On the question of costs we have ascertained what costs were actually incurred in the Court below. Except in the two representative suits the costs were extremely small. The plaintiff having succeeded will be entitled to those costs, which bear no proportion to the length of time during which the case lasted or the number of documents exhibited.

With regard to the costs of the appeal undoubtedly costs have been increased by translations of unnecessary documents. We, therefore, exclude from the costs of the appeal the costs of translations. Each party to pay the costs of his own translations. Apart from that the plaintiff will be entitled to the costs of the appeal.

Cross-objections are dismissed with costs.

I should like to add that we are very much indebted to Mr. Kelkar for having argued the case for the plaintiff in the way he has done in spite of the case as originally set up by the plaintiff. We are also indebted to Mr. Coyajee for the way in which he argued the case for Government.

SHAH, J. :—I concur.

Decree reversed.

R. R.

PRIVY COUNCIL.

VAJESINGJI JORAVARSINGJI AND OTHERS (PLAINTIFFS), APPELLANTS *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL (DEFENDANT), RESPONDENT.

J. C.* 1924. June 26.

[On appeal from the High Court at Bombay.]

Act of State—Cession—Titles to land in ceded territory—Absence of recognition—Effect of proclamation—Patta—Pleading.

After a sovereign state has acquired territory, either by conquest, or by cession under treaty, or by the occupation of such as has theretofore been

* *Present.*—Lord Dunedin, Lord Carson and Mr. Ameer Ali.

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unoccupied by a recognized ruler, or otherwise, an inhabitant of the territory can enforce in the municipal Courts only such proprietary rights as the Sovereign has conferred or recognized. Even if a treaty of cession stipulates that certain inhabitants shall enjoy certain rights, that gives them no right which they can so enforce.

The meaning of a general statement in a proclamation that existing rights will be recognized is that the Government will recognize such rights as upon investigation it finds existed. The Government does not thereby renounce its right to recognize only such titles as it considers should be recognized, nor does it confer upon the municipal Courts any power to adjudicate in the matter.

The grant by the Government of a document described therein as a "patta" does not conclusively show that the grantee is a mere leaseholder, and not a proprietor; the word "patta" may be applied quite appropriately to an instrument which fixes the jamabandi which a proprietor is to pay.

The appellants brought a suit for a declaration that they were proprietors of certain lands situated within territory which in 1860 had been ceded to the British Government under a treaty :—

Held, upon the facts, and applying the active principles, that the suit failed.

Secretary of State in Council of India v. *Kamachee Boye Sahaba*[1]; *Cook* v. *Sprigg*[2] and *Secretary of State for India* v. *Bai Rajbai*[3], followed.

Judgment of the High Court affirmed.

APPEAL (No. 116 of 1922) from a judgment and three decrees of the High Court (January 17, 1917) affirming three decrees of the District Judge of Ahmedabad.

The three appellants were by caste or tribe Lamanis or Brinjaris, and each bore the designation Naik. They brought three separate suits against the respondent claiming that they had proprietary rights in the taluqas which they held in the Panch Mahals. The respondent contended in each suit that the plaintiff and his ancestors were ordinary lessees holding their lands at the pleasure of the Government.

The facts appear from the judgment of the Judicial Committee.

(1) (1859) 7 Moo. I. A. 476. (2) [1899] A. C. 572.
(3) (1915) 39 Bom. 625 ; L. R. 42 I. A. 229.

The District Judge held that the plaintiffs had not succeeded in showing that their ancestors were proprietors of any of the holdings in question or had had long possession in that character as they alleged; in view of temporary leases under which they had held the lands he placed the burden of proof upon them. Accordingly he dismissed the suits.

Appeals to the High Court were dismissed.

The learned Judges (Scott C. J. and Beaman J.) while agreeing with the findings of the trial Judge, disposed of the appeals upon the ground that such documents of title as the appellants or their ancestors had received since the cession of the district affirmed their position as Government lessees, no recognition by the Government of proprietary right in the appellants being shown.

1924 May 19, 20, 22, 23, 26.—*Dunne K. C.* and *Parikh*, for the appellants.

De Gruyther K. C. and *Kenworthy Brown*, for the respondent.

