

Chapter 13.

C. Boundary and other jurisdictional disputes
with other powers.

Boundary disputes and problems and claims of jurisdictional rights were familiar features of the History of States. They were rather more frequent of greater variety and on a wider area with regard to the Baroda State as its geographical characteristic was that its territory interspersed and intermingled with other jurisdictional regions. Situated in the province of Gujarat in five distinct territorial blocks cut off from each other by large tracts of British territory or territory of other Indian States, it was a non-tributary State in subsidiary alliance with the British Government. For administrative purposes, the State had been divided into five districts - Baroda, Kadi, Navsari, Amreli and Okhamandal, in Central Gujarat, North Gujarat, Southern Gujarat and lastly in Kathiawar respectively *

It was, therefore, natural, looking to its distinctive characteristic that there were innumerable cases of boundaries and of other jurisdictional matters. For the sake of convenience we will pick up only those disputes which were either important or which marked a definite change of policy or asserted an already established policy in deciding the disputes. Also we will divide the disputes in the following way.

- (1) Disputes with British Government itself
- (2) Disputes with other native States.

However, the voluminous correspondence on the subject showed that

* 'The State of Baroda' (1921)

all the communications took place with the British Government, irrespective of the State or Government with whom the dispute arose as all the communication regarding disputes with other States also passed through the Residency as intermediary, because no direct dealings were allowed according to the various arrangements and settlements agreed to between the two Governments viz. Baroda and British.

Now with regard to the Boundary disputes, the question divided itself under these broad headings:-

- 1) Appointment of a boundary officer,
- 2) Settlements of boundaries by him,
- 3) Provision of appeal from his decision, and lastly
- 4) demarcation and maintenance of these settled boundaries.

Out of these four questions the most important was for providing the right of appeal. While on the one hand the Baroda Government demanded it as an absolute 'must' supported by the Agent to the Governor General, on the other hand Government of Bombay was not very much in favour of granting this. Once this question was solved the problem was much easier to resolve.

Panch Kalami Rules.

Before the Establishment of the progressive administration under the Dewan Raja Sir T. Madhav Rao in Baroda, in 1875 the settlement of the boundary questions was guided by what were known as "Panch Kalami Rules",* so called from their being five in number, as contained in the Darbar Yad of 2nd November 1854. The old record did not throw any light as to how, why and when they

*Residency File No.655.

originated but it did show that they formed the guiding principles, till the question was raised by Sir Richard Meade in 1875, of Settlements effected both in Mahikantha and Rewakantha Agencies. The Settlement officers in both these Agencies, had not recorded any objections to these rules, which appeared to have had worked very well as remarked by Capt. Jackson in 1876.

Boundary Communication.

It was to Sir Richard Meade, after his appointment as Special Commissioner and Agent to the Governor General, that first of all the need of a special machinery for settling the boundary disputes, was felt. He realised at once the complexity and volume of the whole problem. He first of all wrote to the Government of India for an additional assistant for this purpose (Vide his letter No. 268
3445 dated 6th September 1875)*. Thereafter he applied to the Bombay Government for the services of an officer for the appointment of a Boundary Settlement Commissioner for Baroda. In the following year, the Agent to the Governor General sought orders on two questions from the Government of India viz. whether the Baroda State should have the right of appealing from decisions passed by officers appointed by the British Government for the settlement of boundary disputes and secondly whether the existing Panch Kalmi Rules for deciding such disputes between Baroda and neighbouring Native States should be revised. The Agent to the Governor General, however, recommended that the right of appeal must be granted to the State and also that the existing rules which were very meagre may be revised with advantage.

* Residency File 655.

Right of appeal.

Raja Sir Madhav Rao also immediately saw the urgency and expediency of the problem and in his letter * of 17th October 1876 accepted the desirability of an appointment of a Boundary Commissioner, and agreed to pay a moiety of salary and allowance, but at the same time he was cautious to point out that before the appointment of the officer was made the ground should be prepared in such a manner that as soon as he arrived to take charge of his post he may immediately apply to his work. For this, he pointed out the nature and scope of his work might be defined and procedure laid down. Also a comprehensive list of disputed boundaries was prepared, in consultation with the Residency which showed that in all there were 90 cases* and out of these 49 were disputes between Baroda and British districts; and Baroda and British Political Agencies, The Agent to the Governor General named them as (1) Surat, (2) Broach (3) Khaira (4) Panch Mahals and Mahikantha and Rewa Kantha and Palanpur Agencies. On the recommendation of the Agent to the Governor General, moreover, Rajputana Agency Rules were accepted by the Government of India to commence the work. Later on the Agent to the Governor General was empowered to make necessary alterations in detail in these Rules so as to fit in this region and problems. but the Government of India stated further that the rules definitely prescribed for observance in settling boundary disputes in Bombay Presidency required mature considerations as Bombay Government was definitely of the opinion that the State could not have any right of appeal from the decision of the Boundary

*Residency File 655.

Commissioner, and with this remark sanctioned appointment of a Boundary Commissioner * (Letter No. 4160 dated 20-2-77) as demanded by the Agent to the Governor General.

On such expression of the Government of India as above, the Agent to the Governor General wrote to the Minister on 12th March 1877 indicating his line of approach that * "The general principle which has, I believe been followed in British territory in settling boundary disputes when a district first comes under Settlement is to employ private arbitration or assessors selected by a lot, and where this is done there is no ground for appeal. But in regard to the cases that now await decision in Baroda, it is evident that in some instances at least the disputes can only be settled after a judicial enquiry, while , then, I think that an appeal should be allowed, it is probably desirable to restrict the grounds of appeal, so as to avoid interference on the part of the appellate Court simply on the ground of a different estimate of the value of the oral evidence. It may be difficult to define the exact limit beyond which the appellate Court should not go, but the subject appears to demand consideration.

"In regard to cases that have been already decided, and in which the right of appeal was not reserved, or where reserved , was not exercised in proper time, I am clearly of the opinion that, no appeal now be allowed. The question now before us relates to future and not to past decisions."*Raja MadhavRao was, however, of the opinion that appeals to past decisions on some strong and solid and also reasonable ground, if Agent to the Governor General is convinced, be allowed.

In forwarding his views to the Government of India, the Agent to the Governor General Mr. P.S.Melvill strongly defended the right of appeal for future decision in these words:-

"8. But in reference to the future, I feel sure that an appeal should be allowed. The remarks of the Government of Bombay as to the advisability of Boundary disputes being settled as far as possible by mutual agreement, arbitration and the like, are just, and of course, where such measures are adopted, the only ground of appeal would be the misconduct of the arbitrators, a point which is provided for in the Rajputana Rules. But where the Boundary Officer ~~investing~~ investigates and decides a case, the interests of justice demand that there should be an appeal. It may be presumed that the appellate authority in such cases might be trusted to give every possible weight to the estimate of the credibility of the oral evidence formed by the officer who heard it, and that he would not needlessly or vexatiously interfere with the orders of the investigating officer, but there are such things as hastiness and a perfunctory method of inquiring, an essential point in the dispute may have ~~taken~~ been overlooked or there may have been a miscarriage of justice in other respects, and for all such defects a remedy should be provided. The evils of delay are no doubt to be deprecated, but delay is a smaller evil than mis decision."*

In these eloquent words the corner stone of any judicial system was pointed by the Agent to the Governor General.

This communication had the desired effect on the Government of

India, but it advised the Agent to the Governor General not to press this point at that juncture as Sir Philip Wodehouse's Government in Bombay was energetically objecting to the right of appeal and it thought that if any appeal was to be allowed it should not lie to the Agent to the Governor General at Baroda as he would be regarded as prejudicial in favour of the State to which he was attached. Lord Lytton, therefore, pending the change in the Gubernatorial office, as Sir Richard Temple was taking over from Sir Philip Wodehouse, thought that in the altered atmosphere the Bombay Government would not raise its objection as it was doing then; and some satisfactory arrangement could be reached.

Later on, as anticipated an agreed formula was adopted. Sir Richard Temple in September 1877 recorded after a meeting with the Agent to the Governor General "the amendment is principally in the matter of appeals against the decision of the Boundary Settlement Officer. It would be preferable that these decisions should be final, but if Baroda will not concur in this arrangement it is proposed that an appeal should lie to the Governor General's Agent, Baroda, jointly with the Revenue Commissioner who under orders of the Secretary of State, is to supervise the Gujarat Political Agencies. If these two high officers are unanimous in their decision no further appeal will be necessary. If they should differ a further appeal should lie to the Governor General in Council." *

This right of appeal was an assertion of one of the cardinal principles of judicial proceedings. But in view of the objection raised by the Bombay Government the Agent to the Governor General

suggested on 5th November 1877 an alternative to the Governor's formula. He said "With regard to the feeling that is said to be entertained by the neighbouring native States of the want of impartiality that may be expected from the Agent to the Governor General, a feeling which is attributed to the position he holds at the Court of the Gaekwad, I should be glad to be free of the duty of hearing the appeals even in communication with the Commissioner Northern Division. I would suggest, therefore, that the first appeal should lie either to the Commissioner Northern Division alone, or to the Collector or judge of the nearest British District. Sir Madhav Rao has suggested in a Demi Official letter to me that the appeal should be heard by any District British Judge that Government may designate for the purpose.*

Defining the scope of the Boundary Settlement Officer, Sir Madhav Rao in another official communication dated 18th September 1879, made it clear that, "2. It seems obvious that wanta villages in His Highness the Gaekwad's territories should be omitted from the list of Boundary disputes to be decided by Major Warden, because Major Warden is concerned with boundary disputes between different jurisdiction whereas the Wanta villages and those surrounding them are under the same jurisdiction. This contention was supported by the Agent to the Governor General and accepted by the Bombay Government (Vide their Resolution No. 927 dated 28th February 1880)*

Direct correspondence regarding Petty disputes.

