the register prescribed in this Act shall be prepared in accordance with such agreement.

Procedure if heads of families agree as to who are representative watandars.

32. When watan property or profits have been voluntarily relinquished without abandonment of right of service, such right of service shall be dealt with as if the watandars were still in receipt of such emoluments.

Right of service to remain after relinquishment of property.

33. In any case in which before the coming of this Act into force, any registered representative watandar or his widow shall have adopted an heir, notice of the same shall, within twelve months from the coming into force of this Act, be given by or on behalf of such adopted heir to the Collector, who shall register the name of such heir accordingly.

Notice of adoption if heir has been adopted prior to passing of Act.

But if such adoption shall be shown to have been or shall subsequently be set aside by decree of a competent Court, the Collector shall remove such name from the register.

34. In any case in which, after the coming of this Act into force, any registered representative watandar or his widow shall adopt an heir, report of such adoption shall within three months be made to the Collector by such watandar, or by his widow or in case of their death then by such adopted heir, or by the guardian of the latter, and the Collector shall register the name of such heir accordingly.

Notice of adoption when the heir is adopted after the passing of Act.

But if such adoption shall subsequently be set aside by decree of a competent Court, the Collector shall remove such name from the register.

35. In any case in which notice or report of such adoption shall not be made as herein directed, the Collector shall not recognize the same without the production of a certificate of heirship or a final decree of a competent Court establishing the validity of such adoption.

Procedure if notice of adoption not duly given.

36. When any representative watandar dies it shall be the duty of the patel and village-accountant to report the fact to the Collector; and the Collector shall, if satisfied of the truth of the report, and subject to the provisions of section 2 of Bombay Act V of 1886, register the name of the person appearing to be the nearest heir of such watandar as representative watandar in place of the watandar so deceased:

Death of representative watandar to be reported; name of heir to be registered.

Provided that—

(1) in determining who is the nearest heir for the purposes of this section the rule of lineal primogeniture shall be presumed to prevail in the watan family;

(2) in any case where the deceased watandar was not a sole representative watandar, if his nearest heir is not a member of the branch of the family to which the deceased watandar belonged but is another representative watandar of the same watan or is a member of the branch of another representative watandar of the same watan, the share entered in the register against the name of the deceased watandar shall—

(a) if there is only one remaining representative watandar of the same watan who is descended from the same original watandar as the deceased, pass to that remaining representative watandar,

(b) if there are more than one such remaining representative watandars, be divided among such remaining representative watandars in proportion to their shares

and the register shall be corrected accordingly;

(3) if at any time any person shall, by production of a certificate of heirship, or of a decree or order of a competent Court, satisfy the Collector that he is entitled to have his name registered as the nearest heir of such deceased watandar in preference to the person whose name the Collector has ordered to be registered, the Collector may, subject to the foregoing provisoes, cause the entry in the register to be amended accordingly.

37. When any head of a family or representative watandar is under the age of eighteen years, his guardian may, subject to the provisions of section 51, exercise all powers and perform all duties conferred and imposed by this Act.

Guardian of minor watandar to perform duties of minor.

PART VII.

Periods of Service.

38. Subject to the provisions of sections 45 and 46, representative watandars shall be entitled to office for the following periods, respectively, (namely):—

Representative watandars to serve for life or for fixed periods of five or ten years.

(*a*) in cases falling under section 28 or section 29, clause (2), or section 30 or section 31, in which the representative watandars are entitled to office contemporaneously, and in cases falling under section 27 or section 29, clause (1), } for life.

(*b*) in cases falling under section 28 or section 29, clause (2), or section 30 or section 31, in which the representative watandars are entitled to office in successive periods, } for such period as the Collector shall in each case determine, the same being not less than five nor more than ten years.

39. In the event of the officiating watandar dying before the expiration of his fixed period of service, his heir shall, subject to the provisions of Part VIII, be entitled to officiate for the remainder of that period.

Procedure on death of officiator.

40. *Clause 1.*—In the case of a watan in which the representative watandars are entitled to perform the duties in successive periods, the Collector shall, on the occurrence of the turn of any such representative watandar to perform the duties, issue a notice to the whole body of registered representative watandars calling upon them to appear before him at a certain time and place to elect an officiator, or such number of officiators as may be required by the Collector under the provisions of section 43.

Election of officiator in rotation watan.

Clause 2.—If not less than three-fourths, including the watandar whose turn it is to officiate, of the representative watandars appear at the appointed time and place and unanimously nominate a fit and proper person or persons being a watandar or watandars of the same watan, the person or persons so nominated shall be entitled to officiate in the place and for the period of service of the representative watandar whose turn it is to perform the duties.

Clause 3.—If the person or persons so nominated be other than the representative watandar whose turn it is to perform the duties, he or they shall, for all the purposes of this Act, be deemed to be the duly appointed deputy or deputies of the said representative watandar.

Mode of appointment if representative watandars fail to nominate officiator.

41. If, in the case of a watan in which the representative watandars are entitled to perform the duties in successive periods, the representative watandars shall not appear at the time and place appointed under the provisions of the last preceding section, or shall fail to nominate an officiator, or requisite number of officiators, unanimously, then the provisions of this Act as to service by the representative watandar entitled to officiate and as to appointment of duties shall apply.

PART VIII.

Officiating watandars and Deputies.

Representative watandars to perform duties of office.

42. Every representative watandar whose duty it is to officiate shall, if a fit and proper person, perform the duties of the hereditary office himself on being so required by the Collector, but may be permitted by the Collector to appoint a deputy.

Collector to determine number of officiators required.

43. The Collector shall determine the number of officiators required for the proper performance of the duties of any office from time to time, and for this requirement may call upon the representative watandar aforesaid to appoint a sufficient number of fit and proper persons as deputies, or may direct service in successive periods by representative watandars who have hitherto served or are serving contemporaneously.

44. *(Repealed by Act III of 1910).*

45. The Collector shall refuse to accept the service of any representative watandar or of any person nominated by a representative watandar to be his deputy, if such representative watandar or person—

Collector when to refuse service of representative watandar, or of deputy nominated by him.

(*a*) is under eighteen years of age ;

(*b*) has not passed such educational test, if any, as Government think fit from time to time to prescribe in this behalf ;

(*c*) has attained sixty years of age, except when such person's appointment or continuance in office is specially permitted by the Collector ;

(*d*) is in the opinion of the Collector disabled by lunacy or imbecility of mind, or by deafness, blindness or other permanent infirmity of body ;

(*e*) has been adjudged by the Collector after a summary inquiry held in accordance with the provisions relating to summary inquiries contained in the Bombay Land Revenue Code, 1879, to be of general bad character ;

(*ee*) is considered by the Collector to be unfit for office on the ground that he is a wilful defaulter in respect of land-revenue or any sum expressly declared by any law for the time being in force to be recoverable as an arrear of land-revenue ;

(*f*) has been sentenced by a Criminal Court to imprisonment or whipping for an offence punishable with imprisonment for a term exceeding six months, or to transportation, such sentence not having been subsequently reversed or quashed, and whose disqualification on account of such sentence has not been removed by an order which the Governor in Council is hereby empowered to make, if he shall think fit, in this behalf ;

(*g*) declines to forsake, whilst officiating, some other employment which is, in the opinion of the Collector, incompatible with the due discharge of the duties of the office ;

(*h*) has been removed from office or declared to be ineligible for re-employment under section 58, unless his re-employment is expressly sanctioned by Government.

46. If an officiator at any time becomes unfit to officiate for any of the reasons specified in section 45, the Collector shall remove him from office and, subject to the other provisions of this Part, appoint another officiator.

Power to remove officiator or deputy of representative watandar who becomes unfit to officiate.

A deputy appointed by a representative watandar may at any time be removed from office by the Collector at the request of the representative watandar, if, in the opinion of the Collector, there are good grounds for such request.

47. If a representative watandar whose duty it is to officiate is rejected or removed under section 45 or 46, he may, subject to the provisions of section 49, appoint a deputy:

Procedure when a representative watandar is rejected or removed.

Provided that, whenever such representative watandar ceases to be disqualified under section 45, he shall become entitled, if otherwise fit, to serve in person in supersession of any such deputy, or to serve in person or (subject to the provisions of section 42) to appoint a deputy in supersession of any deputy appointed by the Collector.

48. If a deputy dies or resigns, or is rejected or removed by the Collector under section 45 or 46, the representative watandar whose duty it is to officiate may himself, if otherwise fit, perform the duties in place of such deputy or, subject to the provisions of sections 42 and 49, appoint another deputy.

Procedure when a deputy is rejected or ceases to officiate.

49. The Collector, instead of the representative watandar whose duty it is to officiate, shall himself appoint a deputy in any of the following cases:—

Cases where Collector, instead of the representative watandar, shall appoint a deputy.

(*a*) where the representative watandar is disabled by lunacy or imbecility of mind from appointing a deputy;

(*b*) where the representative watandar is disqualified under clause (*e*), (*f*) or (*h*) of section 45, whether or not he was a representative watandar at the time of his incurring such disqualification;

(*c*) where the representative watandar fails to comply with any requisition of the Collector to serve in person or to appoint a deputy under section 42, 43, 47 or 48, within two months from the date thereof;

(*d*) where the first person nominated by the representative watandar is rejected under section 45, and the second person nominated is also rejected under that section;

(*e*) where the representative watandar declines to appoint a person as his deputy in accordance with section 53;

(*f*) where a deputy appointed by the Collector under any of the above clauses dies or resigns.

50. (*Repealed by Act III of 1910*).

Female cannot officiate, but may nominate deputy.

51. No female shall perform in person the duties of any hereditary office; but if a representative watandar, or the guardian of a representative watandar, she may appoint a deputy.

Collector to appoint deputy when officiator suspended.

52. During the suspension of an officiating representative watandar or deputy, and during any vacancy, the duties shall temporarily be performed by a substitute, whether a watandar or not, appointed by the Collector.

Deputy must ordinarily be a member of the same family as the representative watandar whose duty it is to officiate.

53. Except as is otherwise provided in the last preceding section and in section 56, and, except as the Governor in Council shall by a general or special order from time to time otherwise direct, every deputy appointed under this Act shall be a member of the same family to which the representative watandar whose duty it is to officiate belongs, if there be a member of such family fit and willing to officiate, or, in default of such member, a watandar of the same watan who is fit and willing to officiate, and who is descended from the same original watandar as the representative watandar whose duty it is to officiate.

Term of appointment of deputy.

54. When the Collector appoints a deputy, it shall be for a term not exceeding five years.

When a watandar entitled to officiate appoints a deputy, it shall be for a term not less than five years, or for life.

The term of appointment of a deputy shall cease and determine on the right on this principal ceasing, or on the death of his principal, and any appointment of a deputy on behalf of a representative watandar under the age of eighteen years shall terminate on the attainment by such representative watandar of that age.

55. In the event of temporary absence or illness, an officiator may arrange with any fit person for the temporary conduct of the duties, but shall be liable in the penalties prescribed in sections 57 to 61.

Officiator if absent or ill may appoint substitute.

56. When the hereditary right to perform the duties of an hereditary office as deputies of the original watandar is vested in a family distinct from that of the original watandar, the custom shall be recognized, and the heads of the family entitled to perform the duties shall be registered and treated as representative watandars.

Head of family when to be treated as watandar.

PART IX.

Penalties.

57. It shall be lawful for the Collector to suspend any officiator from office during inquiry into alleged misconduct, and to punish any such officiator for misconduct or neglect of duty by suspension from office for a period not exceeding six months, or by fine not exceeding the fourth part of the annual emolument provided for the officiator.

Punishment of officiators.

The order of the Collector shall be final in such cases, except when the penalty is inflicted on an hereditary district officer.

58. It shall be lawful for the Collector, with the previous sanction of Government, in case of fraud, the wilful framing of incorrect records, habitual neglect of duty, or other grave misconduct on the part of an officiator, to remove him from office, or, if he has ceased to officiate, to declare that he is ineligible for re-employment in any hereditary office except with the sanction of Government.

Collector may remove officiator with sanction of Government.

59. (*Repealed by Act III of 1910.*)

60. When any representative watandar, or any deputy or substitute appointed by him, is convicted by a Criminal Court, not inferior to a Court of Session, of any offence in the discharge of his official duties, or of any of the offences specified in the second schedule, or of the abetment of any such offence, and such conviction is not subsequently reversed or quashed, the Governor in Council may direct the for-

Government may direct forfeiture of a watan.

feiture of the whole or of any part of any watan in which he has an interest. Such forfeiture may be either absolute or for such period as the Governor in Council thinks fit.

Forfeiture of life interest of officiator and deputy for misconduct of deputy.

61. All deputies appointed under this Act shall be subject to the same rules in the performance of the duties of their offices, and to the same penalties, except as otherwise provided, as the representative watandars themselves are subject to when officiating, and, in the case specified in section 58 of this Act, it shall be lawful for Government to direct the forfeiture of the life interest in the watan of the representative watandar entitled to officiate, whether the officiator, guilty of misconduct, be such representative watandar himself or a deputy appointed by him.

Order to be passed after investigation.

62. No order shall be passed under this Part except upon perusal of the judgment of a Court or after investigation recorded in writing.

PART X.

Inferior Village Hereditary Offices.

Application of Part X.

63. This part applies only to hereditary village-offices of lower degree than that of patil or kulkarni.

Powers granted to Collector.

64. The Collector is empowered, subject to the general control of Government—

(*a*) to register the names of individual watandars as holders of the office, or to register it as held by the whole body of watandars:

(*b*) to determine, when individual names are so registered, the rights, duties and responsibilities among themselves of the persons so registered, and the mode in which they shall be selected to perform the duties, whether by selection by the Collector or by defined rotation, or by election by the watandars, or otherwise, as may be expedient:

(*c*) to require, in cases where the registration is made in the name of the whole body of watandars, that they appoint so many fit persons as may be necessary to

perform the duties which the Collector may assign to them severally and jointly; such appointment to be made within a reasonable time to be previously fixed and notified to them by the Collector; in default of such appointment being made, the Collector may himself appoint:

(*d*) to provide for and enforce the joint responsibility of the whole body for the neglect of duty or misconduct of any of their number or their representatives; and, in cases where the crime of cattle poisoning is prevalent, with the sanction of Government to attach, during the pleasure of Government, the watans of the persons whom he may have reason to believe to have been guilty of, or to have connived at, the commission of the crime:

(*e*) to pass orders in regard to appointment, remuneration, period of service, suspension, fining and dismissal of persons officiating, the grant of leave of absence and other matters of discipline not expressly provided for by this or any other law for the time being in force.

PART XI.

The Register.

Collector to prepare and keep register.

65. The Collector shall prepare and keep all registers necessary for the purposes of this Act in the form which Government may from time to time prescribe. There shall be one register of lands and allowances in consideration whereof liability to perform service exists, and another of lands and allowances in respect of which no such liability exists.

Non-service Register what to contain.

66. In the register of lands and allowances the holders whereof are exempt from service, the Collector shall specify—

(*a*) the area of the lands, the survey number and assessment, the quit-rent leviable, and the nett revenue alienated by Government;

(*b*) the amount and nature of the cash or other allowances, and the source from which they are payable:

(*e*) the terms of the settlement under which the exemption is enjoyed:

(*d*) the names of the parties to such settlement with Government as indicated in the sanads issued to them:

(*e*) such other particulars as Government may from time to time order to be recorded.

Service Register what to contain.

67. In the register of lands and allowances in consideration whereof liability to serve still exists, the Collector shall specify—

(*a*) the area of the lands, the names of the occupants, the survey number and assessment, the quit-rent, if any, leviable, and the nett revenue alienated by Government, the amount and nature of the cash or other allowances, the source from which they are payable, and the land and allowances assigned for the remuneration of officiators:

(*b*) the names of the heads of families and of the representative watandars:

(*c*) whether the service is performed by one representative watandar or otherwise: if by several in successive periods, the order in which they are to succeed each other:

(*d*) the proportional share of the watan possessed by each head of family which may be expressed in annas or fractions of a rupee:

(*e*) the number of officiators required to perform the duties:

(*f*) the nature of the settlement of inferior village watans referred to in Part X:

(*g*) such other particulars as Government may (from time to time) order to be recorded.

Register to be corrected.

68. The register kept under this act shall be corrected or added to on the occasion of any change being made in accordance with the provisions of this Act in the particulars above specified.

PART XII.

Miscellaneous.

Service to be performed by watandars.

69. All watandars of whatever denomination whose liability to serve has not been commuted are legally bound, subject to the provisions of this Act, to render such service as has been customary or as is required by law.

Watan records the property of Government.

70. All records which have been or may be prepared by any watandar or by any officiator in an hereditary office in persuance of the duties of the office, or by order of a superior officer or of the present or former Government, are hereby declared to be the property of Government, and the Collector may enforce their production or the production of any State records in the possession of a watandar or of an officiator, in accordance with the provisions of sections 25 and 26 of the Bombay Land Revenue Code, 1879.

Watandars may sign village records.

71. With regard to hereditary offices not inferior to that of patel or kulkarni, it is hereby declared that every head of a family shall have the privilege of signing the abstract of village-land and revenues or other village papers which it may be customary for him to sign.

PART XIII.

Procedure and Appeals.

Evidence to be taken.

72. *Clause 1.*—It shall be lawful for the Collector or other officer conducting an investigation under this Act to take evidence, and in sections 193 and 228 of the Indian Penal Code the words "judicial proceeding" shall be taken to include any proceeding under this Act.

Clause 2.—Every person who shall have been summoned to give evidence or to produce any document in his possession, by the Collector or other officer conducting an investigation under this Act, shall be legally bound to attend or to produce such document.

73. *Clause 1.*—Except as hereinafter provided in clause 2 of this section, no order under Part III directing commutation of a watan, or under Part V assigning remuneration of officiators, or under Part VI determining the custom of the watan as to service and what persons should be registered as heads of families or representative watandars, or under Part VII determining the periods of service, shall be passed unless after an investigation recorded in writing and a proper opportunity afforded for the hearing of claims and the production of evidence.

Orders under Parts III, V, VI and VII to be passed after investigation in writing.

In each such investigation, and in removals from office under section 58, the Collector or other officer shall record his decision with the reasons therefor in his own hand-writing.

Clause 2.—Unless the Governor in Council shall otherwise direct, decisions passed subsequently to the year 1866 after an investigation recorded in writing, and after a proper opportunity had been afforded for the hearing of claims and the production of evidence, and which are recorded with the reasons therefor, in the handwriting of a Collector or his Assistant or Deputy, shall be accepted, in so far as they may not be inconsistent with the provisions of this Act, in lieu of fresh investigation and decision under this Act for the purpose of framing the register required in section 67.

Certain decisions passed since 1866 to be accepted in lieu of fresh investigation.

If any details necessary for the said register have not been recorded in any decision of the nature described above, but are forthcoming from the evidence taken in connection with such decision, they may be supplied from such evidence in lieu of fresh investigation for the completion of the register.

Such details as may not be forthcoming shall be obtained by such further investigation as the Collector may deem necessary.

74. The proceedings of the Collector shall be under the general control of the Commissioner and of Government.

Control of proceedings of Collector.

75. The Collector may require any investigation under Part X to be made by a Mamlatdar or Mahalkari, but the decision thereon shall be made by the Collector.

Mamlatdar may make investigation under Part X.

76. No appeal shall lie from any order made under section 64, clause (*e*) before final order, nor from any order registering any fact specified under section 67 clauses (*b*), (*c*), (*d*) & (*e*) where the effect of such order is merely to register the same facts as are already recorded in the existing registers kept according to law or under the orders of Government.

No appeal to lie save specially where provided.

77. Except as hereinbefore provided, one appeal only shall lie from every decision passed after investigation recorded in writing by a Collector, or by an Assistant Collector or Deputy Collector.

Appeal.

Such appeal, if from the decision of an Assistant Collector and Deputy Collector, shall lie to the Collector, and shall be made within sixty days from the date of the order appealed against.

Such appeal, if from the decision of the Collector, shall lie to the Commissioner, and shall be made within ninety days from the date of the order appealed against.

In computing the above periods the time required to prepare a copy of the order or decision appealed against shall be excluded.

78. Every petition of appeal shall be accompanied by a copy of the order or decision appealed against: and it shall be competent for the officer before whom the appeal is presented to reject the appeal if on perusal of the petition it appears to him that there is no sufficient ground for questioning the correctness of the decision, or for interfering with the order appealed against.

Copy of order to accompany petition of appeal. Appeal may be summarily rejected.

79. Government may call for and examine the record of the proceedings of any officer for the purpose of satisfying itself as to the legality or propriety of any order passed, and may reverse or modify the order as shall seem fit, or, if it seem necessary, may order a new inquiry.

Government may call for proceedings.

Government may delegate all or any of its powers under this section, except the power to revise an order made by a Collector under section 25, to any Commissioner, and such Commissioner may thereupon exercise such powers within the local limits of his

jurisdiction, subject to the revisional powers of Government under this section, and to any restrictions that Government may deem fit to impose.

Notice how to be served.

80. Service of any notice given under this Act shall be deemed to have been made by the notice being affixed in writing to the wall of the village chavdi or other public place in the village not less than seven days before action is required to be taken by any person thereon.

Recoveries how made.

81. All recoveries of profits from land, assessments, emoluments or penalties under this Act may be made as provided by any law for the time being in force relating to the recovery of the land-revenue.

Government to frame rules.

82. Government may frame rules not inconsistent with thi Act for the guidance of its officers in cases not expressly provided for, and may from time to time modify or revoke any such rules.

Government to determine duties of hereditary officers.

83. Except as is otherwise provided in section 18, Government shall have power, in cases where doubt exists, to determine what duties appertain to any hereditary office.

Grant of powers to special officers.

84. The Governor in Council may from time to time confer on any officer specially selected for the purpose, or, so far as concerns any alienated village, on the holder or on any of the holders of such village or on any agent of the holder of such village, all or any of the powers and duties which under this Act are required to be performed by a Commissioner or a Collector, and may authorize the delegation to any Mamlatdar or Mahalkari of the power to fine hereditary village officer in sums not exceeding two rupees.

Powers and duties conferred under this section shall be exercised or performed subject to such conditions, if any, in addition to those specified in this Act, as the Governor in Council shall, from time to time, think fit to prescribe, and any order conferring powers and duties under this section may at any time be cancelled by the Governor in Council.

85. Nothing in this Act contained shall be deemed to affect Bombay Act VIII of 1867 or any other law for the time being in force, defining the duties and powers of village officers or imposing penalties for misconduct; and all references in such laws to Act XI of 1843 shall be taken as made to this Act.

Act not to affect Bombay Act VIII of 1867

SCHEDULE.

(Repealed by Act XII of 1876.)

SECOND SCHEDULE.

(Refer to page 394.)

ACT V OF 1886.

Whereas it is expedient to amend the Bombay Hereditary Offices Act, 1874, in manner hereinafter appearing; it is enacted as follows:—

2. Every female member of a watan family other than the widow of the last male owner, and every person claiming through a female, shall be postponed, in the order of succession to any watan, or part thereof or interest therein, devolving by inheritance after the date when this Act comes into force, to every male member of the family qualified to inherit such watan, or part thereof, or interest therein.

The interest of a widow in any watan or part thereof shall be for the term of her life or until her marriage only.

APPENDIX I.

(A) Jurisdiction of Civil Courts.

S. 9 of the Civil Procedure Code of 1908 vests in the Civil Courts jurisdiction to try all suits of a civil nature, excepting suits of which their cognizance is barred by any enactment for the time being in force. This Act, the Bombay Revenue Jurisdiction Act, X of 1876, and the Pensions Act, XXIII of 1871, have considerably curtailed the jurisdiction of the Courts by withdrawing certain claims in watan and other matters from their cognizance. This is partly ascribed to a notion that the training undergone in the Judicial Department does not thoroughly enable the presiding officers of Civil Courts to dispose of such cases with sufficient insight and despatch, and that the Revenue Officers, who visit the villages and inquire on the spot, and are well acquainted with the customs of watans, &c., are much better qualified to deal with those cases than the Civil Courts can be.

S. 4. Subject to the exceptions hereinafter appearing, no Civil Court shall exercise jurisdiction as to any of the following matters :

(*a*) claims against Government relating to any property appertaining to the office of any hereditary officer appointed or recognised under Bombay Act No. III of 1874 or any other law for the time being in force, or of any other village-officer or servant, or

claims to perform the duties of any such officer or servant, or in respect of any injury caused by exclusion from such office or service, or

suits to set aside or avoid any order under the same Act or any other law relating to the same subject for the time being in force passed by Government or any officer duly authorized in that behalf, or

claims against Government relating to lands held under treaty, or to lands granted or held as *saranjam*, or on other political tenure, or to lands declared by Government or any officer duly authorized in that behalf to be held for service ;

(*b*) objections—

to the amount or incidence of any assessment of land-revenue authorized by Government, or

to the mode of assessment, or to the principle on which such assessment is fixed, or

to the validity or effect of the notification of survey or settlement, or of any notification determining the period of settlement;

(*c*) claims connected with or arising out of any proceedings for the realization of land-revenue or the rendering of assistance, by Government or any officer duly authorized in that behalf, to superior holders or occupants for the recovery of their dues from inferior holders or tenants;

claims to set aside, on account of irregularity, mistake or any other ground except fraud, sales for arrears of land-revenue;

(*d*) claims against Government—

(1) to be entered in the revenue-survey or settlement records or village papers as liable for the land-revenue, or as superior holder, inferior holder, occupant or tenant, or

(2) to have any entry made in any record of a revenue-survey or settlement, or

(3) to have any such entry either omitted or amended;

(*e*) the distribution of land or allotment of land-revenue on partition of any estate under Bombay Act IV of 1868 or any other law for the time being in force;

(*f*) claims against Government—

to hold land wholly or partially free from payment of land-revenue, or

to receive payments charged on or payable out of the land-revenue, or

to set aside any cess or rate authorized by Government under the provisions of any law for the time being in force, or respecting the occupation of waste or vacant land belonging to Government;

(*g*) claims regarding boundaries fixed under Bombay Act No. I of 1865, or any other law for the time being in force, or to set aside any order passed by a competent officer under any such law with regard to boundary marks :

Provided that if any person claim to hold wholly or partially exempt from payment of land-revenue under—

(*h*) any enactment for the time being in force expressly creating an exemption not before existing in favour of an individual or of any class of persons, or expressly confirming such an exemption on the ground of its being shown in a public record, or of its having existed for a specified term of years, or

(*i*) an instrument or sanad given by or by order of the Governor of Bombay in Council under Bombay Act No. II of 1863, section 1, clause first or Bombay Act No. 7 of 1868, section 2, clause first, or

(*j*) Any other written grant by the British Government expressly creating or confirming such exemption or

(*k*) a judgment by a Court of law, or an adjudication duly passed by a competent officer under Bombay Regulation XVII of 1827, Chapter X, or under Act No. XI of 1852, which declares the particular property in dispute to be exempt ;

such claim shall be cognizable in the Civil Courts.

S. 5. Nothing in section 4 shall be held to prevent the Civil Courts from entertaining the following suits :

(*a*) suits against Government to contest the amount claimed, or paid under protest, or recovered as land-revenue, on the ground that such amount is in excess of the amount authorised in that behalf by Government, or that such amount had, previous to such claim, payment or recovery, been satisfied, in whole or in part, or that the plaintiff, or the person whom he represents, is not the person liable for such amount ;

(*b*) suits between private parties for the purpose of establishing any private right, although it may be affected by

any entry in any record of a revenue-survey or settlement or in any village papers;

(*c*) suits between superior holders or occupants and inferior holders or tenants regarding the dues claimed or recovered from the latter;

and nothing in section 4, clause (*g*), shall be held to prevent the Civil Courts from entertaining suits, other than suits against Government for possession of any land being a whole survey-number or a recognised share of a survey-number;

and nothing in section 4 shall be held to prevent the Civil Courts in districts mentioned in the second schedule* ..... from exercising such jurisdiction as, according to the terms of any law in force on the twenty-eighth day of March 1876, they could have exercised over claims against Government—

(*a*) Relating to any property appertaining to the office of any hereditary officer appointed or recognised under Bombay Act No. III of 1874 or any other law for the time being in force, or of any other village officer or servant:

(*b*) To hold land wholly or partially free from payment of land-revenue.

(*c*) To receive payments charged on, or payable out of, the land-revenue.

S. 6. Revenue-officers shall not be liable to be sued for damages in any Civil Court for any act *bona fide* done or ordered to be done by them as such in pursuance of the provisions of any law for the time being in force.

If any Revenue-officer absconds or does not attend when called on by his official superior, and if the Collector of the District proceeds against him or his sureties for public money, papers or property according to the provisions of any law for the time being in force, such Collector shall not be liable to pay damages or costs in any suit brought against him by such officer or sureties although

*The Districts referred to are: Ahmedabad, Kaira exclusive of the Panch Mahals, Broach, Surat exclusive of the lapsed State of Mandvi, as described in the schedule annexed to Act X of 1848, Thana, Kolaba exclusive of the lapsed State of Kolaba mentioned in Act VIII of 1883, Ratnagiri and Kanara.

it appears that a part only, or no part whatever, of the sum demanded was due from the officer so absconding or failing to attend, or that he was not in possession of the papers or property demanded of him.

S. 11. No Civil Court shall entertain any suit against Government on account of any act or omission of any Revenue-officer unless the plaintiff first proves that, previously to bringing his suit, he has presented all such appeals allowed by the law for the time being in force as, within the period of limitation allowed for bringing such suit, it was possible to present.

Pending suits would not be affected by this enactment. They should be decided according to the then existing law (*Rul.* 9).