The arguments were substantially on the facts and documents; the contentions of law appear from the judgment.

June 26.—The judgment of their Lordships was delivered by

LORD DUNEDIN:—In these consolidated appeals the three Naiks of Tanda, Chandwana and Katwada respectively, sue the Indian Government for a declaration that they are proprietors of the whole lands in the Talukas belonging to them and that they are not bound to accept a lease of the same in the terms offered to them by the Government in 1907. They admit that they are bound to pay a jamabundi or revenue contribution but contend that there the right of the Government of India ends. Their demand was

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refused by the District Judge and his judgment was confirmed on appeal by the High Court.

The lands in question are situated in the Panch Mahals and, previously to 1860, were in the domain of Scindia of Gwalior. On December 12th of that year Scindia ceded this territory to the British Government by a treaty of which Article 3 is as follows :—

"The Maharaja transfers to the British Government in full Sovereignty the whole of His Highness' possession in the Panch Mahals and to the south of the river Narbada also Paragna Kumghar on the Betwa river on the following conditions :—

'1st. That for the lands transferred by His Highness, the British Government shall give in exchange lands of equal value calculated on both sides on the present gross revenue.

3rd. That each Government shall respect the conditions of existing leases until their expiry, and that in order that this may be made clear to all concerned, each Government shall give to its new subjects leases for the same terms of years and on the same conditions as those which they at present enjoy.

4th. That each Government shall give to its new subjects 'Sanads' in perpetuity for the rent-free lands—the Jagcers, the perquisites and the hereditary claims (i.e., 'Huks and Watans') which they enjoy at present under the other Government'."

Their Lordships will have occasion presently to enquire into the circumstances of an earlier date, but, for the moment, they pause at this date because what happened in 1860 determines the law of the case. This law was most clearly laid down in the judgment of the Board delivered by Lord Atkinson in the case of *Secretary of State for India* v. *Bai Rajbai*[1]. Their Lordships do not propose to repeat what was there said. It was no new law that Lord Atkinson laid down. The same had been held in the case of *Secretary of State in Council of India* v. *Kamachee Boye Sahaba*[2] and *Cook* v. *Sprigg*[3]. But a summary of the matter is this; when a territory is acquired by a sovereign state for the first

(1) (1915) 39 Bom. 625; L. R. 42 I. A. 229.
(2) (1859) 7 Moo. I. A. 476.
(3) [1899] A. C. 572.

time that is an Act of State. It matters not how the acquisition has been brought about. It may be by conquest, it may be by cession following on treaty, it may be by occupation of territory hitherto unoccupied by a recognised ruler. In all cases the result is the same. Any inhabitant of the territory can only make good in the municipal Courts established by the new sovereign such rights as that sovereign has, through his officers, recognised. Such rights as he had under the rule of predecessors avail him nothing. Nay more, even if in a treaty of cession it is stipulated that certain inhabitants should enjoy certain rights, that does not give a title to these inhabitants to enforce these stipulations in the municipal Courts. The right to enforce remains only with the High Contracting Parties. This is made quite clear by Lord Atkinson, when, citing the Pongoland case of *Cook* v. *Sprigg*[1], he says[2]: "It was held that the annexation of territory was an act of State, and that any obligation assumed under a treaty either to the ceding Sovereign or to individuals is not one which Municipal Courts are authorised to enforce." Their Lordships have thought it necessary so far to repeat what has been said before because the appellants' counsel sought to make two points. He said that Act of State had not been pleaded before the Judge of first instance and ought not to be given effect to now. Their Lordships think that at least the appellants themselves recognised the true situation when, in paragraph 6 of the plaint, they say: "after the advent of the British rule the ancestors of the plaintiff used to be treated as proprietors of the estates in the same way as the other Talukdars in the Panch Mahals." But in truth no plea specifically using the words "Act of State" is required.

[1] [1899] A. C. 572.

[2] (1915) 39 Bom. 625 at p. 648; L. R. 42 I. A. 229 at p. 238.