After the settlement of such an important issue of appeal, there remained the question of demarcation and maintenance of the settled

*Residence File 655.

boundaries. For this purpose, whenever a difference of opinion arose between the then responsible officers of Baroda and British Government in charge of this question, cumbersome method of corresponding through the Agent to the Governor General's office had to be resorted to. Delay, unnecessary increase of work and useless exchanges of communications and other complications were the natural outcome. But hitherto that method had been followed since the Baroda Government undertook not to correspond directly with other Governments except through the medium of British Government.

However, this question appeared in its aggravated form when in 1884 the Darbar started their Revenue Survey Department and among other matters the Minister asked that the Assistant Survey Commissioner or the Divisional Subas might be permitted to correspond direct with political officers of neighbouring States in view to ensuring their presence of officials from the other side to point out the boundary. In case of petty disputes of encroachment, these official, it was suggested, should be authorised to settle them.

General Watson, the Agent to the Governor General communicating this to Bombay Government supported this request and the suggestions appeared to him to be calculated to promote the easy adjustment of petty disputes on the frontier. The Bombay Government agreed to this.*

Again in the year 1888, Mr. J.L. Jenkins, then acting as Survey and Settlement Commissioner, requested that he may be permitted to correspond direct with British Collector for a similar purpose. This was also agreed to in cases where the actual boundary was not in dispute.*

After two years, the Minister asked that permission may be accorded to the Superintendent of Revenue Survey and Boundary Officer to correspond direct with the Political Agents and Collectors, in addition. Sir Henry Prendergast, the Agent to the Governor General declined to accede to this request in principle, but made one concession in 1892 and accorded this facility to Mr. Machonochie, the then Boundary Officer, which he ~~xx~~ said was personal to Mr. ~~Machonochie~~ Machonochie alone.

From the above foregoing short account it is evident that it had been the expressed opinion of more than one Agent to the Governor General that the procedure of direct correspondence in this particular branch of business condued to the satisfactory settlement of petty disputes on the frontier. The Government of Bombay also entertained this view. Even in the case of Mr. Machonochie, though Sir Prendergast declined to accede to allow him to correspond direct, in his absence when Col. F. H. Jackson acted as Agent to the Governor General allowed Mr. Machonochie a personal consideration. It was only, therefore in 1890* that the sentiment of personal consideration began to creep in, in the measure which was meant to facilitate public business.

It appeared from the record that later on in 1896 Bombay Government allowed the Boundary Commissioner to correspond direct with British Political officers.

With this much back ground, we may now conveniently turn our attention to some of the important Boundary disputes, along with certain other disputes wherein in some over and above boundary

*Residency File 655.

jurisdictional ones also existed while in some only jurisdictional disputes existed. We will pick up cases only pertaining to our period i.e. 1875 to 1920.

A Boundary and other Jurisdictional disputes with
British Government.

1. Dang Boundary Case.

The Dangs are situated in the vicinity of Songadh in Khandesh in Bombay State which was the capital of the Baroda State from 1724 to 1761. At an early period in the history of the State, the Rulers came into relations with the Dangs and acquired territories in that area.

The East India Company first came into contact with the Dangs in 1818 in which year they acquired the districts of Khandesh and Nasik from the Peshwa by conquest. To check the raids of the Chiefs and inhabitants of the Dangs into these districts, they found it necessary to maintain a cordon of Military posts.*

In connection with measures for checking the raids of the Dangs Chiefs the Resident at Baroda stated that the Dang Chiefs were in receipt of certain Haks (rights) from the villages of the Baroda Government, and that for the peace and tranquillity of the country, it was necessary that in future these Haks should be paid to them through the officers of the Company's Government in Khandesh. In their reply the Baroda Government stated that they would agree to the proposal provided separate Security Bonds in their favour were taken from the Dang Chieftains. They enclosed the Memorandum showing the payments made to the Dang Chiefs, the villages in the

*H.P.O. Dang Case Bound Volume P. 11.

Dangs in which these chiefs enjoyed a half share and the mode of collecting revenue due respectively to Baroda Government and the Chiefs . After verifying the information contained in the above Memorandum, the Collector of Khandesh issued in 1828 a Sanad to the Chief of Godhavi (in the Dangs) for himself and for the Chiefs subordinate to him. In this Sanad, it was stated that the Chiefs were to receive a sum of Rs. 1520 on account of their Giras, that the Baroda Government were to recover their half share of the revenues of the co-shared villages and that the Chiefs were to receive the other half and also recover their revenues from the villages which were entirely theirs.

In the correspondence which subsequently took place, the Baroda Government raised the question of the execution by the Chiefs of separate bonds in their own favour. But this was not pressed as the Collector informed them that the Dang Chiefs had been bound over by him not to create disturbances in Baroda territory and if they created any such disturbance, they would be made to pay compensation. (Vide correspondence ending with Residency Yadi No. 352 dated 29th July 1836).*

In 1842 the Government of Bombay obtained a lease of the Dang forests from the Chiefs * In connection with the exercise of the rights acquired under this lease, the position of the Baroda Government in their co-shared villages came to be discussed.

This subject formed the subject of enquiry by two Committees% consisting of the Assistant to the Resident at Baroda and the Assistant to the Political Agent Khandesh, in 1867 and 1872

*H.P.O. Dang Case Volume P.11.
% Residency file No. 651.

respectively. As a result of these enquiries the number and the names of the coshared villages were definitely ascertained. The first Committee came to the conclusion that the Baroda Government were entitled to half the revenue, Abkari, and transit duties. The second Committee whose report was to be supplementary to the ^{first} ~~Forest~~ Committee expressed the view that the Baroda Government could not derive revenues from Abkari or Transit duties, as these were vested in the authority exercising jurisdiction, and the Bombay Government were at the time actually exercising the jurisdiction. They found that the Baroda Government had a share in the forest revenue i.e. revenue in the coshared villages from wood passing through nakas. In 1884, the Government of India in effect approved the findings of this second committee. The orders of the Government of India were confirmed by the Secretary of States for India in 1889*

It appeared from the record that the Baroda Government more than once expressed the view that the decision regarding the coshared villages in the Dangs proceeded on incomplete information about the history of the Gaekwad's relations with this territory. Subsequent authoritative reports had however elucidated this insufficient detail. The first of these was in 1886 by Col. Bullock% an "independent officer unconnected with Bombay or Baroda" who was appointed to settle and demarcate the North Eastern Dang boundary, by the Government of India at the suggestion of the Government of Bombay. Before this officer, all the arguments which had been used in support of the position that Baroda had no territorial possessions in the Dangs were urged, but he came to the conclusion that Baroda's connections with the Dangs was much older than was believed by the Boundary authorities. This officer after an exhaustive investigation, awarded to Baroda in

*Residency File No. 651 . % H.P.O.Dang Case Vol. I Pp. 265.

full sovereignty a strip of 64 miles in the Dangs consisting of the group of Malangde^v group*of villages which was claimed on behalf of the Dang Chiefs by the Government of Bombay. Again in 1906 % when demarcating the South Eastern Boundary of the Dangs, the ~~Boundary~~ Bombay authorities did not raise objection to the sovereignty of Baroda over the villages of Harpada, Torpada and Khokharvihir in the Dangs attached to the fort of Salher. Still later, i.e. in 1918@ to set at rest all doubts about the sovereignty over the fort of Salher - this dispute will be dealt by us separately-and the villages of Wadi Salher at its foot, the Government of Bombay formally ceded these to the Baroda Government. The position that was to be found in 1920 was that the Baroda Government held a portion of the Dangs in full sovereignty; they also enjoyed the rights in the coshared villages in accordance with the arrangement of 1828. But as noted above, the decision of 1884 had to be read in the light of the subsequent decisions relating to the same area. This was the demand put forward by the Baroda Government.

There was still another question relating to the Dangs . At an early stage in the correspondence the Government of Bombay raised the question of commuting the rights of the Baroda Government , in the co-shared villages & They stated that calculating the whole revenue, the maximum figure had been found to be Rs. 950/- a year, and proposed that the British Government might guarantee the payment of this amount annually to the Baroda Government. They had added that if the Baroda Government liked to collect their revenue through their own Agency, they should engage such Kamdars as would behave with circumspection

* H.P.O.Dang Case Vol. I P. 302.

