Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Nagardas Saubhagyadas v. *The Conservator of Forests and the Sub-Collector of Kolaba, from the High Court of Judicature at Bombay; delivered* 21*st November* 1879.

Present:

SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

THIS is a suit in which the Plaintiff claims against the Conservator of Forests in the Presidency of Bombay, and the Sub-Collector of Kolaba in the Tanna Zillah, a three fourths share of the proceeds of certain teak and izaili timber which he alleges was cut down by the Government in the village of Pigode. His plaint states that his share in the village of Pigode, or Pigoda, was acquired by him as the proprietor thereof, and he states that it is his watani (hereditary) khoti and izafati (village). He says, "Deducting "the four annas share which belongs to the "Government of the proprietorship of the said "village, the remainder of the village, namely, a "12 annas share thereof, belongs to me as pro-"prietor. Although I have a proprietary title to "the three fourths of the whole jungle (forest) of "the aforesaid village, including teakwood as well "as izaili (inferior wood), by reason of my watani "khoti and isafati thereof, the Defendants in the "years 1865-66 and 1866-67 cut down teak-"wood and izaili wood thereof, and sold the "same by auction as well as by private sale,

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" Having (a right to take) a share of three " fourths of the proceeds of the same, I made " *several* applications to both the Defendants, " requesting to be allowed to have a three " fourths of the sale proceeds, but I obtained " no redress. I sent notices also to them, but " received no reply"—and so on. Then he claims three fourths of the proceeds of the timber which he alleges was so cut down by the Government. The principal question is, was he the proprietor of the soil of three fourths of the village, and as such proprietor entitled, as he alleges, to three fourths of the jungle, including teakwood as well as izaili.

It will be necessary in the first place to consider what were his rights under the isafati title. That depends upon two sunnuds which were put in and relied upon, one dated in 1653, and the other in 1722. The sunnud of 1653 will be found at page 183 of the Record. After certain recitals it proceeds, "The Farman " is as follows: From the (beginning of the) " months of the year one thousand (and) fifty- " four," then there is a blank, the marginal note stating, "There is no grammatical connec- " tion whatever between the equivalent of this " sentence and what follows in the original. " It may probably be intended to mean that " the various rights below named, appertaining " to the village of Pegoonda, had been enjoyed " by Ismailji Abaji from the beginning of the " Arabic year 1054." The firman proceeds, "At " this time Ismailji Abaji Desai of the tappa " (district of) Kharapat, in the jurisdiction of the " above-mentioned (town), has represented to the " threshold of the universe"—that is, the Sovereign—"that the village of Pegoonda in the " above-mentioned tappa (district) is a personal " holding (khood-rawan) in lieu of isabat (dues)

" in this way, namely, that the fixed revenue " of the above-mentioned village, consisting of " ready money and corn, goes into the " possession of the revenue station (thana), and " some of the (taxes called) bab, and the whole " of the (rights called) kanoonat relating to the " above-mentioned village (assigned) for the " maintenance of (his) children are his own " reversionary rights (doombala khood),"— which is translated or explained in the margin to mean— " that will revert to the Sovereign on ceasing to " be held by the present holder."—" And the " (rights to certain perquisites called) hak- " e-lawazimat and (those called) khariasto- " tore of the above-mentioned tappa (district) are " a personal holding;" then the applicant goes on to show what were his personal holdings, and that the profits of the tobacco shop were a personal holding with a reversionary right to the Sovereign. Then he states, "It is hoped that " by the royal grace, a gracious Farman may be " granted (to him) for the satisfaction of his " mind." The Farman which was granted is, " Let them (the above-named officers) recognize " (the said rights as) reversionary (Soombala) " and continue the same;" that is to say, let them recognize all his personal rights, with reversion to the Crown, and then after him they are to continue the same rights to his children and children's children. It appears to their Lordships that the effect of this document was simply to give the grantee as the Collector of the Revenue certain perquisites arising out of the dues, and to convert that right, which was then a mere personal right with reversion to the Sovereign, into an hereditary right which was to descend to his children and to his children's children. It appears therefore to their Lordships to be clear that that sunnud gave no proprietary right in the

village; it did not give an interest in the soil, and it gave no right to the timber.

