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(1865) 01 CAL CK 0001

Calcutta High Court

Case No: Special Appeal No. 869 of 1864

Moulvi Abdul Farar		APPELLANT
	Vs	
Sonatan Ghose and Others		RESPONDENT

Date of Decision: Jan. 25, 1865

Judgement

Seton-Karr, J.

The Regulations and laws most quoted in this discussion, the tenor and scope of which it becomes necessary to discuss and examine very closely, are Regulation XIX of 1793, Regulation II of 1819, Regulation IX of 1825, and Act X of 1859. The first law, Regulation XIX of 1793, is a law passed for trying the validity of the titles of persons holding, or claiming to hold, lands exempted from the payment of revenue to Government; and the first section lays down clearly what is the ancient and common law of the country on this important matter. It then divides the grants alienating public revenue into three classes: (1) grants previous to the Dewanny, or to the 12th of August 1765; (2) grants between this date and the 1st of December 1790; (3) grants made after 1790.

2. With the first class of these grants, the present discussions have nothing whatever to do, and only incidentally does the discussion touch on the second class. Between the two first classes and the third class, the law draws a marked distinction. By section 6 of the law, the revenue assessable on grants of the second period, when not more than 100 bighas in extent, is declared to belong not to Government, but to the person responsible for the discharge of the revenue of the talook or estate within which the grant is situated; and the proprietor is declared on this account not to be subject to any extra payment of revenue. It has been shown to us incidentally that, in the old rules of 1789, the word "rupees" was used instead of the word " bighas;" and it is natural to infer that the subsequent designation of bighas, as marking the extent of the land, was used, because each biga might be held, roundly, to be liable to one rupee of revenue.

3. By the next section, it is clearly laid down that the revenue on grants of more than 100 bighas in extent, alienated before 1790, should belong not to the zamindar or talookdar, but to Government; and that these lands should constitute independent talooks after resumption.

4. Section 10 of this law (Regulation XIX of 1793) is the remarkable section out of which the present contention has mainly sprung. It rules that all grants made after 1790, December 1st, whether under or above 100 bighas in extent, made by any other authority than that of the Governor-General, are absolutely null and void; that all proprietors of whatever sorts, are "authorized and required" to collect the rents from such lands at the pergunna rates, and to dispossess the grantee from the same, without making any application to a Court of Judicature or to Government; and it declares that no such proprietor shall be liable to any increase of assessment on account of any such grant which he may resume and annul.

5. The distinction which the Legislature intended to draw in this section is, I think, sufficiently obvious. The permanent settlement had been made with the zamindars, and their status, as proprietors, had been recognized. Any grants made by any other authority than the Governor-General were, in such estates, ipso facto, null and void. In the term "grants," must, also, I think, in all fairness, be included any usurpation or encroachments made by any subordinate holder of land, under the pretext that they were grants; and it was by considering the status of zamindars and proprietors, which had been so recognized by law, that such persons were not only permitted but required to look after their estates; that they were considered bound to see that the area on which rent was due, and from which revenue was eventually payable, should not be impaired or diminished; and that they were permitted, without any formality or any application to the authorities of any sort, then and there, even by force if necessary, to dispossess all fraudulent or illegal grantees, and to re-annex the usurped property to its parent estate. The zamindars, in this view, were only enjoying their own again. They had as much right to re-annex a tenure, impudently or fraudulently set up as rent-free, but in reality created or usurped after 1790, as they would have had to recapture a stray horse or cow. After 1790, there could, it is clear, be no such grants whether by nawabs, amils, farmers, or proprietors of any kind. None but the Governor-General in Council could, from that date, alienate the revenue, or what was practically the source and foundation of revenue, namely, rent.

6. It is probable, however, that such attempts at usurpation, by subtenants, were few in number. Perhaps, on the other hand, if any such encroachments were made, the zamindars feared that dispossession by the strong hand would fail in the result, or might lead to resistance or violence; or it might be that a zamindar could not distinguish between grants created before and grants created after 1790; and that, when they did endeavor to resume, they preferred challenging all grants, as held by invalid tenure, in uniform, general, but positive terms, without specification of the

date of origin Again, it may be that very little was done comparatively in the way of resumption by Government, until the passing of the Resumption Laws of 1819 and 1828, and that the zamindars following in the wake of Government, themselves did little or nothing, until later years. Religious prejudices may also have had their full sway, and respect for Brahmins may have prevented zamindars from closely scrutinizing the titles by which brahmatra and dewater, and even other tenures, were held. Certain it is that, from whatever cause, for a long time, we heard little of section 10, except in theory. Quarrels and affrays have not, as I hold, been due to this portion of the law in any marked degree, or in a greater proportion than they are due to other well known causes of agrarian disturbance. And it is also tolerably certain that institutions of suits for resumption by zamindars have been numerous enough to attract attention, and to create a distinct branch of law and of litigation, only since the year 1848. After that date, and again after the year 1855, the proprietors of estates in the lower provinces, following the example of two or three well known and energetic zamindars, have generally be taken themselves to enquire into the origin of their grants, and with a growing disregard of religious prejudices and of ancient custom, have resolutely set themselves to increase the rent-paying area of their estates, as they had a perfect right to do, by every means which the law had placed within their reach. All this it is necessary to premise for a full understanding of this part of the subject.

7. We now come to the next law of importance, the well-known Regulation II of 1819.

8. Till that time, it is clear, from the preamble of the law, that the existing laws had been inadequate to secure the just lights of Governments, and similarly, we may add, of those to whom Government had delegated a portion of its rights. The preamble recites the object of the law to be the declaration of the right of Government to assess all lands, which, at the decennial settlement, were not included within the limits of a settled estate, and at the same time to renounce all claim on the part of Government to additional revenue from lands included within the limits of a permanently settled estate. In this view, one uniform course of law and procedure was laid down. The first twenty-nine sections of this law are wholly taken up with the procedure and forms to be adopted by Government in the resumption of its own rights. But the 30th section embraces the cases of proprietors in regard to lands which they could resume. It would seem as if the Legislature, after minutely laying down rules for the action of the Revenue Authorities charged with the preservation or the resumption of the rights of Government, had also thought that time and trouble would be saved by prescribing, in one and the same law, the rules whereby private, as well as public claims should be instituted, tried, and adjudicated. Section 30 declares that all suits instituted by proprietors, &c., to the revenue of any land held free of assessment, shall, immediately on their institution, be referred to the Collector for report; and that proprietors who deem themselves entitled to the revenue of any land held free of assessment on their

respective estates, Shall be at liberty to prefer their claim, in the first instance, to the Collector. The remainder of the section is wholly taken up with the procedure in such cases, and need not be now adverted to.

9. Now, what is to be understood by the term "revenue of any land held free of assessment," which occurs twice in this section? Did the suits, contemplated on the part of proprietors, include both suits for lands held under grants anterior to 1790, and suits for lands usurped or granted away since that date? Is the word "revenue" In Piziruddin v. Madhusudan Pal the Zamindar "and" Revenue of Govern-Chowdhry, ante, p. 75, the terms "Rent to ment" were distinguished in this section to be understood as meaning the revenue due to Government, which had been assigned to the zamindar, or is it a careless term, meaning the rent which proprietors could levy on the ground of their existing status and rights? And, finally, ought suits for the assessment of lands for the first time held, granted, or usurped after 1790, to have ever been held under this section or not; and if suits have ever been so tried, then is the jurisdiction of this section curtailed or taken away by the provisions of section 28 of Act X of 1859?

10. This really is the gist of the whole controversy. I am of opinion, after the very fullest consideration, that the arguments in favor of a concurrent jurisdiction for the Civil and the Revenue Courts in regard to this section, and for the retention of such concurrency, even after the passing of Act X, are inferior in number, weight, and fullness to the arguments, that to resume grants of a later date than 1790, one Court, and one only, that of the Collector, is intended as the correct and legal tribunal. Section 30, to my mind, contemplates the zamindar or talookdar in the position of the assignee of the revenue due to Government on lands of less than 100 bighas in extent. It does not contemplate him as resuming the rent of his own lands, which had been illegally or fraudulently usurped, or denied to him by his own tenants residing on the estate, which was settled with him at the perpetual, and consequently at the decennial, settlement of 1789. The word "revenue" was used, knowingly and advisedly. This, I think, is to be inferred from the whole language and scope of the Act. Its first twenty-nine sections prescribed the rules whereby Government shall recover its alienated revenue. The 30th section similarly prescribes rules whereby zamindars shall recover that portion of the revenue which Government, in its generosity, had conceded to them, and to which they could have had no title, were it not for such liberality on the part of Government. Section 10 of Regulation XIX of 1793, already quoted and explained, is not mentioned, and was never contemplated by the framers of Regulation II of 1819, although other sections of that law are thereby rescinded in express terms. The section (10 of Regulation XIX of 1793) remained in force and unaltered until section 28 of Act X displaced it, and substituted for the possible violence of the zamindar, a more sober, formal, and regular mode of ejectment. Section 30 of Regulation II of 1819 does not contemplate ejectment at all, but assessment; whereas section 10, Regulation XIX of 1793, directly contemplates an act of ejection and dispossession. Section 30 and the

whole Regulation II of 1819 contemplate liability to assessment, and not the ejectment and dispossession of illegal or usurping grantees. This much, I think, every one must concede.

11. It is said, on the other hand, that zamindars have been allowed to bring suits u/s 30 for both kinds of laud,--i.e., those taken before, and those taken after, 1790; and that, further, any zamindar who prudently did not wish to resort to force to oust the latter kind of tenants, had, at any rate, his remedy for his wrong under an ordinary civil action, independent of the Resumption Law of 1819; such as was permitted to all persons injured, under Regulations III and IV of 1793, or our earliest Civil Code. I concede that it is quite possible that suits to resume lands taken after 1790, may have been carelessly admitted u/s 30 of Regulation II of 1819. But the truth, as I take it to be, is that, until a very recent period, zamindars suing to resume and assess used a general and vague language as to time. They stated in their plaints broadly that such and such lands were held "under invalid (najaiz) lakhiraj tenures," and invoked the aid of the Courts. The marked distinction in dates has been, I firmly believe, of recent introduction, and perhaps subsequent to Act X of 1859; and if we find that some suits have been carelessly admitted, that the point has never been fairly and fully argued until very lately, and yet that the Legislature has prescribed certain remedies which are to be the sole remedies for a particular class of wrongs, what, I would ask, is there to hinder us from considering the subject, and from laying down a precise rule for all future and for all pending cases?

12. I cannot admit the conclusiveness of the arguments on the other side of the question, admitting that much may be said against my view of the case, to the effect that it has lately been the practice to admit both classes of suits to trial u/s 30.

13. Then, what is the meaning of the reference to the Collector and to the Board throughout the whole of the law of 1819, and specially in section 30?

14. The Collector was the sole registrar and depository of papers and titles by which the revenue of Government was affected. He was naturally supposed to be the most competent authority to determine in what cases Government, or those to whom Government delegated its powers, might claim revenue unlawfully withheld or appropriated. He was by some supposed to possess a perfect monopoly of knowledge in regard to revenue and land tenures. But I do not see why the Collector should be supposed to know at what period, or by what process, rents, and not revenue, due on lands situated within the limits of a decennially settled estate, with which the Collector had no practical interference, had been illegally appropriated by some fraudulent tenant. The zamindar was the person who could see after his own affairs; who could best know the limits of his own estates, and the extent of the misdoings or usurpations of his ryots; and if he had no means of ascertaining these points, the Collector was not the person to give him any material assistance. The zamindar would certainly find in the Collectorate the quinquennial registry papers, and the papers showing of what mauzas an estate consisted at the perpetual

settlement; but all this he was supposed to have in his possession, already. On the other hand, to call in the aid of the Collector to point out what lands were liable to revenue, and by what titles or grants they were held, was, according to the ideas of the Legislature of 1819, perfectly reasonable and proper. To send zamindars to the Collector, in order that he might help them to ascertain all about their defaulting tenants, and the deficiencies in their rent-roll, was wholly unnecessary. Such alienations, by the section of a law never changed until the passing of Act X of 1859, were on the face of them null and void. What was then left for a Collector to enquire into, ascertain, or report? And to what portion of an enquiry about nothing, could the long and elaborate processes of the swelling clauses of that same section, which make up two pages of Clark''s Edition, by any process of reason or analogy of law, be thought to apply? I cannot accept the argument that the word "revenue" in section 30 is used indiscriminately as expressing "khazana," which means both revenue and rent. The framers of the law of 1819, according to my idea of their capacities and intention, knew perfectly well the force and significance of the terms which they were using, and made use of revenue in its ordinary significance,--viz., that which is due to Government from the land. The word "rents," on the other hand, is pointedly used in section 10of Regulation XIX of 1793, as being what zamindars are required to collect as their own already.