% H.P.O.'Status of Wadi Salher P. 12

@ H.P.O. 'Status of Wadi Salher' P.64

& H.P.O. From a note on the subject in the Bound Volume of H.P.O. papers.

and that it should be clearly understood that the business of these Kamdars, was only collection. In Residency Yadi No. 276 , dated 16th July 1869,* it was stated that the Secretary of State for India, in approving this suggestion of the Government of Bombay had observed that the British Government was the Paramount Power in India and had taken a lease of the Dang forests and had therefore to take these measures to preserve tranquility in these hilly tracts, and that if the Baroda Government accepted the proposal, it would only remain for the Baroda Government and the Dang Chiefs to receive the equivalent of their rights in cash from the British Government. The Baroda Government did not agree to this proposal and the Government of Bombay informed them that the Baroda Government might adopt the other alternative suggested viz. the collection of the amount through their own officers without interfering in the administration of the Dangs. (Vide Residency Yadi No.2241 dated 20th November 1869) %

Three years later, Mr. L.R.Ashburner, Political Agent, Khandesh in a letter to the Resident at Baroda, made the following suggestion in this matter:-

"I have the honour to suggest that Capt. Reeves and Mr. Campbell, who are now employed in the Dang should be directed to make a settlement of His Highness the Gaekwad's claims on the half shared villages of the Dangs, by transferring to him in full sovereignty lands equivalent in value to those of which he claims a half share. If His Highness concurs in this suggestion which will remove all pretext for interference in the Dangs, I beg that early orders may be given to Messrs

* H.P.O. From a note on the subject in the Bound Volume of H.P.O. Papers.

% H.P.O. Dang Case P.12.

Campbell and Reeves, for the season is drawing to a close. The lands to be granted to His Highness the Gaekwad would of course be on his present ^{frontier} ~~border~~ and adjustments of territory can be made with the Chiefs in the interior of the Dang to enable this to be done." *

Later on, when drawing up instructions for the second Committee (Capt. Hancock and Mr. Muller) in accordance with the orders of the Government of Bombay Mr. Ashburner, again referred to this matter in the following words:

"There are, however, other subjects which appear to me of great importance and I think this opportunity should be taken of settling them after the report of the officers nominated for this duty. I allude to (1st) the exchange of the Gaekwad rights ~~and~~ on the revenue of the coshared villages for other lands in full sovereignty on the borders of the Dang.

x x x " *

The Second Committee consisted of the above officers and in the concluding paragraph of their report dated 20th June 1872 made the following recommendations:-

"In conclusion we would have respectfully remarked that the Dangs are only now being fairly opened out and that in dealing with the matters have discussed, the Darbar evidently think that the value of their future claims should not be based upon the profits of the past alone . On this account as also on account of their "prestige" they appear to have hitherto declined the pecuniary offers made to them by Government in lieu of all their rights within the Dangs. An

exchange of villages as proposed by Mr. Ashburner would doubtless to Baroda seem a far more palatable plan. Instead of the shared villages they might certainly accept a fewer number in full. Sovereignty upon the borders of the Songadh Mahal with honour and advantage to both sides, and we think, such an arrangement might be made without insuperable difficulty. It would entail further interchange of villages amongst the Rajas of Dangs themselves, but the adjustment of their shares could doubtless be explained to them as tending to their good and we, therefore, very strongly recommend the plan to the notice of both Government. Liberal concessions should be made on every side to clear away misunderstandings and confusion of the past." *

In forwarding the Report of the Second Committee to the Revenue Commissioner Northern Division Mr. J.A. G. Duff, Political Agent, Khandesh, in his letter dated the 7th September 1872 stated:-

"If Government should approve of an exchange of villages or shares of the villages so as to do away with the system of co-shared villages, it would be equivalent to a final settlements of these disputes. Any such arrangement should be carried out simultaneously with the demarcation of the boundary.*

In 1881, Mr. P.S. Melvill, Agent to the Governor General at Baroda, in forwarding the appeal of the Baroda Government, against the orders passed by the Government of Bombay on the Second

Committee's Report, to the Government of India, made the following recommendation:-

"My recommendation on the whole of the case comprised in the correspondence herewith submitted, is that the rights of the Gaekwad in the coshared villages should be exchanged for lands in full sovereignty on the borders of the Dangs and adjoining the Gaekwad's own territory."*

In the circumstances of the time, the Government of India and the Secretary of State for India did not take the above recommendations into consideration. His Highness's Government^{not} feeling justified in accepting a commutation on the basis "of the value of their future claims on the profits of the past alone" preferred to direct their efforts to deriving the fullest benefit from their rights. About the year 1905* they requested that the management of the coshared villages might be conducted by their Mahalkari of Varghat. This proposal was not acceded to by the British authorities. In 1902, a joint settlement of the Jamabandi was carried out by the Mamlatdar of Pimpalner and the Vahivatdar of Songadh. As these officers were unable to trace some of the co-shared villages, the Baroda Government proposed that the villages should be surveyed so that Baroda revenue might be safeguarded and the State might derive full advantage from the extension of cultivation. At that time it appeared to the Baroda Government that nothing beyond the traverse survey of the villages would be agreed to and therefore, it did not press the proposal then*. They however, renewed it in 1917, but the Political Agent, Surat did not agree to it on the ground that settled -

*H.P.O. Dang Case P. 12.

cultivation had not become established in these villages.

"The position of these co-shared villages has to be examined now, with a view to a final settlement," it was maintained by the Baroda Government "on the lines indicated by the Committees and officers whose views are quoted in extenso above. The proposal His Highness's Government made was that in lieu of their interest and rights in the coshared villages they might be given in sovereignty full villages in the Dangs adjoining their Navsari District or their other possession in the Dangs." Such a solution would be advantageous from every point of view. Under it, the Government of India will be free to develop the Dangs for the benefit of the Chiefs and in accordance with the administrative and other standards suited to them, without being embarrassed by the existence of Baroda rights. To the Chiefs themselves, the 'rounding off' of their possessions, would be a distinct advantage. As for the Baroda Government, if the proposal be accepted, they will be freed from the complications resulting from the existence of joint rights and can get an area to which they can apply their own administrative and other policies which naturally differ from these applicable to the Chiefs in the Dangs." *

Here the question stood, awaiting its final disposal at the end of 1920:

Causes: The solution of the question of Dang boundary and the rights of the Gaekwad in the coshared villages was much complicated due to various reasons. Principally among them were:-

- (1) Over enthusiasm of the British Government in ousting the Baroda Darbar from this territory. This precluded them to judge the events of History and evidence obtained by the Committees

constituted to investigate in the issue. It is doubtless true that there were evidences and reports which went against the Baroda Claims e.g. report of Mr. Pritchard, first Asstt. Collector Khandesh and Liet. H.N. Reeves, Asstt. Resident, Baroda where they stated, "His Highness the Gaekwad has exercised criminal jurisdiction, but only in the shape of the Levy of fines, in three coshared villages. The first exercise of such jurisdiction took place in 1847-48. At that time, and for many years before, the Chiefs and the British Government on their behalf, were exercising jurisdiction over the coshared villages generally. It is in the highest degree dangerous and impolitic if not impracticable that two States should exercise coordinate jurisdiction over the same territory and the balance of both evidence and probabilities is so much against the existence of the Gaekwad's right's "Right" to jurisdictional powers that we have no hesitation in recommending that he be precluded from exercising them in the coshared villages."

(Malegaon , 29th June 1867)*

But on the other hand the weight of the evidences in favour of the State was also not lacking as pointed out by Raja Sir T. Madhav Rao in his Memorandum on the subject in 1881%. This confusion of evidence constituted a great handicap in the solution.

- (2) Secondly, the doubtful territorial limits between the territories of the Gaekwar and the British Government prevented the final agreement on the Boundary.

*Residency File No. 651.
%H.P.O. Dang Case Vol . 2 Pp. 66-71.

- (3) Thirdly, the shifting character of the people inhabiting this area was the greatest uncertain element in the final settlement. As it will be seen from the reference that later on some of the coshared villages were not traced as they were deserted. This shifting character was also reflected in their giving evidence. Sometimes they would say something and on the other occasion they would disown their statement.
- (4) Fourthly, the Geography of the country of Dang also presented great difficulties as the approach to the interior was rather hazardous. It was a hilly tract and was inhabited by an aboriginal tribe known as Bhills, who were not always cooperative.

2. "Wadi Salher."

Salher is situated in the Navsari District of His Highness' Government and was regarded by them as their independent possession. Notwithstanding this, it was proposed by the British authorities in 1867 to treat the same as a Political * Saranjam * to His Highness the Maharaja and apply to it the provisions of the Survey Settlement Act 1863. On His Highness' Government entering a protest against the proposal, it was abandoned at the time.

In 1901 however, the Collector of Nasik treated His Highness' the Maharaja as a Dumaldar % of the village in British territory and addressed a notice @ direct in connection with the local Board

*Saranjam means: Means and Weapons are also called શરણ સરજામ
Accordingly Inami villages agreed to by political treaties.

% H.P.O. "Status of Wadi Salher" P.3.

@ A common term for the two masters of a ગુલાબીદ or coshared village.

Elections in his district, in conformity with section 17 of Bombay Act 1 of 1884. The Notice was returned and his attention was drawn to the correspondence of 1867, intimating, at the same time, that the village was under the jurisdiction of His Highness' Government, and that, therefore, the provisions of British enactments were not applicable thereto. To this, a reply was received from the Residency in 1904 stating that the Government of Bombay intimated that there was no misapprehension as to the status of the village, and that while they had no desire to make any change in the manner in which it was managed, they regarded Wadi Salher as a British village held by His Highness the Gaekwad in Political Sarangam .