The next document of 1722, which was a marathi document, will be found at page 53 of the Record. It is a short document: "To "Mashaul-anam (*i.e.*, the Honourable) the Desai, "the Adhikari and the Kulkarui of Taluka (or "Taraf) Nagothua," and so on. "The villages "which are with (*i.e.*, held by) you as isafat "have been (*i.e.*, are hereby) 'settled and "granted' or 'granted on certain terms being "made' by Rajishri." Then come the names of three villages of which one is Pigode. "In "all three villages have been (*i.e.*, are hereby) "'settled' (or granted on certain terms being "made). Therefore (as to) the babatas (cesses "or tolls) appertaining to the said villages, "whether cesses in cash or in kind (grain), "whatever the amount (thereof) may come to, "(the same) shall be 'received by you' (or "'paid over to you')." All that was granted is that he was to be allowed the babatas or the cesses or tolls, he being the Desai, or the Collector of the Revenue on behalf of the Government. That document therefore did not convey any interest in the soil, but merely gave a certain right to certain cesses or dues as the perquisites of the grantee as the Collector of the Government Revenue. Therefore as regards his isafati rights they did not give him the right of proprietorship.

The next question is, was he entitled to the proprietorship of the soil of the village by reason of his *watani* or hereditary koti. With reference to that point a report of Captain Wingate was read from a collection of papers by the Government of India, from which it appears that a khoti had the right of proprietorship; but that was merely the expression of the opinion of Captain Wingate at that time; since the date

of that report, however, the point came before the High Court of Bombay and was judicially determined. In that case—reported in the 3rd Bombay High Court Reports at page 132—the Government had resumed the khoti, had granted certain rights to the sub-tenants of the estate, and were willing to allow the Plaintiff to take the khoti again upon certain conditions; namely, that she should be bound by the terms which the Government had entered into with the sub-tenants or holders of the land; and it was held that she was not entitled to have the khoti except upon those conditions. The reasons for the decision were that the khot was not the proprietor of the soil. The learned Judge who decided the case in the first instance went very fully into the matter, and held that the khot was merely an hereditary farmer of the revenue. The reasons are given in the report, and it will be unnecessary to read them. It is sufficient to say that that decision was opposed to the view taken by Captain Wingate to which reference was made from the Records of the Government of India. Without expressing any opinion that no khot is or can be the proprietor of the soil, it is sufficient to say that it is clear that the proprietorship of the soil is not vested in every khot.

Then the question comes, was the Plaintiff in this case, by virtue of his khoti, entitled to the proprietorship of the soil and to the timber upon it.

It appears that an agreement was entered into by the Plaintiff on the 24th December 1861, which will be found at page 395 of the Record. It is as follows: "I give in writing this "kararnama as follows: Being invested under "Government Regulation (*i.e.*, Resolution), Eng-"lish Letter No. 1832, dated the 18th May "1860, received by me from the Government

" with (authority) to carry on the vahivat
" (management) from the year 1859-60 to the
" year 1886-87 as khoti of the fourth takshim
" (share) of the mauja (village) aforenamed,"—
that is, including this village,—" and being also
" authorised (by the Government) to collect the
" assessment of the Government shares (also),
" and having consented to do so, I give in writing
" the (following) body of clauses relating to the
" management to be carried on (by me). They
" are written as below: The full assessment on
" the village aforenamed fixed at the survey is
" Rs. 2196 13a. 3p., deducting therefrom the sum
" of Rs. 1648 5a. 9p. in respect of the Govern-
" ment shares, the assessment on the remaining
" fourth share has been fixed at Rs. 548 7a. 6p.
" The same I agree to pay by instalments as
" mentioned below,"—naming four instalments.
Then by the 8th section, " The village afore-
" named has been given (let) to me for 28 years,
" from the (end of the year) 1859-60. Accor-
" dingly, for 28 years from the current year
" 1860-61 up to the year 1886-87, I will
" without any hindrance continue to the
" cultivating tenants or their heirs (*i.e.*, I will
" allow the tenants to hold) such of the Khoti-
" Nisbat lands as are entered in their names in
" the survey papers. The amounts of assessment
" on those lands have been settled at the survey."
Then there are several other clauses, but the more
important ones are the 15th and 16th. He
says in the 15th clause, " Some land belonging
" to the aforenamed village has been divided into
" numbers and reserved to itself by the Govern-
" ment for preserving a forest thereon. I will
" preserve the trees thereon. I will not allow
" any person to cut down the same, nor will I
" myself cut them down. In like manner I will
" not allow any person to cultivate the same,
" nor will I myself cultivate the same. Should

