Duncombe[1] the Privy Council declined to allow a statute to be reduced to a nullity by the draftsman's unskilfulness and ignorance of law, and I think we would be justified in refusing to allow the same defect to lead to hardship and injustice. I, therefore, think that the phrase "his land" in the penal part of the section means the portion of the land in the holding which is purported to be transferred or in which an interest is purported to be transferred.

I, therefore, agree that the appeal should be dismissed with costs.

Appeal dismissed.

R. R.

[1] (1886) 11 App. Cas. 627.

PRIVY COUNCIL.*

BAWA MAGNIRAM SITARAM (PLAINTIFF) *v.* KASTURBHAI MANIBHAI AND ANOTHER (DEFENDANTS).

P. C.*
1921.
December 5.

[On Appeal from the High Court at Bombay.]

Religious Endowment—Alienation by Shebait—Permanent lease—Validity—Lapse of time—Presumption of validity.

Where the validity of a permanent lease granted by a shebait comes in question a long time (in the present case nearly 100 years) after the grant, so that it is not possible to ascertain what were the circumstances in which it was made, the Court should assume that the grant was made for necessity so as to be valid.

Chockalingam Pillai v. *Mayandi Chettiar*[1], approved.

Judgment of the High Court affirmed.

APPEAL (No. 151 of 1920) from a judgment and decree (December 22, 1916) of the High Court affirming a

* *Present*:- Lord Buckmaster, Lord Atkinson, Lord Carson, Mr. Ameer Ali, and Sir Lawrence Jenkins.

[1] (1896) 19 Mad. 485.

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decree of the District Judge at Ahmedabad, which reversed a decree of the Additional Subordinate Judge at Ahmedabad.

The suit was brought by the appellant to recover possession of certain lands from the respondents, as annual tenants, whose interest had been determined by notices. The respondents pleaded that they held under a permanent lease.

The facts sufficiently appear from the judgment of the Judicial Committee.

The District Judge, reversing the decree of the trial Judge, dismissed the suit holding that a valid permanent lease existed. An appeal to the High Court was dismissed on the ground that the matter to be decided was not a question of law which properly arose for decision in Second Appeal, and that if it were so it was not established that the decision of the District Judge was wrong.

1921, December 2, 5:—*Upjohn K.C.* and *E.B. Raikes*, for the appellants.

On its true construction the document of February 22, 1824, created only a tenancy from year to year; it cannot be construed as a permanent lease; *Bilasmoni Dasi* v. *Raja Sheopersad Singh*[1], *Toolshi Pershad Singh* v. *Rajah Ram Narain Singh*[2]. The circumstance that the lease was made by a person with a limited interest is to be considered: *Maharanee Shibessouree Debia* v. *Mothooranath Acharjo*[3]. But if the document purported to create a permanent tenancy, it is invalid as beyond the competence of the grantor who was the shebait: *Vidya Varuthi Tirtha* v. *Balusami Ayyar*[4].

(1) (1882) 8 Cal. 664; L. R. 9 I. A. 33.
(2) (1885) L. R. 12 I.A. 205 at p. 214.
(3) (1869) 13 Moo. I. A. 270.
(4) (1921) 44 Mad. 831; L. R. 48 I. A. 302 at p. 327.

De Gruyther K. C. and *J. M. Parikh*, for the respondents.

Upon the true construction of the lease it was a permanent lease : *Upendra Krishna Mandal* v. *Ismail Khan Mahomed*[1], *Nabakumari Debi* v. *Behari Lal Sen*[2]. There is no authority that there could be in Bombay in 1824 a yearly tenancy subject to six month's notice. Having regard to the long interval of time which has elapsed since the grant of the lease it is to be presumed that it was granted for legal necessity: *Murugesam Pillai* v. *Manickavasaka Pandara Sannadhi*[3] ; *Chockalingam Pillai* v. *Mayandi Chettiar*[4].

[Lord Buckmaster referred to *Banga Chandra Dhur Biswas* v. *Jagat Kishore Acharjya Chowdhuri*[5].]

Further, the evidence did not establish that the grantor of 1824 was the shebait. Lastly there was no right to a second appeal ; there was no substantial question of law.

E. B. Raikes replied.

December 5:—The judgment of their Lordships was delivered by

LORD BUCKMASTER :—Their Lordships have come to a clear opinion upon the merits of this appeal, and as it relates to the possession of land, they will not reserve the expression of the advice that they will tender to His Majesty.