A representation * was hereupon made by His Highness' Government, (H.C.Letter dated 7-6-1906) explaining that the Fort of Wadi Salher had been in their uninterrupted possession long before the British Government occupied Baglan; that it was acquired by them from the Moghuls which was thereafter held by them in independent sovereignty; that it was not ceded to Peshwa along with Baglan in 1795; that it was not acquired by the British Government in 1818 either by the treaty of Mandesar or by their subsequent conquest of Baglan; that all the British officers were perfectly aware of the position taken by the Government of Bombay in regard to the status of the village and considered Salher to be subject to the Baroda jurisdiction that in 1830 the then Bombay Government admitted the claim by merely claiming the Sardeshmukhi in the revenues of the village; that the jurisdiction of every sort was exercised therein by Baroda, and attempts to interfere therewith, made from time to time by the British authorities; were withdrawn.

* H.P.O. "Status of Wadi Salher". P. 12.

The Residency intimated (Letter dated 11-6-1907) , in reply that Government were unable to accede to the request of His Highness' Government adding that pending the issue of other orders by competent authority, His Excellency the Governor in Council did not propose to interfere with the exercise of jurisdiction in the area by His Highness the Gaekwad as contemplated by the orders of the Court of Directors of 1847.

His Highness' Government thereupon represented that no grounds were adduced by Government for not reconsidering their views, and requested to be furnished with authenticated copies of the decisions of the Court of Directors of 1847 and of the Residency Yad No. 74 of Magh Vad 2nd , Samvat 1902. The Government of Bombay, in furnishing the copies of the documents had intimated (Residency No. 4021 dated 10-3-1909) that they considered that in view of the clear orders of 1846-47, the status quo should be maintained.

The Revenue Department of the Government of Baroda to which the papers were referred for consideration and remarks, expressed their opinion that it was not necessary to move further in the matter. The Baroda Government thereupon asked for the opinion of ^{its} ~~the~~ Legal Remembrancer. This Officer was of the opinion that the Government of Bombay having agreed to recognise and maintain the rights which His Highness the Maharaja Gaekwad had heretofore exercised in the village, it would be a matter of sentiment only to fight for the name of 'Sovereign rights' which the Bombay Government had chosen to call rights exercised in an Inam village granted as "Political Saranjam" , and that, therefore, it was not necessary to take any further action in the matter. Before, however, adopting this view, the Minister wanted to make himself sure that the Government of Bombay

had not referred the matter to any competent authority hinted by them before the Residency was accordingly addressed to ascertain the fact, and as their giving an evasive reply, the question was dropped for future consideration.

The question was reopened after some six years in 1915 when Baroda Government by their letter * dated 7-8-1915 pointed that the village had been held in full sovereignty rights and not as a Saranjam by His Highness' Government and certain portions were quoted from old papers in support thereof. It was further requested that under these circumstances the village should not be marked in the map as British territory as it would be the evidence of a change in the rights of Baroda, over this tract. At this stage a new ground of argument was opened by the Residency to the effect that Wadi Salher paid certain dues to the British Government, which other territories did not pay and that if the village had been a conquest by the Baroda troops the payment of these dues would not have been made to the Peshwa or continued to the British after the District in which it was situated came into their possession (Vide Residency letter No. 12454 dated 27-11-1915). This ground was explained away by saying that the payment was on account of Sardeshmukhi and 'Bhet' and that Saranjam were generally granted free of payment, that the Sardeshmukhi was levied by the Marathas on the possession of the Moguls which had not come under their direct sway, that the Sardeshmukhi of Khandesh in which Salher is situated was acquired for the king of Satara by the Peshwa and in the distribution of the revenues, the Sardeshmukhi was retained by the Raja of Satara. It was, therefore, obvious that subsequently

when the Gaekwad acquired by persuasive means the Moghul rights from Salher from its Killedar, the Gaekwad continued making payments ostensibly to the Raja of Satara from whom he derived his authority and whose cause he espoused against the Peshwa. Thus it will appear that the payment of Sardeshmukhi was rather an indication of the manner in which the place was acquired and when subsequently the Peshwa usurped the authority of the Raja of Satara he would not allow the Sardeshmukhi to be discontinued. But "such a levy of Sardeshmukhi" observed the Baroda Darbar" did not affect the Sovereignty of the District (H.C.Letter No. R./195 of 16-8-1918)*

As a result of this, the Government of India though not admitting Baroda's contention that the village was Baroda territory, agreed with the Government of Bombay that the position then obtaining was unsatisfactory and required to be regularised. The village was, therefore, formally ceded to His Highness' Government and the claim of the British Government for an annual sum of Rs. 40 (Forty) from its revenue abandoned. (Vide Residency letter No. 16304 of 16-11-1918)% His Highness' Government thereupon requested the Residency to arrange for the necessary corrections in all the British maps by showing the village as Baroda territory. This request was acceded to by them (Their letter No. 981 of 22-1-1919)@

*H.P.O. Status of Wadi Salher'	P. 64.
% " "	P. 74
@ " "	P. 77

Before this question arose the usual practice which was followed in settling such boundary was to adopt the method prevalent in the region. The rational procedure was first of all followed in this case of Wadi Salher.

3. Riparian villages - Boundary dispute between two - .

It is easy to demarcate the Boundary line when land frontiers were concerned but where the River formed the Boundary line the question got puzzled. There were in that case two obvious methods which could be followed and were also in vogue. Either the centre of the river bed was chosen as the boundary or the centre of the flow of the stream was adopted. This type of the question arose with regard to the boundary line between two riparian villages of Piplej in Kadi in Gaekwadi district and Wasnā in Mahikantha Agency and an important ruling was given at the end which solved the dispute*.

Piplej and Wasna are border villages. The boundary of these villages had not been specifically settled but the river Sabarmati which flows between them was considered as the boundary.

In 1883, the Thakarani of Wasna complained to Political Agent Mahikantha that those people of Piplej who were cultivating in the bed on the Wasna side of the river should either be asked to pay wujey (share due to landlord) or the cultivation should be removed.

The Thakore of Piplej while admitting the action of the people contended that owing to the boundary between the two villages not being settled, the people of Wasna also cultivated in the river bed on the Piplej Side and did not pay any wujey for doing so and vice versa. He further contended that half the river bed and not half the flow of water as maintained by Wasna was the boundary between these two villages.

*Residency File No. 426.

On the other hand the Assistant Political Agent Mahi Kantha Col. Scott, in 1887, stated that only the centre of the stream should form the boundary.

From the old record of the Government it was evident that both the practices were followed. However, the Government of Baroda stated that most of the recent decisions recognised the advisability of fixing the centre of the bed of a river or a channel as boundary and ~~xx~~ not the centre of the principal stream or current. (Vide letter dated 28th March 1880*. Giving the reason which it thought was clear it stated in the very letter "By the old policy, the boundary used to be changed with the change in the main current, and thus the same boundary ~~xx~~ had to be settled over and over again." From the correspondence which was carried on the subject between 1879 and 1883 regarding Indrodā and Shāhapur case of a similar nature, the above principle viz. fixing the boundary between the river bed was fully discussed and recognised. The Minister cited the Memorandum of Mr. Beyts, the then superintendent of the Gujarat Revenue Survey, dated 24th February 1877 in support of his contention. The Memo observed "The former plan of fixing village boundaries in riverbeds by the flow of water or 'Tumaria Tog' was not considered convenient for obvious reasons, than alluvial country. Would the Darbar admit the propriety of giving up the lands of Shahapur if the river deserted its present course and cut through that village? If not, then, the boundary of 'Tumaria Tog' becomes a delusion. It was just on this ground that in the interests of both Governments that their village boundaries terminating on rivers should be once for all fixed in the mid ~~shahla~~

*Residency File No. 426.

channel regardless of the waterflow * The letter further stated, "The difficulty of losing the right over ~~the~~ water by the running stream being transferred within the boundary of one of the villages was got over in the above case by making a condition that the decision did not interfere with the use of water by other side." The Minister also gave instances% of the cases wherein the principle maintained by him was recognised regardless of the fact that the river beds were either alluvial or non-alluvial.

Ex But the Agent to the Governor General also appeared to agree with the views of Col. Scott and not the Minister. He remarked "Col. Scott's contention is correct. The rule of river boundaries is that the centre of the main or deep water channel for the time being shall be the dividing line between two villages, unless the high banks of the river are very permanent. This is probably the best plan, If, however, the circumstances favour a boundary being made and marked without reference to the banks an exception may be made, but it is difficult to see how marks can be put up without there being run over (words underlined are mine) by floods. In British territory in

*Residency File No. 426.

% Baroda
 Bhimpur
 Veljina Muara.
Baroda
 Shahpur
Baroda
 Undra
 Savalni
 Deliathela
 Dunawada
 Massa
Baroda
Delwada
 Bhinar)
 Wansi)
 Timba
Baroda
 Maroli
 Pangara

Mahikantha
 Ghen
 Lihora.
Ahmedabad
 Indroda
Palanpur
 Kasalpura
 Nandotri
 Umbri
 Devpura
 Vithlod.
Surat.
 Karadi
 Matwad
 Patna.
Sachin.
 Karsad
 Kansad - Lajpur.