15. That no interference with section 10 of Regulation XIX of 1793 was contemplated by the framers of Regulation II of 1819, seems to me, further, to be conclusively established by a reference to Regulation IV of 1825, section 8. This section specially provides that nothing in Regulation II, or in any other Regulation in force, shall affect, or be considered to affect, section 10 of Regulation XIX of 1793, which declares the right of zamindars to make use of no Court at all, but only of the services of their own naibs, gomastas, and retainers. And the section goes on to reserve to the Revenue Authorities the right to resume lands now held free of assessment, but subject to payment of revenue at the date of the perpetual settlement, as well as to except the cases in which revenue might belong to the proprietors or others with whom a permanent settlement had been concluded,--i.e., cases of lands on which rent-free grants had been set up after 1790. The section concludes by saying that the provisions of section 22 of Regulation II of 1819 (allowing rent-free holders to remain in possession on tendering security, pending the suit which they were to institute to retain their tenures) shall not apply to such cases.

16. Having thus shown, as I hold, that the intermediate and well-known law of 1819 had no reference whatever to grants made after 1790, and consequently that any such cases instituted under its provisions must have been admitted through inadvertence, or from mere want of distinctness or perspicuity in the claims, I come now to section 28 of Act X of 1859.

17. In my view of the case, there is, then, nothing in our legislation which touches these cases in the whole period between 1793 and 1859. We go per saltum from the vigorous and off-hand dispossessing zamindar of 1793 to the same individual applying to the Revenue Authorities in 1859.

18. In that year a law was passed, which, from its preamble and its whole scope, was intended to provide for all rights of zamindars and ryots, and all questions arising out of rent, and to form, as far as possible, a complete and definite Code in itself.

19. Now what is the language of section 28 of this Act? It simply repeals section 10 of Regulation XIX of 1793, and rules that "any proprietor or farmer who may desire to assess such land, or dispossess any such grantee (i.e., a grantee after 1790), shall make application to the Collector, and such application shall be dealt with as a suit under the provisions of this Act." The section then goes on to say that such suit shall be instituted within twelve years from the time when the title of the plaintiff accrued, &c.

20. In the above language there is nothing permissive. Nothing which suggests the notion of a double form, or of a subsequent remedy in the shape of a civil suit, such as is, by other sections of Act X, reserved for parties whose titles or rights cannot be decided by the Collector. The period of limitation is no short period, but the longest which any of our laws permit. The terms used are as positive and peremptory as language can afford. The law says as I read it:-- "You shall no longer oust alleged grantees who have usurped your lands, or who deny you that rent which they or their predecessor paid to your estate, or to your representatives after 1790. Such proceedings are far too arbitrary for our improved civilization, and our more frequent and more accessible tribunals. You shall now go to the Revenue Authorities, and your application to them shall, in all respects, be treated as a suit; and a suit is not to be tried twice over."

21. A Full Bench of this Court has already ruled that appeals from orders passed under this section lie to the Judge, and not to the Commissioner Biswambhur Misser v. Ganpat Misser, ante, p. 5.

22. It is argued, on the other hand, that Act X never takes away the jurisdiction conferred by Regulation II of 1819, and that jurisdiction cannot be taken away by implication, nor a Court be thus inferentially deprived of its legal powers. But what if civil jurisdiction had never been contemplated at all for such cases by Regulation II? And I have endeavoured to show that the jurisdiction of Courts under that law could not, and did not, extend to such cases.

23. The jurisdiction of Regulation II of 1819 was finally abolished by Act VII of 1862 of the Bengal Council,--an Act intended to put an end to all those vexatious inquiries regarding lands held free of revenue, which were productive of no good financial or political results.

24. If the arguments against this view he correct, then, have plaintiffs, seeking to resume these grants, no less than three tribunals or forms of action, now that their own freedom of action has terminated: (1) they can go to the Collector to dispossess the alleged grantee; (2) they can sue for resumption and assessment, under Regulation II of 1819, in all suits instituted before the Act of 1862; (3) they can resort to the Civil Court under the general law, like any other plaintiff who has sustained a wrong, and who desires a remedy. I cannot think that this diversified course of procedure, and this unfettered freedom of action in the choice of tribunals, were ever contemplated by the Legislature, or are to be extracted out of the words of any law. I cannot think that this course would tend to uniformity of procedure and of decisions, to the satisfaction of a large class of the community, to a general confidence in our tribunals as a sure means of redress, to the ends of justice, or to that character for fairness, equity, and consideration for the people which it was the object of the Government that passed these Acts to obtain. It may be said, certainly, that the last resource of those above enumerated, the ordinary civil action, exists for every man; and that, whether the Resumption Law of 1819 be applicable or not, the ordinary form of redress by civil action was never barred, and is not even now taken away. This argument I take to be purely theoretical. Plaintiffs did not sue to assess or to resume lands under the ordinary civil law. I question if more than one or two such cases can be cited. Plaintiffs came to the Courts under the well-known Resumption Law, and, in any case, I hold that it was the intention of Act X of 1859 to give sole and exclusive jurisdiction to Collectors, and to make a suit before him, the one single remedy for aggrieved or injured zamindars.

25. This view of the case has already been entertained by several Judges in late cases, though the contrary opinion has also been expressed. It is now most requisite that parties resorting to our Courts should know what courses they may or may not pursue.

26. On the whole, I would now sum up the question by saying that, in my opinion, Regulation II of 1819 was never intended to apply to these cases at all; that the distinction between grants made before and grants made after 1790, was rarely if ever raised, until late years, by plaintiffs seeking to resume, inasmuch as they brought these suits on broad and general terms, alleging mere illegality and invalidity of rent-free tenure; that the permission given by the law of 1793 to zamindars to re-annex lands to their estates off hand, was, by comparison, rarely resorted to in practice, but was left quite untouched in theory until the enactment of 1859; that Act X of that year at length substitutes for the peremptory dispossession permitted to the zamindar, or for any possible civil suit under the general Regulation, the more regular and formal course of an action before the Collector, and this law leaves plaintiffs no option but to go before the Collector, and before no one else; that there is no subsequent trial or further remedy by civil suit left open; and that this is the only remedy to which parties have a right to look.

27. In this view I would decree this appeal, and would, moreover, rule that this decision should apply to all pending and future cases of the kind, shutting the action of the Civil Court altogether; but I would not, on this ground, review any decision already passed under a different interpretation of the law.

28. Norman, J. (after briefly stating the facts proceeded).--By the ancient usage or common law of the country, which was recognised and continued by the Regulations of 1793, the dues of Government from each biga of land were inalienable by the person appointed to collect them, namely, the zamindars, except by its express sanction.

29. Section 10 of Regulation XIX of 1793 is as follows:--(reads).

30. Therefore, in respect of lands held within a decennially-settled estate rent-free under a grant subsequent to 1790, the zamindars had a right to the revenue under the ancient common law of the land, and to the possession of the land itself, u/s 10, Regulation XIX of 1793.

31. The Regulations respecting lakhiraj lands, passed by the Governor-General in Council on the 1st December 1790 (see Colebrook''s Digest of the Regulations, Vol. III, pp. 292--294,)--after making provisions with respect to rent-free lands alienated prior to the date of those Regulations, provided as follows:-- "Any person who may purchase a village or villages, &c., subsequent to the date of those Regulations, shall be entitled to the property in the soil, and the Government share of the produce of all portions of such village or villages that may have been alienated since the date of these regulations," & c.; and by section 2, he was authorized "to prosecute for the same in the Court of the Collector of the district," and any landholder resuming lands without having obtained a decree for that purpose from the Collector of the district, was made liable to a prosecution for damages in the Court of the Dewanny Adawlut.

32. Section 10, Regulation XIX of 1793, with a view of carrying out the objects of the Government in securing to, and retaining in the hands of, the zamindars the revenue which they were to receive, authorized and required them to "resume;" or, in other words, to retake possession of such lands without a suit. But, as the Regulation contains no clause depriving the Civil Court of jurisdiction, it appears clear that it did not take from the zamindars the right to enforce their claims, whether to the revenue under the common law of the country, or to the land under the above cited Regulation, if they found it necessary or convenient to proceed in that manner. It would, therefore, appear that, prior to the enactment of Regulation II of 1819, a zamindar might either himself collect the rents and dispossess the grantee of any lands, parcel of his decennially-settled estate, held rent-free under a title which had its origin subsequent to 1790, or he might sue in the Civil Court to enforce his rights.

33. By section 30, Regulation II of 1819, all suits preferred in a Court of judicature by proprietors to the revenue of any land held free of assessment, were to be referred to the Collector; and special rules are provided for the trials of such suits. This section fixes no new right of action; it simply provides a special mode of trial for certain suits which might have been instituted and tried before its passing by the ordinary Courts.

34. As stated by Mr. Loch, in Polin Chunder Gossain v. Worries Chunder Roy S.D.A. Rep., 15th April 1861, p. 151 "zamindars found it more convenient to proceed under these rules than to take advantage of the powers with which they were invested by section 10 of Regulation XIX of 1793;" and according to the established and recognized course and practice of the Court for many years prior to the passing of Act X of 1859, suits under that section were brought and maintained for the resumption of all lakhiraj lands without distinction, whether the grants were prior or subsequent to 1790.

35. It was a well-recognised rule, established after much discussion, that limitation could not he successfully pleaded in such suits, unless it were shown that the lakhiraj was held under a grant prior to 1790.

36. Now it is evident that if no suits under that section could have been maintained, except in respect of grants prior to 1790, the plea of limitation would have been an answer to the suit in every case, except in suits by purchasers at sales for arrears of Government revenue, because the plaintiff would have been in this dilemma, either his suit was for the resumption of a grant prior to 1790, in which case limitation would be an answer, or it was in respect of a grant subsequent to 1790 in which case the Collector''s Court would have had no jurisdiction.

37. We have not now to consider whether, upon a careful and critical consideration of the preamble and general scope of Regulation II of 1819, this construction was correct. There is much to be said on either side of the question. It is sufficient to say that the terms "suits to the revenue of any land held free of assessment" are sufficiently large to include such suits. Indeed, if the words "held free of assessment" were to be treated as if they related only to lands which had never been assessed, instead of as including all lands de facto held free of assessment, or, in other words, without actual payment of any assessed revenue, the inconvenience would have followed that a suit against a person alleging himself to hold a lakhiraj title would be liable to be dismissed on the ground of want of jurisdiction, if, on enquiry, it turned out that the party alleging a lakhiraj title had no ground whatever for resisting the suit, the sanads having been forged, and the land first held rent-free since 1790. It may well be that, if neither party allege a lakhiraj title as existing prior to 1790, there would be nothing to refer to the Collector u/s 30 of Regulation II of 1819; but that is not the present case.

38. The interpretation which has been put upon the section in question is not only perfectly reasonable, but having been for so long a period recognized and acted upon by the Courts, in my opinion we are bound by it, and it has now the force of law. See on this subject the observations of Sir Henry Seton, in Sib-Chunder Ghose v. Russich Chunder Neoghy Fulton''s Rep., 86. Sir Lawrence Peel, C.J., in Sib-Chunder Doss v. Sib Kissen Bonnerjee 1 Boulnois, 77. The actual words used by Sir Henry Seton, as reported (see p. 38), were-- "I have always understood that the law of a country was to be found, not in the text of its code, which can never be more than the foundation of it, but in the practice which has prevailed under it, which may often be inconsistent with it, and even in some cases opposed, to it.", quoting the language of that learned Judge, says:-- "The laws of a people are not to be found merely in its written text, but in the judicial exposition of that text which have prevailed for a long series of years, and on which the laws of property are founded." He goes on to say in the case of the Regulations he was discussing:-- "The construction which has prevailed in the mofussil, namely, that adverse possession for the prescribed period not only bars the remedy, but gives title, is in harmony with the presumable will of their framers, with the opinion of the most able jurists on laws as to real estates similarly worded, and with the whole course of decisions of analogous branches of English law. Had it been otherwise, a long course of decisions settling rules of property on which titles are taken, ought not to be disturbed by judicial decisions."

39. By section 28, Act X of 1859: "So much of section 10, Regulation XIX of 1793, as authorizes proprietors and farmers of estates and dependent talooks, in cases in which grants for holding land exempt from the payment of revenue have been made subsequent to 1790, of their own authority to collect the rents of such lands, and to dispossess the grantee of the proprietary right in the land, and to re-annex to the estate or talook in which it may be situate, is repealed."

40. Stopping here for a moment, we observe that the first clause of section 10 of Regulation XIX of 1793 is left wholly untouched, and that the new and special remedy given by that section to the zamindar, is the only thing which is, in the express terms, taken away. It proceeds:-- "And any proprietor or farmer who may desire to assess any such land or dispossess any such grantee, shall make application to the Collector, and such application shall be dealt with as a suit under the provisions of this Act."

41. The construction which has been put by many decisions of this Court upon this part of the section, is that it merely substitutes an application to the Collector in the nature of a summary proceeding for the right which a zamindar had, of his own authority, to assess and collect rent, or dispossess the holder of such land, and that it did not affect the right of the zamindar to proceed in a regular suit for resumption.

