APPELLATE CIVIL.

Before Sir L. H. Jenkins, Chief Justice, and Mr. Justice Chandavarkar.

1901.
November 20.

SECRETARY OF STATE FOR INDIA IN COUNCIL (ORIGINAL DEFENDANT 1), APPELLANT, *v.* DATTATRAYA RAYAJI PAI (ORIGINAL PLAINTIFF), RESPONDENT.*

Revenue—Land revenue—Assessment—Enhancement of assessment—Land reclaimed from sea granted in perpetuity by village officers at fixed rent—Grant adopted by Government—Money expended on land in belief that the assessment would not be enhanced—Estoppel.

In 1801 the *Gávkars* (village officers) of a village, who were responsible to Government for the revenue, granted the land in suit to the plaintiff's grandfather, who undertook to keep in repair a certain embankment necessary for the purpose of protecting the village from the sea. The writing given by the *Gávkars* provided that the grantee was to hold the land "from generation to generation" at a certain specified rent, and that, if the rent should be increased, it should be paid out of the village revenues. Subsequently the Native Chiefs who owned the village confirmed the grant. The village afterwards passed into the hands of the British Government, whose officers continued to treat the land in question as '*Katuban*,' that is, as land held in perpetuity at a fixed rent. The plaintiff and his predecessors had improved and spent money on the land. It was assessed as '*Katuban*' until 1889, when the Survey officer gave notice to the plaintiff that it could no longer be treated as '*Katuban*.' In 1897 the Collector called upon the plaintiff to pay Rs. 1,035-8-0 as arrears of enhanced assessment. The plaintiff paid the amount under protest on the 11th October, 1897, and on the 10th October, 1898, filed this suit against Government to recover the amount with interest. The defendants denied that the land was '*Katuban*.'

Held, that the plaintiff was entitled to recover the sum claimed. The facts of the case brought it within the equitable principle which protects one who expends money on the improvement of land under an expectation of an interest therein created or encouraged by its owners.

SECOND appeal from the decision of M. P. Khareghat, District Judge of Ratnágiri, reversing the decree of G. D. Madgaonkar, Assistant Judge.

Suit to recover back assessment of land in the Ratnágiri District paid by plaintiff under protest.

The land in question was marsh, which had been reclaimed from the sea by an embankment which needed to be kept

* Second Appeal No. 98 of 1901.

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constantly in repair in order to protect the neighbouring village of Kandalgaon from the sea. The village was in former times owned by the Chief of Sávantvádi and the Raja of Kolhápur, and was managed by *Gávkars* (village officers) who were responsible for the revenue. Early in the last century this marsh land was owned by one Gopal Narayan Kamat and was in his possession. He, however, was unable to keep up the embankment and the *Gávkars* induced the plaintiff's grandfather (Raghunath Pai) to buy the land, and, in consideration of his undertaking to protect the village from the incursions of the sea, they agreed that he should hold it for ever (from generation to generation) at a fixed rent of 5¼ *khandis* of grain. The writing then given to Raghunath Pai further provided that if the rent should be enhanced, the *Gávkars* would pay it out of the village revenues. The following is a translation of the writing then executed (Exhibit 42), dated A.D. 1801 :

To Rajashri Raghunath Pai, inhabitant of Málvan,—Your servants, *Gávkars* of Kandal, Tarf Masure, present compliment and state that in 1801 Gopal Narayan Kamat, to whom Bape Prabhu (and) Jhile Prabhu had sold the marsh lands, has sold them to you. The marsh lands were broken up and were immersed in the sea, so that the whole village suffered from the effect of salt water running in. You were, therefore, told from the village that you should purchase the lands, reclaim them and bring them under cultivation after incurring the necessary expenditure for *bánd-bandobast* (embankment repairs). Accordingly you purchased the lands and represented that as the reclamation would cost a large amount of money and there would be no return for it if a rent was fixed, you would purchase the lands and cultivate them. On this the rent 5¼ *khandis* of grain by Kudal measure was fixed. You should enjoy the *thikáns* from generation to generation by paying the rent of 5¼ *khandis* of grain including *bábtis* (cesses) * * * If the rent is enhanced we shall pay it from the village (revenues) and you are in no way concerned with the enhanced rent. From the next year the *thikáns* should be enjoyed by you by paying 1¼ *bharas* and 5 *kudavas* (that is, 5¼ Kudali *khandis*). No more rent will be exacted.