Northern India revenue is not taken from land subject to overflow and some times one village and some times its neighbour covering the stream gets the benefit of a change in the course of the main channel." (Remarks dated 8th April 1888). This was a very rational approach by Sir O St. John the Agent to the Governor General at Baroda. This principle of reference to the High banks was inevitable in deciding which method was to be followed . But the case under advertance was kept undecided in absence of more detaile information available. *

The question was opened up again in 1891 on the Minister Mr. Manibhai Jashbhai addressing the Resident in this regard. This time the question got complicated as the new Resident Col. E.S. Reynolds happened to support the views of the Minister. He said, "Notwithstanding what Sir O. St. John has said, I think the Minister has a strong case.

"The advantages on the side of making the centre of the original river bed the boundary, are greater than making it the centre of the water channel, which is always shifting, and consequently altering the boundary.

"In a wide river like Sabarmati the banks change very little, but the water channel may after the rains be on one side of the bed one year and on the other side of the middle the next. The only objection to making the centre of the river bed the boundary was that the people of one village might be cut off from the water, but this has already been arranged by ruling that there should be no interference to the use of the water by either party.

*Residency letter dated 3rd Oct. 1888.

"Following the case of Indroda and Shahpur which went upto the Government of Bombay and also Mohamadpura and Khoŕtiapad (Rewakantha), I see no reason why this boundary should not be settled in the same way by making the centre of the river bed the boundary. We got instructions of the Bombay Government from the Political Agent Rewa Kantha in connection with the Mohamadpura V/s Kottiapad case in which Government desired that in future the mid bank should be made the boundary and not the mid stream. The resolutions were sent back to Political Agent, but the note on the letter No. 1635 dated 30-9-89 in the above case explains all. The Political Agent Mahikantha therefore is facing against a resolution of his own Government. Possibly he may not know of it, and it might be referred to them. They are resolutions No. 7490 dated 19-12-85 and No. 3656 dated 6-6-87."*

On referring this matter to the Political Agent Mahikantha Lieut Col. J.M. Hunter said % , "According to Government Resolution No. 7490 dated 19th December 1885, the question whether the mid bank line or the mid channel of the main stream should be the boundary between river-divided states is to be decided by the custom of the country. It appears that the custom of this part of the country which the Baroda State has recognised recently in the settlement of a neighbouring boundary, is to consider the main stream as the dividing line."*

The apparent inconsistency in the Baroda stand and the unbending attitude of both the Governments forced the Resident to refer the question back to the Bombay Government for their authoritative instructions. This resulted in the Bombay Government Resolution

*Residency File No. 426
% 30th November 1891.

No. 4326 of 1st July 1892, which laid down specific instructions as can be seen from its text quoted below:-

"The question raised is whether in the case of a boundary delimitation between Baroda and Wasna in the Mahikantha the dividing line of the middle of the flowing stream (or mid channel as it may be described) or mid-way between the banks which may be described as mid-bed. The ordinary rule of International law is that where a navigable river forms the boundary of the conterminous States, the middle of the channel or THALWEG is the line of separation. But the rivers of India in some cases constitute for the greater part of the year a weak stream, which shifts its channel of flowing water, and in such cases where the banks are fairly permanent, the rule of Tumvi Tag which seems to correspond with the Thalweg has in such cases been departed from and the rule of fixing the mid-bed, that is mid-way between the banks has been adopted, with a special reservation that each side might have access to and the use of the running stream. On the other hand there are also rivers, reduced in the dry weather to a narrow stream, which cause a considerable erosion of the banks in the season of flood as in the Sabarmati, and the very banks themselves are less permanent than the changing channel of flowing water. It appears from Government Resolution No. 7490 dated 19th December 1885 and 3245 of 7th June 1886 that the adoption of the line of the midbed was based on the consideration that the banks of the rivers were tolerably permanent and not subject to erosion. Accordingly the mid bed principle has been generally adopted for the Rewakantha States by Government Resolution No. 3656 dated 7th June 1887. On the other hand so

lately as by Government Resolution No. 7959 dated 31st October 1891, the rule of Tumri Tag or mid channel was adopted in a Settlement with Cambay , because the Sabarmati banks had so entirely changed. Similarly in fixing the boundary with Mysore where the Tungbhadra is tolerably full at all times the mid channel rule has been adopted.

"This account justifies that Statement that Government have on the whole adopted a consistent principle where large rivers, of which the bed is ~~xxx~~ fairly full through out the year, divide states, the rule of mid channel is adopted. where the river runs very dry and shift their channels, but leave the banks as a permanent boundary the rule of mid bed is preferred with a reservation of the right of use of the water, but where the banks are subject to erosion and as shifting as the channel, the ordinary rule of mid channel is reverted to as a choice of evils." *

The celebrated authority on the Native States of India Sir William Lee Warner was the Secretary to the Bombay Government this time and the above Resolution was received under his signature and applying the above principles the Piplej-Wasna boundary was fixed up in the mid-channel.

The Government of Baroda accepted the decision of the Bombay Government but requested in return to revoke their decision regarding Shahapur-Indroda case which they thought stood on all fours with the Piplej-Wasna case. But Government of Bombay refused to open up

questions already settled as such reopening might set the chain of cases in which decision might have to be invoked. The Bombay Government also stated, "If for instance, every time a High Court gives a decision ~~and~~ a question of law all previous cases to which the decision is applicable were allowed to be reopened, the determination of disputes for which the Courts are constituted would be utterly impracticable."

"It was not known hitherto" a Darbar official was heard commenting on the above decision, The record states "that it was the intention of the Bombay Government to apply the principles underlying strictly judicial cases to the Settlement of political cases.! *

4. Village of Surval.

This was an interesting case regarding the dispute of double jurisdiction and the typical remedy suggested for its solution. Secondly an important principle of administration with regard to the relation of the British Government with the Native States was also laid down in the correspondence relating to this dispute.

Surval is situated in the Banāskānthā District (then Agency) on which the Nawab of Radhanpur claimed an exclusive jurisdiction, instead of the joint jurisdiction of Baroda and Radhanpur, in 1883; and thus the question was referred to the ^{Boundary} ~~Bombay~~ Commissioner.

The Boundary Commissioner found that joint jurisdiction existed; and added the opinion that the arrangement was inconvenient. The

Nawab of Radhanpur appealed against this decision to the Commissioner of the Northern Division Mr. Sheppar, who^{concurred} in the Boundary Commissioner's view that the jurisdiction over the villages had been divided between the two States; but thinking this condition of things inexpedient, passed the following order on the 4th October 1883:-

"I direct , therefore, that Radhanpur should in future, exercise sole jurisdiction over Surval paying in addition to the usual Baroda share, the average of annual sum received by the latter State on account/fines during the last 15 years." *

The Gaekwad appealed against this decision of the Commissioner Northern Division to the Governor-General-in Council and Radhanpur also replied to the Gaekwad's Memorial.

The Government of India after consideration of these papers, and of all the circumstances of the case, opined that the Commissioner of Northern Division had no powers to pass the order above quoted, and thus annulled it.

The village of Surval was thus restored to the joint jurisdiction of Baroda and Radhanpur. However, the Government of India thought that the existence of double jurisdiction was rather undesirable and directed the Agent to the Governor General at Baroda to endeavour, in communication with the Government of Bombay, to bring about a more satisfactory statement of affairs.

Col. Warden, the Boundary Commissioner at the original hearing of the dispute, in his decision suggested as a means of removing the anomaly of joint jurisdiction that either the village of Surval and

and its lands should be equally divided between Baroda and Radhanpur or by one of the parties retiring from the control under such arrangements as may be deemed fitting.

The Baroda Darbar, however, in their appeal to the Government of India deprecated such a proposal and as an alternative made a following suggestion:-

"Let either Baroda or Radhanpur whom the Government of India may accord the privilege, elect to retain exclusively the habited portion of the village. Then let the lands of the village cultivated, uncultivated and waste be divided, so as to give the other party lands equal to one half of the total valuation of the village, plus one half of the area of the village site and plus the estimated cash expenses and lands for the establishment of a new village equal to one half of the old village. The lands so divided would then be under the exclusive jurisdiction of the parties. Thus their respective interests would be completely preserved at the same time that there would be a termination of the anomaly of double jurisdiction in one and the same village." *

This proposal of the Baroda Darbar seemed fair and reasonable to the Resident, and he enquired of the Bombay Government whether there was any possibility of the settlement of the issue as suggested by the Darbar.

The Bombay Government referred the letter to the Commissioner of Northern Division. The latter informed his Government that Radhanpur wished to forward a petition to the Government of India. This was

allowed and month's time for this purpose was prescribed. The Baroda Government immediately objected to this saying that "under the Rules laid down for the settlement of Bombay disputes by the Government of India, there is no provision in the Rules for a review."* But the question was solved as the Government of India in their letter to the Chief Secretary, Government of Bombay dated 1st September 1886 declined to accede to the request made by the Radhanpur Nawab for the reconsideration of their decision.