The appellant is seeking to obtain possession of a piece of land some 5½ acres in extent, that is situated near the Delhi Gate of the city of Ahmedabad. That

(1) (1904) 32 Cal. 41 ; L. R. 31 I. A. 144.
(2) (1907) L. R. 34 I. A. 160.
(3) (1917) 40 Mad. 402; L. R. 44 I. A. 98.
(4) (1896) 19 Mad. 485.
(5) (1916) 44 Cal. 186; L. R. 43 I. A. 249.

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the respondents are in possession by themselves or their tenants is not in dispute ; it is indeed the foundation of the appellant's claim, for the proceedings out of which this appeal has arisen were instituted by the appellant as plaintiff claiming to recover possession of the property upon the ground that the only right of the respondents is as tenants from year to year, a tenancy which had been duly determined by notice, or in the alternative, that the conduct of the respondents rendered it unnecessary that the appellant should take any further steps to secure its determination.

The land in question was granted on the 17th June, 1756, to one Sultansingh Maharajji for the deity of Shri Ranchhodji ; in other words, the grant was a grant to a named person for a defined religious purpose.

On the 22nd February, 1824, this land was dealt with by way of lease ; the document recording the transaction takes the form of a recognition by the tenant of the rights that have been granted and its informality is largely responsible for this dispute. It states that it is a rent note given to the wife of Sultansingh Maharajji, the grantee under the original grant ; that the tenant has taken the field and well for making a garden, and that in respect thereof Rs. 40 a year is to be paid. There then follows an important provision. The money is to be paid, not to the lady who made the grant, but to the Sadhu who performed the worship at the temple of the deity, and the explanation of that is to be found in later clauses of the deed, by which it appears that one Bawa Kisandas, who had undoubtedly some official capacity in connection with the temple, had borrowed money from the lessee, and the amount of that loan being Rs. 95, the lease provides for its liquidation by the lessee retaining Rs. 10 a year until the discharge took place. There is also a provision

that if the rent is not paid, the lessee should be at liberty to remove the structures which he may have placed upon the property, and also the trees and seeds. Their Lordships think this means that, in the event of the rent not being paid, re-entry will be possible, and that if re-entry is attempted the permanent structures which the lessee has erected may be removed by him. There are no words whatever in the document that suggest any other right of re-entry on the part of the lessors, nor is there anything in the actual language that gives much assistance in determining what the effect of the document might be. It has been argued that the object of taking the lease, which is said to be the making of a "wadibag," renders some assistance, as the meaning of wadibag is a garden, which it was intended to use for the purpose of adding thereto a house, and that in consequence the grant was for building purposes. Their Lordships cannot, however, find anything that will give them any material assistance in this or any of the descriptive words. All that can be said is that there are two constructions, and no third, to which the document lends itself; the one that the tenancy recognised was a tenancy from year to year; the other that it was a permanent lease, which could only be terminated by non-payment of rent. After this lease had been granted, certain buildings were undoubtedly erected upon the land. What the nature of those buildings may be it is not easy to determine, and it appears that whatever they were they have been allowed to fall into disrepair. Their Lordships do not think that the respondents can gain much assistance from inviting attention to the actual structures that exist upon the property as it stands now. Certainly no case can be established that would stop the lessors from asserting their right to possession, if under the terms of the document as

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construed by the circumstances known, that right exists. The evidence is unvarying to this effect—that from 1826 down to the time when this dispute arose, the tenants have been in continued and undisturbed possession of this land at the original rent, and that there is no case made of any act done or any document signed which suggests that during the whole of that period either one party or the other regarded the right of the respondents as anything short of permanent. There is, indeed, both in 1829 and in a receipt for rent as late as 1906, the use of the word "sadarmat," which has satisfied the learned judges in the Court below that the tenure was intended to be permanent. It is a matter of extreme difficulty for their Lordships here to give with confidence decisions as to the exact meaning of words in a language with which they are unfamiliar, and they always place the greatest reliance upon the learned Judges in India for the purpose of affording them an exact and accurate interpretation of any word that may be in dispute. They do not, however, in this case, intend to rest their opinion upon the use of this particular word. It may have been accidental, it is certainly not conclusive.

