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Barlee J.

theft, any further wrongful loss was caused to him by the killing of the animal. On this point different Courts have taken different views and no clear and considered ruling has been cited. In my view the wrongful loss which was caused to the owner by the removal of the animal was different from the wrongful loss which was caused to him by its destruction. By the theft he was deprived temporarily of the animal, and when it was killed the deprivation was made permanent.

I agree then with my learned brother that the accused has committed two distinct offences and was rightly convicted both under sections 379 and 429 of the Indian Penal Code.

Answer accordingly.

J. G. R.

PRIVY COUNCIL.

J. C.* 1936 *March* 3

THAKORE SAHEB OF LIMDI, APPELLANT *v.* KHACHAR MANSUR RUKHAD AND OTHERS, RESPONDENTS.

KHACHAR MANSUR RUKHAD AND OTHERS, APPELLANTS *v.* THAKORE SAHEB OF LIMDI, RESPONDENT.

[On Appeal from the High Court at Bombay.]

Evidence Act (I of 1872), sections 17, 18 and 31—Admissions in an agreement—Suit against third party—Legal effect of admissions—Code of Civil Procedure (Act V of 1908), order I rule 10 (2)—Necessary parties—Gujarat Talukdars' Act (Bombay Act VI of 1888), section 2—Amending Act (II of 1905)—Mulgametis, whether talukdars of Khadol Barwala Taluka.

In an agreement made in 1922 between the Thakore Saheb and Government, the Thakore Saheb agreed (*a*) that the Kathis or Girasias holding jivai lands in Barwala shall be entered as Mulgametis in the Settlement Registers and (*b*) that the said Mulgametis shall be considered as talukdars for the purposes of the Gujarat Talukdars' Act so as far as the jivai lands were concerned.

In 1925 the Thakore Saheb instituted the present suits against the Mulgametis for a declaration that he was the proprietor and talukdar of the suit villages. The

**Present :* Lord Thankerton, Sir Shadi Lal and Sir George Rankin.

Mulgametis resisted the claim on the grounds that (*a*) they were talukdars under the Act and (*b*) the agreement entered into by the Thakore Saheb was a bar to the suits.

The High Court held that the statements in the agreement between the Thakore Saheb and Government were admissions of status as talukdars on which the Mulgametis could rely in their defence as a bar to the suit, but that the Government was a necessary party to the suit and remanded the suit to be tried after Government was added as a party or otherwise dismissed.

Held, reversing the decision of the High Court, that (1) the agreement did not contain an admission of the Mulgametis' status as talukdars;

(2) that, even if it did, the admission would not be a bar to the suit but would be admissible only as evidence to be considered with other evidence;

(3) that Government was not a necessary or proper party to the suit.

Held, on the facts, that the Thakore Saheb alone was entitled to be considered talukdar of the suit villages.

Order of the High Court set aside.

APPEAL, by Special Leave, (No. 60 of 1935) and Cross-appeal from an Order of the High Court (October 9, 1931) which set aside a decree of the First Class Subordinate Judge of Ahmedabad (April 23, 1928).

These were appeals in 18 suits relating to villages in the Barwala Taluka in Dhanduka instituted by the Thakore Saheb. The question in the suits was which of the parties was the talukdar of the villages within section 2 of the Gujarat Talukdars' Act (VI of 1888) as amended by Act II of 1905.

In 1807 the British Government came to an agreement with the predecessor of the Thakore Saheb by which the Government Revenue for the villages was included in the tribute paid in one lump sum.

In 1888 the Gujarat Talukdars' Act was passed and the Thakore Saheb was recorded as talukdar in the Settlement Registers.

The respondent Mulgametis claimed that their ancestors were Gametis or Chiefs in sole possession of the suit villages, that they held certain lands called jivai or maintenance

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lands rent free and received chouth in respect of other lands in their villages, that they held directly from Government and were talukdars within the Act, the payment of revenue by the Thakore Saheb being made by him as their agent. The question now raised was raised in a suit by the Thakore Saheb in respect of the village of Salangpur. The District Judge in that suit found in favour of the Mulgametis and dismissed the suit in 1916. The Thakore Saheb appealed. During the pendency of the appeal, in July 1922, the Talukdari Settlement Officer, acting on the judgment of the District Judge, issued instructions for the registration of the Mulgametis as Talukdars.