The 4th para of this letter under advertence is very interesting. It said:

"4. A copy of the orders cited above (i.e. of 11th July 1889) has apparently been furnished to the Nawab of Radhanpur, and in this particular case no inconvenience need be anticipated. The Governor General in-Council directs me, however, to observe that in the absence of very special circumstances, copies of communications addressed to or received from the Government of India should not be sent to Native States. The usual practice is to convey the purport of the communications, using as far as possible the exact language, in which the orders of the Government of India are expressed. It is generally desirable to avoid explaining in detail the reasons upon which the orders are based, but such explanations are necessary at times and in this respect the discretion must be left to local authorities. I am to suggest that, if the Governor-in-Council has no objection, Political officers in Bombay Presidency

may receive instructions in accordance with the foregoing remarks." *

5. Chandod Jurisdiction.

Chānode (or Chandod) is a town (Kasba) situated on the banks of the Narbada river, and is a celebrated place of Hindu pilgrimage. It lies within the boundary of what was known as Rewa Kantha Agency, at a short distance from the territory belonging exclusively to Baroda. On the other side of Chandode is Mandwa, the residence of the Rana. The Rana belonged to an ancient Rajput family, and there is a good reason to believe % that he exercised independent jurisdiction on Chanode upto the close of the Mahomedan period in 1755 A.D. But the Gaekwad power overran Chanode, and established its own authority, the Rana retaining certain fiscal and manorial rights, with jurisdiction to enforce them.

In 1825, when the Mewassis were settled and placed under the control of the Political Agent of the Rewa Kantha, it was noted in the Gaekwad's Memorandum of Settlement that he and the Rana had each "half mal" in Chandode. For many years the expression was interpreted as meaning "concurrent jurisdiction," @ but eventually it became necessary that the respective rights of the Gaekwad and the Rana should be strictly defined. Different views on the subject had been held by successive Residents of Baroda on the one hand, and Political Agents, Rewa Kantha, on the other, but in 1854 the Resident Major Malcolm, and the Political Agent Major Wallace,

*Surval Case Sele. No. XI Vol. III
% Rasmala Vol. II Pp. 278 and 279
@ H.P.O. Sele XII "Chandod Case " P. 272.

concurred in a decision which was communicated to the Government by latter officer in his letters 278 of 1854 and 87 of 1855. This decision (the details are given in the following para) was approved by the Government of Bombay, and reported to the Court of Directors.

The Court of Directors, in despatch ~~of~~ 2 of 1856, paras 27 and 28 dissented from this decision.* It was believed by the Residents of this period till it was made clear to Mr. Melvill ~~ix~~ in 1878, that though the Court of Directors dissented Government of Bombay gave effect to the decision of Majors Malcolm and Wallace. But the Government of Bombay laid down that in fact, the Court of Directors reconsidered their dissent, on receiving Major Wallace's explanation (letter 158 of 1856)* and finally informed the Bombay Government that they had no reasons to doubt the propriety of the joint decision of Major Malcolm and Major Wallace, and would not therefore interfere with it. Unfortunately, as the Government of Bombay made it clear, this latter order was omitted to be conveyed to the Resident at Baroda, when they were conveyed to the Political Agent Rewakantha.

This decision then concurred in by the Resident of Baroda and the Political Agent Rewakantha approved by the Government of Bombay, and finally confirmed by the Court of Directors the Bombay Government said must be taken as a fixed point in dealing with the disputes. The decision was to be interpreted, it was said, but its correctness could not be discussed.

This village was therefore prominently before the Government

*H.P.O. Sel. XII Chanded Case P. 373.

and the Political authorities on account of the disputes arising out of a divided jurisdiction within its ^{limits} ~~limits~~ since the year 1844.

The respective rights of the contending parties in Chandode, as declared in the decision of Major Malcolm and Major Wallace might be summarised as follows:-

The Gaekwar's Rights%

- 1) Civil and Criminal Jurisdiction.
- 2) The Collection of customs.
- 3) The Collection of certain specified fees.
- 4) The right to receive Far Farmaish.

The Rana's Rights.%

- 1) Ownership of the town and lands .
- 2) Fees on all transfers of real property.
- 3) Escheat of all intestate property.
- 4) Sanction of refusal of adoptions.
- 5) Sanction of divorces.
- 6) Taxation of lands, trades and individuals.
- 7) Half share of fines imposed by the Gaekwad in cases of adultery, and "an independent power of proceeding, so that even should the Gaekwad omit to adjudicate in such cases, that would not bar the Rana's jurisdiction."

"All the privileges involved in the idea of Chandod being his property, which are not actually inconsistent with the specified privileges of His Highness the Gaekwad."

And further it was decided that any difference in regard to the exercise * of Criminal jurisdiction by the Gaekwad's Thandar^a or the Rana's Proprietary right % was to be decided by the Political Agent, in the Rewakantha in harmony with certain official notes @ by His Highness the Gaekwad^{ga} which preceded the Settlement of 1825 and with a certain paper of instructions £ given to a person who farmed the Gaekwad's rights in Chandode in 1827. These documents set forth the Gaekwad's rights in general terms, the way in which the Civil and Criminal cases were to be adjudicated, and offenders punished, the authorised court fees and stamps duties in Civil suits etc. &

The Bombay Government remarking over these documents in their decision No. 3491 dated 22nd July 1878 said, "As forming part of the record of this decision, it must be mentioned also that papers (were taken from the Gaekwad and the Rana showing in detail what rights each admitted the other to possess. To some slight extent these admissions may be regarded as supplementing the actual terms of the reports recording the decision.)

In spite of this clear definition of each other's rights and the Political Agent Rewa Katnha having been vested with authorities to decide disputed points, the Gaekwad Government had protested against decisions of Col. Barton in sixty one cases.)

*Para 6 of Major Wallace's letter 278 of 12th October 1854.

% Para 3 of his letter 87 of 1855.

@ Paras 7 and 8 of Mr. Melvill's Report 3695 of 1876.

£ Vide page 64 of the Printed Compilation of 1876.

& H.P.O. Sel XII Chandod Case P. 374

(Pages 61 to 63 of the compilation of 1876

) H.P.O. Sel XII Chandod Case P. 375.

In their resolution dated 22nd July 1878 the Bombay Government, when asked to opine on the position of His Highness the Gaekwad and the Rana of Mandwa had very clearly and analytically laid down their view on the situation as follows:-

"19. In 1825 the Government found they had to deal with the anomaly of two antagonistic authorities established in the same town. In 1854-55 they endeavoured to work the anomaly by confining each authority to a distinct field of jurisdiction and by giving the Political Agent, Rewakantha, power to decide to which field of jurisdiction any disputed matter might belong. Speaking generally the Gaekwad was affirmed in the right to taking customs, and in civil and criminal jurisdiction. The Rana was affirmed in revenue jurisdiction including taxations other than customs, and in the rights of a Chief as proprietor of the town.

"20.-It then became the natural object of each party, to magnify his jurisdiction at the expense of the other; but before long, the Mandwa State was attacked and the Rana's authority passed to the Political Agent of the Rewa Kantha.

"21. At the bottom of all the disputes which followed lies the Gaekwad's contention that his Civil and Criminal jurisdiction meant not only the hearing of the Civil suits and the trial of offenders, but the whole executive authority of a government under which theory the Rana became a mere private person. Though owner of the town and entitled to tax he was denied the powers which constitute the revenue jurisdiction of a government, and the powers which ordinarily

pertain to a municipality. For the enforcement of all his rights he was referred to the Gaekwad, in whom alone the public authority was said to be vested. Now this view of the relative position of the Gaekwad and the Rana was impracticable, certain to give trouble, and essentially at variance with the settlement of 1854-55. The intention of the Settlement had been to keep the two jurisdictions apart. The endeavour of the Gaekwad was to lay his jurisdiction on the top of the other.

"22. The confusion which followed was inevitable and the reason why this confusion with all its attendant evils lasted so many years, was because the Gaekwad was allowed by nearly every Resident to evade the provision in the settlement which had been devised for its correction namely that by which disputes about jurisdiction were to be decided by the Political Agent of the Rewakantha.

x

x

x

"25. In respect to the procedure to be observed in future, it is very important that Government should arrive at a clear understanding with the Gaekwad's Government, especially as the Political Officer there is now the Agent to the Governor General. The Agent (Mr. Melvill) proposes thus (See para 87 of his letter No. 3695 dated 6th June 1876):-

"The ^{course} ~~xxxx~~ I would propose for the future observance is that the Political Agent should investigate the disputes which may arise between the Gaekwad and Rana after he has obtained the concurrence of the Agent to the Governor General to his doing so in each case, and that the record of the enquiry when made, and the Political Agent's opinion thereon, should be forward to the Agent to the Governor General for his concurrence. If the

Agent to the Governor General concurs with the Political Agent that
or
an inquiry should be made ~~xxx~~ the decision should be enforced,
otherwise the case should be forwarded for the orders of the
Government . In this way it may be hoped that the interests of
both the Gaekwad and the Rana will be protected."

"26. To this proposed procedure the Governor-in-Council is
willing to accede. If possible the Political Agent should work
out any question that may arise in direct communication with the
Agent to the Governor General if he cannot arrive at a conclusion
satisfactory to himself and the Thakore, then, but not till then,
should he refer to Government."*

This clear injunction set at rest the controversy raging over
the position of the Darbar and the Rana in Chandode . The only
question that remained unsettled was of the Chanode Boundary.

Boundary Question.