42. Act XIV of 1859 was before the Legislature at the same time as Act X of 1859, and received the assent of the Governor-General only five days after the passing of Act X, Clause 14 of section 1 is in pari materia with section 28 of Act X of 1859, and must be read with it. It gives a period of twelve years for suits for the resumption of any lakhiraj or rent-free land, and provides that, in estates permanently settled, no such suit, though brought within twelve years, shall be maintained, if it be shown that the land was held rent-free from the period of the permanent settlement.

43. It is clear that the Legislature contemplated the existence of, and separately dealt with, two classes of regular suits for resumption,--namely, first, suits for resumption of lakhiraj created subsequent to 1790; and secondly, suits in respect of grants prior to that date.

44. Again, the Bengal Act VII of 1862, which received the assent of the Governor-General on the 1st day of May 1862, dealing with suits regarding lands held or claimed to be held free of assessment, repeals section 30 of Regulation II of 1819, and after reciting that it is advisable that such suits should be preferred and disposed of exclusively in the ordinary course of civil judicature makes provision for that purpose.

45. Now, if the construction contended for by the appellant is correct, no such suit could be preferred after the 1st of January 1862. The Legislature itself has, therefore, adopted and acted upon the doctrine so long established in the late Sudder Court, that regular suits are maintainable for the resumption of lands held as rent-free under titles which had their inception subsequent to 1790.

46. I am, therefore, of opinion that section 28 of Act X of 1859 does not touch the right of a plaintiff to institute a regular suit for the resumption of grants falling within section 10, Regulation XIX of 1793, and therefore that the Civil Court had jurisdiction in the present case.

47. Trevor, J. (after shortly stating the facts and the question referred, proceeded):--In determining the point before us, it will be necessary to enter into a short statement of the law as it existed before the enactment of Regulation II of 1819.

48. It would, undoubtedly, suffice to commence this statement with the laws enacted in 1793; but, as reference has been made by the pleader for the plaintiff to the laws which, existed before that time, it will be well to take some notice of them.

49. In the year 1772, or 1179 B.S.--i.e., seven years after the East India Company acquired the Dewanny of Bengal, Bihar, and Orissa, the zamindars and farmers of revenue were bound, by an express law inserted in their leases, not to confer any grants of land, without the knowledge and consent of Government. They, however, violated this stipulation with impunity, and, as by the practice the revenue of the Government was affected, an office for the registration of all lands held free of

revenue, whether under badshahi or bukmi grants in Bengal, styled the bazi zamin daftar was proposed by the Committee of Revenue on the 28th May 1782, and instituted under the orders of the Governor-General in Council, in the Revenue Department, passed on the 31st May of the same year. The main rules passed for deciding on the validity of the title of parties to hold lands free from revenue were--

1st.--That all grants anterior to 1765, and of which possession for one year had been held before that time, should be considered valid;

2nd.--That possession of that nature, even without a grant, was valid; and

3rd.--That all grants subsequent to that date, under the general denomination of lakhiraj or gair jumma, should be declared invalid, excepting such as had been confirmed, or might be hereafter confirmed, by Government.

50. The decision as to the validity of the titles, and also the property in the land, if disputed, was to be reported by the superintendent of the bazi zamin daftar to the Committee of Revenue with whom the ultimate decision rested.

51. The office of bazi zamin daftar was abolished in its original form on 31st May 1786, and it continued to exist only as a presidency office of record until February 1793, when it was entirely abolished. But on the 19th July 1786, it was resolved to invest Collectors with the duty of investigating and reporting on lakhiraj tenures.

52. On the 18th September 1789, the original rules for forming a decennial settlement for Bengal were passed; the settlement itself commencing from the 1st Baisakh 1197, Bengal era (section 2, Regulation VIII of 1793), or 1st April 1790. On 1st December 1790, certain Regulations were passed respecting lakhiraj lands. They confirmed and laid down with greater precision the rules of 1782, and adduced certain new ones, some of which it is necessary to mention. The fifth and sixth rules are to the following effect:--The revenue, which may be assessed on all rent-free lands, consisting of one or more villages, and on portions of villages (provided the sum assessed on such portion shall exceed one hundred sicca rupees per annum) alienated prior to the date of these Regulations, and which may be resumed in conformity thereto, is hereby declared to belong to Government, and the revenue assessed on portions of villages alienated prior to the date of these rules, and resumed in conformity with them (provided the amount does not exceed one hundred sicca rupees) is declared to belong to the person responsible to Government for the revenue of the village, whether zamindar or farmer. Rule eighth lays down that any purchaser of the villages subsequent to the date of the Regulations, at public or private sales, shall be entitled to all property in the soil, and the Government share of the produce (whether it be more or less than 100 sicca rupees per annum) of all portions of such village or villages that may have been alienated since the date of this Regulation and prior to his purchase, and he shall not be liable to any increase of assessment on account of such lands during the term of his lease. By rule 11, landholders and farmers entitled to the property in the

soil, or to the whole or part of the produce of alienated villages resumable by this Regulation, are authorized to prosecute for the same in the Court of the Collector of the district; and any person resuming alienated lands, without having first obtained a decree, is liable to a prosecution for damages in the Court of the Sudder Dewanny Adawlut.

53. These rules remained in force until the enactment of Regulation XIX of 1793, on the 1st May of that year, when, in modification of the previous rules by sections 6 and 7 respectively of that law, it was enacted that the revenue of land not exceeding 100 bighas of the ordinary measurement of the pergunna, alienated by one grant prior to 1st December 1790, on resumption should belong to the person responsible to the discharge of the revenue; whereas that assessment on land exceeding 100 bighas shall belong to Government, and the holders of the former tenures were to be considered dependent talookdars, leaseholders,--that is, under the proprietors of the estate in which the lands are situated,--whilst the holders of the latter were to be considered independent talookdars, entitled to enter into a settlement with Government for the land of which they are to be considered owners. By section 10, all grants made since 1st December 1790, whether above or under 100 bighas, are declared null and void, and no length of possession can give validity to such grants, either with regard to property in the soil, or the rent of it, and zamindars are authorized and required to collect the rents for such lands at the rate of the pergunna, and to dispossess the grantee, and to reannex it to the estate to which it belongs, without any application to a Court of judicature. And by sections 11 and 12, zamindars and Government could severally sue in the Civil Court to resume the land, to the revenue of which they had been declared entitled by sections 6 and 7; and zamindars were declared liable to an action for damages if they subjected lands to the payment of rent without having obtained a decree. It may be observed, too, that no lapse of time barred the Government claim then. This law (section 2) was, however, rescinded by Regulation II of 1805, which prescribed a limit of sixty years to such claims on the part of the Government.

54. Now the foregoing statement shows clearly that, in the rules of the 1st December 1790, the principle of lightening the general assessment of au estate by assigning to its owner or occupant the revenue of small resumed tenures, and thereby rendering more secure the revenue of Government on the whole estate, is fully recognized. In Regulation XIX of 1793, the same principle is asserted; but the mode by which it is worked out is altered. The former rules looked to the amount assessed on land resumed, as determining whether it should be made over to the settling party, be he zamindar or farmer. The latter looked to the area covered by the grant, which had been declared invalid. The reason for the change is, perhaps, to be found in the altered circumstances of the zamindar. Under the decennial settlement, as originally made, though he had been declared the owner, yet the settlement, was not in perpetuity; but when the decennial became a perpetual settlement, the area of the estate became fixed for ever, and any rule for making

additions to that area could be made with greater propriety by looking to the extent of land resumed than to the amount assessed on land; in other words, by a direct, rather than by an indirect course.

55. Again, by the original rule of 1st December 1790, all parties wishing to resume lands alienated, whether before or after 1st December 1790, must go to the Collector''s Court, and get a decree there, whereas, by the Regulations of 1793, alienations after 1st December 1790 were, ipso facto, null and void. As, moreover, the Government demand on estates had become fixed in perpetuity, it became of the greatest moment to prevent, as far as possible, the decrease of the security of the revenue; and hence the power which was given to the zamindars enabling them at once, without recourse to the Courts, to dispossess the grantee and assess the rents after any lapse of time. The grantee, in short, was considered as a trespasser, who had, and could have, no rights in the eye of the law. It follows that Regulation XIX of 1793 placed the possessors of grants subsequent to December 1790 in a very different position from that which they held before the passing of that Act.

56. It is very true, as stated by Baboo Dwarkanath Mitter, that the decennial settlement did not commence on the 1st December 1790, and that, therefore, there must have been a time subsequent to the settlement where section 10, Regulation XIX of 1793, did not apply, but the earlier rule. Doubtless, from the 11th April 1790, or Baisakh 1197, up to the 1st December 1790, about eight months, the old rules of 1790 were in force; and if any alienation of land within the decennial settlement estates then took place, they must be dealt with under the old rules; but this point need not detain us now,--it is one that has never arisen, and is never likely to arise. It is not alleged that the alienation of the present lands was anterior to the 1st December 1790, though subsequent to 1st April of that year; and the objection, therefore, has no real bearing on what we are now about to consider,--viz., the law which has existed since December 1790 up to the present time, regarding lands alienated subsequent to 1st December 1790.

57. Between the passing of Regulation XIX of 1793 and Regulation II of 1819, certain Regulations had been passed regarding the procedure to be adopted in securing the just rights of Government over the lands which, under Regulation XIX of 1793, Government was entitled to resume and assess; but they were found to be in several respects defective. They were, therefore, repealed, and Regulation II enacted, with a view (to use the words of the preamble of that law) of establishing on proper principles one uniform course of proceeding in resuming the revenue of the lands liable to assessment, so that the dues of Government might be secured without infringement of the just rights of individuals.

58. Now, from these words, it seems clear that the main object of the law was the enactment of rules for the resumption of the lands liable to assessment by Government under the Regulation of 1793,--i.e., lands of greater extent than 100 bighas under one grant, held under invalid rent-free grant prior to 1790, but which

had not yet been assessed. The first twenty-nine sections are mainly devoted to this object; and then comes the 30th section, which enacts that all suits preferred in a Court of judicature by proprietors, farmers, or talookdars to the revenue of any land held free of assessment, as well as all suits so preferred by individuals claiming to hold lands exempt from revenue, shall, immediately on their institution, be referred for investigation to the Collector or other officer exercising the powers of Collector: provided also that proprietors, farmers, or talookdars, who may deem themselves entitled to the revenue of any land held free of assessment in their respective estates, or individuals claiming as aforesaid to hold land free of assessment, shall be at liberty to prefer their claims, in the first instance, to the Collector.

59. Now the question is, to what lands do these words refer? Do they refer solely to lands held under lakhiraj grants, which had been expressly excluded from assessment at the time of the decennial settlement, the revenue of which had been assigned by Government to zamindars u/s 6, Regulation XIX of 1793; or do they refer not only to them, but also to lands included within the assessment of Government at the decennial settlement, but which subsequently had become exempt from paying the revenue due upon them in consequence of grants from the zamindar in possession, or otherwise?

60. It appears to me not to admit of reasonable doubt that this section refers only to the former class of lands, and I arrive at this conclusion, first, from the wording of the section, when compared and contrasted with other sections of other laws; and, secondly, from a consideration of the subject-matter of Regulation II of 1819.

61. Now the section, so far as suits of the zamindars are concerned, looks to lands held free of assessment,--that is, lands on which the Government revenue had not been assessed. This was the position (speaking generally, and with the possible exception noted above,--i.e. of lands alienated between April and December 1790) of lands alienated before 1st December 1790; but it was by no means the position of lands alienated by the zamindars subsequent to that date. They had, undoubtedly, been assessed at the time of the decennial settlement, and were only held exempt from the revenue which had been assessed upon them by the illegal act of the zamindars; an act which the Legislature considered so illegal as to render the grant itself resumable at the pleasure of the grantor, but without a reference to the ordinary Courts of justice. Doubtless, this state of things is opposed to ordinary legal notions; for as an estate is liable for its own arrears of revenue, and as, on a sale, grants of this sort fall in, a zamindar might with safety be left intermediately to work, if he so pleased, his own ruin without any detriment to the estate. But such was not the opinion of the Legislature in 1793, which, in addition to requiring the security of the revenue, considered it necessary, by law, to protect the zamindars and their heirs against their own improvidence and weakness (preamble to Regulation XLIV of 1793) and such remains the Statute law unto the present day.

62. A reference to the whole of Regulations IX of 1825 and III of 1828 will, with the exception of one or two places, confirm the view here taken as to the meaning of the words "lands free of assessment,"—i.e., lands which have never been assessed by Government; whereas a reference to section 10, Regulation XIX of 1793, and section 8, Regulation IX of 1825, will show that the terms "exempt from the payment of revenue,"-- i.e., exempt from the payment of public revenue that had been assessed on it, is used regarding lands illegally alienated since 1790, which belong to the zamindar with whom the permanent settlement had been made in the first instance, though he is liable to pay the same to Government. It is not here asserted, however, that the words "exempt from the public revenue" are not used regarding lands legally exempted by Government from such payments, as well as regarding lands illegally exempted by zamindars from the revenue assessed on them. No doubt, they are both in Regulation XIX of 1793 and elsewhere; but only that the term "free of assessment" is hardly ever used regarding lands alienated by zamindars subsequently to 1790, and consequently that Regulation II of 1819 does not apply to them. It is impossible, in interpreting the Regulations and Acts of Government, to predicate that same terms universally bear the same meaning. The laws were not drawn up with technical accuracy. It follows that the same terms or junction of terms frequently import one thing in one place and another in another; and a proposition establishing the general, not universal, use of a term, is all that can be laid down.