In August 1922, the Thakore Saheb entered into the agreement with Government set out in the judgment of the Judicial Committee in the present case.

In October 1922 the High Court reversed the judgment of the District Judge in the Salangpur case and held that the Thakore Saheb was talukdar of that village. The judgment of the High Court is reported in 25 Bom. L. R. 726. An appeal by the Thakore Saheb to the Commissioner for amendment of the Register having failed in 1924, the Thakore Saheb in 1925 instituted the present suits, the material facts of which are set out in the judgment of the Judicial Committee.

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February 3, 4, 6.

De Gruyther, K. C. and *Parikh*, for the appellant. Referred to sections 2 (*1*) (*a*), 8, 24 and 31 of the Act and section 2 (*1*) (*b*) of the amending Act. Until 1905 the Mulgametis, whether they held directly or indirectly from the Government, were not within the Act. Disputes arose in 1914 and the Salangpur suit was instituted. In that suit the High Court rightly held that the Mulgametis did not hold directly from Government and were not talukdars within the Act. The agreement between the Thakore Saheb and Government, read as a whole, does not contain an admission that the Mulgametis are talukdars within

the Act. Even if it did, the admission would not be a bar to the suit, but would only be evidence in the suit. In any case, an admission cannot make a party a talukdar under the Act. It is not necessary to make Government a party to the suit. Government deals with the talukdar whoever he may be and it is not only unnecessary that Government should be made a party, but it would be impossible to make Government a party as section 8 of the Act prohibits suits against Government.

Rashid, for the respondents. The plaint was in Guzarathi. The prayer is translated as a claim for a declaration that plaintiff is an "independent" owner. The High Court used the word "absolute" for "independent". The prayer indicates that the plaintiff was asking for a declaration that the villages were part of the Limdi State, independent of the British Government. The Government was, therefore, a necessary party and the High Court had inherent power under section 151 of the Code of Civil Procedure to direct that Government should be added as a party and did so. In the agreement an admission has been made which is a recognition of the Mulgametis as talukdars within the meaning of the Act.

[SIR GEORGE RANKIN: There is no admission in the document. An admission relates to facts in existence. The statement in the document is, "shall be considered". That is not an admission.]

Khambatta, following: The agreement, *prima facie*, records a declaration that the Mulgametis are talukdars and under it they are given contractual rights against the Thakore Saheb and the Government. Government is a necessary party. Reference was made to section 24 (2) of the Act and to *Virasami* v. *Rama Doss*.[1]

Rashid, on the cross-appeal: The Mulgametis hold directly from Government and are, therefore, talukdars.

[1] (1891) 15 Mad. 350.

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[He accepted, as also did De Gruyther, *K.C.*, the definition of talukdar by the High Court in the Salungpur case as "One who is or is descended from a former ruler and owner of the village and still retains by regrant or otherwise some portion of the lands or interests therein of such former ruler or owner, but not necessarily any of his governing rights".]

The plaintiff paid jama to Government as agent of the Mulgametis.

Khambatta followed.

De Gruyther, K. C., replied.

The judgment of the Judicial Committee was delivered by

LORD THANKERTON. The appellant in these eighteen, consolidated appeals is the ruler of Limbdi State in Kathiawar. The respondents are the mulgametis and landholders in 18 villages of the Khadol Barwala Taluka in Dhanduka in British India, each of the appeals relating to one of the villages. The appellant, as plaintiff in the suits, in substance asks for a declaration that he, and not the defendants, is entitled to be registered as talukdar under the Gujarat Talukdars' Act (Bombay Act VI of 1888), as amended by Act II of 1905.

On April 23, 1928, the Subordinate Judge at Ahmedabad granted the appellant in each suit the declaration asked for. On appeal, the High Court of Judicature at Bombay, by an order in each suit dated October 9, 1931, set aside the decrees of the Subordinate Judge and remanded the suits to allow the appellant an opportunity of joining the Government as a party to the claim as regards an agreement dated August 12, 1922, and his absolute ownership of the villages in question within six months, failing which the suit would be dismissed. The present appeals are taken against these orders, and, in course of the hearing before the Board, the

respondents asked for and obtained special leave to cross-appeal, in order to enable the case to be heard and decided on the merits, in the event of their Lordships setting aside the orders of the High Court.