Apart from any inference due to the use of this word, their Lordships think that the terms of the document which, as pointed out by the learned District Judge, may not be satisfied if the tenancy were one from year to year, coupled with the fact that notwithstanding the low rent, which was never changed, the property has been in fact dealt with by the lessees on three separate occasions, in 1872, in 1883, and in 1900, by being subleased for substantial periods of years at increased rents, a circumstance which it is not unreasonable to assume must have come to the knowledge of the lessors at some time or another, and that no dispute has arisen as to their right to make such grants or to

remain in occupation until the present time, are sufficient to justify them in saying that the memorandum signed on the 2nd February, 1824, was intended to record a transaction by which a permanent right to occupy was conferred upon the respondent's predecessors-in-title. With regard to the litigation that took place in 1893 for the purpose of partitioning the lessees' interest, it is only necessary to say that having examined all the details which are most carefully investigated by Mr. Mohile, the Additional First-class Subordinate Judge by whom this case was originally heard, their Lordships agree with him and the learned District Judge in appeal that nothing was then decided which bars the present litigation or prevents the defendants from asserting their rights.

It is, however, further urged on behalf of the appellant that if such be the meaning of the document, effect cannot be given to it because the property dealt with was property devoted to religious purposes, so that the power of leasing would not extend beyond the granting of a lease for the life of the head of the religious charity, whoever it might be, for the time being. There is no doubt great force in that argument, but it is subject to two defects. The first is that it certainly is not plain that the original lease in 1824 was made by anybody in the position of a shebait at all, because the note is given to the widow of the original grantee, and although it might have been fair to assume that the original grantee was intended to hold as a shebait, even if the widow could hold the office it was not in virtue of that capacity that she granted the lease. Further, the disability of a shebait to make a permanent grant is not absolute.

In the case of *Chockalingam Pillai* v. *Mayandi Chettiar*[1] it was pointed out that although the manager

[1] (1896) 19 Mad. 485.

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for the time being had no power to make a permanent alienation of temple property in the absence of proved necessity for the alienation, yet the long lapse of time between the alienation and the challenge of its validity is a circumstance which enables the Court to assume that the original grant was made in exercise of that extended power. Their Lordships have no hesitation in applying that doctrine to the present case. If in fact the grant was made by a person who possessed the limited power of dealing under which a shebait holds lands devoted to the purposes of religious worship, yet none the less there is attached to the office, in special and unusual circumstances, the power of making a wider grant than one which enures only for his life. At the lapse of 100 years, when every party to the original transaction has passed away, and it becomes completely impossible to ascertain what were the circumstances which caused the original grant to be made, it is only following the policy which the Courts always adopt, of securing as far as possible quiet possession to people who are in apparent lawful holding of an estate, to assume that the grant was lawfully and not unlawfully made.

Their Lordships therefore hold that on both the grounds that have been mentioned this appeal must fail, and they have only to add that if in truth the real complaint that the appellant desired to bring forward was a complaint based upon the limited power of the original grantor, such a case ought to have been carefully stated in the original plaint, and certainly urged before the High Court as a substantial reason why leave to appeal should have been granted. The absence of this circumstance has not had any influence upon their Lordships' conclusion. They only refer to the matter for the purpose of attempting once more to call the attention of parties in India to the

importance of defining at the earliest moment and in the simplest terms, the exact character and extent of the dispute which is going to be made the subject of litigation through the various Courts and upon which this Tribunal ultimately advises.

Their Lordships will therefore humbly advise His Majesty that this appeal should be dismissed with costs.

Solicitor for appellant: Mr. *E. Dolgado.*

Solicitors for respondents: Messrs. *Baker, Blaker and Hawes.*

Appeal dismissed.

A. M. T.

ORIGINAL CIVIL.

Before Mr. Justice Kanga.

FAZAL D. ALLANA (PLAINTIFF) *v.* MANGALDAS M. PAKVASA (DEFENDANT)*.

1921.

June 30.

Sale of shares—Share certificates—"Goods"—Delivery of blank transfers and certificates—Native Stock and Share Brokers' Association—Rules and custom—Certified brokers—Del credere *agents—Duties—Contract—Performance induced by fraud—Effect—Indian Contract Act (IX of 1872), section 108—Estoppel.*

Share certificates are moveable property and are therefore "goods" within the meaning of section 108 of the Indian Contract Act.

Hazarimull Shohanlal v. *Satish Chandra Ghose*[1], referred to.

Delivery of the share certificates with the transfers executed in blank passes not the property in the shares but a title legal and equitable which will enable the holder to vest himself with the shares without the risk of his right being defeated by the registered owner or any other person deriving title from the registered owner.

Colonial Bank v. *Cady and Williams*[2], followed.

*O. C. J. Suit No. 537 of 1921.

(1) (1918) 46 Cal. 331.

(2) (1890) 15 App. Cas. 267