" any person cultivate the same, or cut down
" the trees thereon, I will inform Govern-
" ment of the same. Should the Government
" order that cattle may be allowed to graze on
" the aforesaid land reserved for a forest, I will
" accordingly allow cattle to graze thereon. I
" will not make any objection thereto. I will
" also preserve the teakwood trees that may
" be growing in this village in places other
" than the survey numbers aforesaid. I will
" not allow any one to cut them down, nor will
" I cut them down. If any person does cut them,
" I will immediately inform the Government of
" the same."

Now that is an express agreement on the part of the khot that he will preserve all the trees in the Government reserves, and that he will preserve the teakwood trees that may be growing in the village in places other than the survey numbers. Can the Plaintiff in the face of that agreement, whatever his rights may hâve been as a khot, say as he has said in his declaration, that he has "the proprietary title to the three
" fourths of the whole jungle (forest) of the
" aforesaid village, including teakwood as well
" as inferior wood."

It appears to their Lordships to be clear that according to the 15th section of that agreement, all the timber in the reserves were to belong to the Government, and that the khot was not to cut down any of the teakwood whether in the reserves or not, and that he was not to allow any other person to do so.

Then in clause 16 he says, "The Govern-
" ment has given to me the ownership of a
" fourth part of all the trees that now are
" growing, and of all the new ones that may
" grow hereafter in the village aforenamed,
" excepting the trees in the aforesaid pre-
" served forest, and those on the lands claimed

" by the people, and those on cultivated lands, " as also excepting the teakwood and black-" wood trees growing on waste lands." Therefore he admits that the Government, when they authorised him to carry on the management of one fourth of the village and to collect the Government revenue thereof, had the power to reserve, and that they did reserve, all the trees in allotments reserved for a forest, and all the teakwood trees in every other part of the village.

It appears to their Lordships that there is no evidence that the Government cut down any izaili wood. At page 173 there is an entry which shows that some persons as trespassers went on to the Government reserves and cut down some izaili timber. A sum is credited to the forest account in respect of the proceeds of izaili (inferior kinds of) wood. The entry is—" Some people having cut wood " from the Government forest at Mauja Pigoda " without permission, and having used the " same for building their own houses and cattle " pens, a report was made from the Peta " Mahalkaris, Outward No. 109 of the year " 1864-65, whereupon an order was received " from his Honour the Deputy Conservator of " Forests, bearing Registered No. 361, dated the " 16th of August 1865, to the effect that the " value of the wood (so cut) should be recovered " accordingly; (money was) recovered from the " said people as per Memorandum, bearing the " Mahalkaris signature, bearing the above date." The entry shows that the Government sued some persons as trespassers for cutting down izaili wood in the Government forest, and the Plaintiff claims in his declaration to be entitled to that izaili wood, because he says he is entitled to all izaili wood throughout the village. There is no evidence in the case of any izaili wood being cut

down in any other part of the village excepting in this portion of the village which was reserved as Government forest. The Plaintiff, as it appears to their Lordships, has not made out a title to any teakwood, and he has not made out a case against the Government as to their having cut izaili wood in any place, nor of their having recovered the value of izaili wood cut in any part of the village, except the Government reserves in which the Plaintiff was clearly not entitled to any of the trees.

Under these circumstances their Lordships are of opinion that the decision of the High Court was right, and they will therefore humbly recommend Her Majesty that the decree of the High Court be affirmed, and that the Appellants do pay the costs of this Appeal.