The Civil Courts have jurisdiction to entertain a suit to be declared a watandar against Government along with other parties especially when they are the partisans of one side and do not set up any independent title in themselves (*Ruls.* 14, 17, 23). A suit to establish a right to a share in the emoluments of a watan (which has ceased to be a service watan) will lie (*Rul.* 11). Rights of the members of a particular branch *inter se* can be determined by the Civil Courts (*Rul.* 20). They can order partition, &c., of partible watan property. A suit for a declaration that the plaintiff is the nearest heir of a deceased representative watandar is maintainable under s. 36 of the Watan Act notwithstanding that it is manifest that the declaration is sought for the purpose of establishing a fact which would enable the plaintiff to have his name entered in the register (*Rul.* 32). But the Civil Court has absolutely nothing to do with the question as to who is a representative watandar. What the Civil Court can do is that if in any watan family there are four members A, B, C and D, it can declare who out of these is the next representative of the senior branch. At the most, it can say that each has a four anna share. But beyond this the Civil Court cannot go. The Civil Court cannot pass an order saying that A is the representative watandar. S. 25 of the Watan Act imposes the duty upon the Collector of determining the custom of a watan and what person shall be recognised as representa-

tive watandar. The Civil Court has no jurisdiction to entertain a suit for a declaration of right to officiate as the sole representative of a branch of a watandar family. The Watan Act constitutes the Collector a judge for this and other purposes of the Act (*Ruls.* 8, 10, 21). Suit for recovery of land assigned as remuneration of a Shetsanadi is not maintainable (*Rul.* 30). The Civil Courts have jurisdiction to determine the liability of a person for the perquisites of a watandar (*Rul.* 16). But no civil suit would lie to enforce specifically or in the shape of damages a custom or agreement relating to the office of a watan or any watan property or office right (*Ruls.* 12, 13, 15); nor to set aside an order of the Collector passed within his *prima facie* jurisdiction (*Vide Rul.*6 under ss. 16 to 21). The Courts have no authority to review the proceedings of the Collector as long as he acts within his jurisdiction; but when he acts without jurisdiction, they can interfere with his orders. His proceedings under the Watan Act are subject to the revisional powers of the High Court. (*Vide Rulings* under ss. 8 to 13).

The recent amendment of s. 36 of the Watan Act has changed the law as regards the jurisdiction of the Collector in determining who is or is not a watandar. The Collector had no jurisdiction before the amendment to determine who was a watandar; at least his word on that point was not final. It was exclusively for the Civil Court to determine that point. Now the Collector can and must determine who is a watandar as also who is the nearest heir, and his word is final. The Civil Court will have jurisdiction as before in determining who is a watandar &c., but not exclusive or final as before. The Collector may take into consideration the decree of the Court in giving his decision but it is in no way binding on him now as it was before.

The case of *Ramrao v. The Secretary of State* (*Rul.* 23) markedly brings to notice what appears to be a defect in the law. No effectual remedy seems open to the decree-holder, if Government still refuse to recognise him as the rightful watandar. The prohibition enacted in s. 4 (*a*) of the Revenue Jurisdiction Act being absolute would preclude the decree-holder from successfully

suing the Government to recover his watan-property or service right, and in effect render his declaratory decree though given by the highest tribunal simply valueless and nugatory. S. 4 (*q*), therefore seems to require amendment. The decree-holder can, it is thought, invoke the exercise of the revisional jurisdiction of the High Court, as the said section is confined to a prohibition of *suits* only.

The decision in *S. J. DeSouza v. The Secretary of State* (*Rul.* 19) appears to be perfectly correct on the case as laid before the Court. It is presumed from the absence of any argument to the contrary that the Collector in that case had the authority of Government to act in the way he did, and that therefore the suit was properly brought against the Government and not against him. But supposing the Collector had acted on his own responsibility without any reference to Government, he would have, it is submitted, rendered himself liable to a civil suit. S. 4 (*a*) precludes suits against *Government* only, and obviously a Collector exercising statutory powers under the Watan Act is not Government. There is no provision in the said Act empowering a Collector to restrain a watandar from selling his personal interest in the watan property. The action of the Collector, therefore, in the case supposed would not have been covered by anything contained in s. 4 (*a*) of Act X so as to exclude *ab initio* the jurisdiction of the Civil Court.

Appeal rejected as time-barred is an appeal within the meaning of s. 11 of the Revenue Jurisdiction Act (*Rul.* 25). There is sufficient compliance with s. 11 if the appeal is *presented* before filing a suit. It is not incumbent on the plaintiff to wait for a reply (*Rul.* 26). Only appeals in respect of the act or omission to in s. 11 are intended (*Rul.* 29).

Some *Rulings* under the Revenue Jurisdiction Act, which have no reference to the Watan Act particularly, are given at the end being of general importance.

RULINGS.

Suit to declare right of *vadilki* would not lie.

1. In a suit brought for a declaration of right to the *vadilki* or eldership in a family of patels, with a view to prove title to the patelki, *held*, that the Civil Court had no right to entertain such a claim, in order to influence the controlling revenue officer

who had the power, in certain cases, to nominate, from among the sharers of a family of hereditary officers, a representative to discharge the duties of the hereditary office, "If it were proved over and over again that the appellant was the *vadil*, we hold that the Court had no jurisdiction to substitute him as patel in lieu of a junior member nominated by the Collector under s. 4, Act XI, 1853, if the Collector exercised his power of selection upon failure of the sharers to nominate some fit person for the office." *Abaji v. Niloji.* 2 B. H. C. R., 342.

Declaration as to status may be made.

2. Where the plaintiff sued to be declared entitled to the office of *mulki* patel as being senior of his family and alleged that the defendant, the actual incumbent, had no right to share in the management of the watan, and had, in fact, until 1866, upon the death of the father of the plaintiff, never done so, *held*, that the Civil Court had jurisdiction to entertain the claim. "In the case of *Abaji* (*supra*, 1) both parties were admittedly sharers, and the then plaintiff wished to be declared *vadil*. Here the plaintiff alleges that the defendant has never shared in the management of the watan at all, and that he is sole owner. This is a different matter, as under Act XI, the Collector must choose between the sharers. If therefore the defendant be not a sharer, his appointment would not be legal. The Court has, therefore, jurisdiction." *Vithu v. Amrita.* 7 B. H. C. R., 72, A. C. J.

Perquisites.

3. A suit by one of the Mhars against his fellow Mhars to establish his right to share in the Mhars' perquisites, such as the carcasses of dead animals, &c., will lie, though such a claim be not tenable against the ryots who may have owned such animals when alive. *Yellapa v. Mankia.* 8 B. H. C. R., 27, A. C. J.

Suit to be declared *vadil* does not lie.

4. A suit to be declared *vadil* among holders of a patelki watan will not lie, as upon such declaration no consequential relief can be given. *Yesaji v. Yesaji.* 8 B. H. C. R., 35, A. C. J.

Extent of power of Bombay Legislature.

5. Clause 2, s. 2, Act VII, 1863, enacts that no suit between Government and holders of any lands held for service in regard to the tenure of such lands shall be entertained in any Civil Court. *Held* that the phrase lands "held for service" means lands declared by Govern-

ment under s. 32 (*d*) of the Act to be so held though the plaintiff may deny that the lands in respect of which he sues are service lands. The Governor of Bombay in Council has power to pass Acts limiting or regulating the jurisdiction of the Courts in the mofussil established by the local Legislature, and such Acts are not void because their indirect effect may be to increase or diminish the occasions for the exercise of the appellate jurisdiction of the High Court. The policy of Government in its course of legislation of recent years with reference to judicial institutions, as compared with its policy at the time when the Elphinstone Code (of Regulations) was passed, was reviewed. "A dependant Government can make laws for purposes consistent with the laws of the dominant country applicable to the dependency. It was solely in the exercise of such a power as this that the Zilla Courts were constituted by the Regulation-Courts which have been recognised and substantially continued by Act XIV, 1869. That Act is one passed by the Governor General in Council, but Bombay Act VII, 1863, was passed while the District Courts subsisted under their original constitution alone. The powers of the Governor in Council for legislative purposes are defined by Statute 24 and 25 Vic. c. 67, s. 42. He may 'make laws for the peace and good government of (this) Presidency, and for that purpose repeal and amend any laws made prior to the coming into operation of this Act by any authority in India so far as they affect (this) Presidency.' In the next section there follows a specification of certain subjects on which the Governor in Council is not to legislate, but amongst those no mention occurs of the jurisdiction of the mofussil Courts. It cannot be said that the regulation of the Civil Courts and their powers is not an element of the 'peace and good government of the Presidency; and when the local Government found it consistent with its policy to limit the powers of the Courts in the case of service lands, it was quite within its competence to make such modifications of the laws previously in force as were necessary for that purpose. It was pressed on us that as an appeal to the High Court lies in all cases tried originally by the District Court, the Act goes directly to deprive the High Court of a jurisdiction conferred on it by statute and in one sense there is some force in this argument but we do not think that this operation of the Act can reasonably be held 'to affect the provisions' of the statute intended by the Leg

islature. Every ordinary law passed by the Governor in Council, if it is to be effectual, must be made so by some sanction. That sanction must be enforced by the Courts subject to the appellate and superintending authority of the High Court. Thus the passing of such a law necessarily adds to the jurisdiction of this Court in the sense of the number of subjects to which its judicial authority may possibly be extended. Conversely, every repealing Act diminishes its jurisdiction in a similar sense. Are the Acts therefore void? Such a conclusion, completely paralysing the local Legislature, would obviously defeat, not promote, the purposes of the Imperial Parliament. The provisions of the statute must plainly receive a more liberal construction, one liberal enough to admit of the local Legislature extending or restricting the powers of the Courts, its own creatures, even though the possible occasion for the exercise of this Court's jurisdiction may thus indirectly be increased or diminished in number. The course of legislation on similar subjects in recent times shows a greater construction of the spirit of liberality, and of confidence in its judicial institutions, which animated the Government in framing the Elphinstone Code of 1827. The merits or demerits of this policy we do not intend to discuss, but we must note the fact as throwing light on the probable intentions of the Legislature in passing Bombay Act VII of 1863." *Premshankar v. Government of Bombay*, 8 B. H. C. R., 195, A. C. J.

The tendency of Indian legislation observed upon.

6. Where plaintiff sued for a declaration of his eligibility to the office of patel, if elected under Act XI, 1843, he having been obliged to establish his eligibility in consequence of the defendant's persistent denial of the plaintiff's claim to such eligibility whereby the Revenue authorities were induced to refuse to recognise it; *held* that the suit was maintainable, also that such a suit would lie even when the object of it was only to enable the plaintiff to influence the Revenue authorities by showing that the Court had declared him eligible for office. "The cases (*supra* 1 and 4) are not in point. In them the plaintiff sought to be declared *vadil*, but as the position of *vadil* among watandars is not recognised by Act XI, and, therefore, the declaration by the Court as to who is *vadil* would not in any way entitle a person to claim the office to the exclusion of the other members of the family nor even establish a preference in his favour, the Court declared

Declaration of eligibility to office may be granted.

that the suit will not lie, as upon such declaration no consequential relief could be given. In this case, the plaintiff seeks to get a decree, declaring his eligibility to the office if elected, and he has been obliged to establish his eligibility, because his claim to be eligible has been persistently denied by the defendant, and the objection of the defendant has induced the Revenue authorities to recognise his eligibility. That such a suit is cognizable has been repeatedly recognised by this Court, and that such a suit will lie, even when the object of it is only to enable the plaintiff to influence the Revenue authorities, is further supported by the remarks of the Privy Council in *Sadat Alikhan v. Khajeh Abdul* (11 Ben. 227 2 Suth. P. C. R., 785, in which it was held that where a declaratory decree is sought without consequential relief in the same suit, the Court must see that the declaration of right may be the foundation of relief somewhere). *Ningangavda v. Satyangavda.* 11 B. H. C. R., 232.

Suit to establish right to a share will lie.

7. Though a Civil Court has no jurisdiction to declare an admitted sharer in a patelki watan entitled to a preference over his co-sharers in the enjoyment of the office of patel, yet where the plaintiff sues to establish a right, denied by the other co-sharers to a share in the watan and eligibility for the office, the Court has jurisdiction to adjudicate on the claim. *Babaji v. Nana.* 1 Bom., 535.

Collector, sole Judge to determine who is representative watandar.

8. From the date of the coming into force of Act III, 1874, it is not competent to the Civil Court to entertain a suit for a declaration of right to officiate as the sole representative of a branch of a watandar family, the Act constituting the Collector a Judge for this and other purposes of the Act. "Though the Collector may have full power, it is argued, to determine who shall be recognised as amongst the class of those capable of officiating, yet, as to the abstract rights of the sharers *inter se*, the Civil Court may pronounce still as it did formerly before the passing of the new Act. The plaintiff claims a right to perform the duties of an hereditary office to the exclusion of the defendant. Such duties, s. 24 says, shall be performed by the representative watandar. S. 25 makes it the duty of the Collector to determine what persons shall be recognised as representative watandars, and in several following

tion made by himself, and according to his own judgment, not according under different circumstances. Although, therefore, the provisions of an Act which transfers a class of determination from the ordinary Courts to executive officers are in some cases to be construed restrictively, it appears to us that in this instance the intention of the Legislature to transfer the jurisdiction from the ordinary Judges to the Collectors is too clear to be doubted. The Collector was formerly a merely executive officer, with a certain legal importance attaching to his acts under ss. 19 and 20 of Reg. XVI, 1827, but subject to control in the performance of those acts by the Civil Court. He has now been made a Judge for the particular purposes of the Watandars' Act. His jurisdiction in that character could not be interfered with so long as it was exercised in the way provided in the Act. It is only essential that he conform to the mode of exercising his statutory power prescribed by the law which confers it. It appears to us, then, that the Civil Courts have no power to give to the plaintiff the declaration that he seeks, because not only can they not afford a consequential remedy but because they can no longer establish a right which the Collector would be bound to respect. Every watandar now is as against other co watandars placed as regards the Civil Courts in the same position that the rightful claimant to a *vadilki* formerly occupied. As the fact of being *vadil* gave to him in whom the quality was vested no preferential right beyond what appertained to the watandars generally, so now the relations of all the watandars *inter se* with reference to their recognition as representatives are placed entirely at the disposal of the Collector. The decision in *Abeji* (*supra*, 1) therefore applies to this case. That decision was recognised as binding in *Ningangavda* (*supra*, 6), although another case (*Sadat Alikhan*) was pointed to in which the right of action and the jurisdiction of the Court were recognised where the active enforcement in detail of the decree sought would devolve on another authority. In such a case a right would be constituted which the other authority would have to respect; here, however emphatically the Courts might pronounce in favour of the plaintiff's right, still as both parties are admittedly and equally co-watandars, the Collector, and the Collector alone, could admit either or both of them to the class of representatives capable of officiating under the present law. This he would have to do on an investiga-

cording to the view taken by this Court. Its decree in favour of the plaintiff would thus be purely abortive. The establishment of the new jurisdiction thus excludes the older one." *Khando v. Apaji*. 2 Bom., 370.

Pending suits to be decided according to then existing law.

9. "It is urged that the new Act has taken the matter out of the jurisdiction of the Civil Courts. But the Act says nothing as to pending suits, and, in the absence of such a provision, this suit, instituted before the Act was passed, is to be disposed of according to the law as it stood when the litigation began (*i. e.* when the suit was filed). Taking it as a correct proposition that the right of action formerly subsisting has now been withdrawn, it is a general rule that when the Legislature alters the rights of parties by taking away or conferring any right of action, its enactments, unless in express terms they apply to pending actions, do not affect them. It is, therefore, declared that plaintiff is entitled to a moiety of the office of kulkarni. This decree will not effect the exercise, by the Collector, of any powers vested in him by the new Act, the parties on both sides being acknowledged sharers of the watan." *Bhujang v. Sanjiv, referred to* in 2 Bom., 374.

No suit will lie to obtain declaration of eligibility to officiate.

10. Since Act III came into force, no suit will lie in a Civil Court for a declaration that a person is eligible to officiate as hereditary officer falling within the scope of the Act. Since that Act became law, none but representative watandars, or their deputies or substitutes, can officiate; and the duty of determining what persons shall be recognised as representative watandars is vested in the Collector, whose proceeding is a judicial proceeding. "The High Court, even before the passing of the Act, never went so far as to declare any member of any family of watandars to be the representative of that family. It expressly refused to do so in *Abaji* (*supra*, 1). It has declared a person to be eligible to officiate (*Ningangavda, supra*, 6) but not that he was so in preference to any other member. The Act vests the determination of what persons shall be recognised as representative watandars in the Collector (s. 25). His proceeding is a judicial proceeding (s. 72) and there is an appeal from him to the Commissioner (s. 77). These enactments seem to exclude, by direct implication, any right on

the part of the Civil Courts to declare that persons are eligible to serve as officiators. The principle on which the decision in the case of *Khando* (*supra*, 8) was arrived at, is applicable to this case." *Chinto v. Lakshmibai.* 2 Bom., 375.

Suit to establish right to share in emoluments will lie.

11. Neither Act III of 1878, nor Act X of 1876, contains any provision excluding the jurisdiction of Civil Courts in a suit brought to establish a share in the emoluments of a watan which has ceased to be a service watan. (The plaintiff produced a certificate from the Collector as required (?) by s. 6, Act III, 1874, sanctioning the suit. The watan in question, called *nirkhi*, was an office for fixing and recording current prices. It had been originally a service watan, but had ceased to be such at the date of the suit, a settlement having been entered into whereby a certain cash allowance was paid in lieu of service. No reasons are given for the decision). *Moheyodin v. Chhotibibi.* 5 Bom., 578.

No relief for breach, &c., of agreement as to turns of service, awardable.

12. The Civil Court cannot entertain a suit which seeks to recover damages against the defendant for wrongly continuing in office as patel, instead of resigning in favour of the plaintiff, in obedience to family custom which entitled the plaintiff to serve as patel every fourth year, whereby the plaintiff lost the emoluments of the office. *Quere*—Whether the claims excluded by Act X, 1876 as amended by Act XVI, 1877, s. 1, are limited to claims against Government. "Notwithstanding the provisions of ss. 24, 25, &c., expressly assign to the Collector the ascertainment and determination of the family custom, the lower Courts have taken upon themselves the function which belongs exclusively to the Collector, and have determined the family custom as to the service in relation to patelship, and have given damages for breach by the defendant of that custom in not resigning the office. They have, in fact, held that the defendant was bound by that custom not only to resign office, but to assent in writing to the nomination of the plaintiff as his successor. If this be not entertaining a suit for what is substantially the establishment of the right of a particular person to officiate, we do not know what it is. Such an action cannot be entertained by a Civil Court." *Vasudev v. Ramchandra.* 6 Bom., 129.

Ditto.

13. "The only injury which plaintiff alleges is that the defendant has prevented the recognition, by the Collector, of his right to officiate as patel. This is an injury of which the Courts can no longer take

cognizance. Had he alleged that he had been interfered with in the enjoyment of the estate or the emoluments attached to the watan, it might have been competent to the Court to make a declaratory decree of his right to enjoy or participate in such estate or emoluments." *Ganpatrav v. Rangrav.* 6 Bom., 133.

Suit to be declared a watandar, maintainable

14. Under the Act III of 1874, as under the law antecedent to it, the Civil Court has jurisdiction to entertain a suit to be declared a watandar. This jurisdiction rests on the simple denial of the plaintiff's right by the defendant, irrespective of the pecuniary loss or other injury caused or likely to arise to the plaintiff by its infraction. When the list of watandars is either undisputed, or settled by the decree of the Civil Court, the Collector derives jurisdiction under the Act to determine which of them shall be their representative. "The course of decisions prior to the Act clearly established the jurisdiction of Courts to determine whether a plaintiff claiming to be a watandar against denial of his rights by another had such right. Then, as now, the Collector had authority to accept or reject, and, in some cases, to appoint an officiator; and when the suit was directed to coercing his authority, the Courts refused to entertain it; but that was thought a case entirely different from one in which the question was of the plaintiff's right to be ranked as a watandar. In the matter of an application, this Court held a suit maintainable against a watandar for inducing the Collector to remove the plaintiff's name from the list of watandar sharers. It is contended that now the effect of Act III is to make the Collector a Judge of who shall or shall not be a representative watandar, and that as his decision on that point is conclusive, the jurisdiction of the Civil Court is excluded. The Act, in giving the Collector jurisdiction to pronounce who amongst the watandars shall be representatives, does not give him jurisdiction to determine who, in disputed cases, shall be watandars within the definition given in the Act. A particular mode of dealing between persons whose relative status is unquestioned does not extend to the determination of a question as to the status itself; and here the question being as to the plaintiffs' right to rank as watandars, the jurisdiction of the Court over the dispute does not admit of serious doubt. The discretion of the Collector comes into play when these who are to be its subjects is determined. From the denial of the status, in the

Extent of Collector's jurisdiction.

course of time, a bar by limitation would arise to the plaintiffs' assertion of their right. Where a right is set up, the Court must adjudicate on the right, though the pecuniary loss in the particular case may be inappreciable. A declaration of right may properly be claimed wherever a right is met by an assertion of a contradictory right which the asserter professes an intention to use, so as to dispute and invade the right really existing. A wrong, there ore, though its effects are wholly in the future, still gives a claim to relief and the claim cannot be met by an allegation of no immediate palpable injury. In this case, the plaintiffs sue for a partition. Their title is denied. It cannot be said that they were wrong in including the watan in their suit. The mere denial of their right gives the Court jurisdiction to pronounce on it, unless this jurisdiction has been withdrawn by some special law, and this, as we have seen, is not the case." In this case all the plaintiffs claimed to be declared *gavki* watandars, while Nos. 2 to 6 in addition demanded partition of a field. The defendants denied the plaintiffs' right. *Ramchandra v. Anant.* 8 Bom., 25.

No special damage need be proved.

15. A suit in respect of any injury caused by exclusion from office or service (claiming damages by reason of a breach of an agreement between the co-sharers) is barred by s. 4, cl. *a*, para 2, Act X, 1876. "With reference to the doubt suggested in the case of *Vasudev* (*supra*, 12) we are of opinion, having regard to the wording of the several clauses of s. 4, that the bar therein provided is not limited to suits against Government." *Naro v. Mahadev.* 12 Bom., 614.

S 4 Act X, 1876, applies to all suits, and not to suits against Government only.

16. Where the question between a watandar kulkarni and a ryot is whether the former is entitled to receive any perquisites at all from the latter the jurisdiction of the Civil Court is not taken away by Act III. But the decree passed would not affect the powers of the Collector under s. 17 when he chooses to exercise them. *Vishnu v. Ganu.* P. J., 1888, 2.

Suit to establish right under s. 17 will lie.

17. In a suit for a declaration that plaintiff was entitled to officiate as patel, and also that B, who had been appointed by the Collector to officiate, was a stranger to the watan, *held* that the sections rules are prescribed for the performance of this duty

Suit to obtain declaration of status of watandar will lie.

latter claim was not excluded by Act III from the jurisdiction of the Civil Courts. "As observed in *Ramchandra* (*supra*, 14) the discretion of the Collector only comes into play when those who are to be its subjects are determined, and so far, therefore, as the plaintiff asks for a declaration that defendant is not entitled to be on the list of watandars, it was clearly within the jurisdiction of the Court to entertain it." *Yellapa v. The Secretary of State.* P. J., 1888, 224.

S 18, Act III, 1874, bars suit.

18. S. 18 as much as s. 25 excludes by direct implication any right on the part of the Civil Courts to declare that persons are eligible to serve as hereditary officers under the Act. The plaintiffs sued as watandar *mahars* of certain villages to establish their right to receive the *aya* attached to their office, against defendants, who were the watandar *mangs* of the same villages, and who claimed the right to receive the *aya* equally with the plaintiffs. *Held*, that the suit was not cognizable by a Civil Court. "The claim is based on the alleged right of the plaintiffs to perform the duties in respect of which the *aya* is payable. They do not seek to establish their right generally to be recognised as *mahars*, from whose number the Collector could, under s. 18, select the persons liable to perform the duties, in which case the principle of decision in *Ramchandra* (*supra*, 14) might possibly be applicable to the case; but they claim the right themselves to perform the duties on account of which the *aya* is payable. The suit is, therefore, barred by s. 18, the clear intention of which is to leave such a matter to be defined, on an application being duly made to the Collector, by the *panchayat* appointed under the section. S. 64, moreover, empowers the Collector to determine the rights and duties of watandars independently of any control by the Civil Court. The case is, therefore, governed by the decisions in *K'hando v. Apaji* and *Chinto v. Lakshmibai* (*supra*, 8 and 10). The latter case was one under s. 25 which does not apply to hereditary officers of lower degree than patel and kulkarni, but the principle of the decision is applicable to this case." *Parsha v. Lagma.* 13 Bom., 83.

No suit against Government to try claim as to trees on watan land will lie

19. A Civil Court has no jurisdiction to try a claim against Government with respect to trees on patelki service inam land, as such a claim is one "relating to property appertaining to the office of an hereditary officer," within the meaning of Act X, 1876,

s. 4 (*a*). The words "property appertaining to the office of an hereditary officer appointed under Act III, 1874" do not apply only to property appropriated to the officiating member of the family, but to all property appertaining to the office. "The District Judge has found on the issue sent down that the holders of service inam lands had title to the trees on their lands and that they had the right to cut down trees without the permission of the Collector. A preliminary objection, however, has now been raised that the Civil Courts have no jurisdiction to try the question which is the subject of the issue sent down, as being a 'matter' within the contemplation of s. 4 (*a*), Act X, 1876. It was said that this Court having decided that the land was service inam land, not survey occupancy land as the plaintiff contended, it ceased to have jurisdiction over the plaintiff's claim against Government in respect of trees, as such a claim would be 'relating to property appertaining to the office of a village officer.' We think that this is the necessary result of the above action. The claim, having regard to the definition of 'land' as contained in the Act, undoubtedly 'relates to property appertaining to the office of an hereditary officer'; but it was said indeed that clause (*a*) was only intended to apply to property appropriated to the payment of the officiator. The expression used however, is 'hereditary officer,' and not the persons performing the duties of the 'hereditary office' to which by the Act of 1874 the distinct denomination is given of 'officiator', and by which we should expect him to have been referred to in s. 4, cl. (*a*) of the Act of 1876, had the intention been to confine the term 'property' to his remuneration." *See* same case under s. 4. *S. J. De Souza* v. *The Secretary of State*. 18 Bom., 319.

Suit to establish right as watandar maintainable.

20. There is nothing in Act III which takes away the power of a Civil Court to make a declaration that the plaintiff is the watandar of a share of a watan when the share so defined is in respect of a share in the watan belonging to a particular branch of the watandar family. as the Collector in preparing the register is in no way concerned with the rights of the members of a particular branch *inter se*. "It has long been settled that the Civil Court has still the power to declare the plaintiff's right to the status of watandars, *Ramchandra v. Anant* (*supra*, 14). It was said, however, that the decree of the Court in this case does more than

merely declare the status, as it defines the amount of the share in the watan. That is true, but the share so defined is in respect of the share in the watan belonging to their own particular branch, and the declaration does not interfere with the rights of the Collector in any way as given him by the Act. In preparing the register his duty as determined by s 67 is confined to specifying the names of the heads of families and the proportionate part possessed by each head, and is in no way concerned with the rights of the members of a particular branch *inter se.*" *Govind v. Bapuji*, 18 Bom, 516.

S. 4, Act X, 1876, bars suit as to right to officiate

21. Under Act X, 1876, s 4, cl. (*a*). para 2, the jurisdiction of a Civil Court is excluded in a suit by a Deshpande, an hereditary district officer, claiming against Government the right to perform the duties of a Deshpande's office. "Para 2 runs 'claims to perform the duties of any such officer or servant' The meaning of these words is to be taken from the preceding sentence: '(*a*) claims against Government relating to any property appertaining to the office of any hereditary officer appointed or recognised under Act III, or any other law for the time being in force, or of any other village officer or servant.' The plaintiff is a Deshpande. It is admitted that part of his claim is to perform duties of a Deshpande's office. On the construction of the first para to govern the second, two contentions are raised. The words 'any hereditary officer,' it is argued, are limited by the later word 'village' so as to exclude District Officers. We do not accept this view Act III admittedly deals with hereditary District officers; and the word 'any' would include them in its ordinary sense. The expression 'any other village officer or servant' will include those who are not hereditary, and for whom, therefore, the Act of 1874 does not make provisions Without straining the meaning of any of the words we can thus give effectual interpretation to the whole of the first para. The second contention is that as the present claim includes a claim to perform services not coming within the duties of the office, the second para has no application, as if after the word 'servant,' the words 'where nothing else is claimed' or similar words had been part of the statute. We are of opinion that the Court cannot interpret the para in this manner." *Narayan v. The Secretary of State*, P. J., 1894, 450.

22. Plaintiff sued for a declaration that the branch of the *Gavade* family which he represented was elder than that represented by the defendant. The object which he desired to obtain by a declaration in that form was to influence the Collector in determining whether he should not be recognised as the representative watandar in respect of the 4-anna share which the family possessed in a patelki watan. *Held* that the Civil Court had no jurisdiction, since the declaration sought, if made, would in effect be a declaration of plaintiff's *status* as representative watandar; this, however, equally with the duty of ascertaining the custom of the watan as to service is a duty which by s. 25 is imposed on the Collector and not upon the Civil Court. "Ss. 26 to 30 lay down elaborate rules to guide the Collector in ascertaining what the custom of the watan which he is to follow is. When he has ascertained it, s. 25 still imposes upon him the duty of determining what person shall be recognised as representative watandar and of registering his name. In this case a declaration of eldership would only assist the plaintiff if the custom is for the service to be performed by the representative of the elder branch. It is conceded that the Civil Court has no jurisdiction to enter upon an inquiry whether such is the custom of the watan or not. Assuming that it is, the decree would, in effect, be a decree declaring him to be the representative watandar in the family. That, however, is a duty which by s. 25 is imposed on the Collector. We think that the Courts are not entitled to assume a jurisdiction which the Legislature has entrusted to other hands. The law is accurately stated in *Ramchandra* (*supra*, 14) in this short sentence "Act III *in giving the Collector jurisdiction to pronounce who amongst the watandars shall be representatives* does not give him jurisdiction to determine who in disputed cases shall be watandars within the definition given in the Act." *Raoji v. Genu*, P. J., 1896, 433.