63. Turning from the words used to the subject-matter of Regulation II of 1819, the point seems to me to be equally free from doubt. The first twenty-nine sections of the Regulation refer to the proceedings of Government officers on lands to which the right of resumption is with Government. The 30th section enacts that lakhiraj lands which Government originally had the right to resume, but which had been assigned by it to the zamindar u/s 6 of Regulation XIX of 1793, should, to a certain extent, come under the cognizance of the Collector. The reason of the law was, that the Legislature considered the Collectors more likely to be conversant with the documents upon which the validity or invalidity of grants of revenue depended, and with their proper interpretation, than Civil officers. Hence, it made either a reference of suits instituted in the Civil Courts to the Collectors necessary, or it enabled parties to bring a suit before the Collector in the first instance; but this ground did not apply to alienations after 1790. The issue in such a case was a mere question of fact which the Civil Courts had to determine, and there were no questions regarding the validity or invalidity of grants on which the supposed knowledge of the Collector could he brought to bear.

64. On these united grounds, therefore, I am clearly of opinion that section 30 of Regulation II of 1819 does not refer to the case of lands alienated after 1790. But it is urged that the practice of the Court, and that for a long series of years the Court, has recognized cases of this nature as coming u/s 30 of Regulation II of 1819, and consequently that, even if there were any doubts upon the point, the Court should

rather stand by the old practice than adopt a new rule, the adoption of which, moreover, will be attended with hardship and inconvenience.

65. If a long continued custom of the Court had distinctly recognized the doctrine contended for by the plaintiff, I should hesitate before I disturbed it, whatever my own opinion might be; the practice of the Court would, in such a case, be the law of the Court. No such continuous custom, however, seems to have existed. Up to 1859, zamindars and others suing to resume lakhiraj lands, simply brought their action, mentioning their object, but indulging in no positive statement, save that the alleged lakhiraj was invalid. The Court, under such circumstances, presumed that the suit was for the resumption of rent-free lands prior to 1790, and laid the burden of proof on the party claiming exemption from the public burden which had been assigned by Government to a private party; and in case the lakhirajdar pleaded limitation against the zamindar, from abundant caution the Court required him first to show that he held under a title which prima facie the law acknowledged as a legal one, giving him the right to plead the Statute; but the question of the applicability of section 30 of Regulation II of 1819 to lands alienated subsequent to 1790 was never raised directly on the pleadings, or decided after argument. After, however, the draft of Act XIV of 1859 appeared, with the following words in section 1, clause 14, "Provided that, in estates permanently settled, no such suits, though brought within twelve years from the time when the title of the person first accrued, shall be maintained, if it is shown that the land has been held lakhiraj, or rent-free, from the period of the permanent settlement," the zamindars inserted in their plaints positive statements like that in the present suit, to the effect that the lands were mal, or that the defendant had paid rents up to a certain period, when they or their ancestors had fraudulently, alleging it to be lakhiraj, withheld the further payment of them. In the face of such positive allegations, it became the duty of the Courts to determine whether suits of this nature were cognizable u/s 30 of Regulation II of 1819, or under the ordinary law. There has been a conflict of decisions on the point, and the matter has been now argued before us for the first time; and notwithstanding the application of that law to cases like the present has sometimes been taken for granted, I have no hesitation, for the reason given above, after paying every attention to the arguments pressed on the Court by the learned pleaders for the plaintiff, in determining, on a consideration both of the wording of the law referred to (Regulation II of 1819) and its subject-matter, that the law is inapplicable to cases like the present in which zamindars sue to reclaim land not paying rent, on the allegation that it had been fraudulently alienated since 1790.

66. But then another question remains behind:--Has the Collector, u/s 28 of Act X of 1859, exclusive jurisdiction in such cases, or has the Civil Court a concurrent jurisdiction with it in rent cases? Section 10, Regulation XIX of 1793, declares that all grants, of what ever extent, made after 1st December 1790, are null and void; and that no length of possession shall be hereafter considered to give validity to any such grant either with regard to the property in the soil or the rents of it. It,

moreover, authorizes and requires every person then possessing, or who might hereafter succeed to, the proprietary rights in any estate, to collect the rents from such lands at the rate of the pergunna, and to dispossess the grantee of the proprietary right in the land, and to re-annex it to the estate in which it might have been situated, without making previous application to a Court of judicature or sending previous or subsequent notice of the dispossession or annexation to any officer of Government. By section 28 of Act X of 1859, the power given to zamindars and others of acting without recourse to the Courts is taken away; and proprietors and farmers who may desire to assess or dispossess any such grantee are required to make application to the Collector, and such application shall he dealt with as a suit under the provisions of that Act; and every suit is to be instituted within the period of twelve years from the time when the title of the person claiming the right to assess the land or disposes the grantee first accrued; and if such period has already elapsed, or will elapse within two years from the date of the passing of that Act, the suit may be brought at any time within two years from such date.

67. Now it is clear that there is, in direct terms, no exclusion of the jurisdiction of the ordinary Civil Courts to which a person, if so minded, might have resorted to, though he was authorized and required to act without the intervention of the Courts; and Courts are not to be ousted of their jurisdiction by implication. But it appears to me that there is, in fact, by the force of the terms used, an exclusion of the jurisdiction of the ordinary Courts.

68. This section, after repealing a portion of section 10, then enacts that any proprietor who may desire to assess any such land, or to dispossess the grantee, shall make application to the Collector, and such application shall be dealt with as a suit under the provisions of this Act,--that is, as any suit, either for assessment or ejectment, u/s 23. Now all such suits are cognizable, in the first instance, by the Revenue Courts alone; it follows that these suits, which are to he dealt with as such u/s 23, fall equally within the same rules, and are cognizable only by the Courts of the Collectors.

69. But admitting, for argument''s sake, that the terms of the law are insufficient to bar the jurisdiction of the Civil Courts, and also that a subsequent law does not abrogate a previous law on the same subject, in the absence of express terms, unless the provisions of the one are manifestly repugnant to those of the other, it appears to me that such a repugnancy exists in the present instance.

70. The express remedy under the old law was either by the taking possession of the land illegally granted on the part of the zamindar without recourse to the Courts, and by the collection by him of the rents forthwith at any time, or by a suit for possession at any time; for it is declared that no length of possession gave validity to such grants,--i.e., so as either to establish a right of the grantee, or to bar the remedy of the grantor; and this declaration is unaffected by Act XIV of 1859, which, in clause 14 of section 1, refers not to lands of this nature, which are never in the

laws styled " lakhiraj lands," but to those which are really such throughout the British territories in India to which the Act applies. By the new law, within twelve years from the time when the title of the zamindar first accrued, or if that had elapsed, within two years from the date of the passing of Act X of 1859, a suit either for assessment,--i.e., after notice served, or if notice has not been served, for declaration of his right to assess or for dispossession, must be instituted by the zamindar. In short, by the old law of 1793, the grantee was regarded as a trespasser; by the late law, he is regarded as a tenant, liable to ejectment or assessment. By the former, he could be ousted at any time; by the latter, he is protected by a strict law of limitation, applied, it may be, by reason of a supposed analogy between these cases and those referred to in clause 14 of section 1, Act XIV of 1859.

71. Looking then to the substantial difference of the remedy, and the period within which it might be sought, the two laws seem to me incompatible with each other, and incapable of standing together; and the conclusion, therefore, is, that the former law is repealed, and that the Legislature, in withdrawing from zamindars the large powers which the law of 1793 gave them, and enacting a new and specific remedy in special Courts, intended that those Courts should have exclusive jurisdiction in such matters.

72. On the above grounds, therefore, it seems to me that the Revenue Courts have alone jurisdiction in such cases at the present day, and the jurisdiction of the Civil Courts has been taken away by the enactment of section 28 of Act X of 1859.

73. For the reasons given above, I am of opinion, on the points submitted for our consideration, first, that section 30 of Regulation II of 1819 does not apply to a case like the present; and, secondly, by the enactment of section 28 of Act X of 1859 all other remedies in such cases were taken away, and exclusive jurisdiction in such cases vested in the Revenue Courts.

Glover, J.

74. I entirely concur in the opinion expressed by Mr. Justice Trevor.

75. Pundit, J. (after stating the point referred, and commenting on the provisions of sections 7, 8, 9, 10 of Regulation XIX of 1793, continued):--By section 10, Regulation XIX of 1793, all rent-free grants made subsequent to 1790, without the sanction of the Governor-General, were declared null and void; and the zamindars from whose estates such alienations may have been made were authorized to take possession of such alienated lands at any time, and without recourse to any Court of justice.

76. By section 7 of Regulation XIX of 1793, out of lakhiraj grants subsequent to 1765, but before the 1st of December 1790, the lands comprising which grants were not included in the decennial settlement of the estates within which they were situated, the revenues of all grants in each case, whether in one or more villages, for less

than 100 bighas, are liable to resumption, were made over to the zamindars of the estates within which the lands were situated; and by section 9 of the said law, provision was made for assessing these lands through the Collector.

77. Before, however, assessing these lands, the zamindars, or Government itself in cases of invalid rent-free grants of above 100 bighas (from 1765 to 1790), were required to sue in the Civil Courts (see sections 11 and 12 of Regulation XIX of 1793) in order to render these lands liable to assessment. This was called resumption of the lauds. The power of the Civil Courts, however, ended with that adjudication (see Construction No. 576, dated 1st October 1830) Constructions of the Regulations and Acts from 1798--1847, p. 210.

78. As Government had dispossessed many lakhirajdars before the rules contained in section 8, Regulation XIX of 1793 were passed, and zamindars were also, with regard to rent-free grants assigned to them, likely now and then to take the law into their own hands, parties dispossessed, or likely to he dispossessed, from lakhiraj lands, hut claiming to hold them rent-free, were empowered to sue in the Civil Courts against Government and others for recovery of possession, or for establishing their right to exemption from resumption. For lands which had been settled at the decennial settlement with the zamindars, and which might afterwards be found to be held rent-free subsequently to 1st December 1790, the zamindars had, by section 10 of Regulation XIX of 1793, full powers to dispossess.

79. As to grants subsequent to 1790, in estates decennially settled, sanctioned by the Government, the lakhirajdar, if he thought himself aggrieved by being unlawfully ousted by any person claiming the rents of these lands, had also a right to go to the Civil Court for redress under the general powers of the Civil Courts, but not under the special provisions made by Regulation XIX of 1793 in favor of lakhirajdars claiming to hold rent-free from a time previous to 1st December 1790. Any lakhirajdar claiming to hold under a title acquired previous to 1790, though dispossessed by any person claiming the rents of the lands, under an allegation of the same being parts of the estate settled with him, could go to the Civil Court under the said special provisions.

80. By sections 22, 23, 24, and 25 of Regulation XIX of 1793, the holders of all rent-free lands, previous to 1st December 1790, were required to register their grants in the Collectorate; but no provision whatever was made for registering any grants subsequent to 1790, even when they were sanctioned by the Governor-General. From time to time modifications were made of the existing rules for the resumption, on behalf of Government, of rent-free lands, existing previous to 1790, of more than hundred bighas, until in 1819 Regulation II of that year was passed by way of a modified procedure for the assessment of these rent-free grants (previous to 1790), as well as for assessing, for the benefit of Government, other lands not included within the settlement of any estate.

81. By section 30 of the same law, new rules were passed for the assessment, by private parties, of rent-free grants, before 1790, of less than one hundred bighas, assigned over to them; and for the resumption suits on behalf of Government as zamindars; and also for suits against Government by parties dispossessed by Government of their lakhiraj lands. By Regulation II of 1819, in cases of Government suing as the sovereign, the Collectors became authorized to try, under the sanction of the Board of Revenue, resumption suits; and the parties against whom a decision for resumption may be pronounced, were allowed (section 24) to sue within a year from the sanction of the Board, in order to contest the propriety of the award of resumption. By section 30 of the same law, parties dispossessed by Government (except in cases provided for in section 22, in which suits complainants had not to pay the usual institution stamp duty for plaints), and the Government as zamindars, and the private zamindars wishing to resume rent-free grants previous to 1790, of less than a hundred bighas, as well as parties wishing to contest such demands of the Government or of the zamindars, were all required to sue either in the Collectorate or in the Civil Court; but, if in the latter, the suit was immediately to be made over for report to the Collector.