By section 2 (*1*) (*a*) of the Gujarat Talukdars' Act of 1888, as amended in 1905, " talukdar " is defined as including " a thakur, mehwassi, kasbati and naik and a mulgameti who holds land directly from Government ". The respondents claim to be mulgametis who hold lands directly from Government under the last part of the definition, which was included for the first time by the amending Act of 1905. The appellant admits that they are mulgametis, but disputes that they hold lands direct from Government.

After the Act of 1905, the mulgametis claimed to be recorded as talukdars in place of the Thakore of Limbdi, and disputes arose, which first came to a head as regards the village Salangpur, which is also one of the villages in Khadol Barwala Taluka and of which the Thakore held a two-thirds share, in a suit instituted by the Thakore in 1914 in the Court of the District Judge of Ahmedabad (No. 3 of 1914), who decided in favour of the defendants, and dismissed the suit on March 23, 1916. The Thakore appealed and on October 11, 1922, the High Court reversed this decision, and held that the mulgametis did not hold direct from Government and that the Thakore was entitled to be recorded as talukdar as regards his share of the village : *Sir Dolatsingji* v. *Oghad Vira.*[1]

Meanwhile, a few months prior to the decision of the High Court in the *Salangpur* suit, two material events had occurred. On July 7, 1922, the Talukdari Settlement Officer had issued instruction to the Assistant Survey Settlement Officer to enter the mulgametis as talukdars, except where they had sold the right of ownership to the Thakore before June 1, 1921, and directed that transactions respecting the

[1] (1922) 25 Bom. L. R. 726.

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transfers of rights in chouth were to be regarded as not subject to the Gujarat Talukdars' Act. The other event was the making of an agreement between the Thakore and the Government dated August 8 and 12, 1922, which is in the following terms :—

"With a view to ensure the compilation without dispute, of the Settlement Registers in the Limdi-Barvala villages enumerated in paragraph 3 below of the Dhandhuka Taluka and to obviate all sources of litigation between the parties interested regarding the status of the classes of persons claiming to be 'Mulgametis' the following terms are agreed as between the Thakore Saheb of Limdi on the one part and Government on the other part :—

"(1) The Thakore Saheb agrees :—

"(*a*) That the kathis or the Girasias holding Jiwai lands shall be entered as 'Mulgametis' in the Settlement Registers with reference to such holdings except in those cases where a final decision to the contrary has been passed by a court of law and has been in force up to 1st June 1921, in which case the entry shall be made in accordance with that decision ;

"(*b*) That the said 'Mulgametis' shall be considered as 'Talukdars' for the purposes of the Gujarat Talukdars' Act so far as the Jiwai lands but not the chouth are concerned with effect from the 1st of June 1921.

"(2) Government on their part agree :—

"(*a*) That the Chouth shall not be regarded by Government as forming any part of a 'Talukdar's estate' for the purposes of Act VI of 1888 and that no action either direct or indirect shall be taken by the Talukdari Settlement Officer or any other officer of Government in connection with the mortgage, alienation or other form of transfer of chouth on the ground that it forms part of such 'Talukdar's estate';

"(*b*) That in any subsequent legislation or amendment of the Gujarat Talukdars' Act the Chouth will be definitely excluded from the definition of 'Talukdar's estate' and from the operation of any clauses forbidding mortgage, alienation or other form of transfer ;

"(*c*) That the 'Mulgametis' shall be regarded as 'Talukdars' so far as their Jiwai lands are concerned with effect from 1st June 1921, and that no action either direct or indirect hereafter be taken by the Talukdari Settlement Officer or any Government Officer either under the Gujarat Talukdars' Act or the Land Revenue Code or as a manager of a Mulgameti estate with a view to declaring invalid mortgages, alienations or other forms of transfer of Jiwai lands made previous to the date aforesaid merely on the ground that such transfers are in contravention of section 31 of the Gujarat Talukdars' Act, 1888 ;

"(*d*) That this agreement shall not be held by Government to affect the present legal rights of the parties *inter se* otherwise than as is provided by this

agreement or to derogate from the present legal rights which either the Thakore Saheb or the Mulgametis possess in the said villages ;

"(c) That the said Jiwai lands shall be regarded as included within the villages on account of which fixed (Udhad) Jama and Local Fund are now paid to Government.