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If there existed a right, either admitted or that could be established by decree of Court, and that right it was alleged was taken by an Act of State, it would be necessary so specifically to plead, but that is not the situation. The moment that cession is admitted the appellants necessarily become petitioners and have the onus cast on them of showing the acts of acknowledgment, which give them the right they wish to be declared. The other point was that, in virtue of certain general declarations, the appellants became entitled to enforce the treaty. The general declarations will be subsequently examined. If they give a right of themselves well and good, but they can never have the effect of altering the law as above stated; that is to say, of making the appellants, so to speak, a party to the treaty with a right to enforce the conditions of the same in a municipal Court.

The whole object, accordingly, of enquiry is to see whether, after cession, the British Government has conferred or acknowledged as existing the proprietary right which the appellants claim. The appellants first sought to prove that under Scindia they were proprietors. The defender retorted that they were merely farmers of revenue. Certain documents were produced out of the Gwalior repositories and controversy was raised as to whether they were genuine or had been tampered with. Their Lordships for the reasons of law above stated, think it quite unnecessary to consider this question because their view of what was the tenure under Scindia has no bearing on the question. The view of the officials of the Government as to that would influence them to make up their minds as to what title should be given or recognised, but even then, as far as their Lordships are concerned, it is what they did after investigation, not what they thought at investigation, that is matter of moment.

The first touch between the Government of India and these people did indeed precede the cession. In 1850-51, owing to frontier troubles, it was thought expedient that a lease of all this territory should be granted to the company, who thereupon managed the territory, respecting the rights of the inhabitants as they found them. As a matter of fact the ancestors of the appellants at that time were the holders of pattas for an unexpired term, these pattas having been granted by Scindia, and payments were under them made payable to the company. Their Lordships will at once, in order to show that they have not been swayed by any contrary contention, make the concession that the mere fact that the document of title held by the appellants is called a patta, and that they executed a kabulyat in similar terms is not conclusive of the question of whether they were mere leaseholders, i.e., farmers of revenue, or were true proprietors paying a jamabundi to the overlord. The term patta might quite appropriately be used for the instrument fixing such jamabundi. The term of the existing pattas expired in 1859, and in February 1860 Captain Buckle, who was in charge for the Government (who had by this time succeeded the Company) granted, on the part of the Government of Scindia, three pattas to the appellants for a period of three years from 1860 to 1863. One of these pattas may be taken as a sample. The jamabundi for each year is fixed at Rs. 5,617-5-3. This was made up of Rs. 5,000 for the "jamabundi revenue," Rs. 217-2-5 for a balance and Rs. 600 a debt due to Jamadar Satarkhan. This last was an old debt due by the Naik which the Government was making him pay. Clause 2 provides for the Naik finding security from a banker, a proceeding unnecessary if the land could have been attached, but quite necessary if the lessee was not proprietor but merely a farmer of

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revenue. Then there is a clause binding the Naik at the termination of the patta to "hand over" the villages to the Government.

In 1860, in December, as already stated, came the cession. Immediately after the cession the Government set itself to enquire what were the estates transferred and what were the tenures of their new subjects. This was necessary, first of all, because as land of equal value elsewhere was to be ceded to Scindia, it was necessary to note the exact value of what had been taken over, and also because undoubtedly the Government wished to give effect to the terms of the treaty above quoted and in particular to the fourth head of the 3rd Clause. Accordingly Captain Buckle, who was in charge, was told to make enquiries and furnish exact lists, giving particulars of extant leases, also the names of all Jaghirdhars and their tenures and all charitable and rent-free holdings. Buckle made a report and in this report he enters the appellants as mere leaseholders and not as Jaghirdhars holding proprietary interests. No doubt this was, so to speak, behind the backs of the appellants but it is significant as being the foundation of the action which followed. The pattas which had been granted expired in 1863, consequently they had to be renewed. The Government officers proposed some increase of rent. In the meantime some outsiders made offers to take leases of the three Talukas for a rent preposterously higher than anything hitherto received. The Naiks had got wind of this and made representation to the Government in August 1863. Their prayer is worded "As Government had been taking care of us they will be graciously pleased to grant us a patta to do which they are quite competent".