82. Now the Collector had with him the register of the rent-free lands previous to 1790, and other means of knowing what was the state and condition, as well as the proper history, of all rent-free grants previous to 1790; but there were no data in his office to report upon, or investigate anything regarding any lands held rent-free since 1st December 1790, and which had been already settled as a part of an estate.

83. The title, the preface, the whole subject, and the wording of the contents of Regulation II of 1819, as well as the laws it modified, the requirements and scope of its section (30) show that the section was not at all intended to include any case u/s 10 of Regulation XIX of 1793.

84. By this latter section, the law had given power to zamindars to take possession of lands held rent-free from a time subsequent to 1st December 1790; and the law-maker had no legal necessity or occasion whatsoever to notice that, if these landlords may deem it proper and expedient to have recourse to Civil Courts to obtain possession, they might do so. Much less was it necessary for the Legislature to provide or make rules of procedure for cases of assessment of these lands to be brought by the landlords when they may think it convenient to sue for the lesser right of merely receiving rents from the lakhirajdar in possession.

85. For both these objects the landlord could go to the Civil Courts under the general powers of these tribunals; and, until section 28 of Act X of 1859 was passed, it was never thought proper by the Legislature to allude to this undisputed power of a landlord to abandon a part of his claim, and to be satisfied with asking for only a portion of what was allowed to him by section 10 of Regulation XIX of 1793. The law could only make rules for cases of trespassers, but not for a case of a trespasser whom the landlord may choose to treat as a tenant.

86. The law could not provide rules for anything less than the power it had given,--viz., that of ousting the lakhirajdar; and so no provision was made for any other limited mode of exercising that power which the landlord may find it expedient to adopt.

87. When, with reference to lakhiraj grants created subsequent to 1790 in estates not yet settled, it was thought proper, in modification of section 30 of Regulation II of 1819, by Regulation IX of 1825, to authorize the settlement officers to decide the questions of the validity or invalidity of the lakhiraj tenures without any reference to the Board, as well as of fixing the amount of assessment in all cases, whether the same belonged to the Government as revenue, or as rents to private parties, precaution was taken by section 8 of the law to declare distinctly that no portion of Regulation II of 1819 affects the powers given to the landlords by section 10 of Regulation XIX of 1793. The words of section 30, however general, cannot be extended to suits inconsistent with the general scope of the law and of the procedure of the section itself.

88. It appears that, immediately after the passing of section 30 of Regulation II of 1819, the purport of the section was now and then misunderstood, and accordingly steps were adopted by the Legislature and the Courts to remove these doubts.

89. It is, however, quite clear that, with regard to rent-free lands which the zamindar knew were creations subsequent to 1st December 1790, and for which rents had been withheld after that period, but regarding which the lakhirajdar falsely asserted that he was holding under some grants previous to 1790, if the zamindar chose to sue u/s 30, without disclosing his own case and his knowledge regarding the origin of the tenure, the defendant could not dispute the adoption of the procedure of this section, or the form of the action, as it was one consistent with, and adapted to, his defence. Such cases of lakhiraj created after 1793 might, at first, without any opposition, have gone u/s 30 of Regulation II of 1819 to the Collector from the Civil Courts for report, and then similar cases may have been instituted in the Collectorate, and then by degrees cases for resumption may have been allowed to be instituted first in the Civil Courts, then treated as u/s 30, and then at once primarily instituted in the Collectorate, even when the plaintiff may have distinctly disclosed in the plaint that rents have been withheld from a period subsequent to 1790. It is, however, clear that many decisions of the Civil Courts sometimes confirmed and increased the then existing misconstruction of the purport of this section (30) of Regulation II of 1819.

90. It appeal''s that, by Construction No. 527, dated 30th October 1829, the late Sudder Court ruled that, in conformity with section 30, Regulation II of 1819, suits of every description in which "lakhiraj lands are in dispute, are properly cognizable by the Collector, and not those only in which Government is a party Construction of the Regulations and Acts, from 1798 to 1847, 196." The wording was general enough to include even cases for lakhiraj lands in which the question of validity or invalidity of

the tenure was not in any way disputed. That this was the extent to which the wording, as likely to be understood, is apparent from the next Construction, No. 981, passed on this subject, on the 16th of September 1835, by which the late Sudder Court ruled "that in all cases in which the right of ownership is alone the point at issue (as, for instance, when heirs of a holder of rent-free lands sue their coparceners for their respective shares), the case appertains solely to the Civil Courts; on the other hand, if the nature of the tenure, as well as the proprietary right is disputed,--viz., if a zamindar claims possession of any laud as attached to his estate, and the defendant pleads that he holds possession thereof as rent-free, or vice versa, the case must, in the judgment of the Civil Court, be referred to the Collector for report Construction of the Regulations and Acts, from 1798 to 1847, 395." Now the wording of this Construction, as well as of the former, distinctly shows that both of these included even cases for possession. It is, however, a matter of doubt whether the possession mentioned in the latter Construction was possession u/s 10 of Regulation XIX of 1793. If it be allowed that cases for possession of lands created lakhiraj since 1st December 1790 were but wrongly by both the Constructions, or at least by the first one--required to be referred to the Collector, it might be equally urged that, if cases for assessment of rent-free grants after 1st December 1790 were under these rulings adjudicated upon u/s 30, the jurisdiction was wrongly assumed. That this mistake regarding cases for possession was not redressed until later years, will appear from the following decisions of the late Sudder Court:--The first one, in the matter of the petition of Parbuttee Dey Petition 678 of 1850 : S.D.A., 1851, p. 35, is dated 21st January 1851, page 35. Apparently, this case was for possession of lands held rent-free since 1790, and was ultimately decided on the 15th July 1852, by a Bench of five Judges, the majority of whom held that the procedure of Regulation II of 1819 applied to the case--Parbuttee Dey v. Birjmohun Mytee S.D.A., 1852, p. 686. Another--Hurkanath Sein v. Kalikishore Roy Chowdree Ibid, p. 690 is dated the above date. A third--Baboo Kooldeepnarain Singh v. Mohunt Geerdharee Dass Ibid, p. 868, dated 26th August 1852. And lastly--Rughoobur Dyal v. Chundee Dutt Patuk S.D.A., 1853, p. 430, the case decided on the 28th April 1853, and originally remanded on the 20th May 1847, see In the matter of Umbika Dutt Patuk Petition 412-413 : S.D.A., 1847, p. 163. It is admitted that it cannot be inferred from these decisions that cases for the assessment of rent-free tenures subsequent to 1st December 1790 are unconnected with section 30 of Regulation II of 1819. It is equally clear that neither the Judges, nor the parties, raised any question on the point; and it was assumed by several of the Judges trying these cases that cases for assessment of all lakhiraj lands were intended to be guided by this section.

91. The Court had, however, by a previous Construction, No. 1067, dated 30th December 1836, decided that "a suit brought by a zamindar for the rents of lands in which the defendant claims the right of property in virtue of a rent-free grant, is not referable to the Collector under the "provisions of section 30 of Regulation II of

1819, but must be considered in the light of a boundary dispute, and disposed of in the ordinary mode by the Civil Court Construction, of the Regulations and Acts from 1798 to 1847, p. 448." There are several decisions to be found in the printed reports of the late Sudder Court from 1850 to 1854, in which several Judges have decided in conformity with this Construction; but from many of the decisions it is also understood that, according to the Judges, the lakhirajdar might still go u/s 30 for contesting the liability of his lands to pay any assessment. This shows that the law on the subject was at least uniformly, if not correctly, construed by the several presiding Judges.

92. The usual mode, however, of the landlord setting at issue the question of the invalidity of lakhiraj tenures subsequent to 1790 was to serve a notice upon the tenant; and on the landlord suing for the rents so demanded to be assessed, the defendant pleaded a lakhiraj title previous to 1790; the landlord denied this fact, and the Civil Court tried the suit, without any reference to the Collector. The Courts did not confound these cases with cases for resumption of lakhiraj lands assigned to zamindars u/s 6 of Regulation XIX of 1793, for which section 30 of Regulation II of 1819 was passed, and decided upon the plea of lakhiraj; and if it was not made good, fixed the proper rents. For grants declared to be null, there was no legal necessity to sue to have them pronounced null. The rents which could not be fixed u/s 30 of Regulation II of 1819, even in cases of grants previous to 1790, were asked to be fixed; and if the defendant pleaded a title to exemption, his defence was heard and tried; and if the lands were found to be held under grants of a date previous to 1790, the claim of the plaintiff was non-suited, and he was referred to proceed u/s 30 of Regulation II of 1819. The notice served was under sections 9 and 10 of Regulation V of 1812, which related to cases of enhancement. In this case, sometimes the landlord distinctly admitted that he or his predecessor had not received rents before or for some time, or pleaded by way of fiction of law that the defendant paid inadequate rents. Where it so happened that the defendant admitted himself to be a tenant of some lands, and pleaded a lakhiraj title for the rest, the assertion of the landlord was not altogether false. Even in these cases, from the fact of the claim being one virtually to try the validity of the lakhiraj title set up by the defendant, it is not improbable that the Courts never took any notice of the false plea of inadequate rents being paid before, and at once threw the onus upon the lakhirajdar to prove his title to exemption. There are, however, several decisions showing that, in these cases, the onus of proving was rightly thrown upon the plaintiff, (see 29th March 1853, page 365.)

93. Sometimes, however, in such cases, when it was found that, regarding the land asked to be assessed, the defendants pleaded that they were wholly or partly lakhiraj, alleged to be prior to 1st December 1790, the Courts refused to adjudicate upon the right to assess, though the allegation of the plaintiff was that they were rent-free creations subsequent to 1st December 1790. This, I fear, was a mistake of law, as the allegation of the plaintiff, and not the defence, is to settle the jurisdiction

of a Court.

94. In cases where the plaintiff asserted that the rent-free lands were lands affected by section 10 of Regulation XIX of 1793, he was as much entitled to an adjudication upon his right, as when he is opposed by the defendant on the plea that he holds under a lease fixing the rents in perpetuity, and the plaintiff denies the validity, and also the genuineness of the plea set up. In cases, however, where the lakhiraj title pleaded by the defendant for the lands in his possession, which the landlord wants to assess, are lands the rents of which have been withheld since 1st December 1790, or, in other words, are the mal lands settled with the plaintiffs, the Courts could not but refuse to try the question of the validity of the tenure pleaded in the assessment case, merely because a particular form and procedure, quite distinct from those adopted for assessment cases of "resumption." With regard to lands claimed to be assessed, on the ground of rights given by section 10 of Regulation XIX of 1793, there could not be any such plea.

95. I cannot distinctly state what was the allegation of the plaintiff in the case--Hill v. Khowaj Shaikh Mundle Marshall''s Rep., 554, decided by the Chief Justice and myself on the 14th June 1863. If the assertion of the plaintiff regarding the lakhiraj pleaded by the defendant, was, that it was a creation of a date subsequent to 1st December 1790, the order of the case was opposed to my present view of the matter. That the Chief Justice is not of opinion that no suit could be brought at once to assess lands governed by section 10 of Regulation XIX of 1793, will appear clearly from the subjoined extract from another decision passed by him in conjunction with four other Judges, on the 1st June 1863--Gumdin Kazi v. Harihar Mookerjee ante, p. 15.

96. "In this case the Court had no power to try the validity of the lakhiraj tenure. To entitle the plaintiff to recover enhanced rent for that portion of the land, he ought to have shown that it was his mal land, and that the defendant had paid rent for it; but no evidence of the kind appears to have been given."

97. In some cases, the form adopted for possession of what was really intended to be understood as invalid lakhiraj, created after 1790, was simply to claim possession on the assertion that the landlord had been dispossessed by the defendant, who in defence pleaded that he has all along held the lands in dispute as lakhiraj--Anundmoyee Debea v. Sreemutty Dassee S.D.A., 1857, p. 1602. Such cases were not referred to the Collector u/s 30 of Regulation II of 1819.

98. In all these cases for assessment, as well as for possession, u/s 10, no limitation was applied. On the 10th September 1855, the late Sudder Court, in the case of Gungadhur Banerjee v. Satcowree Sircar Ibid, 1855, p. 501, decided that, to resume, a landlord must sue within twelve years of his acquiring the right to do so. Grants subsequent to 1790, by the decision in the case of Degumber Mitter v. Ramsoonder Mitter S.D.A., 1856, p. 617, dated 24th July 1856, and many others of subsequent date, were expressly excluded from the operation of this ruling regarding limitation.

99. As there was before no such competition for lands as there is now-a-days, in all cases of invalid lakhiraj falling u/s 10, Regulation XIX of 1793, the zamindars found it more convenient to sue for assessment than for dispossession.

100. When the precedent mentioned above applied limitation to suits for resumption of lakhiraj grants before 1790, in order to avoid limitation it became a rule to sue under the allegation that the lakhiraj asked to be assessed was subsequent to 1790, and formed a portion of the mal lands. This was meant to describe rent-paying lands as distinguished from those which had not been included in the settlement, on account of their being held exempt from revenue; and so of rent, under either valid or invalid grants existing on the 1st December 1790. The landlords adhered to section 30, because they knew that, in cases under it, the onus is thrown entirely upon the defendants; and thus, after 1855, section 30 was stuck to for more than one purpose in all cases of assessment of lakhiraj lands.