Subsequently in 1804 the Chief of Sávantvádi, being then on tour, issued a sanad (Exhibit 43) to Raghunath Pai, which recited the purchase and the improvement of the land by him and the aforesaid agreement by the *Gávkars*, and finally ordered that he should continue to pay from year to year 5¼ *khandis* of grain for rent as above and stated that a separate order would be issued

to the village officials and that there would be no more exactions (*haryek vishin jásti jalál honár náhin*). This sanad (Exhibit 43) was as follows:

To Rajashri Raghunath Pai.
From Phond Savant Bhosle Sardesai, Praut Kudal and Mahalanihaya.
Dated 1804-05.

At the village of Kandal, Tarf Masure, there is a holding of marsh lands. Out of it three *thikáns* * * * were sold to Gopal Narayan Kamat from the village. The embankment of the *thikáns* was broken up and they became inundated with the sea. The village (lands) became uncultivable owing to the sea water having rushed in. So the aforesaid Kamat with the consent of the village officers sold all the three *thikáns* (to you) * * * The rent of the *thikáns* is fixed by agreement as 5¼ *khandis* by Kudal measure and you have enjoyed them by paying from year to year 5¼ *khandis* of grain. You now represent that you will continue to pay the rent and enjoy the *thikáns* as hitherto. Taking this into consideration a sanad has been given to you directing that you shall pay from year to year 5¼ *khandis* of grain. In connection with this, orders are being separately issued to the village (officers). There will be no more exactions (*haryek vishin jásti jalál honár náhin*). Be it known to you.

In 1805 an order (Exhibit 44) was issued to the village officials by the Chief of Sávantvádi in terms similar to those of the above sanad, but it contained an additional direction that there should be no exaction of *veth bigár* (that is, forced labour).

In 1807 the Killedar of Bharatgad, who was an agent both of the Raja of Kolhápur and of the Chief of Sávantvádi, issued a similar order (Exhibit 45) as follows:—

Order to Haibatrao Gaikvad, Vishvasrao residing at Fort Bharatgad, and *Gávkars* of the village of Kandal, Tarf Masure, 1807.

In the aforesaid village there is a holding of marshy land. Out of it * * * have been sold to Rajashri Raghunath Pai subject to the payment of 5¼ *khandis* of grain by Kudal measure. The lands should be continued accordingly from year to year. No more exactions should be made. No new *tákid* need be awaited.

The village was subsequently taken over by the British Government.

In the village accounts for 1840-41 (Exhibit 27), Raghunath's tenure was described as *Katuban*, that is, a tenure in perpetuity for a fixed sum. The tenure was described by the same name in

the accounts of 1875-76 (Exhibit 28), 1879-80 (Exhibit 29), 1889-90 (Exhibit 36), 1891-92 (Exhibit 37), 1894-95 (Exhibit 38), 1895-96 (Exhibit 39), and 1896-97 (Exhibit 40).

On the 10th July, 1889, the plaintiff was informed by the special Survey officer that the marsh land in question could not be continued as *Katuban*. The plaintiff in the year 1891 gave notice to the Collector under section 424 of the Civil Procedure Code (Act XIV of 1882).

In 1897 the plaintiff was served with a notice by the Collector, calling upon him to pay Rs. 1,035-8-0 on account of the arrears of assessment and local fund from the year 1881-82 to 1896-97, that is, a period of sixteen years. The plaintiff paid the amount under protest on the 11th October, 1897, and on the 10th October, 1898, filed this suit against the Secretary of State for India and the Collector of Ratnágiri for the refund of the amount with interest, namely, Rs. 1,097-12-0.

The defendants denied that the land was *Katuban*.

The Assistant Judge dismissed the suit, holding that Government were entitled to enhance the assessment on the land and that the suit was barred under sections 4 and 11 of the Revenue Jurisdiction Act (X of 1876).

On appeal by the plaintiff the Judge reversed the decree and allowed the plaintiff's claim.

The defendants preferred a second appeal to the High Court.

Ráo Bahádur *V. J. Kirtikar* (Government Pleader) for the appellants:—The Civil Courts have no jurisdiction to hear this suit: sections 4 and 11 of the Revenue Jurisdiction Act (X of 1876). The plaintiff should have applied to the Revenue authorities.

The plaintiff's cause of action (if any) arose in 1889, when he received notice that the land would no longer be treated as "*Katuban*," but that he would be liable to assessment, &c. He ought to have brought a suit within six years from that date: Limitation Act (XV of 1877), Schedule II, Article 120. This suit was not filed until 1898 and is barred.