"(3) The villages to which this agreement applied are as follows :—

1. Khurol.	11. Koondal.	21. Ulao.
2. Khambra	12. Goonda.	22. Panvee.
3. Godavata.	13. Chunarwa.	23. Kaprialee.
4. Chacharia.	14. Jalila.	24. Wadhela.
5. Dhadodar.	15. Panchtulaore.	25. Wavdee, Nance.
6. Burwala.	16. Barejra.	26. Bela.
7. Mungulpur.	17. Rojid.	27. Pipal.
8. Rephra.	18. Rampura.	28. Akru.
9. Wuhia.	19. Wajulka.	29. Ranpuri."
10. Surwal.	20. Soondriana.	

The decision of the High Court, which is now under appeal, is based on the existence of this agreement, and it is therefore necessary to define its exact bearing on the present litigation. As both the learned Judges in the High Court stated, the respondents—apart from the assertion that the Government were their agents in making the agreement, of which there is no evidence, and which the respondents no longer maintain—do not maintain that any contractual right is conferred on them by the agreement ; they claim that the agreement contains an admission by the appellant of their status as talukdars under the Act, which is admissible as evidence, in terms of sections 17, 18 and 31 of the Indian Evidence Act.

Their Lordships are unable to hold that the Government are either a necessary or a proper party to this question, which is independent of the validity or invalidity of the agreement. There can be no question of estoppel, and the respondents did not so maintain. As between the appellant and the respondents, it will be necessary to consider whether the statement in the agreement amounts to the admission claimed, and, if so, to consider its evidential value along

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with the other evidence, as section 31 expressly provides that admissions are not conclusive proof of the matters admitted. The learned Judges, even on their construction of the agreement as containing a clear admission of the respondents' status under the Act, were not entitled to treat it as a bar to the action, but were bound to consider it along with the other evidence on the merits, which they had found it unnecessary to go into.

Their Lordships are therefore of opinion that the orders of the High Court should be set aside, and, the respondents having obtained special leave, it remains to deal with the case on the merits. The Subordinate Judge found against the respondents on the evidence, and came to the same conclusion as had the High Court in the *Salangpur* case, and he decided in favour of the appellant; as stated above, the High Court did not deal with the case on the merits.

It will be convenient to deal first with the question of the admission alleged to be contained in the agreement of 1922. In their Lordships' opinion, the agreement does not contain any such admission, but the language used rather suggests the contrary. The change of language from clause (*a*), where the Thakore agrees that the kathis or the Girasias holding jiwai lands "shall be entered" as mulgametis in the settlement registers, to clause (*b*), where he agrees that the mulgametis shall be "considered" as talukdars for the purposes of the Act, would more naturally import that, although the mulgametis were not talukdars within the meaning of the Act, and would not be entered as such, yet, in any question between the Thakore and the Government, the Thakore agreed that the mulgametis should be deemed to be talukdars, as, e.g., alienations by a mulgameti to the Thakore were to be deemed to require the sanction of Government. Other parts of the agreement appear to confirm this view but, in any event, it is enough to say that the admission sought to be taken must be clear and that there is no such

clear admission in the agreement, which accordingly affords no evidence on the merits.

Both parties accept the definition of a mulgameti given by A. B. Marten C.J., in the *Salangpur* case,[1] viz., "One who . . . is descended from a former ruler and owner of the village and still retains by regrant or otherwise some portion of the lands or interests therein of such former ruler and owner, but not necessarily any of his governing rights". The respondents maintained further that it follows, as a matter of necessary implication, that a mulgameti holds direct from the Government.