The question to be determined was simply this - Did the exclu-
sive Civil and Criminal jurisdiction of the Gaekwad in Chanode
extend only over the plateau on which the town itself is situated
or did it extend over the town lands as well ?

Mr. J. King , the Special Settlement Officer who was entrusted to
draw the limits of Gaekwad's jurisdiction in Chanode, held in 1879
that the Gaekwad possessed civil and criminal jurisdiction merely ~~xxx~~
in the town itself% while Sir Madhavrao with whom Agent to the

concurrent
Governor General ~~concerned~~ on the other hand that the jurisdiction extended over the town land also. The Government of Bombay held "that Chanode has lands attached to it appears to be satisfactorily established, although this point also has in previous correspondence been contested." *

The Bombay Government stated again in ~~their~~ resolution dated 3rd October 1879, ^{on} ~~at~~ the Report of the Special Settlement Officer Mr. King and other correspondence on the subject that "the question is one of considerable difficulty. Different authorities have held different views. Many of the arguments advanced on either side are deserving of careful consideration, whilst others are remarkable rather for their ingenuity than for the conviction they carry with them" and pronounced their decision as follows:-

"On careful consideration of all the correspondence and papers on the subject His Excellency the Governor-in-council is of opinion that the balance of evidence, of arguments and of probability, is in favour of the view maintained by Sir Madhav Rao and supported by Mr. Melvill. He agrees with them in contention as to the interpretation to ~~the~~ placed upon the word Kasba, and in the inferences they draw from the passages in the documents and records quoted by them.

"Government consider accordingly that whilst ~~that~~ question is by no means entirely free from doubt, yet the weight of evidence and the balance of probability are in favour of the theory that the Gaekwad's exclusive civil and criminal jurisdiction is not

confined solely to the town itself of Chandod but embraces within its limits the land pertaining and attached to the town.

"For the reasons assigned by him, some of which are unquestionably of material importance, the Dewan of Baroda State proposes a compromise by virtue of which the Gaekwad's Government, whilst abandoning its claim to civil and criminal jurisdiction over the whole of the lands belonging to Chandod should be acknowledged to have such full jurisdiction in the limited portion marked off by a green line in the map accompanying his letter.*

"His Excellency the Governor-in-Council considers that on the whole this compromise is the best way of settling a very complicated question. It should therefore be accepted and acted upon%.

Here upon the demarcation of the boundary was entrusted to the Boundary Commissioner Major Warden, and the "Complicated question" came to an end.

**B. Boundary and other jurisdictional disputes
with other States.**

Among the disputes regarding the boundary and other jurisdiction with other Indian Native States there were three of them which figure prominently and they were with Junagadh, known as:-

- (1) Junagadh Zortalbi Prakaran.
- (2) Prachi and Prabhas Pattan, and
- (3) Gheer Boundary case.

*The map referred to can be seen in the printed volume on 'Chandod Case' No. XII of the Record Office, Baroda
% H.P.O. Sel. XII "Chandod Case" P. 417

1) Junagadh Zortalbi Prakaran.

This was a typical case of an Indian Native State of a medieval age in a way, where the whims of a Ruler of a State were the principles of taxation which used to be operated in unimaginable ways of exacting money from the people. In such case the British policy had been one of expediency and not of justice and fair play. It saw the sensitivity of an Indian Ruler to such rights as were claimed, and where they (British) were not losing anything they were shrewd enough to uphold these rights. This was true with regard to the nature of the taxation such as Zortalbi which was as claimed by the Baroda State ^{Horse tax} ~~was~~ "Ghoda Vero" in the beginning.

Again when there was any dispute with regard to the boundary or other jurisdiction between two Native States-and this would be clear when all the three disputes with Junagadh are gone through-the British policy appeared to have rested on the major principles viz. Firstly, when the dispute was between a bigger and a smaller State, the British Government was inclined to give their verdict in favour of the latter as far as possible. Secondly, when there was a dispute between two States, ruled by Hindu and Muslim respectively, the decision of the British Government in a lesser or a greater degree favoured the latter. This policy of the British Government was a corrolary of one which was followed by them in the British India where both Indian National Congress and the All India Muslim League which was their creation to combat the rising national tide against the domination of the British in India were pitted against each other.

Now reverting to the dispute proper. The dispute between the Baroda and Junagadh revolved round a group of 22 villages said

to be formerly of the Jaitpur Taluka in Kathiawar, on which Junagadh claimed the right to levy Zortalbi, a kind of tax and this was disputed by Baroda Government. When this dispute is considered it will be worthwhile to note Col. Lester's decision in this dispute. Col. Lester was appointed as a Commissioner to settle disputes between Junagadh and Baroda by the Government of Bombay in 1867. Col. Lester decided the question in Junagadh's favour. But this decision of his was reversed by the Bombay Government later on, on Baroda's representation. Again on Junagadh's appeal to the Secretary of State for India, Lord Salisbury reversed the decision of the Bombay Government and upheld Col. Lester's decision. These summer saults of British Government's decision is a marked feature of this dispute. Even on Baroda Government's appeal to reconsider the case, the then Secretary of State Lord Cranbrook, who had succeeded Lord Salisbury due to the change of Ministry in England, did not think it necessary to interfere with the decision arrived at by his predecessor and this is how the case was wound up.

In considering the history of the case in short, we might proceed with Col. Lester's words, "This case appears on the Schedule (Capt. Barr's letter dated 16th August 1858) of Junagadh claims on Baroda ----left by the Commission of 1857 and was accordingly taken up in due course by me.

"2. The claim springs from a disputed claim to the proprietorship of certain villages (22 in number) between the Gaekwad and certain Katty Chiefs, which originated so far back as A.D. 1813 and which was finally disposed off by a Panchayat in A.D. 1830"* Thereafter

Col. Lester traced the history in brief of Zortalbi before he took up the question as to what was the decision of the Panchayat and what were the objections preferred against it and summarised the Junagadh's case thus:-

"1.They (Junagadh) State that up to A.D. 1813 Junagadh received the Zortalbi from these 22 villages.

"2. That the villages have been seized in that year by the Gaekwad Government, Junagadh was deprived of its accustomed Zortalbi, the same having been appropriated by the Umrelly authorities.

"3. That the Junagadh State when the Panchayat was settling matters between the Gaekwar and the Katties as related to these and other villages, claimed Zortalbi share in them.

"4. That in settling the claims of the Katties, the Panchayat found that each village was subject to a Junagadh Zortalbi payment in former times, and fixed new rates at ^{which} ~~this~~ this levy should henceforth be made.

"5. That the Gaekwad in the purwanahs he gave the Chiefs after the settlement acknowledges the Junagadh Zortalbi as an integral portion of the Jumma fixed on these villages by the Panchayat.

"6. That the Gaekwad instead of paying Junagadh this Zortalbi (The payment of which ~~is~~ was placed in trust in his hand by reason of the peculiar form of settlement by compromise which the Panchayat effected between the Gaekwad and the Katties) has continued to appropriate it from the date of the Panchayat's settlement."*

In the 7th parag he gave a list of 22 villages on which it claimed Zortalbi as decided by the Panchayat in 1830. The total amount was put to Rs. 2892½. Junagadh also complained that in A.D. 1850 "it urged the Political Agent Kathiawar and since then it is urging to portect its right but with no practical results."

On the other hand the Baroda's position was:-

"1. That these 22 villages belonged to the Amreli Mahal Khata and were not Mulukgiri that is were not tributary villages.

"2. That Junagadh had ceded its Zortalbi Jumabundi in these villages to Baroda by a Kalumbandi of 12 articles in the year 1813 A.D.

"3. That the Panchayat of A.D. 1830 being satisfied with this had confirred the same to Amreli.

"4. That Junagadh had no claim to the Zortalbi from these 22 villages as the names are not given in any of the reports and statements of Political officers who have written on Zortalbi from Capt. Barnwall, the first Political Agent, Kathiawar, downwards.

"5. That the levy was in fact Ghora Vero and not Zortalbi, the Panchayat being misnamed it Zortalbi and that the Ghora Vero was a levy which appertained to the Amreli Mahal.

"6. That Mr. Blane (the then Political Agent ,Kathiawar, after Barnwall) not having called for this Zortalbi showed that he understood the Zortalbi to be an Amreli right.

"7. That the claim was barred by the Gaekwad Statute of limitation, commonly called the "Punch Kalmee" which provides that undisturbed and undisputed possession of 25 years is a bar to all claim.*

Col. Lester then went on weighing each evidence produced by both sides and came to this final conclusion. He said. "81. The plaintiffs' (Junagadh's) claim and the grounds on which it is made are arranged under 8 separate heads.

"82. Five of these are undisputed by the Defendants (Baroda) namely,

"1). That Junagadh has not received its Zortalbi from these 22 villages since A.D. 1813, Amreli having received it.

"2). That the Panchayat of A.D. 1830 found that each village was subject to a Junagadh Zortalbi payment in former times, and that the Panchayat fixed new rates at which this levy should hence forth be made.

"3). That the Gaekwad acknowledged the Junagadh Zortalbi as having the portion of the ~~Amreli~~ Jumma fixed on these villages by the Panchayat, in his Purwanahs to the Chiefs.