As to the grant by the *Gávkars* in 1801, we submit that they had no power to make a grant of the land. Their function was merely to collect revenue. Even if they had authority to make it, it is clear that they did not contemplate that the assessment then

fixed should be perpetual, for the document itself states that if the rent should be increased it should be paid out of the village revenues. It is evident that an increase in the assessment was contemplated. The expression "*karyek vishin jásti jalál honár náhin,*" that is, "no more exaction will be made," has reference to what is called *veth bigár* (that is, forced labour) in Exhibit 44, and not to the levy of increased assessment.

As to the alleged sanad (Exhibit 43) of the Chief of Sávantvádi, the document put in evidence is merely a copy and the original is not accounted for. If it had been a sanad, it would have borne the seal of the Chief. It is inadmissible in evidence: Regulation XVII of 1827, section 39. The Judge has omitted to consider the admitted fact that the village in which the land in dispute is situated was, at the date of the alleged grant, a *dutarfá* village, that is, it was owned jointly by the Raja of Kolhápur and the Chief of Sávantvádi, and that no grant in perpetuity could be conferred by one of them acting singly. At the best the grant would be valid to the extent of a moiety belonging either to the Chief or the Raja. Beyond the expression "no more exaction would be made" there is nothing in the sanads to indicate that the land was granted to the plaintiff's grandfather in perpetuity. Exhibit 42 was superseded by the subsequent grants which must be given effect to.

The Judge has relied upon the fact that the land was entered as *Katuban* for a number of years in the village accounts. We contend that the local subordinates in the Revenue Department could not, by entering the land as *Katuban* in those accounts owing to mistake or misunderstanding on their part, create an estoppel against the Crown, and that the plaintiff could not thereby acquire a prescriptive right to hold the land at a fixed assessment.

Mahadev B. Chaubal for respondent (plaintiff):—The suit is not barred by the provisions of the Revenue Jurisdiction Act (X of 1876). We do not ask for the determination of the legality or illegality of any assessment. We seek to recover from Government the amount which was illegally levied. Our cause of action arose when we paid the amount under protest. The present suit was brought within one year from the date on which

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we made that payment. The bar of limitation is, therefore, saved: Article 16, Schedule II of the Limitation Act (XV of 1877).

Exhibit 42 being the original grant, the confirmation of that grant by the Chief of Sávantvádi and the Raja of Kolhápur by the subsequent documents (Exhibits 43, 44, 45) must be taken into consideration along with the original grant. Exhibits 42 to 45 leave no doubt as to the grant being in perpetuity at a fixed rent.

The question as to the right of the *Gávkars* to make the grant is now raised for the first time in second appeal. It was not raised in the Courts below and should not now be allowed. Further, there is nothing on the record to show that as representatives of Government the *Gávkars* had no authority to make the grant. The fact that the grant was confirmed subsequently by the Chief of Sávantvádi and the Raja of Kolhápur shows that the *Gávkars'* authority to make it was recognized.

The sanad, Exhibit 43, is not in any way suspicious and is admissible in evidence. It and the other documents we rely on are more than thirty years old: their genuineness must, therefore, be presumed. No question as to the admissibility of Exhibit 43 can now be raised, as no such question was raised in the lower Courts. It is true that the sanad does not bear a seal, but the absence of a seal is explained by the fact that the Chief was travelling at the time it was granted and was not in his capital. The Judge held that all the documents we relied on were genuine, and that is a finding of fact.

The land was entered in the village accounts as *Katuban* because we have been holding it at a fixed rent since 1801. The entry in the village accounts as *Katuban* is not the result of any mistake or misunderstanding on the part of revenue officers. Our holding as *Katuban* was recognized by the Chief of Sávantvádi and the Raja of Kolhápur and subsequently by the British Government which succeeded to their rights.

Our family has incurred large expenditure in reclaiming and improving the land on the full understanding that ours was a permanent holding at a fixed rent.

JENKINS, C.J.:—The plaintiff sues to recover Rs. 1,097-12-0 on account of assessment paid by him under protest. His claim

has been awarded by the lower Appellate Court, reversing the decision of the Court of first instance. From this decree the present appeal has been preferred by the Secretary of State.