101. A case reported in Volume IV of the Select Reports, in page 155, instituted shortly after the passing of Regulation II of 1819, and decided on the 6th February 1827, might lead to the inference that the Sudder Judges deciding the case intended to rule that cases for possession of lands, converted into lakhiraj subsequently to 1790, were not at all anywise to come under the laws passed for resumption suits.

102. By section 14 of Regulation I of 1814, the valuation for property exempt from the public revenue due to Government, as distinguished from mal lands, was required to be eighteen times of the yearly rents; and when section 30 of Regulation II of 1819 provided that the valuation stamp fees of the cases under that section were to be as those of cases instituted in Civil Courts, the parties suing u/s 30 adopted this mode of valuation. In Schedule B of Regulation X of 1829, under the note to article No. 8, the same provision is described in these words: "In suits for lakhiraj lands not paying revenue to Government, the value shall be assumed at eighteen times the amount of annual rent by computation."

103. The lakhirajdar suing for possession could not but adopt this (see 29th December 1853, page 982); but the landlord suing to assess the lands held rent-free, having no other valuation to adopt, could not but adopt this of eighteen times the yearly rents of the property.

104. When, however, landlords sued for assessment by serving a notice, without first bringing any case to prove the liability to assessment, they, as ruled by Construction 1272, dated 31st January 1840, paid stamp fees on the valuation of only one year''s assessed rent. In cases of enhancement, landlords had to pay the stamp fees on the valuation of one year''s enhanced rent.

105. The eighteen times the annual produce was the representation of the value at those times, and is in fact rather below the market price of those rent-free lands.

106. It is argued that when, by Act XIV of 1859, which came into operation in the beginning of 1862, the right to sue for assessment of lakhiraj tenures before 1790 was declared barred even to auction-purchasers, if section 30 of Regulation II of 1819 was not applicable to the assessment of lakhiraj tenures subsequent to 1790, how was it provided in section 10, Act VII of the Bengal Legislative Council, for the year 1862, passed in modification of that section in May 1862, that all cases in future under the said section (30) were to be instituted in Civil Courts like other ordinary suits? It is, however, apparent that the laws passed of late are open to the remarks against the laws of 1793, made by the learned Counsel, Mr. Montrion, while advocating the cause of the landholders in the famous case of Gungadhur Banerjee v. Satcowree Sircar S.D.A., 1855, p, 501; see p. 510. He said that they were written as if, at the time of writing, the attention was only confined to that law without any reference to its effect upon other laws, or of others upon the said law.

107. Owing to the right of suit, with regard to the exercise of the powers of resumption or assessment to those who were not auction-purchasers within twelve years of 1862, having been confined at the best to the end of 1861, in the latter portion of the year a vast quantity of suits were instituted throughout several of the Bengal Districts, chiefly in Hooghly and Burdwan. These cases were all instituted u/s 30 of Regulation II of 1819, either in the Collectorate, or, after being instituted in the Civil Courts, had been, or were to be, made over to the Collectors. The Revenue Courts throughout Bengal had already been made exclusive Courts for all cases mentioned in sections 23 and 24, Act X of 1859; and provisions were also made by the same Act for reference to the Collector of many other complaints upon different questions arising between landlords and tenants. The Collectors had thus their files already overwhelmed with these cases. The fact of the last few months of 1863 being too late for cases of arrears of rent due more than three years before the passing of the Act, it was apparent that towards the end of the year many more cases were likely to be instituted in these Courts which could not be instituted anywhere else.

108. Besides, in some districts the indigo disputes had brought in the Revenue Courts an enormous quantity of suits for assessment and, enhancement, and "the right of occupancy" had given rise to many suits. In order to decide these cases, in several districts many extra hands had been engaged. The resumption cases already instituted could not be disposed of in any districts for several years, if they had to pass through the Collectorate so burdened with different sorts of cases.

109. To relieve the Revenue Courts from these arrears, and to have these cases u/s 30 speedily decided, was the real object of passing this law of 1862, by which the pending cases were to be transferred to the Civil Courts, as was done by section 2 of the Act. Besides, it was considered that lakhirajdars dispossessed by landholders before Act X of 1859 was passed, or even afterwards, might have occasion to sue for recovery of possession; and for these persons the original remedy provided for by

section 30, Regulation II of 1819, was still considered as the law under which they might be allowed to sue. The latter portion of clause 14 of section 1 of Act XIV of 1859 being applicable only to estates permanently assessed in Bengal, there might still be lands held khas, but not at all settled, in which there may be lands held rent-free under grants alleged to be before 1st December 1790, and to the revenue of which lands Government still have a right. The law of 1859 was also merely a rule of limitation; it could not prevent cases being brought by parties. Under this state of things, probably, the Legislative Council of Bengal thought it proper to word section 1 of Act VII of 1862, as it is now worded, meaning that the provisions of that section will be, in the case of private claims by landlords, applicable, with reference to the laws enacted before by the Legislature, only to cases to which it will actually apply,--i.e., to suits by those who may still have a right to sue for assessment of rent-free grants before 1790. Section 1 of Act VII of 1862 of the Bengal Council is not, therefore, any conclusive proof of the law-makers having understood that section SO of Regulation II of 1819 was actually applicable to suits for assessment of rent-free holdings subsequent to 1st December 1790.

110. Even if, misled by loose practice of the Courts, the framers of that Act of 1862 had thought so, that would not extend the operation of the law of 1819. It is, therefore, clear that, either in cases for possession, or in cases for assessment of rent-free grants subsequent to 1790, before section 28, Act X of 1859, passed, the ordinary Civil Courts were the tribunals where the suits could have been instituted.

111. It appears that, when section 28 was originally proposed, it simply was intended to be applicable to cases of possession and not of assessment; and the non-limitation clause of section 10 of Regulation XIX of 1793 was left unaffected. When it was found that provision of limitation had been introduced in Act XIV of 1859 (passed only five days after Act X, and considered simultaneously with the latter) on this subject of assessment inferentially for lakhiraj lands subsequent to 1790, a class of cases which the legislature found were often instituted, though not provided for in express words by any law passed before the cases of assessment were included in section 28; and the same rule of limitation that was made applicable to assessment suits under clause 14 of section 1 of Act XIV of 1859, and which had been provided for all cases of possession under clause 12 of the same section, was made applicable to those of possession and assessment mentioned in the said section 28. If clause 14 of section 1, Act XIV of 1859, had been held to be intended to be the general code of limitation for all cases in all Courts, there might be some grounds to argue that, by section 28, exclusive jurisdiction was intended to be given to the Collector in cases mentioned in that section. It has already been held that Act XIV does not over-ride the limitations mentioned in Act X of 1859. It is also clear that the original framers of Act X may have intended to give that meaning to section 28; but the rule passed in other laws may be the reason for the omission of those words in this section which we find are given in sections 23 and 24, to the effect that the cases provided for in these sections were not to be heard in any other

Courts. The intention at the time of framing of any section of a law, whether changed or not changed by those who ultimately pass the law, will not by itself be a good ground for a Court of justice to construe the meaning of the law in conformity with this intention, when the wording of the law as passed, compared with others passed before or at the same time, distinctly leads to a construction opposed to that intention. If the new remedy provided by the new law is not at all inconsistent with the old remedy; and when the old remedy, as now modified, is found to agree exactly with the new remedy now under consideration, there is no reasonable ground to infer that the jurisdiction of the Collector is entirely exclusive. The power to assess is not anywise inconsistent with the power to oust; the latter included the former; and the imposition of a rule of limitation in the Collectorate, even though no such rule was made for suits to be brought in Civil Courts, would not have made the new remedy any way inconsistent with the old mode of redress. In this view of the case, I think that a case for assessment or possession of lakhiraj lands subsequent to 1st December 1790 can be brought either before the Collector, u/s 28 of Act X of 1859, or in the Civil Courts, under the ordinary powers possessed by these Courts, irrespective of section 30, Regulation II of 1819.

112. All the arguments used by Mr. Justice Raikes and Mr. Justice Trevor in Anundmyee Dabee Chowdrain v. Hurrish Chunder Chowdhry S.D.A., 1861, p. 163, decided on the 7th November 1861, to prove that suits u/s 28 were only petitions in matters appealable to the Revenue Commissioners and not to the Judge, apply to the point now under discussion, and show that the jurisdiction of the Collector, u/s 28, is not exclusive. The fact that this decision on the point it ruled has since been set aside by another Full Bench Decision of five Judges, passed on the 18th March 1863--Biswambhur Misser v. Ganpat Misser Ante, p. 5 does not at all affect the argument. The subsequent ruling simply decided that, as the matter brought before the Collector u/s 28 is required to be tried and dealt with as a suit, the appeal should be to the Judge. Whether, after such decision, another case on the same grounds which formed the subject-matter of dispute before the Collector, can, by the party dissatisfied, be again brought, or cannot be brought at all, before the Civil Court, is quite a different question. The word "shall" in section 28 only points to the necessity of suing, which landlords were not required to do before, previous to the ousting of persons holding rent-free grants subsequent to 1st December 1790, and cannot, in any way, enable us to get rid of a separate provision for limitation of such cases, expressly provided for cases of assessment in clause 14 of section 1 of Act XIV of 1859. The argument of there being a limitation fixed in section 28, particularly two years'' time being given for cases in which this limitation had already expired, is of no consequence, as it is clear that there might be some limitation for these cases even when the Court of the Collector is the exclusive Court. Only within some fixed time a suit for current years could be brought in the Collectorate, and the jurisdiction of the Civil Courts, or the limitation applicable to these cases in Civil Courts, was in no way affected by this additional new remedy of a summary case.

There being temptation to go to the Collector, as only a quarter of the stamp duty was required, nobody chose to go to the Civil Court, but the law did not prohibit landholders from going to the Civil Courts for their current arrears. Hence, there being a dread of onus in these cases of resumption of rent-free grants after 1790, though no stamp fees are required u/s 28, the zamindars do not like to go to the Collectorate as long as they have a hope that they may still sue in the Civil Courts u/s 30 of Regulation II of 1819, which throws the onus upon the defendant. If they knew that the Civil Courts have jurisdiction, but not u/s 30 of Regulation II of 1819, the zamindars will necessarily prefer to come u/s 28 of Act X of 1859.

113. As to the suggestion made that the original section 10 of Regulation XIX of 1793, as well as the present section 28 of Act X of 1859, now under consideration, refer to grants, and not at all to cases of lands for which rents may have been only withheld subsequent to 1790 without the ryots having any grant, it is clear that, in all cases ordinarily instituted for assessment of rent-free lands alleged to be created after 1790, no person has found it convenient to plead any invalid grant subsequent to that year, except any grant given by the complainant himself or his predecessor; while generally these cases have been defended by the lakhirajdars under an allegation of rent-free grants previous to 1790.

114. The holding of a rent-free grant previous to 1790, or even after, is an adverse title which the landlord is obliged to set aside before he can succeed in assessing or obtaining possession of the lands. When the landlord sues in the Civil Courts for possession or assessment, the defendant pleads a rent-free grant and puts in a copy of a taidat relating to the village in question. In such a case the plaintiff must prove that the lands of which he asks possession or assessment are parts of his estate which he held, or from which he received rents within twelve years preceding the suit, without the defendant being put to the proof of his alleged grant. Accordingly, in cases of lands held rent-free without any grant from a period subsequent to 1790, the claim of the plaintiff will be liable to limitation under the ordinary law, without any reference to the provision of the Act of 1859. As most of the cases to which the present discussion applies are cases without any grant subsequent to 1790, and the right of the landlord to sue for the assessment of these lands in Civil Courts is not at all denied, and all these cases have now, if instituted in the Collectorate, been transferred to the Civil Courts, it is immaterial, with regard to the cases, whether there is any grant at all of a date subsequent to 1790. The fact of a grant or no grant, if considered material, will be so only in cases instituted u/s 28 of Act X of 1859. In this view of the matter, even if the jurisdiction of the Collector is exclusive in all cases mentioned in the said section 28, it must be so only in cases where there is any question of a grant of a date subsequent to 1790; the Collectors cannot have any jurisdiction in cases where no such question does arise. I have only seen one case of a grant subsequent to 1790 affirmed by a Governor-General. It is reported in page 240, Vol. II, S.D.A. Reports.

115. The wording of clause 14 of section 1 of Act XIV of 1859 does not confine the cases mentioned in that section to grants, but provides for assessment of rent-free lands, of course subsequent to 1790. I may, therefore, have no hesitation in agreeing with my colleagues, who hold that the remedy in section 28 of Act X of 1859 is confined to cases of grants subsequent to 1790. But I am not prepared to hold that that jurisdiction is exclusive, or that the Collectorate is the only Court where all actions for possession or assessment of lands, the rents of which are alleged by landlords to have been withheld since 1st December 1790, under any rent-free grant, or without any such grant at all, can now be instituted.

