P. C.*
1883.
*July* 10 & 11.

NAJBAN BIBI (DEFENDANT) *v.* CHAND BIBI (PLAINTIFF.)

[On appeal from the Court of the Commissioner of the Sitapur Division of Oude.]

*Grant—Construction of gift—Resumption—Tribal custom—Evidence of Intention.*

In view of the circumstances under which an oral lease of villages at favourable rate of rent, and of indefinite duration, was made by the proprietor, a talukdar, in favour of her daughter, it was *held* not to be a lease for life, but to be resumable at the lessor's pleasure.

The parties belonged to a tribe, (Ahban,) appearing to be Mahomedan but in regard to inheritance and maintenance, having customs of its own which permitted the resumption.

There was no evidence of the lessor's intention contemporaneous with the making of the lease; but her will executed within two years after and made known to the Government to show the future succession to the taluk, contained a bequest of the same villages to the lessee, with express reservation of power to alter this disposition. *Held*, that this was evidence bearing on the question of intention.

APPEAL from a decree (26th March 1879) of the Commissioner of the Sitapur Division of Oudh, confirming a decree (30th July 1878) of the Settlement Officer of Kheri.

The plaintiff in the suit out of which this appeal arose sued in the Settlement Court of the Kheri District, claiming as proprietor to recover possession of four villages from the defendant, stating that in the Fasli year 1267 (A.D. 1859-60), she had temporarily leased the villages in dispute to the defendant, her daughter, a widow, then without means, on favourable terms for her support but had afterwards cancelled that lease.

For the defence the right of the plaintiff to resume was denied and a title to these villages founded on a division of the family estate made by the defendant's brother, Asmatulla Khan, since deceased, was alleged. It was also contended that the plaintiff had become, constructively, a trustee of these villages for the defendant, the latter having been induced by her to consent to the settlement being made with her in A.D. 1858, corresponding to 1266 Fasli.

The plaintiff obtained a decree in the Settlement Court, which

* *Present:* Sir B. PEACOCK, Sir R. P. COLLIER, Sir R. COUCH, and Sir H. HOBHOUSE.

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was confirmed by the Commissioner on appeal, the following statement of the facts being given in his judgment:—

"Madar Buksh was the talukdar of Kotwara, Mussamut Chand Bibi (the plaintiff) was his wife, and Mussamut Najban Bibi (the defendant) was their daughter. Madar Buksh died about the time of the annexation of Oudh, and if after that event, too soon for the summary settlement to have been made with him. His eldest son having died before his father, the first summary settlement was made with the second son Asmatulla Khan, who was killed during the mutiny in 1265 Fasli. In consequence the second summary settlement, that of 1266 Fasli, was made with the plaintiff. Her name is in the general list of talukdars prepared under Act I of 1869, and in the subordinate list No. II which declares the taluka to descend one and undivided. The defendant married one Karamatulla Khan who died in 1265 Fasli, and after his death she lived with her late husband's family up to 1267 Fasli, when, finding that her husband's brothers sought to deprive her of her husband's share of the common property, she went to live with her mother at Kotwara. Since 1267 Fasli, the defendant has been in possession of the four villages forming the subject of this suit. In 1269 Fasli, in consequence of a circular issued by the Deputy Commissioner under the orders of the local Government, the plaintiff made a Will, in which she bequeathed the said villages to defendant. She did not specify in the Will whether they were to be defendant's for life or for ever, but she directed the defendant was to pay whatever Government revenue might be assessed on the villages to the talukdar in whose kabuliat they were to remain. In this Will the plaintiff reserved the right to revoke it, or to alter it at her pleasure. This Will was duly registered. In the year 1285 Fasli, however, the plaintiff had become displeased with her daughter, the defendant, and she executed a codicil to the Will in which she revoked the grant of the four villages in defendant's favor."

The Commissioner also found in concurrence with the settlement officer, that there was no evidence shewing that the defendant had obtained possession of the four villages in dispute upon a division by Asmatulla Khan, or before 1267 Fasli, or had any title to them independently of the lease. He confirmed the find-

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ing that the parties were of the tribe of Ahban Thakurs, accordi to whose customs, they being an old Hindu clan, the mother w not bound to provide maintenance for her daughter.

Mr *J. D. Mayne* and Mr. *Theodore Thomas*, for the appellan argued that, there being no evidence of the terms of the leas the presumption was that it was for the life of the lessee. Tl alleged special customs had no application to the rights of tl parties. The case did not fall within s. 52 of Act XVII of 187 (The Oudh Land-revenue Act 1876) (1), which also provided i s. 53 a special procedure; nor could the right to resume l claimed under any other law.

Mr. *R. V. Doyne* for the respondent was not called upon.

Their Lordships' judgment was delivered by

SIR A. HOBHOUSE.—The single question in this appeal is wheth a lease or gift made orally, and for indefinite duration, by one the parties to the other, is a lease for life, or a lease or gift resu able either at the pleasure of the lessor or upon notice.

With respect to any difference between resumption at will an resumption upon notice no question has been raised, and it wou seem, from the state of the pleadings, that no question could l raised; because in the plaint it is stated that the defendant, wl is the lessee, was informed by the lessor of her intention to ca cel the lease, and that she resisted the action, and no issue taken upon that statement.