The Subordinate Judge has reviewed the evidence in the present case in detail and the respondents were unable to suggest any serious criticism of his summary of the facts. Their Lordships therefore find it unnecessary to recapitulate the evidence in detail. It appears to be certain that at some time prior to 1802—probably about 1777 or 1781—the mulgametis had surrendered the lordship of the villages to the Thakore in perpetuity in exchange for his protection, and at the same time retained or were regranted the jiwai lands and the chouth, the Thakore paying all tribute or jama in respect of the whole lands in the villages, and recovering none of it from the mulgametis. The chouth is a share, usually one-fourth, of the income of the lands in the village other than the jiwai lands, payable by the Thakore to the mulgametis. There is no evidence of a lease in writing, as stated in the written statement. When the British became the paramount power in this part of the country in 1802, they found the Thakore of Limbdi in possession of the villages of Dhanduka Taluka, and they recognized his possession, and entered into a settlement with him alone so far as payment of revenue or jama was concerned. This settlement was made by Colonel Walker on behalf of the Government with the Thakore in 1807, and was for payment in perpetuity of a fixed lump sum as jama or revenue in respect of the

[1] (1922) 25 Bom. L. R. 726 at p. 735.

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Dhanduka Taluka. The natural inference from this very material fact is that the Thakore alone held direct from the Government, and that the mulgametis did not so hold. There is no evidence of earlier date to support a contrary view, and the subsequent evidence bearing on the matter, which is reviewed by the Subordinate Judge, confirms the inference from the settlement of 1807. Any question as to alteration of the fixed jama was settled between the Government and the Thakore, the attempts by the Government to impose a separate jama on the mulgametis' lands was rejected by the Court, and number of litigations during this subsequent period down to the *Salangpur* case between the Thakore and mulgametis in particular villages confirm the view that the villages belonged to the Thakore. Except in the case of the Government's abortive attempts to assess them separately, there is no evidence of direct contact between the Government and the mulgametis. It should be remembered that, although the Thakore is not entitled to be reimbursed by the mulgametis for any share of the fixed jama paid by him to Government, the mulgametis' lands are not revenue-free, and the Government would have the right of recourse against them, on any default by the Thakore. It must also be noted that under section 24 (*1*) the registered talukdar is primarily responsible to the Government for the jama of his village, and, if there are sharers, all the co-sharers shall be jointly and severally responsible therefor. The case of the respondents is that they have no liability to Government.

Their Lordships agree with the conclusion of the Subordinate Judge on the evidence that the appellant alone is the person who could be held to be the proprietor of the villages as talukdar, and that the respondents do not hold their lands directly from Government. Their Lordships are therefore of opinion that the cross-appeal on the merits must fail, and that the decision of the Subordinate Judge ought to be restored.

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Accordingly, their Lordships will humbly advise His Majesty that the appeal should be allowed, and that the orders of the High Court should be set aside and the decrees of the Subordinate Judge should be restored, the cross-appeal being dismissed. The appellant the Thakore Saheb to have the costs of the appeal and cross-appeal and his costs in the High Court.

Solicitors for the appellant: Messrs. *T. L. Wilson & Co.*

Solicitors for the respondents: Messrs. *Nehra & Co.*

C. S. S.

ORIGINAL CIVIL.

Before Mr. Justice B. J. Wadia.

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ABDUL GANI SUMAR (PETITIONER) *v.* THE RECEPTION COMMITTEE OF THE 48TH INDIAN NATIONAL CONGRESS.*

Practice and procedure—Civil Procedure Code (Act V of 1908), Order I, rule 8—Indian Arbitration Act (IX of 1899), section 14—Award—Petition to set aside award—Misconduct of arbitrator—Numerous parties as defendants—Applicability of provisions of Order I, rule 8 of Civil Procedure Code to petition under Arbitration Act—High Court Rules (O. S.) 1930, rule 373†—Suit to set aside award—Whether maintainable—Suit, meaning of.

A suit is an original proceeding between a plaintiff and a defendant. The term "plaintiff" includes every person asking any relief against any other person by any form of proceeding, whether the same be taken by cause, action, suit, petition, motion, summons or otherwise. The term "defendant" includes every person served with any writ of summons or process, or served with notice of, or entitled to attend any proceedings.

In re Wallis' Trusts,[1] applied.

The provisions of Order I, rule 8, of the Civil Procedure Code, 1908, are applicable to a petition, filed under section 14 of the Indian Arbitration Act, 1899, to set asied an award on the ground of the misconduct of the arbitrator.

Quare: Does a suit lie to set aside an award on the grounds covered by section 14 of the Indian Arbitration Act, 1899?

* Award No. 21 of 1935.

† In 1936 Edition the corresponding rule is 378.

[1] (1888) L. R. 23 Ir. 7 at p. 9.