116. The case now before us is, in my opinion, cognizable in the ordinary Civil Courts, without any reference to section 30 of Regulation II of 1819, under the general powers which the Civil Courts possess irrespective of that section, which does not apply to cases mentioned in section 28 of Act X of 1859.

117. I would, therefore, allow the case to proceed.

Phear, J.

118. This case, which has been argued before us at great length, and with elaborate care, relates solely to pure matter of procedure. The suit is brought substantially to obtain a declaration that the plaintiff is entitled to the rent of certain lands, which he alleges that the defendant holds within his zamindary on an invalid rent-free title. It was, in the first instance, preferred before the Principal Sudder Ameen, and now comes to this Court by special appeal on several grounds; but it is agreed by both sides that the only question to be determined by us is, whether or not the Civil Courts, as distinguished from the Collectors'' Courts, have jurisdiction to receive and deal with the suit; and this question turns upon the construction to be given, first, to a section of a Regulation made in 1819; secondly, to a section of an enactment made in 1859. Unfortunately, our forensic procedure is based so little upon any general a priori considerations, that it is nearly impossible to infer the motives actuating the Legislature from the forms which it is found ultimately to prescribe. Still, in the absence of any specific declarations on the point, I conceive that the Legislature must be always presumed to have intended to facilitate the recourse of suitors to the legal tribunals rather than the contrary. This presumption affords us but little assistance here, but, such as it is, it is the only guide we have extraneous to actual words of the enactments where these leave us in any doubt or obscurity.

119. The two enactments to be construed are the 30th section of Regulation II of 1819, and the 28th section of Act X of 1859. But before considering them, it is necessary to call to mind the state of things relative to proprietary rights in the soil or its produce, which was brought about by the permanent settlement of 1793. This settlement was founded on the principle that, "by the ancient law of the country, the Ruling Power is entitled to a certain proportion of the produce of every biga of land (demandable in money or kind according to local custom), unless it transfers its

rights thereto for a term or in perpetuity, or limits the public demand upon the whole of the lands belonging to an individual, leaving him to appropriate to his own use the difference between the value of such portion of the produce and the sum payable to the public, whilst he continues to discharge the latter." Practically, the Ruling Power nearly always transferred its rights, or limited its demand in the way thus mentioned, and the lands from which the dues would have accrued, had they been laid in kind, were termed in English the estates of the transferees or other owners respectively. Clearly, the proprietors of so-called estates had no power to grant away any portion of their laud free of liability to pay the public dues, and so to diminish the amount receivable by Government from themselves or their successors; still such pretended grants had been and continued to be made, and Government itself sometimes made valid grants of the like kind. So that, when the permanent settlement confirmed the proprietors in their estates upon condition of their paying, by way of revenue, a certain fixed jumma, or rent, in perpetuity, this jumma was assessed on each estate, exclusively and independently of those portions of it as were at the time of the assessment claimed to be held lakhiraj, or free of revenue, by virtue of any such grants.

120. By Regulation XIX of 1793, section 3, made after the permanent settlement, "all grants for holding land exempt from the payment of revenue which may have been made since 12th August 1765, and previous to the 1st December 1790, by any other authority than that of Government, and which may not have been confirmed by Government or by any officer empowered to confirm them, are declared invalid," and the revenue withheld under pretence of any invalid grant made previous to the 1st December 1790 is allotted between the proprietor of the estate and the Government in the following manner. Section 6 says that, if the land which is the subject of any one such grant does not exceed 100 bighas, the revenue assessable thereon shall belong to the proprietor of the estate in which such land is situated, who shall not, in consequence, be liable to pay any additional revenue in respect of his estate. And by section 7, if the land in one such grant exceed 100 bighas, the revenue assessable thereon shall belong to the Government. Before the proprietor of the estate can claim the revenue given him by section 6, he must establish the invalidity of the grant before the ordinary civil tribunals (section 2); thereupon he becomes entitled to recover such an amount in perpetuity as the Collector on due investigation may fix (section 9). Under no circumstances does he obtain a right to obtain possession of the soil (section 6).

121. The subject-matter of grants made after 1st December 1790 was dealt with by the Legislature somewhat, differently. It is as well to observe that the permanent settlement was not definitely established until after this date; and the assessment of the fixed jumma on particular estates might be, and was in plenty of instances, delayed to a considerably later period. Hence, so far as concerns such of these grants subsequent to the 1st December 1790, as were made before the assessments of the jumma on the estates within the geographical limits of which

they purport to take effect, these operate to deprive the Government of revenue, while those of them which were made after that assessment, only go to diminish the proprietor''s (zamindar, talookdar, and so on, as the case might be,) sources of income from his estates. I shall have occasion to refer to this distinction further on; but it is, at the outset, important to remark that this distinction was at any rate disregarded by the Legislature in 1793, for both classes alike are admittedly within the scope of section 10 of Regulation XIX of that year. The words of that section are--"All grants for holding land exempt from the payment of revenue, whether exceeding or under 100 bighas, that have been made since the 1st December 1790, or that may be hereafter made by any other authority than that of the Governor-General in Council, are declared null and void;" and it is not unimportant to remark that the words here used to describe the character of the grants are identical with those used for the like purpose in section 3. Having declared the grants to be null and void, under the prescribed circumstances, the same section authorizes and requires the proprietor of the estate "to collect the rents from such lands" (those to which the void grants applied) at the rates of the pergunna, and to dispossess the grantee of the proprietary right in the land, and to re-annex it to the estate or talook in which it may be situated, without making previous application to a Court of judicature, or sending previous or subsequent notice of the dispossession or annexation to any officer of Government." And it further provided, that the proprietor should not be liable to any increase of assessment on account of any such grants as he should resume or annul. The effect of this section seems to be, first, to give the proprietor the largest possible right, as against the terre-tenant, to the possession of all lands within the ambit of his estate which may be claimed to be held free of payment, either to him or to Government, by virtue of all alleged grant, purporting to be made since 1st December 1790, by his predecessor in the estate, or any other alleged competent authority; and with this right to possession, also the right to claim rent from those lands in the same way as if they had been let at the pergunna rates, in ordinary course, with the rest of his estate; all this without obliging him to make, on his part, an additional payment to Government, whether or not the land in question originally formed part of the assets on which his fixed jumma was assessed. Thus far, then, his situation relative to these two sets of lands respectively appears to me to be as follows, namely; with regard to land which forms the subject of a grant for holding the same exempt from revenue, dated previously to the 1st De comber 1790, provided the amount does not exceed 100 bighas, he is entitled to obtain from the terre-tenant an annual payment of a given fixed sum assessed originally by the Collector; and with regard to the land which forms the subject of a grant, for holding the same exempt from the payment of revenue, dated since the 1st December 1790, he is entitled to obtain not a fixed sum, but the annual payment of such sum as accords with the rates of rent in the pergunna. He has, moreover, the further right to evict the claimant under the invalid grant even summarily by force, without having recourse to a Court of law.

122. Whatever be the intrinsic peculiarities of these two respective sets of rights, they both alike (the one by the express provisions of, and the other by necessary implication from, the Statute) could be vindicated before the ordinary Civil Courts, and this admittedly remained the case until 1819. In that year was passed Regulation II, the 30th section of which enacts that "all suits preferred in a Court of judicature by proprietors, farmers, or talookdars, to the revenue of any land held free of assessment, as well as all suits so preferred by individuals claiming to hold lands exempt from revenue, shall immediately on their institution be referred to the Collector for investigation," &c. The appellants urge that this section relates solely to suits by proprietors in respect of land, which is claimed to be held exempt from payment under grants made before the 1st December 1790, and that it leaves untouched those where the exemption is claimed under a grant of later date. They then go on to argue that the latter cases are dealt with by section 28 of Act X of 1859, which, after repealing section 10 of Regulation XIX of 1793, enacts that "any proprietor or farmer who may desire to assess any such laud, or to dispossess any such grantee" (namely, such land and such grants as formed the subject of the repealed section) "shall make application to the Collector, and such application shall be dealt with as a suit under the provisions of this Act." According to the appellants, therefore, while the one set of suits may be instituted in the Civil Courts, subject to being immediately transferred to the Collector, the other can be instituted only before the Collector himself. They then contend that, by the words of the plaint before us, the plaintiff actually says that he brings the suit u/s 30 of Regulation II of 1819; and farther, also, makes admissions which show that the pretended rent-free tenure is based on a grant made since the 1st December 1790, and consequently as he brought the suit in the first instance before the Civil Court, it ought to have been dismissed for want of jurisdiction. With the view I take of the two sections under consideration, I do not conceive it necessary to decide whether or not the plaintiff in his plaint made any admission of the kind alleged. For the mere statement that the suit is brought by virtue of a particular enactment does not affect the substantive character of the cause of action; and then, taking the sections in their chronological order, in my judgment, the words of section 30 of Regulation II of 1819 are sufficiently large to embrace suits of both classes; and I see no sufficient indication that the Legislature intended their meaning to be restricted to the interpretation put upon them by the appellants. It is said that "suits preferred to the revenue of any land held free of assessment" can only apply where the claimant stands as it were in the shoes of Government,--namely, where he claims in respect of land which has not been included in his revenue assessment, and in respect of which, consequently, nothing is paid to Government. But even this reasoning, which certainly gives a wrench to the sentence by referring "free of assessment" to the proprietor''s relations with Government, while the claim of revenue is preferred against the terre-tenant, does not necessarily confine the operation of the section to cases where the exemption is based on the allegation of a grant before the 1st of December 1790; for, as I have already explained, all lakhiraj grants made after that

period and before the decennial settlement of the particular estate which they affect, would deprive the Government of revenue; and section 10 of Regulation XIX of 1793, would as effectually make the proprietor assignee of this revenue, as section 6 of the same Regulation makes him assignee of that which is the subject of earlier grants. I cannot assume that the probability of such Intervening grants having been made was absent from the mind of the Legislature when framing this section; and, consequently, as no express words of exclusion were used, I must take them to be within the purview of the words quoted; and if this be correct, the appellant''s contention with regard to this section fails, because it requires for its success that the dividing line for all cases should fall on the 1st December 1790. However, I go a step further. I think the phrase "revenue of any land free of assessment" is in its meaning coextensive with the word "revenue" as it occurs in the next adjoining and correlative sentence of the same section,--namely, "Individuals claiming to hold lands exempt from revenue," and I cannot doubt but that these latter again embrace those persons who set up "grants for holding land exempt from the payment of revenue," within the meaning of section 10 of Regulation XIX of 1793, which concerned grants made since 1st December 1790 only. It would seem anomalous that one and the same issue should be submitted to a different process of investigation, according as it arose from the proprietor instituting proceedings for the assertion of his claim against a soi-disant lakhirajdar, or from the latter taking the initiative upon himself, without waiting for his opponent''s attack; and I see no sufficient reason for inferring that the Legislature intended to establish such a state of things. In my opinion, therefore, the words "suits preferred to the revenue of any lands held free of assessment" include as well suits to assess and recover (in pursuance of section 10 of Regulation XIX of 1793) the "rents" withheld under pretence of a grant for holding land exempt from payment of revenue, as suits to recover (under section 6 of the same Regulation) "revenue" withheld under pretence of a grant described in the same words. And to hold otherwise would lead to this consequence,--namely, that the jurisdiction of the Court to entertain the proprietor''s suit for compelling payment of dues withheld from him would depend upon the nature of an undisclosed defence. Had this been desired by the Legislature, surely it would not have left so important a point without definite expression. But it is insisted very strongly that the purview of the whole Statute shows that it was directed solely to claims founded on grants made before 1st December 1790. With this I cannot concur. The conclusion which I draw from the purview is that the Statute is confined to claims of alleged grants of exemption of whatever date. I quite yield to the reasoning of those who urge that the process and particular mode of investigation which this Regulation prescribes to the Collector''s Court is extremely ill adapted to solving satisfactorily questions which may arise between a landlord and his tenants, or between him and his neighbours; but I do not think that the effect of section 30 is to subject questions of such kind to the Collector''s jurisdiction. Taking the preamble in connection with the Regulation itself, it seems fairly clear that the object of the Legislature was to provide machinery for

the special purpose of determining the validity of claims to be free of assessment, whether relied upon by a proprietor against Government, or by a terre-tenant against the proprietor, and for that purpose only. In the two cases the claim was essentially identical in character, and necessitated the same kind of proof. When Government took the initiative, no issue but this could arise, and the first twenty-nine sections develop a special mode of trying it, having relation mainly to the circumstance that the Collector himself would be the Attorney-General, so to speak, of the Government. The Regulation still left all other cases open to the ordinary tribunals; all, cases where the party initiating the contest was a private person, such as where the proprietor of the estate brought a suit against the lakhirajdar, or the lakhirajdar instituted his claim either against the proprietor or Government, as the case might be, where, I may remark, the claim in question might be mixed up with divers other matters of proprietary right. Then conies section 30; and this, as I read it, directed that, if in any suit of this kind brought in the ordinary Courts, an issue as to the validity of the claim to exemption arose, whether alone or amongst others, that issue should he referred for investigation to the Collector, whose decision with regard to it should form an element in the final determination of the Civil Court, while other proprietary issues remained in the hands of the Civil Court alone; only in the case where Government was defendant (and therefore the issue as to validity of grants of exemption could be the only issue), the Collector''s decision determined the suit. And it should be observed that, as in the former cases, the Civil Court, with its own course of appeal, could overrule the Collector, so in the latter a particular mode of appeal from the Collector to the Civil Courts was specially given. Now, I see nothing in this arrangement to oblige us, in the absence of express words, to say that this legislation obviously contemplated questions as to the validity of grants of exemption made previously to the 1st of December 1790, and these alone; or that it ought to be confined to these, because its wider operation would be subversive of justice.