Suit to establish *patelki* right does not lie.

23. Where the dispute was between the Desais and a Lingayat family as to who were the watandar patels of a certain village, and as between the two the Civil Court had declared in 1865 that the former had the title, the Desais having also been in possession from 1865 to 1887, the Government purporting to act under Act III held that the Desais had no title as watandars and that they were merely usurpers. The Desais, therefore, brought a

Suit to establish status as watandar will lie even against Government.

suit against the Government and the Lingayat family for a declaration of their title. *Held*, that there was nothing in Act X, 1876, to prevent a Civil Court from taking cognizance of a suit against the Government, who have no power to determine under the Watan Act who are watandars, though their jurisdiction to determine who are representative watandars is exclusive under the Act. The order of the Collector, therefore, holding that the Desais had no title was *ultra vires* and a suit against Government for a declaration was properly brought. *Held* also, that as the Government were not setting up any independent title in themselves, but were simply the supporters of the Lingayat family the title of the Desais for a declaration being unimpeachable as against the latter, their title against Government must also be taken to be made out. "This case was remanded on the ground that although Act X, 1876, s. 4 (*a*) bars the claim against Government so far as it relates to property, that does not exclude the jurisdiction of the Court as regards the claim to a declaration that the plaintiffs are watandars. The District Judge has again dismissed the suit. The cause of action is between the Desais and the Lingayats, the Government lay no claim to the watan as owners, they are merely supporters of the Lingayats. The Desais have conclusively proved their title by the suits of 1865 and 1887. Government, however, consider the Lingayats to be the real owners and the Desais to be usurpers, and have ousted the Desais from the watan office and its lands, and placed the Lingayats in possession, and notwithstanding the decree in the suit of 1887, still adhere to that resolution. It has been argued that under Act III the Collector has the powers of determining who are and who are not watandars, and what is and what is not watan land, of ousting any one he pleases from watan land, of granting that land to any one he pleases, and of resuming or confiscating the watan of his own free will and pleasure, and that a Civil Court has no right to call in question, or interfere with, his exercise of any of these powers. No doubt, Act III gives large powers to the Collector, and Act X deprives Civil Courts of jurisdiction (in regard to the various claims mentioned in s. 4 of the Act); but there are certain matters over which jurisdiction is still left to be exercised by the Civil Courts and from which the jurisdiction of the Collector is excluded, and one of these is the determination of the status of being a watandar. This has been consistently ruled by this Court; and

indeed it is plain from the terms of Act III itself, for nowhere in that Act is any provision made for the determination by the Collector of what persons shall be held to be watandars, but only of what persons shall be recognised as representative watandars. When, therefore, the Collector in the present case held an inquiry and determined that the Lingayats, and not the Desais, were the owners of the watan in question, he exercised a jurisdiction not conferred upon him by Act III or by any other law for the time being in force. Rightly, therefore, have the Desais filed this suit in order to obtain a declaration of their status, and not only of their status, but of the status of the Lingayats also, for the determination of the one involves the determination of the other. They do not ask for anything more than their declaration; it is, therefore, unnecessary to discuss anything more than their right to that declaration. Thus narrowed down the case is a simple one, for the sole issue is, have the Desais proved that they, and not the Lingayats, are the owners of this watan? and the answer is in the affirmative, in fact, the issue is *res judicata*. It is admitted that from 1865 to 1885 the Desais have been in possession of the watan. The Government may call this usurpation, but it is possession of such a character as would alone confer on them a good title And if they have proved title as against the Lingayats they have also proved it against Government, for Government are not third parties setting up a title of their own, but merely supporters of the claim of the Lingayats. Of course, it must be remembered that we are not here dealing with the right of Government to resume the watan, to oust the Desais from it, and to confer it on the Lingayats; we are dealing only with the abstract question of title as between the Lingayats and the Desais; and with that question the Government is in no way concerned other than as a partisan of one of the two rival claimants." *Ramrao v. The Secretary of State*. P. J., 1896, 666.

Suit against patel and kulkarni for impressing cart can be entertained.

24. The patel and kulkarni of a village having impressed a pair of bullocks belonging to the plaintiff for the use of an Abkari Inspector, the plaintiff sued them for damages in the Court of a Subordinate Judge. The defendants pleaded (*inter alia*) that the Subordinate Judge had no jurisdiction to try the suit under the Bombay Revenue Jurisdiction Act and the Bombay Civil Courts Act. *Held*, that the suit was properly instituted in the

Court of the Subordinate Judge, as the defendants were sued in their private capacity. It is not clear that the rules about the impressment of carts found in Chapter I of Nairne's Revenue Hand Book actually order the village Patel to impress carts against the owner's will; neither it is clear what officers are to be supplied. There is nothing to show that any law ever imposed this duty on a kulkarni or that provision was made after the repeal of the Regulation of 1818 as regards patels except for military bodies. *Budho v. Keso.* 21 Bom., 773.

Appeal rejected as time-barred is an appeal within the meaning of s. 11.

25. Under section 11 of the Bombay Revenue Jurisdiction Act, in a suit to which that Act applies, the Court, before taking evidence on the merits, should require the plaintiff to prove first of all that he has, previously to bringing the suit, "presented all such appeals allowed by the law for the time being in force as within the period of limitation allowed for bringing such suit it was possible to present." The words 'an appeal allowed by law', used in section 11 do not mean "an appeal within the time allowed by law." They refer to the appeals which the law prescribes, and have no reference to the limitation in point of time, which the law may impose upon bringing of such appeals. The question is, "Is an appeal which is rejected as time-barred, an appeal within the meaning of the Act?" Such an appeal clearly satisfies the words of the statute. The bringing of such an appeal is a literal compliance with its terms. There is not any reason for construing the term "appeal" in other than its literal meaning. The section in question is not a complex statute of limitation for the protection of Government. Its object is to prevent Government from being exposed to law suits arising out of the orders of its subordinate officers before its superior officers have been afforded the opportunity of considering, and, it may be, of disallowing the executive orders of its subordinate officials. ... ... Statutes imposing restrictions upon the subject's right of suit should be construed strictly, and such restrictions should not be extended beyond what the words used actually cover." *Ranchhod v. The Secretary of State.* 22 Bom., 173 and 583; also P. J., 1897, 378.

Presenting an appeal is sufficient compliance with s. 11.

26. All that section 11 of the Bombay Revenue Jurisdiction Act requires is that the appeal referred to therein shall be *presented*. When, therefore, the only appeal allowed by law against a certain order of the Collector lay to the Commissioner and such appeal

was presented, *Held*, that the plaintiff was not bound to wait for a reply before filing his suit against Government. "There is no provision that the time occupied in the appeal shall be excluded in the period allowed by the law of limitation, so that a suit might easily become time-barred before a reply was received." *Abaji v. The Secretary of State.* 22 Bom., 579.

Suit for being declared to be a representative matadar cannot be entertained.

27. The Civil Courts have no jurisdiction to entertain a suit brought by a person for a declaration that he was a representative matadar of a mata held by his father and grand-father, and to oust from the mata another person whose name was already registered as a matadar by the Revenue authorities under the Matadars' Act, under which such disputes fall within the jurisdiction of the Collector. *Jivanbhai v. Narsidas* 1 Bom., L. R., 180.

S. 18 of Watan Act bars suit by Mhars for declaration of right to perform share of service and receive share of customary emoluments.

28. A civil Court has no jurisdiction to entertain a suit brought by mahars for a declaration that they are entitled to a share in the Maharki watan and for an injunction restraining the defendants from obstructing them in the enjoyment of the said share. "There is no dispute about the watan lands. The whole dispute is about the plaintiff's right to perform a share of the service for the villagers and to receive from them a share of the customary emoluments whether in money or kind. Now it seems to us that having regard to section 18 of the Watan Act, the Civil Courts have no jurisdiction to make the declaration sought or grant the injunction. The decision in *Parsha v Lagma* (*supra*. 18) is an express authority on the point. Section 18 reserves to the Collector the duty of defining, with the aid of a panchayat, or otherwise as provided, the nature and extent of the right to levy in money or kind, &c." "Whether a suit by mahars would lie for a declaration that they were members of a Maharki watan remains undecided." *Bhiva v. Vithya.* 2 Bom L. R., 869; also 25 Bom., 186.

'Appeals' in s. 11 means appeals in respect of act or omission referred to.

29. The expression "all such appeals" in section 11 of the Revenue Jurisdiction Act means appeals in respect of the act or omission. Therefore the bar of section 11 would not apply to a suit wherein the cause of action is not an order or decision in

respect of which there was a right of appeal under the Land Revenue Code. *Sakharam v. The Secretary of State for India.* 28 Bom., 332; also 6 Bom. L. R., 124.

Suit against Government for recovery of lands assigned as remuneration of a Shetsanadi not maintainable.

30. The plaintiff, a vendee of certain lands assigned as remuneration for village service (of a Shet-sanadi) having brought a suit for the recovery of the lands against the Secretary of State for India in Council and another defendant who was put in possession of the lands by Government officers, *Held*, that under section 4 (*a*) of the Bombay Revenue Jurisdiction Act, a Civil Court had no jurisdiction to entertain the suit against the Secretary of State (the grant being of land and not of revenue). The plaintiff having contended that his claim was for the possession of lands and not for the revenue arising therefrom which alone was granted, *Held*, that the plaintiff's vendor was put into the occupation of the land free from assessment as the reward of service and that his remuneration did not and could not consist in an exemption for assessment in respect of the lands without reference to his occupation. *Appaji v. The Secretary of State for India.* 28 Bom., 435; also 6 Bom. L. R, 438.

Suit for possession of holding exempt of land-revenue maintainable.

31. "The fact that the holding is claimed to be exempt of land-revenue does not change the suit into one relating to the grant of money or land revenue. The proviso to section 4 of the Bombay Revenue Jurisdiction Act contains no exceptions in respect of holdings unaccompanied by proprietary right in the soil and there is no saving clause which would suggest that such a claim to such holdings might fall within the purview of the Pensions Act. The right of an alienee of the revenue to sue for disturbance of his possession by a stranger or by Government is clearly recognised by the proviso to section 4, and the only condition required is that the claim should be under an enactment, instrument sanad, written grant or judgment such as is described in the proviso. The general presumption is against construing a statute as ousting or restricting the jurisdiction of the superior Courts. The intention must be expressed in clear terms, not merely implied but necessarily implied: the general rights of the Queen's subjects are not hastily to be

Law generally discussed.

assumed to be interfered with and taken away by Act of Parliament. Such statutes are to be strictly construed when their language is doubtful. A construction which would impliedly create a new jurisdiction is to be avoided, especially where it would have the effect of depriving the subject of his freehold or of any common law right, or of creating an arbitrary procedure. No doubt when a power has been conferred in unambiguous language by Statute, the Courts cannot interfere with its exercise and substitute their own discretion for that of persons or bodies selected by the Legislature for the purpose. Nor does any presumption arise against the finality of a decision by an authority with the statutory powers to pronounce in respect of a duty or liability created by the Statute. Thus in respect of the bounty of Government, to which no individual has a common law right, the Pensions Act and the Bombay Revenue Jurisdiction Act bar the jurisdiction of the Courts, save in cases when a right to have recourse thereto has been given by written authority or instrument. In the Watan Act, the jurisdiction to determine as to the right to recognition as a representative watandar, and perform the duties appertaining to that status is expressly reserved to the executive. "The High Court, even before the passing of the Watan Act, never went so far as to declare any member of a family or branch of a family of watandars to be the representative of that family or branch. It expressly refused to do so." Thus there was no common law right, no recourse to the ordinary Court before the Act, and no ouster of their jurisdiction by the Act. Similarly a right to entry in the watan register is not a common law right and the Courts can entertain no suit to establish that right. But the right to be declared as the adopted son of a registered watandar stands on a different footing and therefore no bar to the jurisdiction of the Courts can be implied. Similarly, interference with a legal right to the status of a watandar was held to give a cause of action cognizable by the Courts. The Courts have carefully avoided an implication of ouster of jurisdiction when legal rights are in question. These cases illustrate the rule that the presumption is against the intention to bar the cognizance of the Courts when proprietary rights are concerned, unless such intention is unambiguously expressed or is a necessary implication." *Balwant v. The Secretary of State.* 29 Bom., 480; also 7 Bom. L. R., 497.

Jurisdiction of Civil Courts under Watan Act.

32. Section 25 of the Watan Act imposes the duty upon the Collector of determining the custom of a watan and what person shall be recognised as representative watandar A suit for a declaration that the plaintiff is the nearest heir of a deceased representative watandar is maintainable under section 36 of the Act, notwithstanding that it is manifest that the declaration is sought for the purpose of establishing a fact which would enable the plaintiff to have his name entered in the watan register. "The cause of the suit was that in a dispute between the plaintiff and the defendant, the Collector had ruled that the defendant was the eldest son and that the plaintiff's name could not be entered as watandar patel unless he established his right as the eldest son by a decree of the Court..... A reference to the decision in *Raoji v. Genu* (22 Bom , 344, *supra*, 22) will show that the *ratio decidendi* was that the case fell under section 25 of the Watan Act, under which the duty is imposed upon the Collector of determining the custom of a watan and what person shall be recognised as representative watandar, and that the relief asked for in the suit involved the determination by the Civil Court of a question which by the section was expressly reserved for the determination of Collector. Section 36 provides that the person who shall be entered as representative watandar after the death of a representative watandar is the eldest son or other person appearing to be the nearest heir of such watandar. The question who is the eldest son is a question of fact. If the fact be established, the Collector has no choice in the matter unless there appears to be a nearer heir. The conclusive determination of the question whether the statutory condition of eldership or heirship is satisfied becomes, therefore, a matter of importance to a person claiming to be the eldest son or nearest heir, and it is a question which is not by the words of the Act reserved for the exclusive determination of the Collector." *Rahimkhan v. Dadamiya.* 34 Bom., 101 ; also 11 Bom. L. R., 1339.

Suit to be declared the nearest heir under s 33 of the Watan Act maintainable.

33. While the Courts may have jurisdiction to declare that the villagers of a specified village are entitled to rights of free pasturage over Government waste lands within the limits of their village, still they can go no further and enjoin the Collector to pursue any particular course in connection with them while

No jurisdiction to entertain claim against Government respecting occupation of government waste land.

he is acting *bonâ fide* in pursuance of the power which the provisions of the statute confer upon him. The claim being against Government respecting the occupation of waste land belonging to Government, the Civil Courts are precluded from entertaining it under section 4 (*f*) of the Revenue Jurisdiction Act. A question relating to the discontinuous occupation of the village wastes by the village cattle is as much a question of land revenue as one relating to the permanent occupation of them or a portion of them by an individual. *Triambak v. The Secretary of State.* 21 Bom., 684.

Dispute as to position of boundary line, suit maintainable.

31. The jurisdiction of a Civil Court is not ousted by section 4 (*g*) of the Bombay Revenue Jurisdiction Act, in case of a dispute as to the position of the boundary line between two survey numbers as laid down by the Survey authorities, the defendant alleging that the boundary marks were changed, the plaintiff alleging that they are in their right position. *Bala* v. *Nana.* P. J., 1898, 41.

Jurisdiction of Courts in suits for determining legality of levy of water-tax

35. Where water-rate is levied under section 48 of the Irrigation Act, the question whether the Civil Courts have jurisdiction, in view of section 4 (*b*) of the Revenue Jurisdiction Act, in a suit for the determination of the legality or otherwise of such levy, depends upon whether the incidence of the rate is authorized by the provisions of section 48. Under it, the condition precedent to levying the rate is not the fact ascertained by evidence whether the water in dispute has percolated from the canal, but the opinion of the canal officer that it has so percolated, he and not the Civil Court being made the judge of such percolation for the purposes of the Act. Such water-rate falls within the denomination of land-revenue. *Balvant* v. *The Secretary of State.* 22 Bom., 377.

Collector's determination of boundary dispute, when final.

36. Section 121 of the Land Revenue Code must be read along with sections 119 and 120 of the Code. It is only when a boundary dispute arises between the owners of adjoining lands, and the Collector is called upon to determine the dispute that his determination becomes final under Section 121 of the Code so as to oust the jurisdiction of the Civil Court. *Lakshman v. Antaji.* 25 Bom., 312; also 2 Bom. L. R., 1083.

37. The plaintiff, an Inamdar, sued to recover from the defendant, an occupant, the assessment of the lands held by him in accordance with the survey rates. The defendant contended, among other things, that under certain *maphi istaua kowls* held by him, he had acquired the right to hold the lands permanently on payment of a fixed sum as rent. Plaintiff contended that by virtue of section 4, class (*b*) of the Bombay Revenue Jurisdiction Act, the Civil Court was precluded from entertaining the defendant's contention. *Held*, that clause (*b*) of section 4 presented no bar to the hearing by the Civil Court of the contention set up by the defendant. *Held* that an objection to come within 1st head of section 4, clause (*b*) must be "to the amount or incidence of any assessment of land revenue" itself and as such, in other words, apart from the question of any other and independent right, if an occupancy tenant complains that though he is bound to pay the assessment of land-revenue, the amount or incidence of it as authorized by Government is too high, having regard to the nature of the soil and quality of his land and other like considerations, the objection is one purely and simply to such amount or incidence. But if without questioning the legality or propriety of the amount or incidence *per se*, he asserts a right independent of and having no relation to it, such as a right to pay a certain fixed amount annually under a contract between him and the Inamdar he cannot be said to object to the amount or incidence of the assessment. Nor can such a tenant be said by his objection to object to the validity or effect of the notification of survey or settlement under the 3rd head of clause (*b*) of section 4 of the Bombay Revenue Jurisdiction Act. "Objections" in section 4, clause (*b*) of the Act, can be raised by a suit or in defence to a suit. *Lakshman v. Govind* and *Govind v. Lakshman*. 28 Bom., 74; also 5 Bom. L. R., 694.

Meaning of objection to amount or incidence of assessment of land revenue.

38. In the Revenue Jurisdiction Act, section 4, clause (*j*), the phrase "any other written grant" means any written grant other than that which falls within clauses (*h*) and (*i*) of the same section. The clauses (*h*), (*i*), (*j*) and (*k*) of the section are independent of one another; the source of title referred to in each stands apart from the rest and each clause is connected only with that portion of the proviso which precedes clause (*h*). The

Meaning of "any other written grant" and "treaty."

term "treaty" in section 4 (*a*) of the Act is to be strictly construed and is to be confined to an agreement between two or more independent sovereign Powers or States. The effect of amending Act, XVI of 1877, is to restore the jurisdiction of the Civil Courts to the extent mentioned in that Act in the Districts mentioned in Schedule thereto and so far to remove the bar created by section 4 of the principal Act X of 1876. *Kalabhai v. The Secretary of State for India.* 6 Bom. L. R., 648; also 29 Bom., 19.

(B) The Pensions Act.

S. 3. In this Act, the expression "grant of money or land revenue" includes anything payable on the part of Government in respect of any right, privilege, perquisite or office.

S. 4. Except as hereinafter provided, no Civil Court shall entertain any suit relating any pension or grant of money or land-revenue conferred or made by the British or any former Government, whatever may have been the consideration for any such pension or grant, and whatever may have been the nature of the payment, claim or right for which such pension or grant may have been substituted.

S. 5. Any person having a claim relating to any such pension or grant may prefer such claim to the Collector of the District or Deputy Commissioner or other officer authorized in this behalf by the Local Government; and such Collector, Deputy Commissioner or other officer, shall dispose of such claim in accordance with such rules as the Chief Revenue authority may, subject to the general control of the Local Government, from time to time prescribe in this behalf.

S. 6. A Civil Court, otherwise competent to try the same, shall take cognizance of any such claim upon receiving a certificate from such Collector, Deputy Commissioner or other officer authorized in that behalf that the case may be tried, but shall not make any order or decree in any suit whatever by which the liability of Government to pay any such pension or grant as aforesaid is affected directly or indirectly.

S. 9. Nothing in sections 4 and 8 shall affect the right of a grantee of land-revenue, whose claim to such grant is admitted by Government, to recover such revenue from the persons liable to pay

the same under any law for the time being in force for the recovery of the rent of land.

S. 11. No pension granted or continued by Government on political considerations, or on account of past services or present infirmities or as a compassionate allowance,

and no money due or to become due on account of any such pension or allowance,

shall be liable to seizure, attachment or sequestration by process of any Court in British India, at the instance of a creditor, for any demand against the pensioner, or in satisfaction of a decree or order of any such Court.

The Act being in derogation of the right of the subject should receive a strict construction (*Ruls.* 15, 16).

The word 'suit' in s. 4 does not include execution proceedings and a certificate of the Collector under s. 6 is not required to enable the Court to take cognizance of claims in execution proceedings (*Ruls.* 5, 24, 33). Suits for lands assigned for remuneration of watandars do not come within the purview of the Act. The Act deals with suits for pensions, grants of land revenue, and cash allowances conferred or made by Government. Suits for lands held free of assessment under a grant from Government which bestows on the grantee the lands themselves and not merely the Government revenue arising from them do not fall within the provisions of the Act. (*Ruls.* 1, 13, 15, 32). It appears from *Ruling* 12 that a certificate is not necessary for a suit between the claimants to a Devasthan cash allowance but the Bombay High Court seem to hold otherwise by ruling that the Pensions Act applies to religious endowments as well as to personal grants (*Rul.* 28). A Desaigiri *hak* or a Deshpande allowance does not fall within the meaning of 'pension' as laid down in s. 11. When the Collector once gives a certificate which entitles a party to claim a certain right in a Civil Court, then the effect of that certificate is to give to the party the right to claim in a Civil Court whatever he is entitled to in virtue of that right. The general right being allowed and established, the right to each

year's share follows as consequent upon it (*Rul.* 30). The Commissioner has no power to revoke or cancel the certificate given by a Collector under s. 6 (*Rul.* 29). A suit is not bad *ab initio* by reason of its being filed without a certificate. The defect of want of a certificate can be cured by its subsequent production (*Rul.* 25).

RULINGS.

1. Advocate General: "The Pensions Act does not extend to *lands* assigned for the remuneration of watandars. It excludes from the cognizance of Civil Courts all suits relating to any pension or grant of land-revenue conferred by Government, but it goes no further. It includes every kind of cash allowance made to watandars. Where land has been assigned as part of the remuneration, it cannot be said to be anything *payable* on the part of Government. As the Act is in derogation of the right of the subject, it must be strictly construed. No. 3045, June 16, 1874.

2. L. R. "As the *hak* (Deshmukhi, payable from the revenues of the alienated village of K) is payable by the inamdar of K and not by Government, it does not appear that the provisions of sections 4, 5 and 6 of the Pensions Act are applicable to it. The definition in s. 3, and the title and preamble, and the last part of s. 6 all seem to indicate that the Act relates only to cash allowances payable by Government. So the application for a certificate should be disallowed. If the Act did apply, the Collector should not have refused the certificate merely on the ground that the *hak* is watan property. If he should think fit to take action under Act III to set aside the mortgage of the *hak*, then he would have good reason for also refusing the certificate applied for by the mortgagee; but unless he resorted to legal measures for invalidating the mortgage it would be only inflicting an unnecessary hardship on the mortgagee to refuse him the means of obtaining redress in the Civil Court." Copy forwarded. (But see *Rul.* 22). No. 477, Jan. 17, 1885.

3. L. R. "Act III of 1874 does not apply to the watans of village servants useful to the community such as Kazis, Joshis, &c., inasmuch as their offices are not included in the difinition of 'hereditary office' given in s. 4 of the Act. The question then

simply remains whether s. 4 of the Pensions Act applies to such watans. The answer depends on the nature of the property which constitutes the watan. If that property consists in an annual cash allowance payable from treasury s. 4 is applicable, but not under ordinary circumstances if it consists in service land. The provisions of the Pensions Act have been held inapplicable to suits for the partition of service lands (8 Bom. H. C R. p. 27) and they do not apply to suits for the possession of watan lands held by Kazis and Joshis &c. Without however knowing the precise facts of any particular case it is difficult to give a general opinion on a subject of this kind." No. 3817, June 23, 1887.

4. L. R. "The question whether the Pensions Act applies to *haks* payable direct by inamdars is not free from doubt. But as the District Judge holds that it does apply, there is no reason for combating that opinion, and if there is no other objection, the certificate may be granted." Copy forwarded. No. 8718, Dec. 17, 1891.

5. L. R. "The question appears to be whether a Deshpande allowance can be attached by a Civil Court without a certificate from the Collector under section 6 of the Pensions Act, 1871. In my opinion the allowance and any payment actually accrued due can be so attached, but not future payments not as yet accrued due. It has been decided in the case of *Vajiram v. Ranchodji* (16 Bom. 731, *Rul.* 24) approved in the case of *Trimbakrao v. Balvantrao* (7 Bom. L. R. 659, *Rul.* 33) that the word 'suit' in section 4 of the Pensions Act does not include execution proceedings, and that the certificate of the Collector under s. 6 of the Act is not required to enable the Court to take cognizance of claims in execution proceedings. It has also been decided in the case of *Secretary of State v. Khemchand Jeychand* (4 Bom., 432) that the word 'pension' in section 11 of the Act is to be interpreted in its ordinary sense and does not include a *toragiras hak*, and in the case of *Vajiram v. Ranchodji* already referred to, it was admitted that a *desaigiri hak* was not a pension within the meaning of s. 11 of the Act. A Deshpande allowance appears to be similar to this latter *hak*, and, no doubt, would not be included in the word 'pension.' Section 11 of the Act does not, therefore, apply, and it was open to the Civil Court to attach the Deshpande allowance under section 268 or 272 of the Code of Civil Procedure. It is not, how-

ever, open to a Civil Court to attach any allowance under section 272 of C. P. Code which has not actually accrued due ; such an attachment cannot be made in anticipation (*vide Tulaji v. Balabhai*, 22 Bom, 39), and so far as the attachment under section 272 of the C. P. Code purports, (if at all) to attach future payments of the allowance the attachment is illegal. If, therefore, the attachment under section 272 of the C. P. Code did purport, as stated, to attach future payments, the Collector should be instructed to apply, under section 151 of the Law Officers' Rules, for sanction for the Government Pleader to file an application under section 278 of the C. P. Code to raise the attachment so far as regards future payments not yet accrued due. The Bombay High Court laid down in first Appeal No. 11 of 1874 that the Collector ought in such cases to apply to the Court under that section, and not by ordinary letter." Government concur. No. 10612, December 12, 1905.

6. L. R. "The property liable to attachment is specified in section 266 of the C. P. Code and section 5 of the Toda Giras Allowance Act merely modifies that section. It does not affect the manner in which attachments must be made as laid down in sections 268 and 272 of the C. P. Code. Under section 268, a debt may be attached by notices to the debtor not to pay and to the creditor not to receive the debt Upon receipt of such notice the debtor may, but cannot be compelled to pay the debt into Court, and such payment will discharge him of his debt. He cannot, however, make any valid payment of it to the creditor. Such payment would be void under section 276. If the debtor does not choose to pay the debt into Court, it can only be realised for the benefit of the person effecting the attachment by formal sale by the Court. The purchaser at such sale would purchase the right and would be entitled to recover the debt in place of the creditor. If any one wishes to recover the amount of his decree out of a cash allowance owned by the person from whom the decretal amount is due, he can proceed under section 268 by notice to Government not to pay the debt due from them to that person and notice to that person not to receive payment. For this purpose the duty of Government to pay the cash allowance periodically is regarded as a debt, as opposed to the correlative right of that person to receive the periodical payments from time to time. This duty of Government or such part of it as may be necessary is lia-

ble to be sold under section 284, and the purchaser obtains the correlative right to receive the periodical payments or such part of them—which may be the payments for a certain number of years as may have been sold. If the cash allowance is Toda Giras allowance, then section 5 of the Act will prevent the sale of the whole duty of Government to pay the allowance for ever, but the proviso will permit the sale of the payments for so many years as the Court may consider to fall within the expression 'money due or likely to become due' on that account. No objection would, in my opinion, be taken to attachments effected in this manner. Under section 272, however, only property in the custody of a public officer can be attached and custody means actual custody. The manner of attachment is by notice to the public officer to hold the property and any interest that may become due on it subject to the orders of the Court. The public officer is bound to obey such orders and if required so to do to pay the property and any interest that has become due on it into Court or to the person making the attachment. No notice to the owner of the property not to receive it is essential. Without unduly straining the ordinary meaning of the words the debt or duty of Government to pay a cash allowance periodically cannot be said to be in the custody of any public officer. Its nature does not admit of it being taken into custody. Such a debt, with the future payments accruing due on it, cannot therefore be attached under the section. The section does not apply to it. Payments, however, which have already accrued due, may not unreasonably be regarded in their concrete form of so much cash in the hands of the public officer whose duty it is to pay them as property in his custody. As such they can be attached under this section. But attachments attempted under section 272 otherwise than as here explained would be legally invalid and of no effect. And a subsequent sale of such attached property under section 284 would pass nothing to the purchaser." Government concur. No. 3436, April 5, 1906.