The Government came to the conclusion that they would not accept the outsiders' offer in view of the long

time that the Naiks had had possession and renewed on the same terms. In 1868 the question came up again. There was a long enquiry by the Government as to the precise position of the Naiks. As an interim arrangement a lease was granted on the old terms to endure till the survey. This lease also provided for handing back the villages at the expiry of the period. The enquiry dragged on for some years, but in 1876 the Government came to a decision that the Naiks were not entitled to hereditary rights, but might be continued as leaseholders so long as they behaved themselves. This determination was conveyed to the Naiks by letter of 12th June 1876, which contains the following passage :—

"It appears that under the old rule the pattas (leases) of these villages were also given several times to other people besides these Naiks, and from this it appears that their status may not be of hereditary Talukdars ; but for about the last fifty years the vahivat (management) has been smoothly carried on by the houses (families) of the three Naiks under their respective pattas and Meherban Propert Saheb and Major Voice Saheb have expressed their opinions that the management under the patta may continue with the Naiks so long as they properly take care of the villages. Hence this question is decided accordingly. The pattas of the three talukas are to be continued till the survey takes place. The Survey Department has taken the trigonometrical Survey of the three talukas and it may be suitable to fix the amounts of the pattas, keeping in view the trigonometrical measurements at the time of the survey. No hereditary right of the Naiks is admitted in the preparation of the pattas."

In 1881, the survey having been introduced, the Government came to a resolution as to what leases should be granted. They were to be on a sliding scale calculated on the survey assessment and allowing the Naiks a 10 per cent. margin. This proposal must have been communicated to the Naiks, though there is no direct evidence to that effect, for in 1883 there is a petition from the Naiks complaining of the proposal as calculated to impoverish them ; complaining of the taking away of the forest land, and offering as evidence of right a document granted in Scindia's time. This

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petition was refused in 1883 and the refusal communicated to the Naiks. In 1887, the question of the forest land arose in an acute form. The Naiks petitioned against the taking of the forest land by the Government. In the petition they really sought to re-open the whole question. Thus, in Article 7 of the petition of 31st October, 1887, they say as follows :—

"7. If our right is considered by the Government as specially that of Ijardar mentioned above, it is a great mistake; we have the right of ownership over our village, which is handed down from generations; we had been recovering and we have been recovering the jamabundi tax, Vaje (payment in kind), etc., from our villages in any manner we like. Also we gave (land) to others free from any tax; we had been and have been giving as a loyal subject to the late and present Government a certain amount as Chauth in lieu of remaining under their protection."

This petition was considered, was not sanctioned, and a reply sent in the negative on April 26, 1888. Under the Forestry Acts the Naiks could have appealed against this order, but did not do so.

In 1902, the Naiks again sought to raise the whole question by sending a memorial to the Government, in which they went over the whole ground again and claimed to have proprietary rights. This was sent to headquarters, when a report from the Under Secretary, *inter alia*, said as follows :—

"4. The question as to the proprietary rights of these Naiks in their villages was fully inquired into and decided in the year 1880, and we are of opinion that no valid reason has now been shown for re-opening it after so long an interval of time. We are also of opinion that as the status of the memorialists is that of mere leaseholders, holding their leases at the pleasure of Government, their claims to the sole proprietary title in the forests within the limits of their villages cannot be admitted."

And the final determination of the Government was conveyed in a resolution of December 13, 1902 :—

"The evidence collected by Mr. Beyts clearly showed that these Naiks never acquired the position of Talukdars, but that they were merely lease-holders, and in paragraph 1 of Government Resolution No. 2783, dated 31st May 1880 (copy appended), the following orders were passed by this Government."

In 1904, there was a final report from the Government officials as to the leases, which, as already noticed, had not actually been granted. By this time there had been complaints of what the Naiks had been doing, and some of the officials were anxious that no new leases should be granted to the Naiks, but that the whole village sshould be made khalsa. The Government, however, determined that the Naiks should have another chance, and the leases were offered, upon which they took the present proceedings.