123. Under the circumstances which attend the prosecution of the appeal now before this Court, I have thought it incumbent on me to give the foregoing somewhat lengthy explanation of the way in which I read section 30 of Regulation II of 1819; but the view which I take of section 28 of Act X of 1859 will, of itself, determine in judgment in this case. Section 10 of Regulation XIX of 1793 had, on the happening of a certain event, given the proprietor of the estate a summary personal power to assess and evict. The practice seemed to have been that the proprietor evicted at his peril, leaving the tenant to bring his action for the disruption of the lakhiraj tenure--Sheikh Mahomed Mohair v. Sheikh Goolzar Hossein S.D.A., 1858, p. 464. This state of things left an opening for much oppression; and section 28 of Act X of 1859 corrects this by taking away the summary power of eviction, and substituting for it a proceeding of ejectment before the Collector, in which the burden of proving that the event in question had happened is imposed on the proprietor; for, until he shows that he sues in respect of "such" laud or against

"such" grantee as are respectively the subjects of "grants for holding land exempt from the payment of revenue made subsequent to the 1st December 1790," he has made out no case within this section. It, in effect, says to the proprietor of the estate. "If you choose to base your claim to assessment, or possession, on the allegation that the defence to it rests upon an invalid grant made since 1st December 1790, prove that allegation to the Collector, and you shall have your summary remedy without further trouble." But I find nothing in the section to take away from him any right of suit to the Civil Courts which he previously possessed. This interpretation, in no degree, as I conceive, conflicts with Biswambhur Misser v. Ganpat Misser Ante, p. 5, and is, I think, strongly confirmed by the circumstance that this section is quite one-sided, and makes no provision, nor does any other part of the Act, for the establishment on the part of the lakhirajdar of his claims,--an omission which does not occur in section 30 of Regulation II of 1819.

124. Therefore, whether this suit is within the meaning of section 30 of Regulation II of 1819 or not, I think it is well brought in the Civil Court.

125. Jackson, J. (after briefly stating the facts, proceeded):--It is to be remarked, in the first place, that the suit has been treated in both the lower Courts before which it was heard, as a suit preferred u/s 30, Regulation II of 1819; and the plaintiff in his plaint distinctly states that he brings his suit to be tried under the provisions of that law. The plaintiff has obtained a decree under that law. This Court should not, on special appeal, throw out the suit, because there has been any careless wording in the plaint, the more so as the plaintiff''s right to resume will, if now thrown out, be hereafter barred by the law of limitation. The Courts below and the parties have fully understood the nature of the claim, and only at this late stage of the case the question of jurisdiction has been raised, and raised also on a view of the plaint which, it appears to me, was not contemplated by the parties in the lower Courts. It is said that the plaintiff avers that the land has been taken possession of as lakhiraj after 1790. The words in the plaint are that the defendants have taken possession of the laud, and the rent derivable from it, surreptitiously under pretence of a lakhiraj title in the time of the former talookdar. These words do not, to my mind, definitely state that the land was taken possession of after 1790. Even, however, if the plaint did contain allegations sufficient to specify that it was the intention of the plaintiff to charge the defendant with having fraudulently obtained possession of the land as lakhiraj after 1790, it appears to me that the jurisdiction in the suit would lie in the Civil Courts. The provisions of section 28, Act X of 1859, do not confer an exclusive jurisdiction on the Revenue Courts. Applications preferred under that section are similar to applications preferred to the same Courts under sections 25 and 26. They are in the nature of summary applications; and orders passed on such applications are revisable in the Civil Courts, and suits may be preferred direct to the Civil Courts without the intervention of any application to the Revenue Courts by parties seeking for the redress to which those sections relate. Act X of 1859 lays down, in the clearest language, the particular suits, to try which an exclusive jurisdiction is vested

in the Revenue Courts. I allude to the concluding words of the 23rd and 24th sections. The 151st section also lays down that no judgment of a Revenue Court in any suit under the Act shall be open to revision or appeal, except as declared in the Act. It also points out what orders passed under the Act are not open to revision or appeal. If the decisions passed on applications preferred under sections 25, 26, and 28 of the Act are orders, those orders are nowhere declared final, or not open to revision. If, on the other hand, they are judgments in suits, they are clearly declared not open to revision. This Court has, in former special appeals, ruled that the decisions under sections 25 and 26 are orders; but that the decisions u/s 28 are judgments. The word "orders" is distinctly used in the 25th and 26th sections; but unfortunately, in the 28th section, neither the word "orders," nor the word "judgments" is used. In all these sections "application" is the word used to designate the form of claim, and the procedure under which the "application" is to be tried is that applicable to suits. These applications are, it appears to me, in the nature of summary applications, on which, if the plaintiff can show good cause for obtaining the assistance of the Revenue Authorities, he can obtain an order from them to enforce his rights. I see no different reason for making any distinction between the decisions of the Revenue Authorities passed under these three sections.

126. If, however, it is a point which is not open to further dispute, as having been already decided by a Full Bench of the Court, that decisions u/s 28 are judgments in suits, and the jurisdiction to try such suits is thereby vested exclusively in the Revenue Courts under that section, must be confined strictly to the cases to which section 10, Regulation XIX of 1793 relates. Section 28, Act X of 1859, only substitutes a new form of procedure where parties wish to dispossess grantees who hold under grants subsequent to 1790. Where a landholder could have ousted a lakhirajdar u/s 10, Regulation XIX of 1793, of his own accord, he is now directed by section 28, Act X of 1859, to make application to the Collector, and obtain an order from him declaring his right to oust the alleged lakhirajdar before he proceeds to oust him. But the right of action of the landholder under the former law, and the jurisdiction of the Revenue Courts under the present law, are confined to cases where it is clear and undoubted that the lakhiraj title set up is one dated after the year 1790. If the lakhirajdar sets up a title anterior to 1790, the Revenue Court has no longer any jurisdiction to try his title. It might try his title for the purposes of trying the plaintiff''s application, but no decision of a Revenue Court in such a title would be a final decision. A lakhirajdar, who sets up a title anterior to 1790, is entitled to have his claim to hold his lakhiraj estate under that title declared valid or invalid only by the Civil Courts, or if by the Collector, then only under the provisions of section 30, Regulation II of 1819, with power of appeal to the Civil Courts.

127. If I look, then, to the wording of the plaint, my impression is that, in the view of it which the lower Courts have taken, it is correctly preferred in the Civil Courts. But that impression is much confirmed if I go beyond the plaint, and determine the jurisdiction according to the issues which have arisen in the suit, and which have

been tried and decided with the consent of both parties, or at least without any objection from the special appellant, as is visible from his appeal to the lower Court.

128. There has been much argument in the case as to whether a suit in which there was a distinct allegation that the defendant held under a lakhiraj title of a date subsequent to 1790 could, after the passing of section 28, Act X of 1859, be preferred in the Civil Court. It is, on the one hand, said that such a suit can be preferred u/s 30, Regulation II of 1819, and tried under the provisions of that Regulation. It is, on the other band, said, that such a suit does not come within the provisions of that law, but before the passing of section 28, Act X of 1859, could only have been preferred under the general law (section 3, Regulation III of 1793), and, after the passing of section 28, Act X of 1859, could only be brought under that law.

129. Those who hold the former view allege that the jurisdiction to try such suits still exists in the Civil Courts. Those who hold the latter view allege that the jurisdiction no longer exists in the Civil Courts, but is exclusive in the Collectors'' Courts. It appears to me, then, immaterial whether the jurisdiction to try a claim for the resumption of land alleged to be held under a lakhiraj grant after 1790, which it is admitted did exist in the Civil Courts, was one which they obtained u/s 30, Regulation II of 1819, or under the general law (section 8, Regulation III of 1793). In either case, I am of opinion that that jurisdiction still remains with the Civil Courts. And in what-ever mode the suit was brought, I would apply the rule which is declared in the preamble of Regulation XIX of 1793;--namely, that the Ruling Power is entitled to a certain proportion of the produce of every biga of land, and call upon the lakhirajdar to prove that he holds any title to hold land rent free in contravention of this old and long established rule. Certain sections of Regulation XIX of 1793 distinctly throw the burden of proof on this point on lakhirajdars who held under grants dated prior to 1790. No special rules were enacted regarding the trial of grants subsequent to 1790 in Regulation XIX of 1793. But it cannot be supposed, looking to the terms of section 10, Regulation XIX of 1793, that a less stringent mode of procedure was to be adopted with lakhirajdars holding under grants of a date subsequent to 1790, than with lakhirajdars holding under grants prior to that date. In both cases the same presumption would apply, that their titles were invalid until the lakhirajdars could prove them to be valid.

130. It still remains to consider what was the effect of section 30, Regulation II of 1819, with respect to the procedure as regards suits for the resumption of lands held under grants subsequent to 1790. It is said that section 30, Regulation II of 1819, applies only to grants anterior to 1790. But there is nothing in the wording of that section alone to lead to that conclusion. A piece of laud, which is held rent-free under a grant dated 1790, is virtually held free of revenue and of Government assessment, as well as of the zamindar''s assessment. That piece of land does not contribute to the Government revenue. It may be that the Government has assessed it at the decennial settlement; but the holder has contrived by some means to

escape paying that share of the revenue which was assessed on it, and so far the holder of that land, in the words of Regulation II of 1819, has defeated the just rights of the Government as well as of the zamindar. In section 10, Regulation XIX of 1793, the same wording is used as in the other sections of that Regulation, showing that the Legislature considered that every biga of land which did not pay rent, and was rent-free, was also to be considered revenue-free, and that Government would not tolerate not only revenue-free invalid grants, but also rent-free invalid grants. In fact, it applied a far stricter rule with the latter grant than with the former. The latter were specially declared all invalid, unless sanctioned by the Governor-General in Council. The former were admittedly valid if he held on good title.

131. If, then, the wording of section 30, Regulation II of 1819 is sufficient to include the trial of suits to resume land held under lakhiraj grants, after 1790, on the ground that such grants are virtually free of Government assessment, the next question is whether it has always been the custom of the Courts to admit such suits for trial under that law. There appear to be precedents in the old Reports, showing that such suits have been preferred under that Regulation, and have been sent to the Collector for report, and ultimately decided. I am not aware of any such suit in which the defendant has admitted that he holds under such a title; and, therefore, although plaintiff may have preferred suits alleging that lakhirajdars hold under such titles, the issues in such cases have always turned upon other points. The lakhirajdar has always set up a title anterior to 1790, and the question for trial has always been the defendant''s allegation of that title prior to 1790. If be shows he really holds some such title, then the question is whether it is a valid title. If he holds no title at all prior to 1790, then it is held that he holds under no title at all, and he may be even dispossessed.

132. I cannot help thinking that, in all this contention regarding grants subsequent to 1790 we are contending with a shadow. There are very few cases on record in which zamindars have preferred a suit alleging that a lakhirajdar held under such title, and similarly hardly a case in which a lakhirajdar ever alleged, in answer to any resumption suit, that he held under such a title. There are some exceptional cases in which it is attempted to support such grants, on the ground that, though no rent is paid annually, still a certain consideration equivalent to rent is paid; and there have been other attempts on other grounds to have such grants declared valid. But such cases are very few indeed, and may be looked upon as quite exceptional. Section 28, Act X of 1859, gives jurisdiction in such cases to the Collector; but not an exclusive jurisdiction. It may be that, in passing section 30, Regulation II of 1819, the Legislature never contemplated cases in which the lakhirajdar would destroy his own title by making any such averment as that he held under a grant after 1790. But there is nothing in that law to prevent the Collector from reporting on such a case; and it appears to me absurd to suppose that, on a lakhirajdar making such an averment, the Collector would no longer have any jurisdiction to report upon the case, or the Civil Court to try it, until a new suit was brought. I would, therefore,

record my opinion that section 30, Regulation II of 1819, refers not only to cases where land is said to be held free of Government assessment on grants anterior to 1790, but also to cases where land is equally held free of Government assessment; in that it does not pay any Government revenue or assessment in the shape of rent, although it was included in the assessment at the decennial settlement. I would, consequently, disallow the objection to jurisdiction which is raised in this appeal.