The facts are set out in detail by the lower Appellate Court, and, as its findings are binding on us, it would serve no purpose to recapitulate them here. These facts, in my opinion, bring the case within the equitable principle which protects one who expends money on the improvement of land under an expectation of an interest therein created or encouraged by its owner. In *Plimmer* v. *Mayor &c. of Wellington*[1] their Lordships of the Privy Council had to consider the application of that principle, and after citing the classical passage from Lord Kingsdown's judgment in *Ramsden* v. *Dyson*[2] they said (p. 712):

> In the present case, the equity is not claimed because the landowner has stood by in silence while his tenant has spent money on his land. This is a case in which the landowner has, for his own purposes, requested the tenant to make the improvements. The Government were engaged in the important work of introducing immigrants into the colony. For some reason, not now apparent, they were not prepared to make landing places of their own, and in fact they did not do so until the year 1863. So they applied to John Plimmer to make his landing place more commodious by a substantial extension of his jetty and the erection of a warehouse for baggage. Is it to be said that, when he had incurred the expense of doing the work asked for, the Government could turn round and revoke his license at their will? Could they in July, 1856, have deprived him summarily of the use of the jetty? It would be in a high degree unjust that they should do so, and that the parties should have intended such a result is, in the absence of evidence, incredible.

What is there laid down is, in my opinion, applicable to the facts here found. It is true that in the first instance the plaintiff's predecessor dealt only with the *Gávkars*, but when regard is had to the functions of those officers, to the nature of the work undertaken by the plaintiff's predecessor, and to the subsequent events narrated in the judgment of the lower Appellate Court, the inference is irresistible that, though the encouragement may have proceeded from the *Gávkars* in the first instance, it was adopted by those to whom the lands belonged.

It is argued, however, that the possibility of enhancement was distinctly contemplated in Exhibits 42 and 41 so that no estoppel

(1) (1884) 9 A. C. 699. (2) (1866) L. R. 1 H. L. 129.

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can be claimed; but I do not think this argument is well founded. All that was meant was that if the proprietors did not adopt the rate named in those exhibits but insisted *ab initio* on a higher rate, the excess would be made good by the village. The possibility of a future enhancement was not contemplated, for a fixed rent was an essential condition.

The Killedar's authority was questioned before us, but having regard to the lapse of time and other circumstances I think the objection has no force. Much, too, has been made of the absence of a seal from Exhibit 43, but the lower Appellate Court has held as a fact that the document is genuine, so nothing turns on the absence of a seal notwithstanding the terms of section 39 of Regulation XVII of 1827. So far, then, as the share of the Sávantvádi Chief was concerned we have, in addition to the equitable estoppel with which I have already dealt, an express grant at a fixed rent. The result is that, in my opinion, we must confirm the decree of the lower Appellate Court with costs.

CHANDAVARKAR, J. :—It is found by the District Judge, and his finding is not impeached before us, that at the date of the grant now in dispute the land in suit consisted of marsh reclaimed from the sea by an embankment, which had always to be kept in repair to protect the village from the incursions of the sea. As the person then owning and in possession of the land could not keep up the embankment, the *Gávkars* of the village induced the plaintiff's grandfather to buy the land from him, and, in consideration of his taking upon himself the burden of protecting the village from the incursions of the sea, they agreed that he should pay a fixed rent to the Government annually for the land. One term of the contract entered into by the *Gávkars* with the plaintiff's grandfather was that, if the rent should ever be increased by the Government, the excess should fall not on the grantee but on the village. The village was owned at that time by the Chief of Sávantvádi and the Raja of Kolhápur.

The plaintiff's case is that the contract in question was adopted by the Chief of Sávantvádi in 1804, and he has produced Exhibit 43 which purports to be a sanad granted to the plaintiff's grandfather and an order (Exhibit 44) issued to the village officials by the Chief. Both the sanad and also the order stipulate that

the grantee should go on paying 5¼ *khandis* for rent payable to the Government and there shall be no more exactions. They have been found to be genuine by the District Judge, but the learned Government Pleader has impugned that finding before us on the ground that the sanad (Exhibit 43) is a mere copy, which was not admissible in evidence in the absence of any allegation and proof that the original was lost and could not be produced. The District Judge, however, has treated Exhibit 43 as the original sanad, and there is nothing either in the document or in the case to show that it is a mere copy. The plaintiff himself has never alleged that it is a copy. The finding of the District Judge that it is a genuine document remains and is binding upon us in second appeal. But, said the Government Pleader, if it were the original sanad, Exhibit 43 should bear the seal of the Chief of Sávantvádi, and as it does not bear it, it is open to suspicion. That, however, was a question for the District Judge to consider on the evidence in determining the genuineness of the document, and he has taken it into consideration. But the absence of the seal, it is argued, makes the document inadmissible in evidence under section 39 of Regulation XVII of 1827. That section does not say that a sanad granted by a ruling Chief before the British Government succeeded to his powers must be treated as void if it does not bear his seal. So far, therefore, as the Chief of Sávantvádi was concerned, he adopted the contract of the *Gávkars*, and the British Government, which has succeeded to his rights and interests in the village, would be bound by it, unless there is some legislative enactment which entitles that Government to repudiate the contract. There is no such enactment. On the other hand, section 52 of the Land Revenue Code makes such grants binding upon the Government.