The parties stand in the relation of mother and daughter, ar the circumstances under which the gift was made are these: Tl mother is the talukdar of a taluk containing a number of v lages. The daughter married and became a widow. For sor time she lived with her husband's family. She then quarrelled wi them, and it would seem that they deprived her of her share the husband's property, upon which she came to her mother destitute circumstances, and her mother gave her the properi in question by way of maintenance. The parties belong to tl tribe of the Ahbans, who appear to be Mahomedans, but wi several customs of their own; and it would seem that their law inheritance and their law of maintenance is a tribal law.

(1) Relating to the liability to resumption of rent-free grants, and gran at favourable rates of rent.

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Now, in the first place, it is to be observed that the mother, the plaintiff below, is only seeking to resume that which is a portion of her taluk. *Primâ facie* she has a right to do that, and it is incumbent upon the person who is resisting the resumption to show a good title against the talukdar. The question is whether the defendant, who sets up this gift or lease, has shown such a title.

There was a great deal of evidence given in the Court below as to the customs of the Ahbans. The evidence principally related to the custom of inheritance, because the defendant set up a title either by inheritance, or by the law of succession mixed up with the allegation of a will in her favour. Those issues have been found against her in the Courts below, and there is no dispute about them now. But besides the evidence of the customs which relate to inheritance or succession, several witnesses have said that where a gift is made by way of maintenance it is a gift resumable by the grantor. It appears to their Lordships that both Courts have found in favour of that evidence. There is none the other way. The only witness who speak as to the non-resumability of such grants speaks of grants made to a daughter of the family by way of dowry and upon marriage. Both the Courts below, as their Lordships read the judgments, have found in favour of the power of resumption. The Settlement Officer says, speaking of the gift to the defendant: "It is shown to be now, and was so from the first, a lease to her for her maintenance, and therefore resumable at the pleasure of the proprietor of the estate." That is in accordance with the evidence; and their Lordships read that, not as a conclusion of law found by the Judge himself, but as his interpretation of the evidence. The Commissioner says this: First he finds that, according to the custom of the Ahbans, the defendant would have no right to maintenance from her mother. He then adds: "Defendant has therefore no claim, either by custom or by special necessity, to the continuance of this grant, which it appears to me cannot be regarded as anything but a compassionate allowance for her maintenance, granted by her mother under peculiar circumstances, which now no longer exist." Then he goes on to say that if it had been made in money there could be no doubt

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that it could have been stopped, and it cannot make any difference that the mother had followed the common custom of giving a beneficial interest in land instead of an allowance in money. He further shows that the old native custom always recognised a right of resumption on the part of the talukdar even in cases of maintenance proper, though he says it was exercised with a great deal of discretion in a gradual and merciful way, so that the whole of the resumption did not fall upon a single generation. But, he argues, if the right of resumption existed in cases where there was a right to maintenance, much more would it exist in such a case as this, where there is no right to maintenance at all.

Therefore both Courts have found that by the tribal custom the right to resumption exists, and it appears to their Lordships that such is the fair effect of the evidence on the subject.

Then there is another piece of evidence which is not without bearing upon the plaintiff's right to resume. In answer to the circular sent out by the Government to talukdars, desiring to know who were their successors, the plaintiff followed the not uncommon course of making what was called a will by way of pointing out to the Government who the successor was. In that will she appoints as her general successor her grandson, Raza Hussain; but she states that "those entitled to any rights will continue to enjoy those respective rights in accordance with the details recorded herein." Then she goes on to say. "Until I die I have the right of revoking and confirming, and of decreasing and increasing, and of altering." So that, although she states that certain persons have rights, she at the same moment asserts her own right of altering those dispositions if she pleases. Now among those rights are four villages to be held by the defendant, and it is stated again that "these four villages will remain with the defendant with the Government jumma upon them," and so forth. There we have stated on the face of a formal document, put in for the purpose of informing the Government of the state of this taluk that the talukdar then claimed the entire right of altering the disposition of these very four villages.

Such evidence is by no means conclusive, and under some circumstances it might be worthless, or even inadmissible. But in this case we have absolutely no evidence of the intention of the donor, which is contemporaneous with the gift. The will was made within two years, at the longest, after the gift, and many years before the events which led to its revocation. Under such circumstances a formal declaration by the donor as to the positions of herself and the donee with reference to the gift ought not to be disregarded.

In the year 1876 the plaintiff made what is called a codicil to her will, and thereby revoked the gift to her daughter.

At that time the circumstances in which her daughter was had very much altered for the better, and the relations between the mother and the daughter had altered too, but for the worse. We have, however, no concern with the reasons given by the mother for altering her dispositions. The fact is that she claimed the full right of altering them, and she has chosen to do so. Having altered them, she brought this action for possession, and it has been decided that she has the power of resumption. For the reasons above given their Lordships entirely agree with the decision of the Courts below.

Something has been said as to the effect of s. 52 of Act XVII of 1876, the "Oudh Revenue Act," but it does not appear to have been the ground of the decision in the Courts below, nor to have been much discussed, and their Lordships express no opinion about it.

The result is that the appeal should be dismissed with costs; and their Lordships will humbly advise Her Majesty to that effect.

*Appeal dismissed.*

Solicitors for the appellant: Messrs. *Barrow and Rogers.*

Solicitor for the respondent: Mr. *T. L. Wilson.*