It is abundantly clear from what has been above set forth that, although the Government officials took great pains to determine what was the position of the Naiks, they came to the conclusion that their rights were not those of hereditary proprietors. To say that is, in view of the law as laid down above, to say enough, but their Lordships will notice what has been urged on the other side. It is pointed out that the Naiks have been in the saddle for a long time. This is true, and it is due to this fact that they held their position as leaseholders at all. But for that long possession the villages would have been made khalsa as others had been.

Then it is said that, by the terms of certain proclamations, the Government acknowledged the right. The proclamations in 1852, when there was merely a transference for administration purposes, are neither here nor there. When we came to the cession the proclamation referred to is in these terms :—

"I wish to let you know in time that the laws of the British Empire will be in force from the 1st of May next in the Panch Mahals.

2. It has hitherto been the practice to reserve Civil suits against the lands or houses for arbitration.

3. That can no longer be the case ; a suit once filed cannot be withdrawn unless by the consent of the complainant and the law will be enforced.

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4. As a friend of all your ancient houses I wish to warn you beforehand against debt. If you wish to preserve your present position, you should avoid it as the most unfortunate thing which can happen to you."

Then follows a list of names, among which are persons who have had acknowledged to them a real proprietary right, and in this list occurs the names of Katwada, Chandwana and Tanda. There is also, especially in the Naiks' petition, reference made to proclamations made at the time of the Durbar.

There are two answers to be made to an argument founded on such documents. The first is that a mere general statement that existing rights would be upheld could never prevail against exact determinations such as have been above set forth. The second is that any statement in general terms that rights will be respected must necessarily mean as these rights are on investigation determined by the Government officials. To suppose that by such general statements in a proclamation the Government renounced their right to acknowledge what they thought right and conferred on a municipal Court the right to adjudicate as upon rights which existed before cession, is, in their Lordships' opinion, to misapprehend the law as above set forth. It was also urged that the Government had recognised certain free grants which had been made in the past by the Naiks. This is true. But the Government had directed a special head of inquiry to be made as to free grants. The wish not to disturb persons whose tenure had been, *de facto*, free was a generous policy. But to infer from this generosity that the Government was admitting that the grants had originally been properly made and that from that admission flowed the further admission that the Naiks were true proprietors is to make a mere inference over-ride a direct statement. One other matter may be noticed. The Naiks' susceptibilities seem to have been aroused by the term "Iiardars"

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being used as to them, and requested that the term "Talukdars" should be used. The Government reply is as follows:—

"In reply to his petition, dated 26th September 1898, to the address of Government, Naik Ratansing Pratapsing of Tanda in the Dohad Taluka of the Panch Mahals District, is informed that Government have no objection to his being addressed as 'Talukdar' instead of 'Pattadar' in official communications, but it should be distinctly understood that this concession will not in any way affect the orders passed by Government in May 1880, regarding the tenure of the Petitioner's holding."

Now, the resolution of 1880 referred to was the foundation of the proposals as to the 10 per cent. margin, which, denying the proprietary rights of the Naiks, was objected to by the petition which was refused in 1883.

For these reasons their Lordships are satisfied that this appeal must be dismissed with costs, and they will humbly advise His Majesty accordingly.

Solicitors for appellants: Messrs. *T. L. Wilson & Co.*

Solicitor for respondents: *Solicitor, India Office.*

A. M. T.

ORIGINAL CIVIL.

Before Mr. Justice Fawcett.

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March 31.

K. C. SHRIMAN NEDAN RAJAH KOTAKAL (PLAINTIFF) *v.* THE MALABAR TIMBER CO., LTD. AND OTHERS (DEFENDANTS)*.

Letters Patent, Clause 12—Land outside jurisdiction—Charge claimed by unpaid vendor—Defendant resident within jurisdiction—Jurisdiction of High Court in personam.

In a suit brought by the vendor of certain forest rights in land, situate outside the limits of the original jurisdiction of the High Court, against the purchaser (resident within those limits) for a declaration that he had a charge thereon for the amount of the unpaid purchase-money,

* O. C. J. Suit No. 1399 of 1921.