Then we have to consider whether the Raja of Kolhápur was bound by the contract. The District Judge's finding is that the Killedar of Bharatgad, who was the agent of both the Chief of Sávantvádi and the Raja of Kolhápur, issued an order (Exhibit 45) to the village officials in A.D. 1807 in terms similar to those of Exhibits 43 and 44. The learned Government Pleader contended that that order should not be taken to have been issued by him in the capacity of agent to the Raja of Kolhápur, because he filled the double capacity of agent to that Raja and also the Chief of Sávantvádi. 'But where you have a man acting as agent for two

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bodies, and you can sever the two characters,' the legal presumption, I take it, is that he acted in the only character in which it was possible for him to act (see *per* Jessel, M.R., in *Smith's Case*.[1]) Here there was no occasion for the Killedar to act as the agent of the Chief of Sávantvádi, because that Chief had personally adopted the contract. He could, therefore, act only in the other capacity, *i.e.*, as agent of the Raja of Kolhápur, and provided he acted within the scope of his authority as agent in adopting the contract, the Raja of Kolhápur, and after him the British Government which succeeded him, would be bound by it. The question, therefore, is whether the action of the Killedar was within the scope of his authority as the agent of the Raja of Kolhápur. The Killedar was the agent of the Raja for the purpose of discharging the obligations which the Raja, as the ruling power of the time, owed to his subjects in the village. Now, one of those obligations was to save the village from the incursions of the sea. The duty of the king to save and defend his realm as well against the sea as against the enemies—that it should not be drowned or wasted—is pointed out by Lord Coke in the case of the *Isle of Ely*.[2] That duty is, no doubt, a duty of imperfect obligation, as pointed out by Brett, L.J., in *Attorney-General* v. *Tomline*,[3] *i.e.*, it is a duty which the subjects have no means of enforcing against the king in a Court of law. But, though a duty of imperfect obligation in that sense, it is a duty nevertheless, and an agent of the king left in the administration of a village on the king's behalf, who discharges it or takes steps towards its discharge, must be presumed to have acted within the scope of his authority so as to bind his principal. When, therefore, the Killedar, as the agent of the Raja of Kolhápur, appointed to exercise the powers and fulfil the obligations of the Raja in the village, took steps for the purpose of protecting the village from the incursions of the sea by granting the land to the plaintiff's grandfather for a fixed rent in consideration of the latter discharging the obligations of the Raja, and agreed never to raise it, he must be regarded as having acted within the scope of his authority. And if the Raja was bound, his successors, the present Government, are also bound by the grant.

(1) (1879) 11 Ch. D. 579 at p. 592. (2) 10 Rep. 141*a*.

(3) (1880) 14 Ch. D. 58 p. 66.

In this view of the case the fact that the land in suit has been entered in the village accounts as *Katuban, i.e.*, a permanent tenure, by the village officials, becomes unimportant. But the entries have been relied upon by the District Judge as showing that by their subsequent conduct Government acknowledged the permanence of the plaintiff's tenure. The learned Government Pleader has argued before us that as these entries were made by the village officials, Government are not bound by them. But they are entries made by public servants in a public register or record in the discharge of their official duties, and were admissible in evidence under section 35 of the Indian Evidence Act. Having been properly admitted, the only question was what weight should be attached to them. It was for the District Judge to determine that, and he has drawn from these entries the inference that Government went on for a number of years acknowledging the plaintiff's tenure of the land to be *Katuban* or permanent. But the learned Government Pleader's argument as to that was that the only inference which could be legally drawn from the entries was that the village officials understood the plaintiff's tenure to be permanent, but that their knowledge or understanding should not be treated as the knowledge or understanding of the Government, and he cited a passage from Story on Agency, showing that the Court should be more strict in the application of the doctrine of constructive notice to Government than to private individuals. That doctrine, being founded on a fiction, must, indeed, be cautiously applied, and the mere fact that a village official has made an entry in the books of Government in the discharge of his official duty would not be sufficient by itself to bind the Government with knowledge of it. But where, as in the present case, the entries have been repeated from year to year for a number of years without the levy of an increased assessment, the District Judge was, I think, right, in the absence of any evidence to the contrary, in holding that Government through their agents have acquiesced in the permanence of the grant made to the plaintiff's grandfather.