7. In the opinion of Government there can be no question that the conditions on which the pensions were originally granted must be recognised and that pensions which were granted as ordinary partible property must be continued as such. It would be unjust now to repudiate the original conditions of the grant and to declare the pensions to be impartible property relying on the power of making such a declaration final by refusing certi-

ficates of suits under the Pensions Act, 1871. Government aim merely at the prevention of the multiplication of names in the registers while practically preserving the rights of co-sharers against the registered pensioners, and this may be effected by a general declaration that the provisions of the first paragraph of No. 19 of the rules under the Pensions Act against new entries of names of co-sharers in the registers should be strictly enforced and that co-sharers holding decrees obtained under certificates should be left to execute their decrees for arrears of co-shares in the ordinary way against any other property of the registered pensioners and to enforce their claims to future payments of co-shares either by special written orders to be issued in proper cases by the Collectors for sub-division at the time of the payments under the provisions of the second paragraph of rule 19 or by further suits under the same or fresh certificates. The grant of certificates does not necessarily connote new entries in the registers under the provisions of paragraph 1 of rule 19. The certificate-holders can sue for arrears of their co-shares and be left to execute their decrees for those arrears against any other property of the registered pensioners. The decree-holders may enforce their right to future payment of their co-shares either by obtaining written orders from the Collector for sub-division at the time of future payments of the pensions (which orders would be temporary orders to be made from time to time in respect of one or more future payments as might be deemed proper) or under the provisions of paragraph 2 of rule 19 may be left to obtain and execute further decrees under the same or fresh certificates. After careful consideration Government are of opinion that the sub-sharer should be left to take such remedy against the registered sharer, as he may be advised, and that the Collector need not issue orders for separate payment. While not interfering with the partibility of allowances Government will do nothing to encourage partition, and will enter in the registers only so many names as are convenient, leaving sharers to settle the distribution of the pension among themselves. The interest of Government ceases with the payment made to the registered pension-holder. No alteration of the rules under the Pensions Act is necessary. These papers deal only with the case of co-sharers and not with cases in which the whole title is in dispute and has been declared to vest in the holder of the decree under a certificate. In such cases the grant of certificates would

necessarily connote new entries in the registers, but these would be made rather under No 17 than No. 19 of the rules under the Pensions Act. No. 8918, Sep. 6, 1907.

8. L. R. "The Honourable the Advocate General is of opinion that there can be no doubt that the right to a cash allowance (other than one falling under section 11 of the Pensions Act or special legislation such as section 5 of the Toda Giras Allowances Act, 1887) is legally attachable and saleable in execution of a Civil Court's decree either under section 268 or section 274 of the Code of Civil Procedure, according as the right is held to be moveable or immoveable property. The main object of Government is to prevent the multiplication of names in the registers; and if this be so, the provisions of sections 8 and 14 of the Pensions Act and No. 19 of the rules under that Act will perhaps sufficiently secure that object. Certain cash allowances are inalienable under the terms of the sanad or other grant conferring or continuing them and in such cases objection can, of course, and should be taken by the Collector to any attachment and sale of the right to cash allowance. So far, however, as the attachments purport to be attachments of the actual money accrued due on account of a cash allowance and payable by the Collector under the Pensions Act rules, I think that, whether or not a cash allowance charged on the land revenue is to be classed as 'immoveable property' for the purposes of the Civil Procedure Code, it is quite clear that the procedure alluded to is erroneous and should be resisted in any case which comes to notice. Section 274 and Form No. 141 by their very terms obviously contemplate a case where the immoveable property concerned is not in the custody of a Court or public officer, this latter being a special case dealt with in section 272 and Form No. 142; and any attachment made under section 274 will not, in my opinion, be binding on the public officer, who pays the cash allowance. Section 274 also clearly does not include a cash allowance in the immoveable property contemplated, for it is impossible in such a case to comply with the provision requiring a copy of the order to be fixed up 'in a conspicuous part of the property.' It seems to me that the Collector might almost ignore any such attachment as illegal and not affecting his duty under the Pensions Act, 1871, and rules thereunder. But the more correct course will be for him to take steps to get the attachment removed, in the manner already mentioned above, *i. e.*, the Col-

lector should apply under No. 151 of the Law Officer's Rules for sanction for the Government Pleader to file an application under section 278 of the Code of Civil Procedure to raise the attachment. It would perhaps be useful and save delay if Collectors were given a general authorisation to file such applications without special sanction, consulting this office only in any case of special doubt or difficulty." Copy forwarded. As regards the attachment and sale of the right to cash allowances which are inalienable under the terms of the sanad or grant conferring or continuing them or the attachment ordered under section 274 and Form No. 141, Civil Procedure Code, of the actual money accrued due on account of a cash allowance and payable by the Collector under the rules under the Pensions Act, the course suggested by the Remembrancer of Legal Affairs is approved and should be adopted. The Collector is given a general authorisation to file an application under section 278, Civil Procedure Code, to raise the attachment, without the special sanction required under No. 151 of the rules for the conduct of legal affairs of Government, the office of the Remembrancer of the Legal Affairs being consulted only in any case of special doubt or difficulty. No. 1470, February 11, 1908.

9. Collector: "Government in their Resolution, Revenue Department, No. 3301 of 2nd April, 1909, accorded their sanction to the issue of a certificate under section 6 of the Pensions Act, 1871, to one L to enable him to institute a suit in the Civil Court for the recovery of his one-fourth share in a cash allowance for the year 1906-07. On the authority of the certificate issued to the applicant he instituted a suit for the recovery of his share for the years 1906-07 and 1908-09. He now informs me that the Civil Court wants a certificate for the amount due for the year 1908-09 also. In the circumstances mentioned in the body of the Government Resolution referred to above, I see no objection to the issue of another certificate, but would suggest that it should be not for the recovery of the arrears of a particular year but for a declaration of his right to a particular share in the allowance. Once this is declared, presumably no further certificate will be necessary." Commissioner: "The Collector's recommendation is meant to save the trouble of giving a certificate every year to the same applicant. But it is not understood how it will help to attain the desired object. If the applicant is given a certificate for a declaration of his right to a particular share in the allowance and if he obtains a decree to

that effect on the strength of that certificate, yet it is presumed that to obtain his dues when they fall into arrears every year he will have to file fresh suits and the Civil Courts will not entertain them in the absence of certificates. Moreover, Government Resolution No. 8918, dated 6th September 1907, contemplates the grant of a certificate when the allowances are in arrears." The certificate for a general declaration should be granted on the present occasion. They will also be granted on all similar occasions, when the Collector thinks it advisable, in order to save trouble. But the applicants should also have their attention directed to the High Court ruling in *Krishnaji v Anant* (*vide Rule.* 30) in order that it may be made known as widely as possible. No 3411, April 15, 1910.

10. Petition from G stating that certain Deshpande and Nadgoude cash allowances originally stood in the name of R, that after his death they were entered in the name of Y, son of R, and that after Y's death in the name of his son V; intimating that after V's death his widow L claimed to have her name entered in the place of her husband, but her request being against the standing orders of Government on the subject, the name of X, the petitioner's grandfather, was entered; adding that after the deaths of his grandfather and father the petitioner's name was entered in the Government record; observing that one *Z* appealed to the Commissioner to have his name entered and that of the petitioner cancelled on the ground of his being the adopted son of V, and that the Commissioner granted his request; and praying that the order of the Commissioner may be set aside, and that the entry of his name in respect of the allowances restored. L. R. "The case is essentially one for adjudication by a Civil Court" Government concur in the opinion expressed by the Remembrancer of Legal Affairs, and accordingly direct that the order of the Commissioner should be suspended and sanction accorded to the grant of a certificate under section 6 of the Pensions Act, 1871, to Z. No. 4973, June 2, 1910.

11. Collector: "The matter which is important and which does call for a clear statement of policy is whether we are to regard these pensions as partible or not. In G. R. No. 8918 dated 6th September 1907 (*supra* 7), and its predecessors as well as in the rules under the Pensions Act there is drawn a distinction between permanent entry in the alienation lists and transient orders of separate

payment which the Collector has the power to issue from time to time. The Collector considers that all the trouble and confusion in connection with these rules arises from the fact that this is a delusive distiction which ought not to be recognised. Whether the law be Hindu or Mahomedan, when once an estate has been divided between two sons it does not re-unite, but on the contrary goes on sub-dividing *ad infinitum*, and when it is a pension it cannot (as it might if it were any other form of capital) after sub-division increase and multiply and so retain, in the hands of successive generations, its original magnitude, but must of necessity always be growing less and less until it vanishes. The principle which seems to underlie the preference for separate payments upon individual orders is that such a single order does not recognise a permanent subdivision and that there is some remote chance of the re-union of the extinction of the claim to a separate share; but in fact there seems no foundation for this. Once separate payment has been granted in a single year, it would be illogical and arbitrary for the Collector to refuse it in the next year; and year after year while separate payment continued, the vested interest, if it may be so termed, of the co-sharers in the partibility of the pension would grow so strong that it would be very difficult even for Government to refuse to recognise that a definite partition had been accomplished. In the next generation the various heirs of the co-sharer who has enjoyed separate payment under such a prescriptive title will expect separate payments of their shares of the share. Again it would be illogical of the Collector to refuse that which in one generation had not an impartible character in the next generation. The final result must inevitably be that the Collector instead of a single pension has to pay separately to 40 or 50 persons minute fragments of that pension. He has no regularly framed register and record to guide him as to the title to these payments. Some of the parties may have obtained decrees against others, some may base their claims only upon prescription, others may be new claimants altogether whose title can only be scrutinised with an accurate knowledge and proof of the geneology and succession law of the parties. It is, therefore, submitted that under such a system the Collector and the parties are both in a much inferior position and far more liable to be plunged into litigation, disputes and appeals (as the records of Government abundantly show) than if in the beginning when a partition is permit-

ted the separate shares were entered and recognised in a register where-in the further branchings and sub-divisions of the family and the transfers of shares by sale, gift, testament, and civil decree would be duly recorded. *In short, it is submitted that the separate payment by single order system leads in the end to precisely the same result as the recognition of shares in the alienation register but it reaches that result by a path far more circuitous, laborious and dangerous for all parties.* When therefore in Government Resolution No. 8918 of 6th September 1907 Government say that they do not wish in any way to encourage partition, it seems desirable that they should now provide some machinery by which it may be stopped. In the case of a fresh application one Collector may exercise his discretion so as to refuse it, but his successor on the facts being laid before him again may in his discretion permit it, and once it is permitted the partition will rapidly become established. If it is held that partition must be permitted strictly according to the law of succession governing the parties in every case, then at least the Collector hopes that Government, in definitely affirming that principle, will be pleased to consider a suggestion which will prevent the evil administrative consequence which can easily be foreseen. This suggestion is as follows:— Whenever the applicant claims partition, he should first be required to prove his title by a civil suit in which the *holder* should be advised to argue as much as possible against the partibility of the pension, and when after a consideration of all the arguments and all the facts the Civil Court finally decreed partition, it should then be made compulsory (either by legislation or under the rules under the Act, if that be possible) for *both the shares of the pension to be commuted for cash payment of 25 years purchase.* The justification for this course plainly is this, that after partition the pension can no longer serve its original purpose, whatever it may have been. If it is a mere question of feeding the family they can do that just as well by taking the capital sum and investing it in any class of security they prefer, and there remain no State reasons for maintaining for ever cash alienation lists with all the complications, litigation, and appeals which they involve." Commissioner: " The unnecessary multiplication of names in the registers has been stopped by the orders of 1907, but the sub-divisions of the allowances which tended to produce that multiplication is unchecked. Probably every Collector in the Presidency would endorse Mr. Anderson's views as to the unsatisfactory position

which the Collector has to assume. Government are aware that all three Commissioners were in favour of a definite pronouncement from Government that further division of cash allowance would not be permitted. It is respectfully submitted that it is worth while considering again whether Government are under any obligation to concede to the descendants of the original alienees the power to deprive the cash allowances of the attributes with which they were originally invested. It is difficult to see of what possible use a cash allowance reduced to a few rupees per annum can be to any one; below a certain minimum sub-divided allowances might with advantage be bought up." Sufficient cause has not been shown for introducing a change in the policy laid down in Government Resolution No. 8918, dated 6th September 1907. The orders in that Resolution and those in Government Resolution No. 1470, dated 11th February 1908, (*Supra*, 8) reduce the Collector's action in such cases largely to a matter of routine. With regard to the question of the commutation of divided shares, Government do not think that it would be possible to order any such commutation without reversing the existing orders. No. 5768, June 27, 1910.

12. Collector: "A *devasthan* allowance of Rs. 15 stands in the name of C. One G is the holder of this allowance as recognised in our books. The applicant is the divided uncle of the payee and claims half a share in this allowance. He wants to go to the Civil Court to have his title established, and for doing so a certificate under section 6 of the Pensions Act is necessary. The applicant's claim appears to be reasonable, but this is a question entirely for the Civil Court to decide, and I am of opinion that he should be given an opportunity of establishing, if possible, his title in Court. I, therefore, request Government to authorise me to issue the necessary certificate." The attention of the Collector should be invited to the opinion of the Remembrancer of Legal Affairs printed at pages 99 and 100 of the Compilation of Standing Orders in the Revenue Department and he should be informed that the grant of certificates in this and in similar cases in future should be refused. No. 6733, July 28, 1910.

13. Act XXIII, 1871, s. 4, debars the Civil Court from taking cognizance of any suit, whether the Government is a party to it or not, which relates to any pension or grant of money or land

revenue, &c., without a certificate. S. 5 prescribes a remedy for the claimant of such pension or grant, and s. 6 enables the revenue officer to refer the parties to the Civil Court. Lands held free of assessment under a grant from Government, which bestows on the grantee the lands themselves and not merely the Government revenue arising from them, do not fall within the provisions of the Pensions Act. *Babaji v. Rajaram.* 1 Bom., 75.

14. *Toda Giras haks* are within the scope of the Pensions Act. *Parbhudas v. Motiram.* 1 Bom., 203.

15. An enactment of a character so arbitrary as Act XXIII, 1871, ought to be construed strictly, and the Courts should not extend its operation further than the language of the Legislature requires. The meaning of the expression "grant of money or land revenue" is not of so wide a range as to include a grant of the proprietorship of the soil, or any suit involving the rights of a proprietor of the soil. *Ravji v. Dadaji.* 1 Bom., 523.

16. A suit for a declaration of the plaintiff's eligibility to officiate as patel is not prohibited by Act XXIII, 1871. That Act should receive a strict construction, as being in derogation of the right of the subject to resort to the ordinary Courts. *Gurshidgavda v. Rudrayavda.* 1 Bom., 531.

17. A plaintiff alleging that, as the hereditary *Deshmukh* of certain mahals, he was entitled to be paid directly by the ryots of these mahals a percentage on the revenue thereon assessed, sued to recover a portion of such precentage which had been collected along with the revenue and retained by Government; *held*, that the claim was "a suit relating to a grant of money or land revenue" and as such excluded from the jurisdiction of the Civil Courts by s. 4 of the Pensions Act. *Vasudev v. The Collector of Ratnagiri.* 2 Bom., 99.

18. A suit in a Civil Court by a hereditary *deshmukh* relating to a grant of land revenue is prohibited by the Pensions Act. "The circumstance that the haks were levied in the form of grain directly from the villagers, does not efface the fact that they originated in a grant from the Maratta Government, and are still payable in virtue of that creation. The case of *Vasudev* (*supra*, 17) applies. *Naro v. The Collector of Thana*, 6 Bom., 209.

19 The plaintiffs formerly sued for a sum of money, and obtaining a decree attached, in 1861, two villages, the land revenue of which had been granted in inam. The attachment continued down to 1875, when the last holder of the villages died, and, the Government having resumed the villages, the attachment was raised. The plaintiffs now sued to have their right declared to satisfy their decree from the revenue of villages. *Held*, that the former suit was not a suit in respect of pension or grant of money or land revenue, and that an attachment placed in pursuance of an ordinary money-decree before the date of the Pensions Act could not be treated as a suit in respect of a pension instituted before such date, so as to exclude the operation of the Act under s. 1. *The Secretary of State v. Jamnadas.* 6 Bom., 737.

20. A certificate under the Pensions Act granted during the pendency of a suit removes the objection to jurisdiction. *Mir Ahmed v. Mir Akabar Alli.* P. J., 1883, 52.

21. The mortgagee of a *desaigiri hak*, without obtaining the Collector's certificate under s. 6 of the Pensions Act, sued the defendant as the representative of the mortgagor to enforce the mortgage-debt by sale of the *hak*, obtained a decree, and himself became the purchaser. In a subsequent suit by the defendant (who was at the time of the previous suit a minor) to obtain a declaration that he was the life-holder of the *hak*, *held* that the proceedings in the previous suit were without jurisdiction, and that the decree could not constitute the basis of any title or estop the representative from suing for a declaration of his right to the *hak*, as a life holder, as against the purchaser at the auction sale. After holding on the authority of *Radhabai's* case that the sale was valid, the Court proceeded: "In the absence of a certificate, the Court (in the former suit) had clearly no jurisdiction as regards the subject-matter to entertain the suit, and the decree was therefore null and void, and could not constitute the basis of any title. But it was argued that the plaintiff himself was a party to the suit and was estopped from now taking the objection to the jurisdiction. But apart from the circumstance that he was a minor at the time, there can be no question of estoppel by conduct between the judgment-debtor and the purchaser at auction, who derives his title from proceedings which are entirely *in invitum* as regards the former. The plaintiff is, therefore, entitled, whether still subject

to the mortgage or not, as against the defenfendant to a declaration that he, and not the defendant, is entitled to the *hak*." *Vasanji v. Lallu.* 9 Bom., 285.

22. Plaintiff sued, as the trustee of a *devasthan*, to recover the amount of a cash allowance attached to the worship of certain idols. He alleged that the defendant, who was the *inamdar* of the village, received its revenues subject to the payment of the allowance in question and that he had wrongfully appropriated the latter. *Held*, that the allowance in question was a "grant of money" within the meaning of s. 4 of the Pensions Act, and that the suit would not lie in the absence of the Collector's certificate, though the Government was not a party to the suit It is admitted that the allowance must have been by grant of a former Government. It is argued that as the allowance is payable by the *inamdar*, it is not within the inclusive s. 3. But the inconclusive verb 'includes' is not exhaustive; and in the Pensions Act, s 3 is an extension of the ordinary meaning of the expression 'grant of money or land revenue' and not as limiting the meaning of s. 4 which section in unmistakable terms is more comprehensive than the preamble; and in *Panchanda v. Nilkant* (7 Mad., 195) it is remarked that the Act contemplates money payments to be received through the Collector, or recovered from persons bound to pay revenue. In *Babaji* (*supra, 13*), this Court, in construing s. 4, did not narrow the ordinary grammatical meaning of that section so as to exclude suits between private persons. But as the certificate has now been produced we remand the case for trial on merits. *Vyankaji v. Sarjarao* 16 Bom., 537.

23. Where a suit was brought in relation to the management of *saranjam* lands, *held*, that the suit was *prima facie* one not included in the Pensions Act. *Keshavrao v. Ganpatrao.* 16 Bom, 596.

24. The word "suit" in Pensions Act, s 4, does not include execution proceedings. The Collector's certificate is not necessary to validate the sale of a *desaigiri hak* in execution of a decree. "The Act is to be strictly construed, and its operation is not to be extended further than the language requires." *Vajiram v Runchodji.* 16 Bom., 731.

25. A suit under the Pensions Act is not bad *ab initio* by reason of its being filed without a Collector's certificate. Where

at the hearing of such a suit the necessary certificate was not produced, *held*, that the Judge ought to have granted the plaintiff's application for an adjournment, in order that certificate might be obtained and produced. *Jijaji v. Balkrishna.* 17 Bom., 169.

26. A suit for a declaration that the plaintiffs are watandars of a share in a kulkarni watan when the watan consists exclusively of a cash allowance from Government is not a suit relating to a money-grant within the meaning of the Pensions Act. "This objection under the Pensions Act was unsuccessfully urged in *Ramchandra* under precisely similar circumstances. As Act III itself precludes the suit being entertained except for the purpose of declaring the plaintiff's status as watandar, it cannot, we think, in its restricted form be regarded as a suit relating to a grant of money within the meaning of the Pensions Act." *Govind v. Bapuji.* P. J., 1893, 337.

27. As the decree (relating to a cash allowance) sought to be attached was passed before the Pensions Act came into force, *held*, that the plaintiff's *darkhast* (to attach the decree) was not barred for want of a certificate. *Dharamdas v. Hafasji.* 19 Bom., 250.

28. A plaintiff claimed to be a co-trustee of certain *dargas* and entitled to a share in the management and in the profits thereof, which consisted of a certain cash allowance from Government. *Held*, that the suit, so far as it related to the cash allowance from Government, required a certificate under s. 4 of the Pensions Act. A cash allowance attached to the worship of an idol is a grant of money within the meaning of s. 4. The Pensions Act applies to religious endowments as well as to personal grants. *Miya Vali v. Sayad Bava.* 22 Bom., 496.

29. No rule has been made which provides for the revision by the Revenue Commissioner of the Collector's action in granting certificates or for the cancellation by him of certificates granted by the latter. There is a rule (6) which requires that every order for granting a certificate under s. 6 shall be made by the previous sanction of the Commissioner by the Collector himself. We must presume in this case that the certificate was originally granted with this sanction, since there is nothing on the record to show the contrary. We must treat the alleged revocation order as null and void. *Bhimbhat v. Bhikambhat.* 1 Bom., L. R., 184 ; also 23 Bom., 676.

30. If the Collector once gives the certificate which entitles a party to claim a certain right in a Civil Court, then the effect of that certificate is to give to the party the right to claim in a Civil Court whatever he is entitled to in virtue of that right. The certificate given by the Collector may refer only to the plaintiff's share in the allowance for particular years, but if the Collector permitted the plaintiff to establish his right to a share in a Civil Court, the plaintiff was not bound under the Pensions Act to get a certificate for each year's allowance before suing for it. The general right being allowed and established, the right to each year's share followed as consequent upon it. *Krishnaji v. Anant.* 5 Bom., L. R., 950 ; also 28 Bom., 241.

31. Suits for arrears of assessment due from *Khatedars* holding lands in an Inam village by the Inamdar whose right to the Inam has been admitted by Government are, by section 9 of the Pensions Act, 1871, exempted from the necessity of a certificate required by s. 4 of the Act. *Antaji* v. *Kashinath.* 6 Bom. L. R. 423.

32. There exists a broad distinction between claims to the soil, to which the Pensions Act is inapplicable, and claims to moneys payable by Government to which the provisions of the Pensions Act apply. Section 4 construed strictly as it must be is entirely silent as to suits to recover possession of land the revenue of which has been remitted. The words "no civil Court shall entertain any suit relating to any pension or grant of money or land revenue" occurring in the section, cannot, without a manifest strain of words, cover a suit to recover the possession of land or to obtain a declaration of a right to hold land. The phrase "relating to," as occurring in an enactment restrictive of the right to sue must be construed strictly, i. e., in favour of the right to proceed. *Balvant v. The Secretary of State.* 29 Bom., 480 ; also 7 Bom., L. R., 497.

33. The word 'suit' in section 4 of the Pensions Act does not include execution proceedings. *Trimbakrao v. Balvantrao.* 7 Bom. L. R. 659 ; also 30 Bom., 101.

34. The plaintiff sued to recover a sum of money as the amount of her maintenance. She claimed under an agreement whereby the defendants agreed to pay her Rs. 52 every year for her maintenance out of a cash allowance which was received by the latter from Government. It was objected to the suit that it

was bad in the absence of a certificate from the Collector under section 4 of the Pensions Act. *Held*, that the suit could not be taken cognizance of without a certificate under section 4. The words of the section were wide enough to include any suit to enforce such a claim provided it related to a pension or grant of money or of land revenue; it was immaterial whether the claim was based on an agreement between the parties or arose out of any other legal right or liability and whether it was a claim for a share by way of partition or maintenance or otherwise. *Lamodar v. Satyabhamabai*, 31 Bom., 512; also 9 Bom., L. R., 889.

35. The plaintiff, who held a money decree against the defendant, applied for its execution by sale of the *toda giras* allowance which the latter was entitled to receive periodically from the Mamlatdar's kacheri. The specific prayer in the application was the attachment and sale of the allowance which was to become payable to the defendant during the 20 years following the application. The lower Courts held that the defendant's life-interest in the *toda giras* allowance computed at its valuation for 20 years, could be attached and sold in execution of the decree. *Held*, reversing the order that it is clear from the language of section 5 of the Toda Giras Allowance Act, that it is not the life-interest of the judgment-debtor in a *toda giras* allowance, but something short of it that is allowed by the Act to be attached. The words "money likely to become due" in section 5 of the Act must be restricted to the case where, for instance, during the life-time of the judgment-debtor, a sum of money is directed by the Collector to be paid to him on account of a *toda giras* allowance not immediately but on a date subsequent to the date of the order of direction, and the judgment-debtor dies before that date, and to other cases of a similar character. Under what circumstances money is likely to become due on account of a *toda giras* allowance is a question which cannot be answered exhaustively and must depend on the facts of each case as it arises. *Amarsing v. Jethalal*, 33 Bom., 258; also 10 Bom., L. R., 1201.

36. It was directed by the decree that the purchaser at a Court-sale of a *toda giras* allowance should recover from the Collector the amount due for arrears of the allowance from the date of his purchase. An application to execute this decree was made in 1864, in consequence of which the decree-holder's name was entered in the Collector's books as the person entitled to the allow-

ance in question and the arrears upto 1864 were paid. In 1903 the decree-holder's heirs applied to the Court to recover the arrears of allowance that had remained unpaid since 1896. The Collector contended that the application could not be entertained in the absence of a certificate from the Collector under the provisions of section 6 of the Pensions Act. *Held*, that the power of the Collector under the Act had been exhausted and there was no discretion for that officer to exercise either under the Act or the rules, so far as the applicant's right to recover the arrears that had become due in the life-time of the last holder recognised as such by the Collector under the Pensions Act, was concerned. *Held*, further that if those amounts remained unpaid, the Collector held them for and on behalf of the last holder, as moneys due to him, and as moneys therefore recoverable on his death by his heirs independently of any question which might arise under the Pensions Act, or the rules framed thereunder. *Chhaganlal v. Pranjivan*. 34 Bom. 154 ; also 11 Bom. L. R. 1369.

37. Where the Subordinate Judge decreed partition of a village holding that, though it came within section 6 of the Pensions Act, the want of a certificate was sufficiently met by an order of the Collector referring the parties to Civil Court to determine whether the said village was partible, and the High Court, on appeal, confirmed that decree holding that the sanad, by which the British Government confirmed the land, was not a grant of land revenue but of the soil of the village itself, their Lordships saw no reason to differ from the two Judges of the High Court on a question of construction, particularly as it seemed to them that the Subordinate Judge was fully justified in treating the said order of the Collector as dispensing with the said certificate. *Sardar Ganpatrao v. Sardar Anandrao*. 12 Bom. L. R. 267 (Privy Council).

APPENDIX II.

Regulation XVI, 1827.

S. 19. *First*—It shall be the duty of Collectors to record, in a book to be kept for that purpose, the land and allowances attached to hereditary district or village offices.

Second—The record shall specify the extent and value of the lands, and the different sources from which the allowances are received, whether from land, ready money, fees, or other perquisites, from villages and trades, or from the treasury of Government, with their amount, and in each case, as far as possible, the origin and duration of such allowances.

S. 20. *First*—The allowances so derived by a sole proprietor or occupant of an hereditary district or village revenue office shall in future be considered strictly as the official remuneration of the person filling the office, and as such shall not be subject to alienation by any incumbent.

Second—Official emoluments enjoyed by a co-sharer of any hereditary district or village revenue office shall not leave the family in which the office is vested; and, if they revert to a sole proprietor or occupant of the office, they shall thenceforth follow the provisions of the preceding clause.

Act XI, 1843.

Whereas it has been found that the provisions of Reg. XVI, 1827, are insufficient to secure the efficient discharge of the duties of hereditary officers :—

S. 4. It is hereby enacted that it shall be competent to the Collector or other officer to whom the duties of an hereditary office are, as provided in clause (Section) 2, to be rendered, when the performance of those duties is claimed in rotation by different sharers, to require that the sharers in the watan shall nominate a fit and proper person from among their number, who shall hold the office as the representative of the family either during life, or for such term, not being less in each instance than five years, as the Collector or controlling officer shall determine with the sanction of the Governor in Council* ; and in the event of the sharers not so nominating, when required, one or more of their number within a reasonable period to be fixed by the Collector or control-

ling officer, the Collector or controlling officer shall himself exercise the power of selection, subject to the approval of the Governor in Council.*

S. 5. And it is hereby enacted that it shall be competent to the Collector or controlling officer to refuse to confirm the nomination by the sharers of any individual, if he shall have reason to think that, from age or personal disqualification, the duties of the office will not be properly performed by him, or if, from character and past conduct, the person nominated be considered unworthy of trust, provided that the grounds of such refusal shall be recorded in writing, and that an appeal from such decision shall lie to the Governor in Council, whose order thereon shall be final.

S. 10. And it is hereby enacted that no female shall perform in person the duties of any hereditary office.

S. 11. And it is hereby enacted that, if any hereditary officer is incapable of personally discharging the duties of his or her office by reason of sex, minority, mental or bodily infirmity, or manifest incapacity, it shall be lawful for the Collector or controlling officer to call upon him or her, or his or her guardians, to appoint a deputy, subject to his approval; and on the party or parties failing to appoint a fit deputy within a reasonable period, the appointment shall be made by the said Collector or controlling officer.

S. 12. And it is hereby enacted that all deputies, appointed to perform the duties of hereditary offices under this Act, and under s. 4, Reg. V, 1833, shall be subject to the same rules and penalties as the principals, and that the watan of the office shall be liable to confiscation upon the conviction, by any Sessions Court, of any deputy appointed by the hereditary officer, in the same manner as it would be under s. 9 upon the conviction of the hereditary officer himself.

