Judgement of the Lords of the Judicial Committee of the Privy Council, on the Appeal of Najban Bibi v. *Chand Bibi from the Court of the Commissioner of Seetapore Division, Oude; delivered, July* 10*th*, 1883.

Present:

SIR BARNES PEACOCK.
SIR ROBERT P. COLLIER.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

THE single question in this Appeal is whether a lease or gift made orally, and for indefinite duration, by one of the parties to the other, is a lease for life, or a lease or gift resumable either at the pleasure of the lessor or upon notice.

With respect to any difference between resumption at will and resumption upon notice no question has been raised, and it would seem, from the state of the pleadings, that no question could be raised; because in the plaint it is stated that the Defendant, who is the lessee, was informed by the lessor of her intention to cancel the lease, and that she resisted the action, and no issue is taken upon that statement.

The parties stand in the relation of mother and daughter, and the circumstances under which the gift was made are these: The mother is the talookdar of a talook containing a number of villages. The daughter married, and became a widow. For some time she lived with her husband's family. She then quarrelled with them, and it would seem that they deprived her of her share of the husband's property, upon which she came to her mother in destitute circumstances, and her mother gave her the property in question by

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way of maintenance. The parties belong to the tribe of the Ahbans, who appear to be Mahommedans, but with several customs of their own; and it would seem that their law of inheritance and their law of maintenance is a tribal law.

Now, in the first place, it is to be observed that the mother, the Plaintiff below, is only seeking to resume that which is a portion of her talook. *Primâ facie* she has a right to do that, and it is incumbent upon the person who is resisting the resumption to show a good title against the talookdar. The question is, whether the Defendant, who sets up this gift or lease, has shown such a title.

There was a great deal of evidence given in the Court below as to the customs of the Ahbans. The evidence principally related to the custom of inheritance, because the Defendant set up a title either by inheritance, or by the law of succession mixed up with the allegation of a will in her favour. Those issues have been found against her in the Courts below, and there is no dispute about them now. But besides the evidence of the customs which relate to inheritance or succession, several witnesses have said that where a gift is made by way of maintenance it is a gift resumable by the grantor. It appears to their Lordships that both Courts have found in favour of that evidence. There is none the other way. The only witness who speaks as to the non-resumability of such grants speaks of grants made to a daughter of the family by way of dowry and upon marriage. Both the Courts below, as their Lordships read the judgements, have found in favour of the power of resumption. The Settlement Officer says, speaking of the gift to the Defendant: "It is shown " to be now, and was so from the first, a lease " to her for her maintenance, and therefore " resumable at the pleasure of the proprietor of

" the estate." That is in accordance with the evidence; and their Lordships read that, not as a conclusion of law found by the Judge himself, but as his interpretation of the evidence. The Commissioner says this: First he finds that, according to the custom of the Ahbans, the Defendant would have no right to maintenance from her mother. He then adds: " Defendant " has therefore no claim either by custom or by " special necessity to the continuance of this " grant, which it appears to me cannot be re- " garded as anything but a compassionate allow- " ance for her maintenance, granted by her " mother under peculiar circumstances, which " now no longer exist." Then he goes on to say that if it had been made in money there could be no doubt that it could have been stopped, and it cannot make any difference that the mother had followed the common custom of giving a beneficial interest in land instead of an allowance in money. He further shows that the old native custom always recognised a right of resumption on the part of the talookdar even in cases of maintenance proper, though he says it was exercised with a great deal of discretion in a gradual and merciful way, so that the whole of the resumption did not fall upon a single generation. But, he argues, if the right of resumption existed in cases where there was a right to maintenance, much more would it exist in such a case as this, where there is no right to maintenance at all.

Therefore both Courts have found that by the tribal custom the right to resumption exists, and it appears to their Lordships that such is the fair effect of the evidence on the subject.

Then there is another piece of evidence which is not without bearing upon the Plaintiff's right to resume. In answer to the circular sent out by the Government to talookdars, desiring to know

who were their successors, the Plaintiff followed the not uncommon course of making what was called a will by way of pointing out to the Government who the successor was. In that will she appoints as her general successor her grandson, Raza Husain; but she states that "those entitled "to any rights will continue to enjoy those "respective rights in accordance with the details "recorded herein." Then she goes on to say, "Until I die I have the right of revoking and "confirming, and of decreasing and increasing, "and of altering." So that, although she states that certain persons have rights, she at the same moment asserts her own right of altering those dispositions if she pleases. Now among those rights are four villages to be held by the Defendant, and it is stated again that "these four "villages will remain with the Defendant with "the Government jumma upon them," and so forth. There we have stated on the face of a formal document, put in for the purpose of informing the Government of the state of this talook. that the talookdar then claimed the entire right of altering the disposition of these very four villages.

Such evidence is by no means conclusive, and under some circumstances it might be worthless, or even inadmissible. But in this case we have absolutely no evidence of the intention of the donor, which is contemporaneous with the gift. The will was made within two years, at the longest, after the gift, and many years before the events which led to its revocation. Under such circumstances a formal declaration by the donor as to the positions of herself and the donee with reference to the gift ought not to be disregarded.

In the year 1876 the Plaintiff made what is called a codicil to her will, and thereby revoked the gift to her daughter.

At that time the circumstances in which her

daughter was had very much altered for the better, and the relations between the mother and the daughter had altered too, but for the worse. We have however no concern with the reasons given by the mother for altering her dispositions. The fact is that she claimed the full right of altering them, and she has chosen to do so. Having altered them, she brought this action for possession, and it has been decided that she has the power of resumption. For the reasons above given their Lordships entirely agree with the decision of the Courts below.

Something has been said as to the effect of section 52 of Act 17 of 1876, the "Oude Revenue Act," but it does not appear to have been the ground of the decision in the Courts below, nor to have been much discussed, and their Lordships express no opinion about it.

The result is that the Appeal should be dismissed with costs; and their Lordships will humbly advise Her Majesty to that effect.