The last argument of the learned Government Pleader was that, assuming that the Government adopted the agreement of the *Gávkars* with the plaintiff's grandfather, still its terms did not exclude the right of Government to raise the assessment. On

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the other hand, the possibility of an increase was distinctly contemplated, because the contract was that if the Government should raise the assessment, the excess should be borne by the village. And, it was urged that though neither the sanad of the Chief of Sávantvádi nor the order of the Killedar of Bharatgad referred in so many words to this term, yet they should be construed by the light of what had been previously agreed upon between the *Gávkars* and the plaintiff's grandfather. I do not think that on any rule of construction we can yield to that argument. The agreement between the *Gávkars* and the plaintiff's grandfather was executory. When in consequence of that contract the Government made a grant of the land to the plaintiff's grandfather, it is the terms of that grant that must govern the rights and liabilities of the parties, and those terms expressly stipulate that Government shall not take more than a specified amount as rent from the grantee. We have no right to look to any previous contract or to any previous arrangement. As observed by Thesiger, L.J., in *Wheeldon* v. *Burrows*[(1)]:

> If it had been the case of an ordinary contract, and there had been parol negotiations, it is well-established law that you cannot look to those parol negotiations in order to put any construction upon the documents which the parties entered into for the purpose of avoiding any dispute as to what might be their intentions in the bargain made between them. The same rule of law applies, and even more strongly in the case of a conveyance, which alone must regulate the rights of the parties. In the cases which have been cited the conveyances were founded upon transactions which in Equity were equivalent to conveyances between the parties at the time when the transactions were entered into, and those transactions were entered into at the same moment of time and as part and parcel of one transaction.

Here we cannot say that the agreement with the *Gávkars* formed part and parcel of the subsequent transaction with the Chief of Sávantvádi and the Killedar. If we admitted evidence of the former for the purpose of construing the latter, we should be admitting evidence to contradict or vary the express terms of the grant to the plaintiff's grandfather, which we cannot do under the Indian Evidence Act. But even if we yielded to the argument of the learned Government Pleader on this point and

(1) (1878-9) 12 Ch. D. 31 at p. 60.

treated the terms of the agreement with the *Gávkars* as having been impliedly incorporated in the grant made subsequently by the Chief of Sávantvádi and by the Killedar on behalf of the Raja of Kolhápur, what should be the effect in law? One term of the grant in that case would be that the grantee should be liable to pay to Government a fixed amount as rent and no more. That is the primary agreement between the parties. The other term, that if the rent be raised the excess shall fall on the village, is in the nature of a clause providing for compensation in the event of a breach of the former. But if the former term is enforceable, Government are not entitled to say that it should not be enforced because a remedy for its breach is provided by the terms of the grant.

On these grounds I am of opinion that the decree appealed against should be affirmed with costs.

Decree affirmed.

APPELLATE CIVIL.

Before Sir L. H. Jenkins, Chief Justice, and Mr. Justice Chandavarkar.

SAKARLAL JASWANTRAI (JUDGMENT-DEBTOR), APPELLANT, v. BAI PARVATIBAI (DECREE-HOLDER), RESPONDENT.*

1901. *November* 21.

Injunction—Light and air—Decree in light and air suit—Death of defendant after decree—Decree ordered to be executed against the deceased defendant's legal representative—Execution—Mode of enforcing decree—Civil Procedure Code (Act XIV of 1882), sections 234 and 260.

Plaintiff obtained a decree against defendant, restraining the latter from obstructing the access of light and air to her windows. The plaintiff applied for execution, praying that the portion of the defendant's house which obstructed her windows should be pulled down. While this application was pending the defendant died and his son and heir (the appellant) was brought on the record. The lower Courts directed that the decree should be executed as prayed for and directed the appellant (the son and heir of the deceased defendant) to pull down the obstructing portion of the house in question within a given time, and in case of his failing to do so, empowered an officer of the Court to have it pulled down. On second appeal to the High Court it was contended (1) that as the

* Second Appeal No. 338 of 1901.