S. 13. And it is hereby enacted that nothing contained in this Act shall be construed to debar the right of any sharer to participate in the rents and profits of any hereditary office so held and filled as above provided, after provision shall have been made therefrom for the fit maintenance of the officiating hereditary officer, for which purpose it shall be competent to the Collector or control-

* or of a Revenue or Police Commissioner when authorised by Government—Act III, 1862, s. 1.

ling officer to fix and assign a specific portion of such rents and emoluments, leaving the remainder only subject to the claims of the other sharers; and further that the portions of the rents and emoluments so fixed and assigned shall be the official remuneration of the officiating hereditary officer, and shall not be liable to civil process of any Court of law.

S. 14. And it is hereby enacted that, whenever it may be necessary, as hereinbefore provided, that the Collector or controlling officer shall appoint a deputy to conduct the duties of an hereditary office, it shall be lawful for him to assign to such deputy a fit remuneration from the rents and profits of the said office.

APPENDIX III.

Scale Allowance and Judi.

Rules for dealing with the village officers' service lands (G. R. No. 7651, Dec. 28, 1877):—

DEFINITIONS.

1. "Watan land emoluments" consist of the difference between the original judi or Government charge on the whole lands of the watan and the full survey valuation or assessment thereof for the time being.

2. The "appropriated amount" of the watan land emoluments consists of the sum imposed in the form of an addition to the original judi to meet, so far as it can, the remuneration of the officiator as fixed according to the orders of Government from time to time.

3. The "unappropriated watan land emoluments" consist of that portion of the difference, if any, between the total watan land emoluments at any time and the amount appropriated at any time for the remuneration of the officiator according to the last paragraph.

RULES.

1. The mamul or ancient recorded judi, or the highest recorded ancient payment, whichever may be the higher of these two

sums, shall be considered to be the ultimate limit of judi or Government charge upon the service inam watan lands of village officers exclusive of any charge which it may seem fit to Government to impose for the remuneration of the member or members of the watan appointed by Government to officiate, so long as such charge on account of remuneration of service together with the original judi does not exceed the survey assessment, for the time being, of the whole lands of the watan.

2. The watan emoluments are liable for the payment of the officiator upto their whole survey valuation as at any time fixed; and any portion of this valuation in excess of the requirements at any time for the payment of the officiator may be appropriated at any future time, if it is, in the opinion of Government, necessary to increase the sum payable to the officiator.

3. In G. R. No. 331, Jan. 26, 1860, it was decided that, in commutation of enquiry by the Inam Commission into the title on which unappropriated watan land emoluments were held, additional judi of one half the survey assessment for the time being should be levied on the unappropriated amount. It is now clearly ruled that upon its being necessary to add to the remuneration of the officiator or officiators, all such excess watan land emoluments are liable up to the full survey assessment for the time being. It is, however, laid down that the above half judi is not liable to increase on account of the unappropriated watan land emoluments for the time being attaining an increased valuation under a revision of assessment; but it is also to be understood that such judi may be lowered owing to a decrease in the value of the unappropriated watan land emoluments rendering the judi formerly fixed thereupon more than half their value for the time being, or, as above provided, owing to a portion of the excess watan land emoluments being at any future time appropriated for the payment of the officiator.

Rules 4, 5 and 6 are incorporated in the Wingate's Scale rules given below.

7. The whole emoluments of village officers, whether consisting of salary, potgi or extra allowance, special allowance, or stationery allowance, are payable from the watan emoluments so far as they are capable of meeting these charges.

8.* On revision of assessment, all service inam lands of every head, whether those of village officers or servants, and whether held by officiators or others, shall be liable to pay local one anna cess on their survey valuation in common with all other lands.

Rules for the valuation of the existing emoluments of patels and kulkarnis and for determining the amount of and manner of providing the future remuneration of officiators, comprising Wingate's rules, (framed in 1853) as generally applied to the Deccan collectorates with modifications subsequently sanctioned by Government.

Rules 1 to 17 formulate the mode of determining the amount of remuneration, and 18 to 27 the mode of how that amount is to be made up.

1. All official land whether recorded as Sarwa Inam, Judi or otherwise, will be valued at the survey assessment of the same, less the amount of judi tax or other cesses to which it may be subject as recorded in the public accounts of the year.

2. Cash allowances under the denomination of *potgi* (fixed allowance), *kagad bab* (stationery), &c, not being subject to fluctuation from year to year will be estimated at the amount recorded in the public accounts of the preceding year.

3. The officiating patel and kulkarni of each village shall hereafter receive for the performance of the duties of his office a remuneration in cash of at least the amount fixed by the following scales for their respective offices:—

PATEL'S SCALE.

4. For the first thousand rupees of the gross revenue of his village 3 per cent; for the second thousand 2 per cent.; and for the balance of gross revenue beyond two thousand rupees 1 per cent.

* Government are unable to cancel or modify the rule, as it is inadmissible to effect at the cost of local funds an improvement in the remuneration of village officers and servants, which is a charge on Provincial revenues. If in any case it is found that in consequence of his having to pay the local fund cess on his service land, the profits from that land of the village servant useful to Government who is actually rendering service are so materially reduced as to render it advisable to make an addition to his remuneration, recommendation may be made for the grant of such addition whether in the shape of land rent free or subject to a quit-rent, or in the shape of a cash allowance. No. 7148, September 4, 1905.

5. In addition to these percentages he shall receive a fixed annual allowance (potgi) and contingent (or Chowri) allowance according to the following scale :—

Population.		Potgi and Chowri expenses each.	Population.		Potgi and Chowri expenses each.
From	To		From	To	
1	100	2	1,501	1,600	17
101	200	3	1,601	1,700	18
201	300	4	1,701	1,800	19
301	400	5	1,801	2,000	20
401	500	6	2,001	2,200	23
501	600	7	2,201	2,300	24
601	700	8	2,301	2,400	25
701	800	9	2,401	2,500	26
801	1,000	10	2,501	2,600	27
1,001	1,200	13	2,601	2,700	28
1,201	1,300	14	2,701	2,800	29
1,301	1,400	15	2,801	3,000	30
1,401	1,500	16	and upwards.		

6. In addition to above scales for the ordinary remuneration of patels, a special remuneration may be granted in certain cases under the following classes; *Class* IV—ordinary large places in the District, special allowance of Rs. 10; *Class* III—Extraordinary large or troublesome places in the District, being Market Towns, Rs. 20; *Class* II—Large centres of traffic and important Railway Stations, Rs. 30 ; *Class* I—Places such as described under Class II, but the ordinary land revenue of which gives small emoluments to the patel, Rs. 50.

KULKARNI'S SCALE.

7. For the first thousand rupees of the gross revenue of his village 5 per cent ; for the second thousand 4 per cent.; for the third thousand 3 per cent ; for the fourth thousand 2 per cent.; and for the balance of gross revenue beyond 4 thousand rupees 1 per cent.

8. He shall also receive a fixed allowance (potgi) according to the following scale. But no potgi shall be granted when the total emoluments attain to Rs. 72 or no more than shall bring up

the total emoluments to that sum. The scale is Rs. 3 Potgi for revenue of the village ranging from Re. 1 to 25 ; Rs. 6 for revenue from Rs. 26 to 50 ; Rs. 10 for revenue from Rs. 51 to 1300; above Rs. 1300 so much as may bring up the total emoluments to Rs. 72 and no more.

9. In addition to his salary the officiating kulkarni shall also receive an allowance for stationery as shown in the subjoined table :—

Gross revenue of the Village.	Stationery Allowance.		Gross revenue of the Village.	Stationery Allowance.	
	Rs.	A.		Rs.	A.
Up to Rs. 20	1	0	1,501 to Rs. 1,800	6	8
21 „ „ 50	2	0	1,801 „ „ 2,000	7	0
51 „ „ 100	2	8	2,001 „ „ 2,500	7	8
101 „ „ 200	3	0	2,501 „ „ 3,000	8	0
201 „ „ 350	3	8	3,001 „ „ 3,500	8	8
351 „ „ 500	4	0	3,501 „ „ 4,000	9	0
501 „ „ 700	4	8	4,001 „ „ 4,500	9	8
701 „ „ 900	5	0	4,501 „ „ 5,000	10	0
901 „ „ 1,250	5	8	Upwards of Rs. 5,000, annas 8 for		
1,251 „ „ 1,500	6	0	every additional 500 or fraction thereof.		

10. The percentage due on any given revenue must be exactly calculated out. For instance a patel on a revenue of Rs. 873 will be entitled to Rs. 26-3-0, which after deducting fractions according to ordinary rule becomes Rs. 26 under this head.

11. The following table shows the amount of salary to be paid to officiating patels and kulkarnis according to the preceding scales calculated on even sums for example's sake. (The table, being a mere matter of arithmetic, is not given here).

12. The salaries of officiators fixed by the preceding rules form the minimum rate of remuneration, but an addition to the fixed portion of the officiator's allowance according to scale will be made in certain cases specified in the three following subsidiary rules:—

i.—When the balance of the total land emoluments found by rule 1 beyond what is necessary to provide the remuneration of the officiators falls short of Rs. 5, this balance will be assigned as a

permanent fixed allowance to the officiator in excess of his salary found by the scale in rule 3.

ii—When the balance of the total land emoluments found by rule 1 beyond what is necessary to provide the remuneration of the officiator is large, *viz.*, when it exceeds the salary of the officiator according to scale, 10 per cent of this balance will be assigned as a permanent fixed allowance to the officiator in excess of his salary found by the scales in rules 3 to 11. But* if the sum so assignable exceeds one-half of the whole allowance of the officiator according to scale (exclusive in case of the kulkarni of stationery allowance), then a sum equal to one-half only of the salary of the officiator will be assigned to him under this rule.

iii.—In the case of towns or large villages with a population of about 2,000 inhabitants or more, for the duties of which the kulkarni may require an assistant, a permanent fixed allowance of Rs. 10 will be assigned to the officiating kulkarni in addition to his salary found by the scale in rule 3, when the balance of the total emoluments is sufficient for the purpose, but insufficient to bring the case under the operation of the preceding subsidiary rule.

13. The gross revenue of the village referred to in rules 4 and 7 is the whole ordinary revenue leviable on land for the last year before deducting remissions and suspensions, but including judi and irrigation revenue, but excluding grazing realisation (No. 7240, July 20, 1909.)

(The amount of remuneration due to village officers for grazing fees is deducted before the fees are sent to the taluka headquarters. If the grazing realisations are included in the gross revenue, the village officers will get double remuneration for the collection of grazing fees. Irrigation revenue is to be added to average of land revenue receipts in fixing the remuneration of the village officers for the collection of irrigation revenue.)

14. The salary of each officiating patel and kulkarni is to be paid him† half yearly from the taluka treasury in cash, the first half year's payment being made at half of the whole amount receiv-

* This provision existed in Dhárwar, Sholapur and Ahmednagar only, but appears fairly applicable to all.

† Unless the sum be less than Rs. 25 in which case it be paid in one sum at any time between May and July.

ed by the Officiator during the preceding year and the last half year's payment at whatever may be due to him when the accounts of the year have been made up But no part of the salary of an officiator shall on any pretext whatever be deducted or withheld from the revenue due by himself or others or from balances of Government revenue in his charge.

14 A.—After the introduction of a rivision survey settlement into a taluka or portion thereof, the remuneration of the officiators therein should be annually calculated by the Collector, until the revised scale of remuneration given in rules 4 to 12 of these rules is introduced by the Survey Department. The annual calculation to be made by the Collector is to be made on the revised gross revenue of the year for which the remuneration is due, and in accordance with the scale in force in the taluka, and the amount arrived at should be paid to the officiators half-yearly in accordance with the preceding rule The scale of remuneration proposed will be sanctioned by the Collector, except when extra allowances are proposed for patels, in which case sanction of the Commissioner should be obtained to the grant of the extra allowances (No 4367, July 3, 1903.)

14. B —After the introduction of a rivision settlement into a taluka or portion thereof, the Survey Department will forthwith proceed with the enquiry into the question of "mamul judi" and on its completion will revise the salaries of the officiators in accordance with the scale given in rules 4 to 12 of these rules. This revision will be based on the gross revenue of the latest year for which figures are available, information relating to which should be obtained from the Collector. The revised salaries will be communicated to the Collector for sanction and when necessary under rule 14 A, the Collector will obtain the previous sanction of the Commissioner (No. 4367, July 3, 1903.)

15. The salaries of the officiators fixed by the Survey Department will be revised decennially in accordance with the fluctuations of the gross revenue of the village, but in order to avoid confusion and complication in the accounts the appropriations made from the land emoluments of each watan found by rule 1 to provide the remuneration of officiators will be changed at the decennial revision only when the increase in the emoluments payable exceeds 10 p c, provided that the decennial revision ordered by this rule shall not be undertaken except when there is special reason or a probability

of its resulting in a substantial increase in the existing emo t, of the officiators (No. 7024, July 20, 1909.)

16. When the assesment of the arable land (exclusive of alienations) under cultivation exceeds five-sixths of the assessment of all the arable land exclusive of alienations in any village, the gross revenue of the year shall be taken for the calculation of the remuneration of the officiator with a view to fix and determine the extent of the appropriations to be made for his support out of the total watan emoluments.

17. When the assessment of the arable land specified in the preceding rule falls short of the (aforesaid) five sixths, the sum by which it so falls short will be added to the gross revenue of the village, and upon the total amounts so found, the remuneration of the officiator will be calculated with a view to fix and determine the extent of the appropriations to be made for his support out of the total watan emoluments.

18. The existing official emoluments, valued as provided in *rule* I, will be appropriated for the support of the officiator in the manner specified in the following rules, and the balance of emoluments remaining after providing for the officiators is to be disposed of for the future in the manner also provided for in these rules.

19. The whole of the land emoluments, valued according to rule 1, will be first assessed for the remuneration of the officiator; if these do not suffice the cash allowances hitherto paid from the treasury will be next taken, any balance required being made up from the treasury.

20 When the official land of any watan is held in shares and these shares with the amount of judi and other cesses now payable on each are separately recorded in the village accounts, then the additional tax imposed on the whole official land of the watan under this rule will be apportioned on the several shares in proportion to the sum by which the full survey assessment of the land of each share shall exceed the present judi and other cesses payable on the same, but always so that this tax and the pre-existing judi shall in no case exceed the whole survey assessment for the time being of the whole official land; as in the following example which shows how an addition to the present cess of Rs. 32 is to be apportioned on the several sharers of the patel's watan.

No.	Names of sharers	Survey Assessment of the land of each share.	Deduct judi now paid on each share.	Remaining profit on each share.	Addition to the judi in column 4 apportioned on the profit in column 5	Future judi cess on each share being sum of columns 4 and 6.
1	2	3	4	5	6	7
		Rs. A. P.	Rs. A. P	Rs. A. P.	Rs. A. P.	Rs. A. P.
1	A	92 12 0	51 8 0	41 4 0	15 4 0	66 12 0
2	B	95 12 0	51 8 0	44 4 0	16 4 0	67 12 0
3	C	36 0 0	37 12 0	... ...	... ...	37 12 0
4	D	36 8 0	35 4 0	1 4 0	0 8 0	35 12 0
5	E	245 12 0	287 8 0	... ...	... ...	287 8 0
Total five Shares.		506 12 0	463 8 0	86 12 0	32 0 0	495 8 0

In settling the amount of judi to be paid on each share, fractions of less than $\frac{1}{4}$ rupee are not to be admitted into the accounts in accordance with the rule followed in regard to all shares of the survey assessment.

21. By the operation of the settlement specified in the preceding rules, the official land of every watan will be held subject to the total judi cess entered in the detailed village statements, and for the future the entire official lands of every office are to be entered in the accounts as Service Inam.

22. Nothing contained in any of the preceding rules is to be considered as debarring any hereditary officer from relinquishing his official land when so disposed, and every such officer shall at any time whether at, or subsequent to, the introduction of the settlement prescribed in the foregoing rules, be permitted to relinquish by written *Rajinama* any entire field or fields into which

his official land may have been marked off at the survey, and on so doing the relinquished field, subject to the provisions of the rules in the following para, is immediately to be entered in the accounts as *khalsat* land and the judi tax payable by the lands of the office or watan lands is to be reduced by the full amount of the survey assessment of the relinquished field.

23. Shares in watan lands may be partially or wholly resigned under the following rules :—

i Any separately recorded share-holder in office lands may resign his share or any part of it, so long as the resigned part contains an entire survey number or numbers entered in the name of the person resigning it.

ii Should the resigned land be only a part of the share, the judi payable by the resigning sharer shall be reduced by the amount of the survey assessment of the resigned survey number or numbers.

iii The resigned survey number or numbers shall then, with the survey assessment payable thereon as the future judi, be offered to each of the other sharers in succession (commencing with the largest payer of judi) on judi tenure; should they all decline to take it, it will then be entered as Government waste land.

vi But should the resigned land entered as Government unoccupied land under the preceding rule comprise the entire share of the resigning sharer, and the judi upon it happen to be more than the survey assessment of the same land, the entire resigned share will be offered with the judi due and hitherto paid thereon to each of the other sharers in succession, and if declined by them will be entered as Government unoccupied land; but the sum by which the judi hitherto paid exceeds the survey assessment will be added to the judi payable by the other share-holders in proportion to their respective land profits (which is the difference between the judi payable by each of them and the survey assessment of their respective shares) in the mode laid down in rule 20.

v The judi upon a single share in office watans may possibly exceed the survey assessment of the lands comprised in the share in consequence of the uneven distribution of the ancient or

mamul judi payable by the different sharers. Suppose the following case of a patel's watan lands with three sharers :—

Survey No.	Assessment.	Ancient or Mamul Judi.
A { 1	10	35
A { 2	15	
	25	
B { 3	15	15
B { 4	10	
	25	
	12	15
C { 5	13	
C { 6		
	25	
	Rs....75	Rs...65

vi In the above case the mamul judi on the whole watan lands being less than the survey assessment is confirmed, and every sharer continues to pay his judi as heretofore. As the mamul judi must, if less than the assessment, be fully paid, and as no one can be called upon to pay a higher judi than heretofore on his own original share (except on account of his contribution to the remuneration of the officiator), it follows that some sharers may be called on to pay more than the assessment on their shares.

vii In the above instance, if any one of the sharers resigned one survey number a reduction would be made from the judi equal to the assessment of the survey number resigned, and that number would be offered to the other sharers in succession ; and if accepted the number would be continued on judi tenure and an addition made to the judi of the accepting sharer equal to the assessment of that number. If no one accepted that number, it would be entered as Government unoccupied land.

viii But if A resigned his entire share it would be offered in succession to the other sharers with the judi hitherto payable thereon, and if declined by them, the sum of Rs 10 by which the assess-

ment of A's share falls short of the mamul judi, would be divided between the other sharers in the proportion which the total sum to be made up bore to the "profit" of each. In this case the profit of each being equal, *viz.*, Rs. 10 each, the sum to be made up would be equally divided between them and the judi of each would become Rs. 20 in future. Thus the loss by alienated revenue in this watan could never exceed the original alienation (Rs. 10 which is the difference between the assessment Rs. 75 and mamul judi Rs. 65).

24. The official land under the settlement prescribed in the foregoing rules will form no part of the remuneration of the officiator who is to be paid wholly in cash and the land will therefore remain in the possession of the co-sharers who now hold it.

25. Where there is an excess of land emoluments, as ascertained by rule 1, above the amount appropriated and imposed as additional judi to cover remuneration of the officiator, a judi of one-half of the money valuation of the unappropriated excess has been and shall be imposed on the lands of the watan in original settlements, that is, settlements made for the first time.

Note. Provided that all unappropriated excesses of watan emoluments what were exempted at the original settlement from payment of half judi under Government letter No. 331, Jan. 26, 1860, shall be subject on the expiration of the period of settlement to payment of half judi calculated on the old and not the revised rates. If in any case it be found that the excess at the original settlement is not known a judi at the rate of one-quarter of the excess ascertained on revision shall be imposed in lieu thereof.

26. The above half judi, as originally fixed, is not liable to increase for the time being on account of the unappropriated watan land emoluments attaining an increased valuation under a revision of assessment, though it may be lowered in consequence of a reduction in the said valuation owing to a larger proportion of the hitherto unappropriated watan emoluments being now or at any future time appropriated for the payment of the officiator (this rule is the same as rule 3 in the first set of rules given above).

27. Any unappropriated excess of cash emoluments shall be absorbed by the treasury and at once cease to be paid.

In order to exemplify the working of the above rules the following examples A and B are given of revision of emoluments of patel and kulkarni. In example A the original value of the patel's watan under rule 1 is taken at Rs. 47 as follows: Survey assessment Rs. 92, minus judi Rs. 45, value of watan Rs. 47. The original value of kulkarni's watan under rule 1 is taken at Rs. 25, namely, survey assessment Rs. 57, minus Judi Rs. 32, value of watan Rs. 25.

In example B the original value of the patel's watan under rule 1 is taken at Rs. 400, namely, survey assesment Rs. 890, minus judi Rs. 490, value of watan Rs. 400; and the original value of the kulkarni's watan under rule 1 is taken at Rs. 600 namely, survey assessment Rs. 700, minus judi Rs. 100, value of watan R. 600.

Revenue and population of village.	Patel.	Rupees		Kulkarni.	Rupees	
	A.			A		
Revenue: Rs. 600	Percentage allowance (rule 4) ...	18	0	Percentage allowance (rule 7) ...	30	0
Population 600	Potgi (rule 5) ..	7	0	Potgi (rule 3) ...	10	0
	Chowri allowance (rule 5) ..	7	0	Stationery allowance (rule 9) ...	4	8
	(No extra allowance under rule 6)	0	0	Total...	44	8
	Total.....	32	0	Value of watan (rule 1) ...	25	0
	Value of watan (under rule 1) ...	47	0	Amount payable from treasury ...	19	8
	Balance left after deducting remuneration of officiator ...	15	0	Total..	44	8
	Deduct *half judi imposed on balance (under rule 25) ...	7	8			
	Balance left to watan ..	7	8			

Note—This applies to settlements of remuneration made for the first time. In revision of such settlements the half judi fixed at the first settlement cannot be exceeded but may be reduced under rule 26.

	B			B		
Revenue: Rs. 5,791 Population: 4,250	Percentage allowance (rule 4) ...	88	0	Percentage allowance (rule 7) ...	158	0
	Potgi (rule 5) ...	30	0	Potgi under (rule 8) ...	...	...
	Chowri allowance (rule 5) ...	30	0	Stationery allowance (rule 9) ...	11	0
	Extra allowance (rule 6) ..	20	0	10 per cent. of balance of total land emoluments left after providing aboveremuneration (rule 12 clause II)	43	4
	Add 10 percent of balance of total land emoluments left after providing aboveremuneration (rule 12, clause II.)	23	4			
	Total.....	191	4	* Total...	212	4
	Value of watan (ascertained by rule 1) ...	400	0	Value of watan (ascertained by rule 1) ..	600	0
	Balance left after deducting remuneration of officiator	208	12	Balance left after deducting remuneration of officiator	387	12
	Deduct half judi (rule 25) which is Rs. 104-6 but as under rule 26 the half judi originally fixed is not liable to increase, it is confirmed ...	100	0	Deduct half judi (rule 25) which is Rs. 194-6-0 but as under rule 26 the half judi originally fixed Rs. 150, is not liable to increase, it is confirmed ...	150	0
	Balance left to watan ...	108	12	Balance left to watan ...	237	12

* The inquiries instituted in accordance with the orders contained in G. R. No. 5920 dated 21st July 1905, have shown that it is at present inadvisable to attempt a general revision of the remuneration of patils on the lines suggested in that Resolution. Individual cases will as hitherto be dealt with on their merits. Orders regarding the increase in the remuneration of patils in certain villages in the Kanara District will be issued separately, No. 7484, August 2, 1909.

LOCAL FUND.

Commissioner: "The scales regarding the remuneration of kulkarnis for the collection of Land Revenue and Local Funds are:

Land Revenue (as given in the above rules)

Local Funds.

Exceeding	Rs.	5	and up to	Rs.	10	Rs.	0	4 0
Do.	,,	10	do.	,,	25	,,	0	8 0
Do.	,,	25	do.	,,	50	,,	1	0 0
Do,	,,	50	do.	,,	75	,,	1	4 0
Do.	,,	75	do.	,,	100	,,	1	8 0

On collections above Rs. 199, 8 annas for every 25 rupees. Thus the highest percentage for Land Revenue is Rs. 5, while that for Local Funds is only Rs. 2. It follows that when the Land Revenue and Local Funds of a village are thrown into one lump for the calculation of the remuneration on the whole according to Wingate scale (as recently ruled by Government), and the aggregate does not exceed Rs. 3,000, the percentage payable for the collection of the one anna cess will be considerably greater than it is now calculated on the above scale, and will cause undue expense to Local Funds. The same remarks apply to the remuneration payable to patels. The undersigned recommends that the calculation of remuneration for the collection of the Local Fund Cess should be made at the existing scales quoted above (which is obviously more economical) on the average of previous five years' collections of the cess, the remuneration so determined being continuable for ten years." The proposal is approved and sanctioned. No. 163, Jan. 19, 1881.

REMISSION BY MONEY ORDER.

Sanction is accorded to the introduction of the system of remitting by postal money order allowances due to patils and kulkarnis and petty devasthan cash allowances, subject to the condition that payments by postal remittances should be restricted to such persons only as signified their wish to have them so made. Those recipients who do not signify their desire to receive their allowances through the Post Office will be paid on their presenting themselves at the treasury on any day upto 10 days after the date on which the payment was due. All allowances not drawn within ten days of the date fixed for payment should be remitted by money order. If a village officer officiated in more than one

village during the term, or if remuneration was due to him for collecting different revenues, such as Land Revenue, Local Funds, Irrigation, Cattle Pound, &c., the amounts due to him on all these collections should be sent by a single money order and the amount paid in respect of each village and head of revenue detailed in the coupon. Amounts in excess of the limit payable according to the Post Office rules to a single payee by village postmen should be remitted by two or more instalments separated by intervals of a week. Sanction is also accorded to the recommendation for the extension of the system to cash allowance holders (District Hereditary Officers, Political Pensioners, and others whose allowances appear in Taluka Forms Nos. 23 and 24), provided they send the life-certificates as required by the rules. No. 7779, August 9, 1909.

APPENDIX IV.

Sanads.

The following are some of the important Sanads issued to the different holders of alienated land, cash allowances, &c., in this Presidency. All of them begin with :—

" The Secretary of State in Council
To "

and end with :

" This Sanad is executed on behalf of the Secretary of State in Council, by order of the Governor in Council of Bombay, by and under the hand and seal of , this day of 18 and the said has affixed his signature in the Marathi beneath this as evidence that he accepts the above grant on the terms and conditions aforesaid. "

No. I—*Continuable for ever as transferable private property on payment of chauthai and annual nazarana.* [SAN. 1]

Whereas in of Taluka in the Collectorate, certain land claimed as inam is entered in the village accounts of the year as follows : (namely, in a statement form), 1 Name of holder, 2 Field Number, 3 Measurement, 4 Full assessment, 5 Of which is paid to Government.

It is hereby declared that the said land shall be continued for ever by the British Government as the private property of the persons who shall, from time to time, be its lawful holders on the following conditions : that is to say, that the said holders shall continue faithful subjects of the British Government, and shall render to the same the following fixed yearly dues : Settled Chauthái...Rs., succession and transfer nazarana...Rs. Total...Rs.

In consideration of the fulfilment of which conditions, the said land shall be continued for ever without increase of land tax or nazarana over the said fixed amount, and without objection or question on the part of Government as to the rights of any rightful holders thereof, whether such rights shall have accrued by inheritance, adoption, assignment or otherwise.

No. II.—*Continuable for ever as endowment property on payment of fixed land-tax.* [SAN. 2]

Whereas in of Taluka in the Collectorate, certain land claimed as inam is entered in the village accounts of the year as follows (namely, as in No. I).

It is hereby declared that the said land shall be continued for ever by the British Government as the endowment property of the on the following conditions:–that is to say, that the managers thereof shall continue faithful subjects of the British Government, and shall render to the same as settled and consolidated land tax, the sum of Rs. yearly. In consideration of the fulfilment of which conditions, the said land shall be continued for ever as endowment inam without increase of land tax over the said fixed amount.

No. III.—*Continuable for ever as transferable private property on payment of annual nazarana.* [SAN. 4] *(Act II, 1863, s. 4).*

Whereas certain land in of Taluka in the Collectorate is held as an hereditary inam under the authority of the British Government, and is described in the village accounts of the year as follows : (namely) 1 Name of person to whose lineage the land is continuable, and name of present holder, 2 Authority for hereditary continuance, 3 Field number, 4 Measurement, 5 Full Assessment, 6 Of which is paid to Government.

And whereas the holder of the land has, with a view of its being continued as private property, agreed to pay to Government

a certain fixed annual sum as nazarana: It is hereby declared that the said land shall be continued for ever by the British Government as the private property of the persons who shall, from time to time, be its lawful holders, on the following conditions:—that is to say, that the said holders shall continue faithful subjects of the British Government, and shall render to the same, as settled and consolidated land-tax, the sum of Government Rs. yearly. In consideration &c., (as in No. 1).

No. IV.—*Continuable for ever as transferable private property on payment of half assessment.* [SAN. 8]

Whereas in of Taluka in the Collectorate, certain land claimed as watan is entered in the village accounts of the year as follows: (as in No. 1).

It is hereby declared that the said land shall be continued for ever by the British Government as the private property of the persons who shall, from time to time, be its lawful holders, on the following conditions; that is to say, that the said holders shall continue faithful subjects of the British Government, and shall render to the same as settled and consolidated land-tax, the sum of Rs. yearly. In consideration of the fulfilment of which conditions, the said land shall be continued for ever without increase of land-tax over the said fixed amount, and without objection &c., (as in No. 1).

No. V.—*Settlement of service land and cash allowance of persons useful to the community.* [SAN. 10]

Whereas in of Taluka in the Collectorate, certain land and cash claimed as emolument appertaining to the office of are entered in the village accounts of the year as follows: (namely), 1 Designation of office, 2 to 9 Details of official emoluments, 2 Field No., 3 Measurement, 4 Full assessment, 5 Out of which is paid to Government, 6 Balance, 7 Fixed Chauthai payable to Government in addition to col. 5, 8 Total payment, cols. 5 and 7, and 9 Former cash allowances, 10 Fixed Chauthai to be permanently deducted, 11 Future cash payment due, 12 Remarks.

It is hereby declared that a fourth of the former amount having been deducted as above specified, the said land and cash allowance shall be continued, so long as the village community may require the services, as the service emolument appertaining to the

office of on the following conditions: that is to say, that the holders thereof shall perform the usual service to the community and shall continue the faithful subjects of the British Government. As this watan is held for the performance of service, it cannot be transferred, and in consequence no nazarana will be levied.

No. VI.—*Settlement of service land of persons useful to the community.* [SAN. 12]

Whereas in of Taluka in the Collectorate, certain land claimed as emolument appertaining to the office of is entered in the village accounts of the year as follows: 1 Designation of office, 2 Field No, 3 Measurement, 4 Full assessment, 5 Out of which is now paid to Government, 6 Balance, 7 Fixed Chauthai to be paid to Government in addition to present payment.

It is hereby declared that the said land shall be continued, &c., as in No. V.

No. VII.—*Gordon Settlement sanad.* [SAN. 14]

Whereas in the Zilla of certain lands and cash allowances are entered in the Government accounts of the year 18 as held on service tenure, as follows: 1 Name of the Watan, 2 Lands assessed at, 3 Cash Allowances, 4 Total Emoluments (after deducting mamul judi).

Note—The details are given in Marathi below.

And whereas the holders thereof have agreed to pay Government a fixed annual payment in lieu of service;—

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

mamul judi.....Rs.
in lieu of service...Rs.

Total Rs.

In consideration of the fulfilment of which conditions.—

1st.—The said lands and cash allowances shall be continued without demand of service, and without increase of Land Tax over

the above fixed amounts, and without objection or question on the part of Government as to the rights of any holders thereof, so long as any male heir to the watan, lineal, collateral, or adopted, within limits of the watandar-family, shall be in existence.

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

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

The first condition in the Marathi form of this sanad runs as follows:—

जोंपर्यंत वतनाचा पुरुष वारस, म्हणजे सिधा किंवा तेढा अगर वतनदार घराण्यापैकीं दत्तक, असा कोणी असेल तोपर्यंत, चाकरी न चेतां व वरती लिहिलेले कायम चेर्जेपेक्षां अधिक कांहीं न मागतां व उपभोग करणारांचे हक्काविषयीं काहीं हरकत किंवा शंकाही न घेतां, सदरहु जमीनी व नक्त नेमणुका सरकारांतोंन चालविल्या जातील.)

No. VIII—*Commutation of Service.*

Whereas in the District of the following land and cash allowances are entered in the Government accounts of the year 189 as held on service tenure, *viz.* 1 Name of the Watan 2 to 5 Land: 2 Name of the Village in which it is included, 3 Survey No. (i Main, ii Pot or Phalni), 4 Area (Acre, Gunthas), 5 Assessment (Rs. a. p.), 6 Cash Allowance (Rs. a. p.) 7 Total (Rs. a. p.); and whereas Government have decided to accept a fixed annual payment in lieu of service;—

It is hereby declared that the said lands and cash allowances shall be continued hereditarily by the British Government on the following conditions:—that is to say, that the said holders and their heirs shall continue faithful servants of the British Government, and shall render to the same the following fixed yearly dues:—Mamul Judi—Rs. a. p., Commutation Judi in lieu of service—Rs. a. p. Total—Rs. a. p.

In consideration of the fulfilment of which conditions,

1st—The said land and cash allowances shall be continued without demand of service and without increase of the judis over the above fixed amounts, to the said holders and their male heirs whether lineal, collateral or adopted within the limits of the watandar family, but subject to the same restrictions on each successive holder's power to mortgage, alienate or lease the same beyond the term of his natural life, as are imposed on watandars by section 5 (1) of the Bombay Hereditary Offices Act 1874, as amended by Bombay Act V of 1886.

(The subsequent contents of the sanad are the same as those of No. VII.)

No. IX.— *Conversion of terminable inam into permanent transferable private property.* [SAN. 15]

Whereas the village of situated in Taluka of the Collectorate, continuable under the authority of the British Government as inam for life to the incumbent or incumbents on the 6th June 1864, is entered in the Government accounts of the year 1863-64 as follows: 1 Name of incumbent or incumbents on 6th June 1864, 2 Un-arable area of the village, 3 Arable area, 4 Total, 5 Assessment of the village, 6 to 9 Deductions: 6 Amount payable to the British Government as judi or other tax, 7 to 9 Alienations more ancient than the grant of the village, 7 Total measurement of land so alienated, 8 Total assessment of the same, 9 Total amount of cash payable out of the revenue of the villages.

It is hereby declared that the said village shall be continued for ever by the British Government as the private property of the persons who shall, from time to time, be its lawful holders on the following conditions: *Firstly*—That the said holders shall continue faithful subjects of the British Government and shall render to the same, as settled and consolidated land tax, the sum of Government Rupees yearly, that is, two-thirds of its annual value to Government in addition to the sum it may be already paying to Government; and that if the said incumbent, or all the said incumbents on the 6th June 1864 shall die within ten years reckoned from the commencement of the revenue year in which he, or they signified their acceptance of the terms in confirmation of which this sanad is granted, the next successor shall at once pay to Government a lump sum equal to the amount of revenue due by the said

incumbent, or incumbents for the unexpired portion of the said period of ten years, and shall continue liable nevertheless to the aforesaid annual payment.

Secondly—That the said holders shall have no present or future claim to any alienations whether land or cash more ancient than the grant of the village, all which shall be permitted to be enjoyed under such orders as the British Government may from time to time issue, till such time as they may finally escheat to the British Government.

Thirdly—That if in any case the existing assessment of occupied lands has been guaranteed by the Revenue Survey, such guarantee shall be respected in its integrity until the expiration of the period of the guarantee after which the holders of the village shall be at liberty to revise the assessment, all lawful rights and privileges of minor inamdars, cultivators, sub-tenants, or others, being maintained.

In consideration of the fulfilment of which conditions, the said village shall be continued for ever without increase of land tax over the said fixed amount, and without objection or question on the part of Government as to the rights of any lawful holders thereof, whether such rights shall have accrued by inheritance, adoption, assignment, or otherwise.

No. X *Ditto.* [SAN. 16]

Whereas in of Taluka in the Collectorate, certain land continuable under the authority of the British Government as inam for life to the incumbent or incumbents on 6th June 1864, is entered in the village accounts of the year 1863–64, as follows : 1 Name of Incumbent or Incumbents on 6th June 1864, 2 Field No., 3 Measurement, 4 Full assessment 5 Of which is paid to Government.

It is hereby declared that the said land shall be continued, &c., (as in the preceding sanad upto and including the first condition stated therein ; the second and third conditions do not appear in the sanad, as it is only for land and not for a whole village).

In consideration of the fulfilment of which conditions, &c., (as in the preceding sanad).

No. XI—*Settlement of watans of obsolete offices.* [SAN. 18]

Whereas in of Taluka in the Collectorate certain land held as watan emolument appertaining to the office (*now useless and obsolete*) of , under the authority of the British Government is entered in the village accounts of the year as follows: 1 Name of Holder, 2 Authority for permanent continuance, 3 Field No., 4 Measurement, 5 Full assessment, 6 Out of which is now paid to Government.

And whereas the holder of the land has, with a view to its tenure being converted into transferable private property, expressed a wish to pay to Government three annas in each rupee of assessment under the Resolution No. 1194, April 7, 1866, in addition to any present cess existing; it is hereby declared that the said land shall be continued for ever by the British Government as the private property of the persons who shall, from time to time, be its lawful holders, on the following conditions:—that is to say, that the said holders shall continue faithful subjects of the British Government, and shall pay the said share of the assessment yearly in addition to any present cess existing In consideration of the fulfilment of which conditions, the said land shall be continued for ever without increase over the tax aforesaid, and without objection or question on the part of Government as to the rights of any lawful holders thereof, whether such rights shall have accrued by inheritance, adoption, assignment or otherwise.

No. XII—*Summary Settlement of villages.* [SAN. 19]

Whereas the village of in Taluka of the Collectorate, is held as an hereditary inam, under the authority of the British Government, as shown below: 1 Name of person to whose lineage the village is continuable, and name of present Holder, 2 Authority for hereditary continuance, 3 to 5 Area of the village: 3 Unarable, 4 Arable, 5 Total, 6 Assessment of the village, 7 to 10 Deductions: 7 Amount payable to the British Government as judi or other tax, 8 to 10 Alienations more ancient than the grant of the village: 8 Lands, Total Measurement, 9 Total assessment, 10 Total cash amount payable out of the revenues of the village.

It is hereby declared, that the said village shall be continued for ever by the British Government, under s. IV, and s. XVI, cl.

B, Act II, 1863, as the private property of the persons who shall, from time to time, be its lawful holders, on the following conditions: 1st. That the said holders shall continue faithful subjects of the British Government, and shall pay to the same a fixed annual sum of Rupees as nazarana, in addition to any judi or other tax heretofore payble. (The subsequent contents of the sanad are the same as those of No. IX.)

When rights over forests are conceded to the inamdar, there is an additional clause as follows :—That in respect of the management of the forests in the said village, the felling and removal of timber therefrom, the payment of quit-rent upon the revenue thereof, and all other matters connected therewith, the said holders shall duly fulfil the terms of the agreement entered into by on their behalf on the day of 188, of which agreement a true copy is herein below transcribed in the Marathi.

No. XIII—*Ditto.* [SAN. 20]

Whereas the village of situated in Taluka of the Collectorate, claimed as inam, is entered in the Government accounts of the year as follows : 1 Name of Holder, (2 to 9 same as 3 to 10 in the preceding sanad). It is hereby declared that the said village shall be continued for ever by the British Government under s. II, and s. XVI, cl. B, Act II, 1863, as the private property of the persons who shall from time to time be its lawful holders, on the following conditions :—that is to say, 1st. That the said holders shall continue faithful subjects of the British Government, and shall render to the same the following fixed yearly dues : judi or other tax heretofore payable ... Rs., settled Chauthai . Rs., succession and transfer nazarana... Rs., Total ... Rs. (The subsequent contents are the same as in No. IX.)

No. XIV.—*Ditto of Endowment villages.* [SAN. 33]

Whereas the village of situated in Taluka of the District, claimed as inam on account of a institution, is entered in the Government accounts of the year as follows : 1 Name of Institution on account of which the village is held, and name of Manager thereof, 2 to 9 same as in the preceding sanad. And whereas the said village has been brought under the summary settlement authorized by Act VII of 1863 of the Bombay Legislative Council;

It is hereby declared, that the said village shall be continued for ever by the British Government as the endowment property of on the following conditions, that is to say :—*Firstly* that the Managers of the said institution shall continue faithful subjects of the British Government, and shall render to the same the following fixed yearly dues :—Salami or other tax heretofore payable.. Rs., Quit-rent fixed under the said Act.. R., Total.. Rs. *Secondly* :—(The same as in No. IX). *Thirdly* :—(There may be a clause about forests &c. similar to that in No. XII).

In consideration of the fulfilment of which conditions, the said village of shall be continued for ever as endowment inam without increase of the said fixed dues.

No. XV.—*Personal Inams (to continue to male line)* [SAN. 40 *c*]

Whereas in accordance with the orders referred to certain lands in the village of have been declared to be held as personal inam without the condition of service as follows :—1 Name of holder, 2 Field No. (original survey), 3 Measurement, 4 Full Assessment, 5 Quit-rent to be paid to Government.

It is hereby declared that the said lands (subject to the payment of the annual quit-rent which may hitherto have been levied) shall be continued hereditarily to the lineal male heirs in male descent of the original grantee on the condition that the holders shall continue faithful subjects of the British Government.

No. XVI.—*Service Watans.* [SAN. 21]

Whereas in of Taluka in the Collectorate, certain land held as watan official emolument under the authority of the British Government is entered in the village accounts of the year as follows : 1 Designation of office, 2 Authority for permanent continuance, 3 Field No , 4 Measurement, 5 Full Assessment, 6 Out of which is now paid to Government.

It is hereby declared that the said land shall be permanently continued as the service emoluments appertaining to the said office on the following conditions : that is to say, that the holders thereof shall perform the usual service and shall continue faithful subjects of the British Government. As this watan is held for the performance of service, it cannot be transferred and in consequence no nazarana will be levied.

No. XVII.—(*A*) *Conditions of the sanad granted to the District Hereditary Officers of Surat and Broach as per G.R. No. 3929, Nov. 14, 1867*

The watan, of which the share specified in the schedule below given is a part, as now confirmed, shall be continued (subject to the condition of loyalty to the British Government on the part of the holders thereof) by the British Government without demand of service, and without any further deductions therefrom on that account, or any objection or question on the part of Government as to title, to whomsoever shall from time to time be the lawful holders thereof; but without affecting the rights and interests of other parties.

(*B*)—*Ditto of Ahmedabad as per G. R. N. 234, Jan. 17, 1867.*

1st—The watan, as now confirmed, and below specified, shall be continued (subject as above) hereditarily without demand of service, and without any further deduction therefrom on account of service, and without objection or question on the part of Government as to the rights of any holders thereof, so long as there shall remain in existence any legal heir to the watan, whether lineal, collateral, or adopted, within the limits of the watandar's family, and whether descended in the male or female line. *2nd*—When all the recorded sharers in the watan agree to request it, the general privilege of adopting at any time any person out of the watandar's family, who can be legally adopted, and of transferring the watan or any recognised share thereof, by sale, mortgage, &c., as private property, will be granted by Government to the watan on the payment from that time forward, in perpetuity of an annual nazarana of one anna in each rupee of the total emoluments of the watan as now confirmed, and from the date of the imposition of this nazarana the whole watan, or the recognized share thereof, will be converted into private property, heritable and transferable in all legal modes.

(*C*)—*Ditto of Kaira, as per G. R. No. 2376, May 16, 1872.*

This sanad is accordingly issued; and it is hereby declared that the emoluments of the said watan specified below shall, as now confirmed, be continued (subject as above) by the British Government in perpetuity, without demand of service or any further deduction therefrom on that account, and without any objection or question on the part of Government as to title, whether it shall have accrued in virtue of inheritance, adoption, transfer, or otherwise to whomsoever shall from time to time be the lawful holders thereof but without affecting the rights and interests of other parties.

APPENDIX V.

Record of Proceedings.

Record of Proceedings held before (the officer's name) under Part VI, Act III, 1874, for the village of A, Taluka B, Zillah C, Camp D, Date

The following persons are present :—

A list of men who have served from the earliest period with notes showing whether they were selected by the Collector or by he sharers under Act XI, 1843, s. 4, is appended.

CUSTOM OF WATAN.

Under this head state distinctly.—

1. Whether it is the custom "for a member of one family only to serve," s. 27, and if so whether he served by the selection of the Collector or the votes of the sharers in the watan or under Act XI, 1843, s. 4.

2. Whether "a member of each of several families" served "contemporaneously or for successive periods," s. 28, and if for "successive periods" whether this practice existed at the date of the introduction of Act XI, 1843. In both cases inquiry should be made and recorded if the several families served contemporaneously or in successive periods by selection of the Collector or under Act XI, 1843.

3. Whether "the practice of selection by the Collector from several families prevails," s. 29, cl. 1, and whether he selected one family to serve or several families to serve contemporaneously or for successive periods.

It is not sufficient to record that the custom is "rotation;" this word is not recognized by the Act and had better be abandoned. The Act only contemplates one or other of the customs above noted or perhaps a combination of two or more of them, but whatever remarks you may make on the subject of the custom, you must record a distinct finding under which section of the Act you consider the custom to exist, and fix the period of service prescribed by s. 38.

It must be remembered that the mere appointment of one patel to succeed another on vacancies by death or dismissal or termination of the period for which previous appointments have been made does not *alone* constitute "service for successive periods" as contemplated in the Act. Service for successive periods can only exist *as a custom*, when it can be claimed *as a right*. When it exists at the discretion of the Collector, it comes more properly under cl. 1, s. 29, "selection by the Collector" or service in successive periods subsequent to 1843. Whether one or more persons served or whether they served for life or in successive periods, they were invariably selected by the Collector, though he often fixed the orders of service by selection, and therefore established a *quasi*-service in successive periods. Having decided the custom of the watan, the next step is to decide who are the

REPRESENTATIVE WATANDARS.

If you decide that the custom is for a member of one family only to serve, s. 27, then you "shall" register the "name of the head of that family only as representative watandar."

2. If you consider that the custom is for a member of several families to serve, s. 28, then you must "register the head of each of such families as representative watandars, and fix the order in which they shall officiate."

3. If you find, as you will in the great majority of cases, that the service in successive periods has been introduced subsequently to 1843, or that "the practice of selection from several families prevails," then you must determine "if they are descended from a common ancestor and if so, who is the head of the eldest family descended from the original watandar and enter his name as sole representative watandar," but if they are not descended from a common ancestor, then you must "register the names of the heads of such families" and the order in which they are to serve, s. 29, cl. 2.

4. If you find that service in successive periods has been introduced under British rule "in consequence of the reduction of the number of sharers or the amalgamation of watans," then it will be your duty to enter the names of the heads of each family that formerly officiated "as representative watandars," s. 30, and the order in which they are to serve. Whatever remarks you may

find it necessary to make, you should quote the section under which you enter the names of the representative watandars.

It will be observed that when the practice has been selected by the Collector, s 29, cl 1, if the watandars are descended from a common ancestor, then the name of the head of the eldest family descended from a common ancestor (original watandar) can alone be entered, but as this will operate with great harshness in disinheriting every member of the watan you will do well to look with great suspicion on the evidence of a common ancestry, and not admit it without the clearest proof.

When a common ancestry is clearly proved, then you should represent to the watandars that unless they accept a compromise under s. 31, they will all be disinherited except the one sole representative watandar, selected under s. 29, cl. 1. When this is properly put before them, they will seldom fail to accept a compromise, and it should then be distinctly recorded that the watandars are appointed under s. 31, and that service is for life (or for a shorter period, as the case may be), under s. 38.

When an appeal is made to the Collector or Commissioner from the decision of the Assistant Collector or Collector, the appellate authority should prepare a record, in substance, as follows:—

Proceedings on appeal from the decision of dated before Collector, Camp 188 .

Recorded petition of appeal under s. 78.

Note should be taken if the period of 60 or 90 days allowed for appeal has expired.

The objections raised by the appellant should then be briefly stated and the decision with the reasons for it recorded. No. 7878, Dec. 26, 1881.

APPENDIX VI.

Inam* Tenures.

There are some tenures which, though akin to watans, are not watans as defined in section 4 of the Watan Act and therefore are not governed by the provisions of that Act, *e. g. saranjam*, the *Joshi* watan, the *Kazi* watan etc. These tenures may conveniently be classified under the following heads:—

(A) Political Inams;
(B) Inams of village servants useful to Community;
(C) Inams of village servants useful to the State but not hereditary;
(D) Religious and Charitable Endowments;
(E) Other Inams.

(A) Political Inams.

Origin

It was the practice under the Mahomedan and Maratha Governments to maintain a species of feudal aristocracy for State purposes by temporary assignments of revenue, either for the support of troops, personal service, the maintenance of official dignity, or other similar specific purpose. Holders of such grants were entrusted at the same time with the powers requisite to enable them to collect and appropriate the revenue, and to administer the general government of the tract of land which produced it. Under the Mahomedan dynasty such holdings were known as *jaghirs*, under the Maratha rule as *saranjams*. If any original distinctive feature marked the two terms, it ceased to exist during the Maratha Empire: for, at the period of the introduction of the British Government, there was no practical difference between a *jaghirdar* and a *saranjamdar* in the S. M. Country, where the latter term is now almost universally adopted.

* As to the meaning of the word 'inam,' how and on what terms the various kinds of inams were settled etc., see Introduction p. *xxxv* et seq.

Sanadi grants in *inam*, *saranjam*, *jaghir*, *wakf*, *devasthan*, and *samvasthan*, are, generally speaking, more properly described as alienations of the royal share in the produce of land, *i. e.*, of land revenue, than grants of land, although in popular parlance occasionally so called. But if words are employed in a grant, which expressly or by necessary implication indicate that Government intends that, so far as it may have any ownership in the soil, that ownership may pass to the grantee, the ownership in the soil may be considered to have passed to the grantee, as far as the Government or any person claiming under it is concerned.* Grants in inam, however, are ordinarily to be regarded as grants of land revenue and nothing more (*Ramchandra v. Venkatrao* 6 Bom. 598). This principle is specially applicable to grants in *jaghirs* or *saranjams*.

Saranjam a grant of land revenue only.

As to the settlement of saranjams, the principles according to which their continuance was regulated *&c.*, see Introduction pp. *x x x i x* et seq. Their continuance is at present subject to the following rules framed by Government :—

Rules regarding the continuance of Jaghirs, Saranjams &c.

In exercise of powers referred to in rule 10 of Schedule B of Act XI of 1852 and of the second sub-clause to clause 3 of section 2 of Bombay Act VII of 1863, His Excellency the Governor in Council is pleased to issue the following rules for the purpose of determining the terms to which the continuance of *jaghirs* and *saranjams* and other alienations of a political nature shall be subject :—

(1) *Saranjams* shall be ordinarily continued in accordance with the decision already passed or which may hereafter be passed by Government in each case.

(2) A *saranjam* which has been decided to be hereditarily continuable shall ordinarily descend to the eldest lineal male representative, in the order of primogeniture, of the senior branch

* In most cases, however, the occupancy would follow the grant, *i. e.* the Government cultivator before the grant would become the grantor's cultivator after the grant (under the same conditions under which he held under Government). (*Vide*, Introduction p. *xxx*).

of the family descended from the first British grantee or any of his brothers who were undivided in interest. But Government reserve to themselves the right for sufficient reasons to direct the continuance of the *saranjam* to any other member of the said family, or as an act of grace, to a person adopted into the said family with the sanction of Government. When a *saranjam* is thus continued to an adopted son, he shall be liable to pay to Government a *nazarana* not exceeding one year's value of the *saranjam*, and it shall be levied from him in such instalments as Government may in each case direct.

(3) In the case of *saranjams* which have been decided to be continuable for two generations with a pension to the third, the eldest surviving son shall be considered to represent a generation, and the entire *saranjam* shall descend to him when he represents the second generation from the first British grantee, and a pension when he represents the third. But if the elder son or sons of the first British grantee have died before their father but leave sons, the grandson who ranks first in the order of primogeniture shall, on his grandfather's death, be regarded as the second generation, and the entire *saranjam* shall be continued to him, no pension being granted to the third generation.

(4) Proposed orders regarding successions to *saranjams* in accordance with the above rules must, as they constitute a technical re-grant of the *saranjam*, be submitted in all cases for the sanction of Government.

(5) Every *saranjam* shall be held as a life estate. It shall be formally resumed on the death of the holder, and in cases in which it is capable of further continuance, it shall be made over to the next holder as a fresh grant from Government, unencumbered by any debts or charges save such as may be specially imposed by Government itself.

(5A) In cases in which there is no suitable person to whom a re-grant can immediately be made, or in which an immediate re-grant would be injurious to the interests of the estate, the *saranjam* may be attached and placed under Government management for such period as Government may consider necessary; and the revenues of the *saranjam*, after deduction of the expenses of management, may be assigned for the maintenance of the representatives of the deceased *saranjamdar*, in such

manner and in such proportion as Government may from time to time direct.

(6) No *saranjam* can be capable of sub-division.

(7) Every *saranjamdar* shall be responsible for making a suitable provision for the maintenance of the widow or widows of the preceding *saranjamdar*, his own brothers, or any other member of his family who, having a valid claim arising from infancy, mental or physical infirmity rendering such member incapable of earning a livelihood, may be deemed deserving of support at his hands. When this obligation is not fulfilled by any *saranjamdar*, Government may direct him to make suitable provision for such persons and may fix the amount, which he shall pay in each instance: provided that no one who has independent means of his own, or is, in the opinion of Government, otherwise sufficiently provided for, shall be entitled to maintenance from the *saranjamdar*.

(8) Every order passed by Government under the above rule for the grant of maintenance by a *saranjamdar* shall hold good during his life only.

(9) If an order passed by Government under rule 7 is not carried out, Government may, whatever the reason may be, direct the *saranjam*, or a portion of it, to be resumed, as the circumstances of the case may require. Provision for the members of the *saranjamdar's* family entitled to maintenance shall then be made by Government out of the revenues of the *saranjam* so resumed.

(10) Whenever it appears that a *saranjam* or its revenues have passed by attachment or any other process of the Civil Court into the hands of a person other than the *saranjamdar*, Government will ordinarily direct the *saranjam* to be resumed and pass such orders as to its re-grant or other disposal as may seem to them fitting.

(11) The above rules shall be applicable not only to *saranjams* proper, but also to *Chauth saranjams*.

(12) Any inam granted on political considerations shall be continued in the terms of the sanad or order creating the grant. In the event of any such inam passing out of the possession of the family for whose support it was granted, it shall be liable to

resumption, unless there be an express provision permitting such transfer in the terms of the grant. Government Notification, Political Department, No. 4584, June 29, 1901.

Saranjam a life estate

Saranjams, being of a political character, are not transferable, and must be taken *prima facie* to be an estate* for life only, although they may possibly be granted in such terms as to make them

* With regard to such expressions as "for ever", 'from generation to generation," &c, to be met with in the sanads of grants especially of this class, it has been observed by many writers of authority that the words do not, as might be supposed, impart (by themselves) a fixed hereditary tenure (*Shekh Sultan Sani v. Shekh Aymodin*, 17 Bom. 431). Under the native rule grants were often made by revenue officers without authority. The practice followed by the Native Governments was to investigate, at every new succession and frequently more than once in the same reign, into the validity of grants made, and to resume such as were of modern date and not duly authorised. Not unfrequently the Peishwa himself would not hesitate to resume his own grants when that course was deemed expedient. Such frequent resumptions and change of rulers have left their mark on the meaning of the word under consideration. After an examination of the subject, Sir T. Munro in his minutes of 1822 says: "In this country under the Native Governments, all grants whatever are resumable (meaning not *ousting from possession but levying an assessment*) at pleasure. Official grants are permanent while the office continues but not always in the same family; a grant for religious and charitable purposes, though often granted *forever* or *while the sun and moon endure*, was frequently resumed at short intervals; grants of *jaghirs* or inam lands made from favour or affection or as rewards for services, were scarcely ever perpetual. It was rare that any term was specified and never one or more lives; but it made usually little difference whether the grant was for no particular period or was specified as perpetual. The *altumgha* or perpetual grant was as liable to resumption as any common grant containing no specification of time; it was resumed because the reigning prince considered it was too large, or because he disliked the adherents of his predecessors and wished to reward his own at their expense, and for various other causes. There was no rule for the continuance of grants but the pleasure of the reigning Sovereign: they might be resumed in two or three years, or they might be continued during two or more lives; but when they escaped so long, it was never without a revision and renewal. There are no persons to whom *jaghirs* have continued without some change or modification. Instances can easily be cited to show that princes resumed *altumghas* at

hereditary. The pleasure of the reigning power is, as in the pre-British times, more or less the governing element in the continuance of these grants. The concession of being recognised as hereditary has been made in the case of certain *saranjams* not as of right but as of grace and state policy, and Government has reserved to itself that power of determining, whenever occasion might arise, the nature and extent of its *own bounty*.

Lineal primogeniture is the ordinary rule of succession in the case of hereditary *saranjams*, but Government reserve to themselves the right to order, in a particular case, diviation from the ordinary rule. Proposed orders regarding successions must, as they constitute a re-grant of the *saranjam*, be submitted in all cases for the sanction of Government. In the absence of a suitable successor, the *saranjam* may be attached and kept under Government management. Sanction to adoption may be granted *as an act of grace*.

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pleasure Had they seized private property, they would have been regarded as unjust by the country; but no injustice was attached to the seizure of an *altumgha*, as the people knew that it was a grant of public revenue. Grants of public revenue were not regarded by the people in the light of private property, as it was almost ent rely to land revenue that the rulers had to look for the means of government, there having been no excise or customs duties then. The princes were liberal in their grants, because they found no difficulty in resuming them when they chose. The words *forever, from generation to generation, &c.*, were, therefore, considered as mere forms of expression and were never supposed, to use the words of the same eminent writer, either by the donor or receiver, to convey the durability which they imply or any durability beyond the will of the Sovereign. However, grants in *jaghir* &c. were not so often resumed as might be supposed, because the same motive, *e. g.* the keeping up of troops, continued to exist that existed when the said grants were first made (*Krishnarao v. Rangrao* 4 B. H. C. R I A. C. J). This uncertainty of duration of the most absolutely worded grants explains why the levy of *nazarana* on succession, &c., by Native Governments was readily submitted to by holders of inam tenures. It has been recognised in all the British legislation on the subject. The so-called hereditary *saranjams* are formally resumed on the death of the then incumbent and re-granted to his heir as a fresh grant from Government. It is for Government to determine how *saranjams* are to be held, enjoyed and inherited.

Alienability and resumption.

As a necessary consequence of *saranjams* being held as a life-estate only, they cannot be validy alienated or otherwise encumbered. If they are in any way encumbered, the charge will not be binding against the successor. The *saranjam* will pass to the successor free of any charges save such as may be specially imposed by Government itself. Whenever it appears that a *saranjam* or its revenues have passed by attachment or any other process of the Civil Court into the hands of a person other than the *Saranjamdar*, Government will ordinarily direct the *saranjam* to be resumed and pass such orders as to its re-grant or other disposal as may seem to them fitting.

Any other inam granted on political considerations shall be continued in the terms of the sanad or order creating the grant. If it passes out of the possession of the family for whose support it was granted, it shall be liable to resumption, unless there be an express provision permitting such transfer in the grant. If the grant is to the grantee and his heirs and there is nothing to control the meaning of those words, the grantee would take an absolute estate. But the meaning and effect of the grant is to be gathered from the surrounding circumstances and the object with which the sanad was granted. When the history of the grant shows that the object was to make a permanent provision for the maintenance of an important family, it is not alienable beyond the life of the actual holder, although an hereditary one. (*Ramkrishnarao v. Nanarao*, 5 Bom. L. R., 983.)

Partibility.

No *saranjam* is capable of sub-division. It will ordinarily descend to the heir according to lineal primogeniture, but to whomsoever it may descend, it must descend as a whole. There cannot be any partition. In the absence of any special rules, the law applicable to impartible property would serve as a guide in dealing with them. Suitable provision will of course, when necessary, be made by the successor for the maintenance of the widow of the last holder, his own brothers, and other members deserving to be maintained out of the *saranjam*. (*Trimbak v. Balvant*, 7 Bom. L. R., 652 ; also 30 Bom., 101.)

Civil Court has no jurisdiction as to claims against Government relating to lands granted or held as *saranjam* or on other political tenure. The decision of the Inam Commissioner that a certain estate is *saranjam* is final under rule 2, Schedule A of Act XI of 1852, as regards the land and interest contained in the decision (*Ramrao v. Secretary of State*, 34 Bom., 232; also 11 Bom. L. R., 1333). It is for Government to determine how *saranjams* are to be held, enjoyed and inherited, and in cases where the Civil Court has jurisdiction, it would be bound to determine such claims according to the rules, general or special, laid down by the British Government. The questions, which the Courts would have to consider, would simply be what the terms of the grant by which the British Government continued the *saranjam* are and what the rule of succession laid down by the British Government for *saranjams* in general and for this *saranjam* in particular is. Persons who are grantees subject to special conditions cannot by any length of family custom or usage establish, with binding force which a Court could recognise, any variation of tenure inconsistent with the conditions on which it was granted or is allowed by the grantor, the Government, to be continued.

Jurisdiction of Civil Courts

The rights of successive holders of *saranjams* may be barred by adverse possession (*Trimbak v. Shekh Gulam*, 12 Bom. L. R., 203; also 34 Bom., 329).

Adverse possession.

(B) INAMS OF VILLAGE SERVANTS USEFUL TO COMMUNITY.

Village servants useful to the community are *sutars*, *lohars*, *joshis*, *kazis*, *jangams*, &c. The power of alienation in the case of their holdings is governed by the terms of the settlement, the sanads granted thereunder, and the rules regarding the resumption and continuance of lands held for service issued in exercise of the powers conferred by Act XI of 1852, Schedule B, ss. 8 and 10, by Bombay Act VII of 1863, s. 2, cl. 3, and by other enactments. The terms of the sanads generally are that the lands shall be continued so long as the village community may

Power of alienation.

require the services, on condition that the holder should remain faithful subject of His Majesty, and should perform the services, for which the grant was made. (For form of sanad, *vide* Appendix IV). The sanads, it would appear, generally prohibit the alienation of lands.(1) The lands would become liable to resumption irrespective of the date of alienation (unless Government action is barred by 60 years' limitation, *Radhabai v. Anantrao*), if they were alienated or otherwise encumbered without Government sanction, also if the service in respect of which they were held was no longer performed, or its performance was no longer necessary, or if they came into possession of a person other than the person actually performing the service.

Resumption.

Rules (to be given later on) regarding the resumption and continuance of such holdings would guide the Collector's action in dealing with these cases. The holdings are liable in whosesoever hands they may be for service to the village community. Alienees of long standing (whether the settlement was made with them or not) (2) and sometimes even others (if Government think fit)

(1) From the report it seems that all the sanads, which have been issued, prohibit alienation of the property to which they relate. There is, therefore, no necessity of extending the Watan Act, so as to bring such watans (e. g. of sutars, lohars &c.) under its operation. Commissioners informed that under the terms of the settlement land which has ceased to be held as remuneration for service useful to the village community may be resumed. No. 512, January 24,1882.

(2) L. R. :—"In this case the settlement was made, not with the Kazi's family but with the family which so long ago as 1805 had purchased the Kazi's land. The sanad granted to the family recognises them as the holders of the land 'claimed as emoluments appertaining to the office of Kazi,' and declares that that land shall be continued as the emolument of the office, so long as the village community may require the services, on conditions that the holders shall perform the usual services to the community and shall continue faithful subjects of the British Government. If these two conditions are fulfilled and the community still requires services, the land cannot be resumed. The mere fact that the land is held by strangers is not a sufficient ground for resumption when the settlement was made with those strangers and the conditions of the sanad are fulfilled by them. They, of course, cannot in this

are allowed to continue in possession of the lands (G. R. No. 636, Jan. 23, 1885), provided that they perform, themselves or through agent, the necessary services (3). Resumption in the case of these holdings was till recently considered to be only the levying of full assessment from the person in occupation as laid down in G. R. No. 6310 (4) of 1883. But in G. R. No. 5375 (5) of 1905, resumption of

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instance perform the duties in person, because they are Hindus, but if they perform the services vicariously, that is a sufficient compliance with the sanad, and the land may be said to be 'in the enjoyment of the persons who perform the services' within the meaning of the preamble to G. R. No. 6310 of 1883". Copy forwarded. No. 4996, June 21, 1884.

(3) Commissioner "Lands should continue in inam, so long as the two conditions (referred to in G. R. No. 4996 of 1884) are fulfilled, notwithstanding the fact that the sanad was not issued to the holder (who had purchased the lands before British rule) but to the original inamdar." The view is correct. No. 636, Jan. 23, 1885.

(4) Commissioner: "Numerous applications from Kazis and other people, who are classed as village servants useful to community, have been received applying for the restoration of their inam lands in the possession of strangers, who are in no way connected with the duties for the performance of which the inams were originally granted. The alienations in many cases are said to be of ancient dates. The order in G. R. No. 512 of 1882 is based on the terms of the settlement made as regards these lands, and there is nothing to show in the conditions of these settlements whether the restriction regarding alienation is to be enforced as well in the case of alienations effected prior to the date of the settlements as in the case of alienations which took place subsequently. It is thought that the conditions hold good irrespective of the date of alienation." L. R. "I concur that the service lands as these are resumable by Government irrespective of the date of their alienation. Such lands having been granted or continued by Government on the condition that service useful to the community should be performed by the holders thereof, it is quite reasonable that Government should resume any of them which, they find, are no longer in the enjoyment of the persons who perform the services, or in respect of which services are no longer performed. Resumption, however, means nothing more than the recovery of full assessment from the actual holders, whose possession is not disturbed. Such resumption is not, it is true, of any benefit to the original grantees, on the contrary it removes all

such a holding, by actual eviction of the person in possession who refused to render service, was ordered under the rules for the resumption, &c., of service holdings and the land was granted in inam to the officiator appointed instead of the original holder. By G. R. No. 347 (*) of 1908 Government issued

chances of their ever getting their rent-free lands back. But if they or their ancestors have alienated property in which they had only a life interest, the punishment cannot be said to be altogether undeserved. At least, Government can hardly be expected to take care of people who will not take care of themselves." Government concur that the terms of the settlement made in the case of village servants useful to the community should be held applicable to all cases, in which their service lands have ceased to constitute the remuneration of such servants, and that the lands should be resumed at once irrespective of the date of alienation. It should be borne in mind that by resumption is only meant the levy of full assessment from the person in occupation other than the original grantee or his descendants. Government do not consider original holders as entitled to any consideration. No. 6310, August 25,1883. But *vide* No. 347 of 1908, p. 526.

(*) Collector "Certain inam land was assigned as remuneration for services of a blacksmith and was entered in the name of K, who, however, refused to render the usual services required by the villagers. The inam land was therefore 'resumed,' that is, full assessment was levied on it, but it was allowed to remain in the possession of the former occupants, viz., 'K and his *bhaubands*. The villagers appointed one V to do the work of a blacksmith in their village. He has accordingly been doing this work since 1896 and made an application that the amount of assessment on the land (Rs. 6) *minus* judi (As. 8) might be paid to him from that year." For the past years for which he has served, he should be paid Rs. 49-8. The land in question should be resumed under no. 4 of the rules published in Government Notification No. 2702 of 23rd April 1902,* and the persons in possession should be evicted under rule 6 (*a*). It should then be granted in inam, subject to the payment of the settlement judi, to the present officiator. No. 5375, July 1, 1905.

(*) As Government have, under the terms of the settlement effected and sanad issued in the particular case under notice, power to resume *the land* as opposed to the mere exemption of the land from full liability to land revenue, the orders, issued in G. R. No. 5375 dated 1st July 1905 for the resumption of the service inam land in question by evicting the holders thereof, and for the

*These rules have now been superseded by those published in Government Notification No. 10336 dated 12th October 1908.

general orders for the resumption of such lands by actual eviction in cases where the land itself was required for the purpose of remunerating the person actually rendering the service, when the terms of the settlement and the sanad issued allowed it. In G. R. No. 4250(7) of 1908, Government issued further orders to

grant of the land to the present officiators, should now be carried out. Resumption to the same extent should be enforced, whenever necessary, in all cases of alienations of land granted to village servants useful to the community, in which the terms of the settlement effected and sanads issued are similar to those in the present cases. The orders contained in G. R. No. 6310 of 25th August 1883 should be regarded as cancelled so far as they apply to such cases as the one under consideration, where the land itself is required for the purpose of remunerating the person actually rendering the service useful to the community. No. 347, Jan. 11, 1908.

(7) In G. R. No. 347 of 1908 it has been ruled that in all cases of alienation of inam lands granted to village servants useful to the community, where under the terms of the settlement effected and sanads issued the land itself is required for the purpose of remunerating the person actually rendering the service and is therefore declared to be not transferable, Government have power to resume the land as opposed to the mere exemption of the land from full liability to land revenue, and that the orders contained in Government Resolution No. 6310, dated 25th August 1883, should be regarded as cancelled so far as they apply to such cases. It should be borne in mind that this ruling is intended to apply only to the holdings of village servants useful to the community, which, in consideration of services to be rendered, are assessed at not more than one-fourth the annual survey assessment for the time being and are declared to be non-transferable, and not to those of useless village servants, which, in view of their services being no longer required either by Government or the community, have been subjected to the payment of half the assessment and converted, except in Gujarat, into private transferable property. This is the principle which has governed the disposal of several cases of holdings of these two classes. Only the alienated holdings of the former class should be dealt with in accordance with the following directions:—In every case in which the stipulated service is no longer performed or required by the village community and the service inam land has been wholly or partially alienated, full assessment should be levied from the person in possession of such land, which should be removed from the list of service inams and treated as *khalsa*. In every case in which the stipulated service is no longer performed but is still required by the

General directions for dealing with alienated service lands

the effect (1) that only full assessment should be levied from the person in possession of alienated land, where the service was no longer performed or necessary; (2) that the land should be resumed by actual eviction where the service was no longer performed but was still necessary; (3) that rent might be recovered from the person in actual possession of the alienated land, where the service was performed and was necessary, so long as the service continued to be performed. In G. R. No. 9123 (8) of 1908, it was conceded that, in cases of alienations

community, and the service inam land has been wholly or partially alienated, such land should be resumed by evicting the person in possession of it and re-granted as inam to the person undertaking to render to the community the stipulated service. In every case in which the stipulated service continues to be performed and is still required by the village community, but the service inam land has been wholly or partially alienated, no steps need be taken to resume such land from the person in possession of it, so long as he agrees to pay such rent as may be demanded from him, and so long as any member of the family of the grantee is willing to perform the service and to pay the judi fixed on the land; but it should be intimated to the alienee that the land will be resumed from his possession whenever the requisite service ceases to be performed. No. 4250, April 28, 1908.

(8) Commissioner "It is improbable that in any village there will be found land held for village service of every kind. The gradual alienation of such land and its disconnection with the service therefor, which has or may have taken place, has not affected village society in the same way as if all the various services had been affected in every village. All the persons who do perform service, so far as such communal service is performed, get remuneration in grain from the rayats whether they hold land or not. It is not then the case that service cannot be performed, unless the performer is in possession of the land which has been assigned for the service remuneration. The conditions, on which land held for service useful to the community was continued, are clear enough but we considered so long that resumption in such cases meant only levy of full assessment. In the case of some village servants the performer of service is not likely ever to cultivate the land himself. In some cases land has been sold in execution of a decree of a Civil Court—the alienation having thus in the eyes of the alienee (auction-purchaser) received the implication of the *sirkar*. Some of the alienations are of long standing, some for high prices. It may be said, of course, that the alienees are at liberty to get service per-

Full rent to be levied in certain cases instead of actual eviction.

of long standing for adequate consideration, the person in possession should be given the option of paying full rent instead of being actually evicted. And finally in G. R. No. 1425 (9) of 1910, it is laid down that orders passed by Government officers in accordance with G. R. No. 6310 of 1883 should not ordinarily be interfered with and that Government should at

formed but it may be doubted whether it would not be in the power of influential villagers, should they choose, to prevent it, and whether it would be a suitable thing to require a Lingayat cultivator to make arrangements for the remuneration of a Brahmin Joshi. Levy of rent in lieu of eviction is a common method of dealing with alienations. For these reasons I recommend that, instead of actual eviction, rent should be levied from the alienee and paid to the person appointed to serve, and that the rent should, in all cases where difference between assessment and judi is sufficient remuneration, be not more than this amount." Approved subject to the following :—The cases to which the Commissioner refers are those of holdings of village servants useful to the community, which are subjected to the payment of a judi of not more than a quarter of the assessment and are declared to be non-transferable, in which the service is not performed but is required, and in which the land has been wholly or partially alienated. In such cases, when the alienation is of long standing, say 30 years or more, and was made for adequate value, the Collector should have discretion to refrain from resumption of the land so long as the person in possession agrees to pay such rent as is demanded of him. He should enforce resumption only in cases other than these. When rent is demanded in lieu of resumption, Government consider no sufficient reason exists for limiting the amount of rent to the difference between assessment and judi. The person undertaking to render the service should receive the full remuneration obtainable from the land. No. 9123, August 10, 1908.

(9) Orders passed by Government officers in accordance with G. R. No. 6310, dated 25th August 1883, should ordinarily not be interfered with, and if in any case reversal of the previous orders seems desirable and equitable, the facts should be reported to Government. By keeping the old order unaltered Government are of course appropriating in such cases the difference between the judi and the assessment, to which they are not entitled under the later orders, if service is still performed. Recommendations should be made for the re-grant of this difference to the actual officiator in cases where it seems called for. Government in fact will allow the actual officiator rent, but it will be limited to the assessment *minus* the judi, and it will be paid now at the expense of Government. No. 1425, February 16, 1910.

its own expense pay rent limited to assessment *minus* judi to the actual officiator.

A Joshi's holding is held to be alienable where the practice so obtains (*Narharbhat v. Martandbhat*, P. J. 1888, 347). It is also held that private alienation of the *vritti** of Joshis is not absolutely prohibited (*Moro v. Anant*, 21 Bom., 821). No fixed rules can be laid down as custom rather than the text-law governs succession, alienation &c. in such cases. But a compulsory alienation, *e. g.* in execution of a decree, being opposed to law and public policy, is not allowable (*Rajaram v. Ganesh*, 23 Bom., 131).

A watandar Joshi can sue an intruder for damages (if he be not at fault) (*Raja valad Shivapa v. Krishnabhat*, 3 Bom., 232). He will not, however, be granted an injunction against the intruder, if the result be to force him upon unwilling *yajmans*; but otherwise if they (*yajmans*) be willing to take service from him and the obstruction comes from the intruder only (*Moro v. Anant*, 21 Bom., 821).

Females are not precluded from succeeding to Joshi holdings (*Umanbhat v. Tulsawa* P. J. 1898, 118). Principle of estoppel is held to apply in the case of alienations of Joshi holdings (*Ramkrishna v. Umaji* P. J. 1879, 295).

Jangam's service land is inalienable †

Following are the rules (G. Notification No. 10336, October 12, 1908) framed by Government regarding the resumption and continuance of service land:—

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* *Vritti* is a priestly office in virtue of which certain religious services are performed, *e. g.* on behalf of pilgrims to the *tirth*, who pay fees to the holders of the *vritti* for the performance of those services.

† Land, held under a sanad as service emolument appertaining to the office of the *Jangam* on condition that the holders thereof should perform the usual services to the community and should continue faithful subjects of the British Government, *held* inalienable beyond the life-time of the holder for the time being, being service inam and also on the ground that under cl. 3, s. 8, Act II of 1863 it was not alienable from the *mutt* (*Jamal Saheb v. Murgaya* 10 Bom., 34).

Rules concerning the resumption and continuance of lands held for service.

In exercise of the powers conferred by Act XI of 1852, Schedule B, sections 8 and 10, and by Bombay Act VII of 1863, section 2, clause 3, and of all other powers enabling him in this behalf, the Governor in Council is pleased to issue the following rules concerning the resumption and continuance of lands held for service.

1. An inquiry into the title, by which any land held for service is enjoyed, may be instituted from time to time by such officer as Government may direct.

2. Lands originally held for service, which have been continued, or may hereafter be continued, under section 15, Bombay Act III of 1874, on condition of payment of a certain portion of the assessment thereof in commutation of service, shall continue to be held in accordance with the terms of the sanads issued or hereafter to be issued in confirmation of the said commutation settlements.

3. Service lands, in respect of which no such commutation settlement has been effected, and which have been already declared by Government, or by any officer acting under the orders of Government, to be resumable on the demise of certain persons, or on the extinction of certain families or lines of descent, shall be resumed accordingly.

4. Service lands which do not fall under No. 2 or 3 of these rules shall be continued, subject to the provisions of Bombay Act III of 1874, and of any other law for the time being in force relating thereto, to the heirs of the present holders or in the event of the same being at any time lawfully alienated, to the heirs of the alienees, without restriction as to adoption or female or collateral succession; but such lands shall be resumed in default of any heir in whom, in the ordinary course of descent, the deceased holder's private property would vest, and shall not be liable to be dealt with under the ordinary law for the time being in force relating to intestate property: provided that if the Collector is at any time satisfied that the service, in respect of which any such lands are held, is no longer performed or that its performance is no longer necessary, or that for the service performed the remuneration derived from the profits of the enjoyment of such lands

is unnecessarily high or, in the case of service lands, to which the provisions of Bombay Act III of 1874 do not apply, if it shall appear that the holder has been guilty of any serious offence or misconduct, or that such lands or any part thereof or any of the profits thereof have or has, by succession or otherwise, come into the possession of a female or of any person other than the person, who for the time being is duly authorized to perform and does actually perform the service in respect of which such lands are held, the Collector may in his discretion direct either (1) the resumption of such lands, or (2) the continuance of the same, subject to such new conditions as he shall deem fit to impose, or (3) the resumption of a portion of such lands and the continuance of the rest thereof, subject to such conditions as aforesaid.

5. When the sanad issued in confirmation of any service commutation settlement expressly authorizes the alienation or transfer of the service lands, the same shall be continued without question to any lawful holder thereof on fulfilment of the terms of the sanad. In every other case contemplated by no. 2 of these rules, and in every case contemplated by nos. 3 and 4 of these rules, if any land held for service or any of the profits thereof shall at any time be or become alienated contrary to the provisions of Bombay Act III of 1874, or of any other law for the time being in force, or, in the case of land to which the provisions of Bombay Act III of 1874 do not apply, if the same or any of the profits thereof shall be alienated or in any way encumbered without the previous sanction of Government, the said land shall, if the Collector deem fit, be forthwith resumed, anything in the said rules to the contrary notwithstanding.

6. It shall be lawful for the Collector, whenever it may be necessary, in carrying out any of the provisions of no. 4 or 5 of these rules—(*a*) summarily to evict any person wrongfully in possession of any land, or (*b*) to levy any rent due by any person in the manner that may be prescribed for the time being in force for the levy of a revenue demand. Explanation.—For the purposes of this rule any person in possession of land, the resumption of which has been directed under no. 4 or 5 of these rules, shall be deemed to be a person wrongfully in possession thereof.

(C) INAMS OF VILLAGE SERVANTS USEFUL TO THE STATE BUT NOT HEREDITARY.

Village servants useful to the State are servants that hold offices connected with the administration of the village. If they hold their office hereditarily and perform duties mentioned in section 4 of the Watan Act, they would be hereditary officers as defined in the section. As to whether a particular office is held hereditarily or not is mainly a question of fact to be decided on the merits of the particular case.

Resumption.

The holdings of these non-hereditary servants would be liable to be resumed under no. 4 or 5 of the rules of resumption (already given), when they are alienated or when they have passed into the possession of any one other than the officiator.

Under the rules as they stood till 1902 Government alone could order resumption, but thereafter and now Collectors have been invested with those powers. (10)

The lands of these servants are partible and can be applied to non-agricultural purposes. But the trees thereon cannot be cut down without Collector's sanction. (11)

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(10) The orders conveyed in G. R. No. 3400 dated 3rd April 1907 were not intended to deprive the Collector of any powers previously conferred upon him in connection with the resumption of shetsanadi inam lands. But when that Resolution was issued the orders contained in G R. No. 7499 dated 24th October 1902, were overlooked, with the result that the Collector was declared to have power to resume only in cases in which the inam lands had been alienated. On further consideration, the Governor in Council is now pleased, in modification of the orders conveyed in G. R. No. 3400 of 3rd April 1907, to authorize the Collector to exercise the power of resumption and regrant as well as continuance of such lands in all the cases enumerated in no. 4 of the rules published in Government Notification No. 2702 dated 23rd April 1902. The Remembrancer of Legal Affairs should be requested to amend rule 4 accordingly, No. 12118, December 9, 1907.

(11) Can an inferior village servant appropriate his non-watandari service lands to a non-agricultural purpose without restriction of any kind? L. R. "A holder of service land appears to me to be at liberty to make what use he pleases of it. If Government disapprove of his using it for building purposes or think

Except perhaps those of shetsanadis which Government have declared to be non-hereditary and resumable, ([12] & [13]), it is not easy to say which holdings are included in this class. But as to shetsanadis, *vide* notes on page 10.

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that he will realize by doing so higher profits than his service is worth, a timely arrangement for exchange or for substituting a cash allowance for the land is perhaps the simplest course. But the proviso to no. 4 of the rules concerning the resumption and continuance of lands held for service (*vide supra*) provides remedies, if in any case Government are satisfied that for the service performed the remuneration derived from the profits of enjoyment of service lands is unnecessarily high." Can he cut down the trees standing on such lands without the sanction of the Collector? Government conceded as an act of grace to the occupants of service holdings the right to cut trees standing in their holdings with the previous permission of the Collector. The permission of the Collector was required in order to prevent the wanton destruction of trees by temporary holders of service lands. No. 2535, April 21, 1900.

([12]) Commissioner :—" The Subordinate Judge ordered the attachment and sale of land held for the performance of the duties of a Police sanadi in the execution of a decree. As the shetsanadi lands are held for service and are required to be in the possession of the persons performing the duties of sanadi, an application was made to the Subordinate Judge under the Collector's order to remove the attachment. The application was refused by the Subordinate Judge who held that he could not take any action on the motion of the Collector, unless he issued a certificate under s. 10 of the Watan Act. The Collector proposes that it should be admitted that Watan Act applies to the shetsanadi lands as all relief that is required can be given under that Act. The question for consideration is whether the Watan Act can be made applicable to the shetsanadi land. From the brief history given regarding the tenure of the shetsanadi service inam lands, it will be seen that Government have all along held that shetsanadis have no hereditary right to hold their office and that the lands held by them do not constitute a watan as defined in the Watan Act. But the High Court have held in *Limbaji v. Rama* that shetsanadis are watandars and that the lands held by them are watan lands." Government are in no circumstances prepared to admit that land held by shetsanadis is watan property and subject to the operation of Act III of 1874. The earliest opportunity should be taken to set at rest by means of a test case the uncertainties arising from the conflicting and indecisive utterances of the Courts of Law on the point, which in some instances at least appear to have been

(D) RELIGIOUS AND CHARITABLE ENDOWMENT.

The Hindu and Mahomedan laws of religious and charitable endowments will be found discussed in the various treatises on those laws. Such grants may emanate either from the ruling power or from private individuals. The former have been declared to be permanent and continuable for ever on payment of a fixed tax and on condition that the managers shall continue faithful subjects, but they are not transferable. The latter may be permanent or otherwise. (As for form of sanad, *vide* appendix IV.)

Religious charitable endowments, Hindu law.

Under the Hindu law the religious and charitable endowments are of three kinds:—perfect, imperfect, and nominal. In the first kind, the dedication is absolute, leaving no beneficial enjoyment to the donee; in the second, the property is granted subject to the religious trust—primarily it belongs to the donee; in the third, the founder nominally dedicates the property and that is all.

Perfect endowments.

Perfect endowments are continuable in perpetuity to the religious purposes (*Collector of Moorshedabad v. Ranee Shebessuree*, 18 W. R., 226).

made on insufficient and inaccurate information. As a means to this end Government are pleased to direct under rules 4 and 5 of the rules under Bombay Act XI of 1852, Schedule B, s. 10 and Bombay Act VII of 1863, s. 2, cl. 3, that the land in question in the case under reference be resumed. The Collector is directed to summarily evict the alienee under no. 6 of the said rules. Should the alienee successfully resist eviction, or should he bring a suit against Government for wrongful ejectment, further instructions should be taken. In the meantime the services of an officer should be placed at the disposal of the L. R. to collect materials for placing before Courts of Law, in any test case that may be brought, full evidence that shetsanadis are not watandars, and land granted to them for service is not watan property within the meaning of Act III of 1874. No. 4695, July 6, 1899.

(13) L. R. "After perusing the report of the officer deputed to collect materials, referred to in G. R. N. 4695 of 1899 (*supra*, 12), there should apparently be no difficulty in establishing that the view taken by the High Court in *Limbaji v. Rama* was based on a misapprehension and that shetsanadis generally (subject possibly to some individual exceptions) have not the rights of watandars under Bombay Act III of 1874." Opinion underlying G. R. No. 667, February 6, 1901.

They are exempt from the rule prohibiting perpetuities. They are ordinarily inalienable but can be alienated for necessary and legal purposes of the institution to which they are attached *e.g.*, keeping up the religious worship, repairing the temples or other possessions of the idol; defending hostile litigious attacks *Krishnarao v. Rangrao*, 4 B. H.C.R., I,A. C. J.). The rule of Hindu law, which invalidates a gift other than to a sentient being capable of accepting it, does not apply to a bequest to trustees for the establishment of an image and the worship of a Hindu deity after the testator's death, nor does it make such a bequest void. The decisions—that a devise to an idol neither set up nor consecrated before the testator's death is invalid—based on the said rule have been recently over-ruled by the full Bench ruling of the Calcutta High Court in *Bhupati v. Ram Lal*, 37 Cal., 128. A gift to a deity, whose image is to be established and consecrated in future, is therefore now valid. Where property is dedicated to the religious services of an idol, it constitutes, in legal contemplation, the property of the idol (*Manohar v. Lachmiram*, 12 Bom., 247).

Office of *shebait* or Manager.

When a gift is made to an idol, some person is appointed as *shebait* who is strictly a manager but is considered a trustee for the idol. The possession and management of the dedicated property belongs to him. In him is vested the right to sue when necessary for the protection of the property (*Jagadindra v. Hemant*, 32 Cal., 129 P. C.); and conversely the property is liable for wrongs committed by him in the course of reasonable management (*Raja Pramada v. Sheba Purna*, 7 C. L. J., 514). His power of alienation is, like the manager of an infant heir, limited to cases of unavoidable necessity; and apart from such necessity, to create a new and fixed rent for all time, though adequate at the time, in lieu of giving the endowment the benefit of augmentation of a variable rent from time to time, would be a breach of duty (*Abhiram v. Shyama Charan*, 36 Bom. 148, 11 Bom. L. R. 1234; see also *Ishwar Chand Jiu v. Ram Kanai Ghose* 13 Bom. L. R. 421). The right of managing endowments is inalienable, being *res extra commercium*. Custom has much

relaxed the rule in case of private alienations, when the alienees are near-related members of the family of alienor, and sometimes even when they are strangers. But compulsory alienations, *e. g*, in execution of a decree, have been disallowed in all cases. The

Devolution of office of manager.

founder has the right of laying down rules for the devolution of the office of manager (*Gridharji v. Romanlalji*, 17 Cal., 20). In default of them, recourse must be had to usage. Where nothing is said in the grant as to the succession, the right of management passes by inheritance to the natural heirs of the donee, according to the rule that a grant without words of limitation conveys an estate of inheritance. It is naturally indivisible, but custom has sanctioned a

Divisibility.

departure from the rule by allowing the parties to officiate by turns. In the case of imperfect endowments, the property is alienable, inheritable,

Imperfect endowments.

and partible. It can be sold in execution of decrees also. The alienees would take the property subject to the performance of worship or other duties. If in such a case the trust deed provides that the property is inalienable, or indivisible, these directions will be ignored as being repugnant to law. (*Dassa Ramchandra v. Narasinha*, 13 Bom. L. R. 101.)

Nominal endowments are no endowments. The property in

Nominal endowments.

those cases is inheritable, partible and alienable. The alienees will take it unencumbered with any kind of trust. Where the endowment is in favour of a public idol or other public institution, neither the

Completed trust irrevocable.

founder nor his family can put an end to it; while in the case of a private idol, the consensus of the family can stop the endowment (*Konvar Doorganath v. Ramchander* 4 I. A., 52).

Suit.

Suits can lie in Civil Courts to prevent fraud and waste in dealing with religious and charitable endowments (*Manohar v. Lachmiram*, 12 Bom., 260). A manager can be removed for abuse of trust (*Jagatmohinee v. Savkhemoney*, 14 M. I. A., 289). If decrees are obtained *bona fide* against managers, they are *res judicata* and bind their successors. Ad-

verse possession of the office or property may bar the person claiming to be a manager (*Ramanathan Chetty v. Murgappa Chetty*, 27 Mad., 192). Sections 92 and 93 of the Civil Procedure Code (1908) make provisions for the enforcement of public trusts.

Mutts.

Mutts were established as centres of theological learning and in order to provide a line of competent teachers with reference to the established Hindu creeds of the country. They are presided over almost invariably by learned and pious ascetics who are called *swamies*. The object of these *mutts* is generally the promotion of religious knowledge, the imparting of spiritual instruction to the disciples and followers of the *mutt* and the maintenance and strengthening of the doctrines and tenets of particular schools of philosophy.

The two classes of institutions, *viz.* temples and *mutts*, are thus supplementary in the Hindu ecclesiastical systems, both conducing to spiritual welfare, the one by affording opportunities for prayer and worship, the other by facilitating spiritual instruction and the acquisition of religious knowledge, the presiding element being the deity or idol in the one, the learned and pious ascetic in the other. The position of the head of the *mutt* is thus not the same as or analogous to that of managers or *dharmakartas* of *devasthanams* and temples. In the case of temples, the endowments have to be devoted to the carrying out of the specific purposes connected with the temple and the *dharmakartas* are mere trustees for the carrying out, or executing of such trusts. In the case of *mutts*, however, such defined and specific purposes immediately connected with the maintenance of the *mutt* as an institution, are in the nature of things very limited and a large part of the income derived from the endowments of the *mutt* is at the disposal of the head of the *mutt* for the time being, which he is expected to spend, at his will and pleasure, on objects of religious charity and in the encouragement and promotion of religious learning. His obligation to devote the surplus income to such religious and charitable objects is one in the nature only of an imperfect or moral obligation resting in his conscience and regulated only by the force of public opinion and he is in no way, whether as a trustee or otherwise, accountable for it in law. In legal contem-

plation, therefore, the head of a *mutt*, as such, has an estate for life in its permanent endowments and an absolute property in their income and the offerings of his followers, subject only to the burden of maintaining the institution. Over the *corpus* of the endowment, however, his power of disposition is very limited as in the case of managers of temples and *devasthanams*. He cannot alienate or charge the *corpus* or the income beyond his own life-time, so as to bind the *mutt* and his successors, except for purposes plainly necessary for the maintenance of the *mutt*. And except under such circumstances, an alienation of the *corpus* or a charge thereon made by him and debts incurred by him will not bind the *mutt* or his successors, merely because the same was made or incurred for general religious or charitable purposes appropriate to an ascetic or head of a *mutt*. (*Vidyapurna v. Vidhyanidhi*, 27 *Mad.* 576).

Succession to *mutts* is regulated by the custom and usage of each particular *mutt*. The successor is ordained and appointed by the head of the *mutt* during his own life-time and in default of such appointment, the nomination may rest with the head of some kindred institution or the successor may be appointed by election by the disciples and followers of the *mutt* or in the last instance by the Court as representing the Sovereign. The head of a *mutt* is not a trustee and does not forfeit his position by reason of his having become lunatic (*ibid*).

Wakfs.

The following brief summary of the Mahomedan law of *wakfs* may be found useful:—A *wakf* is a dedication in perpetuity of specified property, generally immoveable to religious or charitable uses or to objects of public utility. The institution of *wakf* is entirely interwoven with the religious and social life and the basic principles of economy of the Mahomedan community. When property is dedicated to religious or charitable uses, the ownership is deemed to be transferred from the dedicator to the Almighty, and the property cannot, therefore, be alienated by him or by any other person, nor can it pass to his heirs on his death. *Wakfs* may be divided into two classes:—(1) pure and simple charitable or religious trusts, (2) private trusts with ultimate reversion to charity. A *wakf* may include provisions for the benefit of the founder, or his descendants, or other relatives. It has been laid down by the Privy Council

and the High Courts in a series of cases that the provisions in favour of the founder's family can take effect only if there is substantial dedication of property to charity at some period of time or other presumably not too remote. Otherwise the *wakf* is illusory and therefore bad (*Abdul Fata v. Rasamaya*, 22 Cal, 619 P. C.)* A mere settlement for the benefit of the settlor's family in perpetuity is thus void.

Mutawalis.

A dedicator may appoint himself or any other person to be *mutawali* or manager of the *wakf* property. A *mutawali* cannot transfer his office to another in his life-time ; he may generally nominate his successor on his death-bed. He has no power, without the permission of the Court, to mortgage, sell, or exchange the *wakf* property. But where a Court found that a mortgage was for urgent necessity, and was proper, the mortgage was held valid in law, inasmuch as it might be taken to have been retrospectively approved by the Court. A *mutawali* may be removed by the Court on proof of misfeasance or breach of trust. *Wakf* property cannot be attached and sold in execution of a personal decree against the *mutawali*. His office also cannot be so attached.

(E) OTHER INAMS.

Village servants useless to State and to Community.

The holdings of village servants useless alike to State and to community, such as Mahajan, Beldar etc., whose offices are now obsolete, have become permanent, heritable, and transferable freeholds, on payment of a certain share of the assessment. They are the private property of the holders and are governed by the ordinary law as regards alienation, partition, succession &c. They are not liable to be resumed, so long

* The law thus expounded is, by some, supposed to be against the Mahomedan law and the wishes of the Mahomedans. Such a feeling has given rise to *Wakf* Validating Bill which, if passed into law, would validate a *wakf* for the maintenance and support, wholly or partially, of a man's family, children and descendants, (even for his own support where the *wakif* is a Hanifi Musalman), provided that the ultimate reversion is expressly or impliedly reserved for the poor, or for some other religious, pious or charitable purpose of a permanent character

as the usual condition of loyalty is fulfilled. (For form of sanad, *vide* Appendix IV).

Personal Inams.

Personal inams, *i. e.* those not burdened with the performance of any service or office or the discharging of any trust or obligation, which were given for past services rendered by the grantee or his ancestor or out of mere favour, *e. g. dharmadaya*, are now permanent, heritable, and transferable freeholds on payment of *nazarana* and a certain share of the assessment to cure defective title. Allegiance to the Crown is, of course, a condition to their continuance. They are governed by the ordinary law as regards alienation, partition, succession, etc. (For form of sanad, vide Appendix IV).

Other Inams.

Other inams by Government and those emanating from private persons would be governed as regards succession, alienation, partition etc., by the terms of the deed creating the grant, the particular circumstances under which, and the particular object for which, the grant was made. Each case would have to be dealt with on its own merits.

One or two points of interest connected with inams in general may usefully be touched upon here.

Nature of inamdars' interest in soil.

A grant to an inamdar is ordinarily a grant of revenue only, *vide* notes on Political Inams, p. 516 but if suitable words are employed in the deed creating the grant, the ownership in the soil may pass to the grantee. The burden rests on the inamdar to show that he is an alienee of the soil (*Rajya v. Balkrishna*, 29 Bom., 415; also 7 Bom. L.R., 439). And there may be cases, in which, though there may not be a grant of the soil, still the inamdar may have had occupancy rights. To give the same in the words of the Court in the case of *Balvant, v. Secretary of State*, 29 Bom. 480, also 7 Bom. L. R. 498; and 32 Bom. 433, 10 Bom. L. R. 531.

Rights of inamdar over soil.

"A grant, which purports to be a grant only of the royal share of the revenue given in commutation of cash allowance, must be construed strictly in favour of the Crown, and is *prima facie* a grant only of the revenue. The right to hold land is a right distinct from the right to money or revenue, and a suit relating to the former is distinct from a suit relating to the latter. The right of an alienee of the revenue to the possession of the land may survive the resumption of the grant or exemptions from liability to land revenue. The decided cases make no distinction between holdings which an inamdar has acquired by purchase from a *kadim* occupant or by lapse of prior occupancies and the rights which he may have obtained directly from the grant itself to hold at his disposal lands comprised therein, which at date thereof no other person had a right to occupy. If the grant places land at the disposal of the alienee of the revenue, where there are no pre-existing claims to hold it, the alienee, though not an owner of the soil, is entitled to dispose of it as he chooses. He is not bound to give it out to tenants but may retain it in his possession and becomes the holder thereof within the meaning of the Bombay Land Revenue Code; and his rights are as indefeasible, so far as the right to possession is concerned, as the rights of an occupant of unalienated land. The right to hold land, even though it be not as proprietor of the soil, is incontestably one, of which the Civil Courts can take cognizance, if not barred by statutory provision. When Government grants the revenue of a village considered as a unit of assessment, and in course of time the grantee is able to bring under cultivation land which had previously been uncultivated or even unassessed, it is open to him under the grant to do so and to profit by the new cultivation."

Rights of inamdar and Government in alienated village

Where the plaintiffs, who were the inamdars of certain land, sued for a declaration of their ownership in and of their right to cultivate (*a*) two plots of land which (they alleged) formed part of their inam and (*b*) the bed of a stream which flowed through their land, it was contended for the defendant as to these two plots that the plaintiffs had no right to cultivate them, as they had been made a part of a village site, and on that understanding they had not been numbered at the survey in

1863 and had been exempted from assessment for 20 years and as to the bed of the stream, that the stream was a public stream, and that the bed of the stream as it dried up belonged to Government and not to the plaintiffs: *Held*, that the plaintiffs were entitled to the declaration prayed for; *held* also (1) that section 61 of the Bombay Land Revenue Code did not apply; that section relates back to section 38 and both refer only to lands, the property of Government, in unalienated villages or unalienated portions of villages; they do not empower the Government to confiscate any land belonging to an inamdar and to confer it on the persons living in his village; (2) that the mere omission to number the plots of land could not have the effect of turning them into a part of the village site, or take away the right of the plaintiffs; nor did the omission of Government to assess these lands deprive the plaintiffs of them, or make them the property of Government; the only effect of such omission would be to make them liable to an enquiry into the title of the plaintiffs to hold them rent-free; (3) that the bed of the stream was the property of the plaintiffs, who owned the land upon its banks. *Vinayakrao v. Secretary of State for India*, 23 Bom., 39.

As regards rent and its enhancement, the law is as follows:—

Enhancement of rent.

Where the inamdar is an alienee only of the land-revenue, then his relations towards those who hold land within the area of the inam-grant vary according to certain well-recognised principles. If the holding was created prior to the grant of the inam, then the inamdar *as such** can only claim land revenue or assessment; for he has no interest in the soil, in respect of which rent would be payable; but if the holding be later in its origin than the inam-grant, then the lands comprised in such holdings would be the *sheri* lands of the inamdar and he would be entitled to place tenants in possession of them, even if he be only a grantee of revenue, not by virtue of any interest in the soil but as being entitled to make the most he can out of them by way of revenue. With respect to the latter class of holdings, direct contractual relations would be established

* The inamdar may have had occupancy rights prior to the inam grant and he may have created a tenancy thereout, which may survive the resumption of the inam-grant.

between the inamdar and the holder. If no such contract can be proved, recourse must be had to section 83† of the Land Revenue Code. In the absence of satisfactory evidence of agreement, the rent is that payable by the usage of the locality and failing that, such rent as, having regard to all the circumstances of the case, shall be just and reasonable. In a suit by an inamdar to enhance rent of *miras* land, it must be determined whether what was paid was rent and whether the inamdar has a right to enhance as against one who holds on the same terms as the defendant does; the test is whether there has been any and what enhancement according to the usage of the locality in respect of land of the same description held on the same tenure. *Rajya v. Balkrishna*, 29 Bom. 415; also 7 Bom. L. R., 439.

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†As regards the presumption (1) of permanent tenancy enacted in s. 83, the following cases may profitably be referred to here:

S. 83 is applicable only when the evidence as to the commencement and duration of the tenancy is not forthcoming by reason of its antiquity, which, in the case of a tenancy at most only forty years old, there is no reason for presuming will be the case. *Kalidas v. Bhaiji Narayan*, 16 Bom., 646.

It is only when by reason of the antiquity of the tenure no satisfactory evidence is forthcoming to show when the tenancy commenced that the special presumption contained in s. 83 can be applied. Directly it is shown that a tenancy commenced at a particular period, the ordinary presumption (of annual tenancy) contained s. 106 of the Transfer of Property Act, will have to be drawn. *Ranga v. Shidlingappa*, P. J. 1898, 82.

The mere fact that a tenancy has commenced subsequently to the commencement of the land-lord's tenure does not prevent the application of s. 83, L. R. C., in cases where by reason of the antiquity of the tenancy no satisfactory evidence of its commencement or duration is forthcoming, because had the Legislature intended to say 'where.....there is no satisfactory evidence that it commenced subsequent to the land-lord's tenure,' it would have used plain words to that effect. The words simply mean, there is nothing to show satisfactorily the origin of the tenancy *i. e.* the terms under which the tenant commenced to hold. *Ramchandra v. Anant*, 18 Bom, 433.

The saving clause of s. 83, L. R. C., seems to contemplate that though the commencement and duration of the tenancy may be lost in the obscurity of antiquity, still there may be vested in the land-lord a right by agreement (or local usage) to enhance rent and evict for its non-payment. Permanency of

The question of enhancement of rent arises only when the tenant claims to be a *mirasdar* or permanent tenant at a fixed rent.

A *mirasdar* on an *inam* estate is only a tenant at a quit-rent or at a reasonable rent not subject to ejectment as long as he pays it. The permanency of his tenure is indisputable. He and his descendents enjoy the land, so long as they pay the rent. In the absence of any express contract limiting the rent in perpetuity, he pays a fair and equitable rent such as, according to the custom of the country, is leviable on *miras* land of the description held by him. *Khanderao v. Ramji*, 1 Bom. L. R., 373. *See*, also *Laxman v. Krishnaji*, 9 Bom. L. R., 861.

An inamdar suing for assessment is not entitled to a charge on the land but only to a money-decree against the occupant (*Vinayak v. Laxman* and *Laxman v. Vinayak*, 28 Bom., 92.; also 5 Bom. L. R., 700.)

Law of resumption.

The general law of resumption of inam lands may be stated as follows ;

In every case the right of resumption must depend, in a great measure, upon the nature of the tenure or on the terms of the grant. The combination of interest in land and an obligation as to service may fall under three heads :—(1) a grant

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tenure is not inconsistent with the absence of fixity in rent. The two are distinct, and the latter may be subject of agreement without touching the former. In determining the tenure of land, regard must be had, not merely to the expressions (*e. g*, "as soon as the period of the *makta* is over, I will make over the plot to the *sarkar*") in documents that form part of the history of the title, but also to the actual facts of the case. *Raghunath v. Lakshuman*, 2 Bom. L. R., 93.

(1) This presumption is inapplicable to *service* lands and even an express lease will be invalid during the grantor's life-time.

A *miras* tenancy of service watan ceases at the death of the grantor by reason of the land being service watan land (and therefore, not alienable beyond life-time), and the tenant then becomes a tenant by sufferance. The heir might eject him immediately or at any time thereafter, unless he has in the meantime done some act as to make him a tenant from year to year. Such an act would be the acceptance of rent. *Manohar v. Moro*, P. J. 1896, 518.

of land burdened with service, (2) a grant in consideration of past and future services, (3) a grant of an office, the services attached to which are remunerated by an interest in land. A grant of either of the two classes may be so made as to make the continued performance of the service a condition to the continuance of the tenure, and, in that case either the continued performance of the service would be the sole motive to, and consideration for, the grant, or the instrument would, by express words, declare that the service ceasing, the tenure should determine. Such a condition is something very different from a provision in the grant which merely casts upon the grantee the performance of certain duties so long as they are necessary; in the former case the grant determines when the service ceases or when there is no further occasion for it; in the latter case the grant practically becomes freed from liability to service originally imposed upon the grantee, whenever the service is dispensed with or is rendered unnecessary by the operation of any natural cause (*Forbes v. Mir Mahomed Tuquee*, 13. *M.I.A.*, 438). In the absence of any condition as referred to above, lands held under those grants are not resumable at the will of the grantor (*Lakhamgavda v. Keshav Annaji*, 28 Bom., 305; also 6 Bom. L. R., 364). Where a grant of land is made merely *burdened* with the performance of certain services, or in consideration of past and future services, the tenure will continue so long as the grantee is ready and willing to perform them and the fact that there is no further occasion for the services or that the grantor chooses to dispense with them will not put an end to the tenure, unless power of resumption is expressly reserved in the deed of grant (*Shri Raja Venkata v. Shri Raja Sobanadri*, 8 Bom. L. R., 1). In the case of grant of an office remunerated by the use of certain lands (class 3 above), the tenure in the very nature of things would cease with the cessation of the services. The extent of the power of the grantor to dispense with the services would be regulated by the terms of the grant. If the grant reserves to him absolute power, then the grantee's tenure of office will depend on his will, so also the tenure of the lands; or if it imposes any con-

dition or puts any limit, that condition or limit must be adhered to. Where the services are still required, and the grantee has a right to the hereditary office, he cannot be deprived of the land on the mere ground that the grantor prefers to appoint some one else to officiate. If the grantee refuses to render service or is unable to discharge the duties of the office duly and efficiently, the land can be resumed. (*Bhimapaiya v. Ramchandra*, P. J. 1896, 545.)

Adverse possession.

If the lands are held for service, the fact that no service was performed would not of itself make the holding adverse. The render of service is on the same footing as payment of rent, and to make possession of such lands adverse, there must be a refusal to perform service or a claim to hold the lands free of service (*Komargowda v. Bhimaji*, 1 Bom. L. R., 61).

TABLE OF

GOVERNMENT RESOLUTIONS.

(Figures in Italics indicate merely references.)

1832	5th	September	4	164
1838	31st	May	2065	359
1844	14th	„	1511	348
1850	4th	September	5	164
1851	14th	February	1343	165
„	20th	May	5666	165
„	12th	August	8151	166
1858	22nd	January	283	365
1860	26th	„	331	*207,487*, 497,
„	28th	February	692	*327*
1862	27th	November	4309	*xlii*
1863	13th	October	3539	166
1864	16th	May	1897	166
„	23rd	July	2785	371
„	1st	August	2900	„
1865	3rd	January	8	348
1867	17th	„	234	511
„	25th	April	1584	*42,402*
„	26th	July	59 p.	*402*
„	„	„	2735	*xxxii*
„	„	„	2786	*xxxi*
„	27th	July	2786	*xxxi*
„	9th	August	2864	230
„	14th	November	3929	*42, 402,511*
„	16th	December	4425	*42*
1868	5th	September	3418	36
„	16th	„	3516	5
1869	14th	July	2865	*233*
1871	4th	January	47	230
„	12th	September	4485	231
1872	6th	February	$\frac{1}{147}$	203
„	16th	May	2376	511
„	8th	July	3266	231

1874	5th	May	2266	365
,,	16th	June	3045	166,466.
,,	25th	,,	3619	360
,,	4th	July	3405	360
,,	31st	December	6909	167
1875	6th	March	1391	304
,,	8th	May	L. R.'s 176	167
,,	3rd	June	,, 3136	311
,,	9th	,,	3243	214
,,	23rd	July	4165	310, 333
,,	27th	,,	4235	311
,,	23rd	August	4797	231
,,	8th	September	5115	370
,,	14th	,,	5233	373
,,	29th	,,	5522	311
,,	2nd	November	6183	41
,,	6th	,,	6282	168
,,	27th	,,	6648	231
,,	1st	December	6752	41, 321, 376
,,	20th	,,	7127	*313*, 344, 374
1876	24th	January	515	311, *326*
,,	2nd	March	1370	333
,,	13th	,,	1557	380
,,	17th	,,	1711	232
,,	23rd	March	1871	329
,,	27th	,,	1949	374
,,	,,	,,	1957	232
,,	2nd	May	2643	321
,,	15th	,,	2906	232, *233*
,,	22nd	,,	3043	334
,,	25th	,,	3096	233
,,	2nd	June	3262	233
,,	,,	,,	3279	41, 168
,,	12th	,,	3442	392
,,	14th	,,	3484	233
,,	26th	,,	3699	203
,,	30th	,,	3809	234
,,	31st	August	4987	234, *255*
,,	14th	October	5873	234
1877	28th	March	1583	348

1877	5th	September	5427	203
„	8th	October	6070	*41*, 127
„	28th	December	7651	366, *456*
„	„	„	7807	311
1878	30th	January	646 (J. D)	349
„	23rd	February	953	127
„	7th	August	3985	381
1879	11th	June	3073	390
„	16th	„	3444 (J. D)	363
„	18th	September	5003	204, *249*
1880	10th	June	3016	205
„	19th	November	7711 (J. D)	*362*
1881	19th	January	163	500
„	5th	February	1170	205
„	15th	„	945	288
„	17th	March	1579	*127*
„	23rd	„	1692	311
„	14th	April	2188	14
„	19th	May	2818	288
„	„	„	2878	381
„	23rd	„	2915	168
„	24th	September	5559	264
„	„	„	5705	373
„	7th	December	7409	46, 236, *241*
„	„	„	7410	237
„	24th	„	7884	193, *194*
1882	6th	January	90	238, *241*
„	23rd	„	476	193
„	24th	„	512	523
„	13th	February	998	127
„	22nd	March	1929	384
„	8th	April	2318	334
„	15th	„	2461	112
„	27th	„	2764	162, *173,174*
„	10th	May	3267	346
„	30th	„	3523	112
„	9th	June	3732	239,*240*
„	16th	„	3882	239
„	21st	„	4007	239
„	23rd	October	7412	330

1882	7th	November	7789	288
„	30th	„	8398	239
„	15th	December	8805	318,*319*
1883	3rd	January	19	47
„	15th	„	359	240,*241*
„	20th	„	527	*240*,244
„	17th	February	1309	169
„	27th	„	1643	*322*
„	28th	„	1676	214
„	13th	March	2095	305
„		„	2116	392
„	28th	„	2507	153
„	7th	April	2776	47
„	19th	May	3834	240
„	2nd	June	4180	169
„	7th	„	4299	349,*351*
„	15th	August	6631	319
„	25th	„	6310	*176*,525,*526*
„	30th	„	6444	16,*174*,*175*
„	1st	September	6518	349
„	22nd	October	7816	381
„	15th	November	8420	319
„	26th	December	9540	244
„	„	„	9506	113,*118*
1884	7th	February	1184	169
„	2nd	May	3530	289,*297*,*300*
„	8th	„	3686	319
„	21st	June	4996	524
„	9th	July	5478	244
„	„	„	5479	244
„	19th	„	5846	264,*328*
„	30th	„	6102	265
„	1st	September	6981	384
„	5th	„	7192	*328*
„	17th	„	7422	36
„	17th	November	9071	312
„	5th	December	9628	360
„	22nd	„	10050	170,290
1885	7th	January	104	290
„	17th	„	477	466

1885	22nd	January	619	245
,,	23rd	,,	636	524
,,	,,	,,	692	246
,,	2nd	February	989	247,*256*
,,	,,	,,	1001	170
,,	4th	,,	1061	374
,,	,,	,,	1071	170
,,	15th	April	2912	205
,,	27th	,,	2949	*248*
,,	,,	May	4235	207
,,	29th	,,	4219	*296*
,,	3rd	June	4433	318
,,	6th	,,	4528	249
,,	3rd	July	5381	388
,,	21st	,,	5916	291
,,	24th	,,	5986	215,*217*
,,	25th	,,	6026	18
,,	5th	September	7192	*293*,384
,,	,,	,,	7310	312
,,	24th	October	8617	37
,,	24th	December	10407	171,*172*
1886	11th	January	148	390
,,	26th	,,	10	291
,,	2nd	March	1653	*171*,*172*
,,	,,	,,	1968	256
,,	26th	May	3786	194
,,	10th	June	4157	*251*,313
,,	25th	,,	4545	320
,,	14th	July	5026	400
,,	22nd	,,	5212	215
,,	16th	August	5854	171
,,	19th	,,	5922	*328*,384
,,	6th	September	6333	305
,,	11th	,,	6430	390
,,	19th	November	7717 (J. D.)	361
1887	8th	January	176	172
,,	,,	,,	178	172
,,	26th	May	3289	108
,,	22nd	June	3774	216,*217*
,,	23rd	,,	3817	467

1887	7th	July	4188	129
„	2nd	September	5902	253
„	16th	December	3296 (F. D.)	207
1888	20th	January	451	341
„	20th	March	1865	254
„	2nd	May	2718	320
„	3rd	„	2793	305,359,398
„	28th	June	4273	195
„	6th	October	6680	173
„	5th	December	8104	312
„	20th	„	8513	129
1889	14th	February	1249	320
„	25th	April	3057	*314*
„	27th	„	3090	265,292
„	27th	July	5365	385
„	„	„	5383	477
„	„	„	5391	*118*
„	„	„	5399	254,381
„	13th	August	(, D.)	320
„	13th	September	6890	70
„	26th	October	8141	217
„	8th	November	8508	386
„	19th	December	9578	7
1890	4th	February	947	114,*118*
„	18th	March 11 Pub.	679-88 (H.	
„	6th	June	3912	*27,39*
„	19th	July	5068	335
„	20th	August	5920	49,130
„	13th	September	6500	130
„	6th	October	7059	114
„	29th	„	7675	51
„	19th	November	8195	254
1891	29th	January	474	116
„	28th	April	2917	131
„	1st	May	3012	*8*
„	16th	September	6402	398
„	6th	October	7369	256
„	7th	November	5945 (J. D.)	*314*
„	23rd	„	7917	*160,173,177,178*
„	17th	December	8718	467

1891	22nd	December	8851	265
		L. R.'s	1512	335
1892	29th	March	3066	71
,,	1st	June L. R.'s no.	393	292
,,	2nd	August	6234	255
,,	3rd	December	9481	207
1893	20th	January	575	293
,,	15th	March	1953	392
,,	19th	,,	2253	117
,,	11th	May	3411	8
,,	12th	,,	4421	312
,,	12th	August	5839	37
,,	15th	,,	5885	109
,,	11th	October	7409	48
,,	17th	,,	7590	327,335
,,	3rd	November	8082	321
,,	10th	,,	8247	217
,,	11th	December	9060	312
1894	16th	February	1285	256
,,	19th	May	4424	247,256
,,	30th	July	6380	265
1895	25th	January	623	386
,,	31st	,,	802	335,336
,,	23rd	February	1550	217
,,	13th	March L. R.'s	303	399
,,	14th	,,	2056	365
,,	16th	,,	2132	336
,,	19th	June	4605	6
,,	4th	July	5053	208,257
,,	31st	,,	5815	173
,,	16th	August	6241	366
,,	28th	,,	6556	329
,,	25th	September	6804 (J. D.)	366
,,	,,	,,	7371	294
,,	5th	October	7903	257
,,	24th	,,	8279	174
,,	21st	November	9198	118
,,	11th	December	9851	342
1896	7th	January	139	336
,,	17th	,,	539	313

1896	24th	January	766	38
„	7th	February	1182	337
„	28th	„	1887	175
„	4th	April	3616	400
„	20th	„	3261	36
„	24th	„	3340	208
„	4th	May	3616	400
1897	23rd	January	593	320
„	16th	February	1284	*215*,218
„	8th	April	2770	401,*403*
„	11th	May	3550	175
„	1st	June	4092	176
„	11th	October	7440	361
„	22nd	„	7737	299
1898	20th	January	444	326
„	14th	April	2538	118
„	28th	April	2824	*121*
„	14th	July	4595	294,*295*,329
„	29th	August	5521	38
„	3rd	October	6302	389
„	4th	November	7 63	295,*296*
„	16th	„	7321	119
1899	3rd	February	116	209
„	23rd	March	2129	402
„	„	„	L.R.'s 368	402
„	25th	„	2197	*159,161,177,178*
„	3rd	May	3074	*196*
„	17th	June	4181	337
„	30th	„	4547	*109*
„	6th	July	4695	*10*,534
„	26th	August	5964	*2*,122
1900	21st	April	2535	*8*,533
„	14th	June	3753	120
„	5th	September	5500	177
„	13th	October	6425	350
„	16th	„	6502	42
„	28th	November	7424	122
„	3rd	December	7566	*160,173*,177,*178*
1901	25th	January	482	43
„	6th	February	667	534

1901	1st	April	2224	295
„	29th	June	4684 (Pol. D.)	619
„	8th	July	4729	178
„	21st	August	5931	39
„	3nd	October	6933	350
„	8th	November	7889	149
„	27th	December	8963	296
1902	22nd	April	2668	321
„	23rd	„	2702	*152,179,180,210*
„	17th	October	7321	*299,300,302,*
„	24th	„	7499	*532*
1903	5th	March	1556	402
„	3rd	July	4367	*492*
„	7th	„	4472	6
„	28th	August	5891	392
„	16th	November	8021	178
„	24th	„	8238	321
„	5th	December	8574	210
1904	26th	January	605	296
„	23rd	April	3064	*300*
„	12th	May	3543	*342*
„	1st	June	4155	*152*
„	4th	„	4215	39
„	19th	July	5523	300
„	13th	August	6189	326
„	22nd	October	8164	300
„	3rd	November	8497	179
„	10th	„	8671	266
1905	19th	January	454	110
„	1st	February	845	322
„	11th	„	1156	258
„	27th	April	3430	402
„	24th	May	4240	403,*404,405*
„	17th	June	4942	210
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