"4). That the villages rightly named by the plaintiff together with the amount payable by each on account of Zortalbi.

"5. That the subject was discussed and referred to Amreli between A.D. 1852 and 1857, and was eventually investigated by the Commission of A.D. 1857, but not settled on that occasion."*

The dispute then was narrowed to the following points only.

*1. That these villages were not Mulukgiri i e. were not tributary villages but belonged to the Amreli Mahals.

"2. Baroda denies that this Zortalbi was placed in his hands by the Panchayat in trust for Junagadh and states that on the contrary, that it was a Baroda State right, which had become

so by a cession made of this Zortalbi by Junagadh in A.D. 1813, by virtue of a Kalambandi of 12 articles then written, and that the Panchayat on this account confirmed it to Baroda.

"3. That the claim is barred by reason of undisturbed possession extending over a period of more than 25 years, which is a period allowed under the Gaekwad's limitation Statute of A.D. 1854.*

After a detailed consideration of above three heads he concluded "I am sensible that the case is not without its difficulties, owing to the lapse of time, but I think the weight of the evidence is decidedly in favour of Junagadh claim% and he made the undermentioned points clear, which emerged out of the consideration.

1. That these 22 villages were not Crown possession of Baroda, at the time of Walker's Settlement, but that they belonged to Jetpur Katty Chiefs, as a portion of the Jetpur Taluka and that these Chiefs were in that year cultivating the lands and receiving the revenues of these 22 villages and continued to do so upto A.D. 1813, when they were forcibly and unjustly deprived of them by Amreli.

2. Junagadh had a Zortalbi interest in them at the time of Walker's Settlement which continued unimpaired upto A.D. 1813, and that this was distinct from the Jumma which Amreli was then recovering from them.

3. Col. Lester stated that Baroda Government failed to prove that the Zortalbi was ever ceded to her.

4. Junagadh having proved the possession at the time of Walker's Settlement and the subsequent cession not having been proved, the Junagadh right is consequently secured to it under the British Guarantee.

5. And finally that nothing which had been adduced in evidence could impair that right.

"My decision therefore, is that Junagadh is entitled to Zortalbi from each and all of these 22 villages according to the rates fixed by the Panchayat in A.D. 1830 aggregating Rs. 2892½ yearly.

"That it is entitled to arrears of Zortalbi from these 22 villages from A.D. 1857 inclusive at the above rate, this amount however, being subject to a deduction in favour of Amreli of one fourth for cost of collection.

"The award in arrears is Rs. 28925 less 1/4th or Rs. 7231-4-0 leaving a balance of Rs. 21693-12-0 in favour of Junagadh."*

We have gone in details of this ^{decision} ~~evidence~~ of Col. Lester, because the Secretary of State confirmed it and the final settlement of the question was effected on the lines mentioned therein.

However, Bombay Government, seeing the validity of the Baroda's evidences, reversed this decision, which in turn prompted Junagadh to appeal to the Secretary of State for India. On 28th February 1877, after ten years from the pronouncement of Col. Lester's decision. British Government pronounced its decision thus:-

"6. There are many circumstances connected with the Settlement ~~which~~ which has been effected of the numerous questions in dispute between the States of Baroda and Joonagadh, which give the latter State a claim to generous treatment in any doubtful case. But without reference to these considerations, and

having regard only to the merits of the claim now under discussion, I am constrained to reverse the decision of the Bombay Government against which the Nawab of Joonagadh has appealed, and to direct that effect be given to Lieut. Col. Lester's judgement of the 26th February 1867. Having regard, however, to the length of time which the Nawab allowed to elapse before submitting to me his appeal from the orders of the Government, I have decided that arrears should not be allowed to His Highness from the date of those orders to that of his appeal."*

Raja Sir T. Madhavrao, dissatisfied with the decision requested Mr. Melvill, the Agent to the Governor General in his letter of 9th November 1877 to resubmit the detailed Memorandum of Appeal. In it he stated, "The result is that strong grounds are found for submission to the British Government in view to a reconsideration of the case. Placed as I am by the British Government in my present position and circumstances, that Government has a right to expect that I should not shrink from the duty of conserving the legitimate interests of His Highness the young Gaekwad during his minority."% In an eloquent manner he brought out the points in favour of Baroda that

- (a) Col. Lester reopened the settled questions while he was only appointed to settle some boundary disputes and hence his decision unwarranted;
- (b) Lester mixed up Jeitpur and Cheetul which were different Talukas.

*H.P.O. "Junagadh Zortalbi Claim" Selection No. V Pp. 38-39

- (c) He also omitted to discuss the role of Desai (or hereditary revenue officers) of the Amreli purgunah, who enjoyed Dasturi (official remuneration) from the ancient times from these 22 villages.
- (d) The distinction between Mulkgiri Jamabandi and the Mahal Jamabandi was unnoticed by Col. Lester.
- (e) Col. Lester's 'trust' theory was erroneous.
- (f) The peculiar form of settlement, which he spoke of had nothing peculiar in it. But all these clarifications did not get the decision reconsidered in Baroda's favour and on 26th July 1879 Mr. Melvill informed Sir Madhav Rao that the Secretary of State "after very careful consideration" did not see his way to change the decision passed by his predecessor and Baroda lost an important right.

(2) Prachi and Prabhas Pattan.

Prachi and Prabhas Pattan are two places of religious veneration on the part of the Hindus in Kathiawar. Pattan is the name of one of the Mahals of Junaghadh in Kathiawar. It is called Prabhas Pattan from its having been the seat of the Prabhas K^hsetra.* It has sometimes been called Somnath Pattan% on account of ancient temple of Somnath Mahadev of historic fame standing there upto the present day though in ruins uptill now, however, the renovation has been undertaken and the work is still going on.

The name Prachi is collectively given to the river Saraswati, the Kund (a sacred bathing place in the vicinity of the temple) and

* H.P.O. 'Disputes Relating to Prachi Etc.' Selection No. XXVIII

% " " " P.144.
P.550

---- Madhavraiji (the name of lord Kirshna) "Prachi Kund about 15 miles east of Pattanis situated on the banks of Saraswati at the point where this reiver takes a turn towards the East and hence is called Prachi" (The East). *

Pilgrims from Kathiawar, Gujarat and other parts of India go to Prachi for pilgrimage, which is not considered complete unless both Prachi and the temple of Somnath are visited.

In the year 1813, an arrangement was entered into by Vithalrao Dewaji with the Junagadh State, with the cognisance of the British Government, in which among other things it was agreed that the temple of Somnath at Pattan, being a sacred Hindu Shrine, should be put under the protection of a Hindu Ruler. The first Article of the Agreement ran as follows:-

"Article 1. The Fort of Prabhas Pattan is a seat of Hindu religion, Therefore in the place, from this time no sacrilege shall take place. No animal shall be killed and the tax which used to be levied before from the Hindu pilgrims shall not be levied from them hereafter. It shall be abolished. A Sarkari karkun shall remain at Pattan to see that the sanctity of the Devas-thans (temples) and of the Trithas (Sacred strems) is preserved. A Dhorajee Hundi of Korees ,(the currency of the time) 2000 shall be yearly given for the miantenance of the Karkun and for defraying the temple expenses. Men of Jamadar Umar bin Muhamad Mukhasan shall remain at Pattan under the control of the Sarkari Karkun." %

* H.P.O. "Disputes relating to certain matters connected with Prachi and Prabhas Pattan" Selection No. XXVIII P. 552 551.
The description of Prachi from Campbell's Gazetteer, P.630 Vol. VII
% " " " P. 118

@ Bracketed words are mine

The levying of tax from Pilgrims was thus peremptorily put ~~from~~ ~~Ridgway~~ stop to by the above agreement, and things presumably went on smoothly till December 1830, when the first complaint of a tax having been levied from the pilgrims by Junagadh came up before the Baroda Government. The tax was returned on protest from Baroda. However, it had been subsequently exacted on various occasions, as can be seen from the vernacular correspondence on the subject and returned to the parties through the Gaekwad's officials at Amreli.

In the year 1866, Junagadh for the first time remonstrated against the Gaekwad's officials calling Prabhas Kshetra as "મગધ" (which meant belonging to Baroda) and the Assistant Resident, Amreli, interdicted these officials from adopting the style.*

With regard to the refund of the tax the Junagadh Darbar assumed an attitude of evading, nay of protesting. They argued that the tax levied was not a pilgrim tax but a chilo (transit due) when the ~~the~~ claim for refund % of tax to one Sadashiv Bawa was made Col. Anderson, P.A. Kathiawar viewed the levy of the tax as one for protecting the lieves and property of the Pilgrims.@. The Political Agency tabulated certain figures to show that the tax levied by Junagadh was mainly for the maintenance of medical and police help to pilgrims, but as Col. Jackson, Assistant Agent to the Governor General at Baroda aptly remarked that "the spirit of the arrangement of 1813 will thereby (levy of tax) be defeated.£

*Selection No.	XXVIII	P. 118.35
%	"	P. 32
@	"	P. 45
£	"	P. 84

By a letter No. 245, dated 10th October 1885, the Assistant Agent to the Governor General suggested that the early settlement of the dispute between Amreli and Junagadh was very desirable and to prevent any unseemly quarrel in future, the following should be decided:-

- "(1) Have the Baroda officials any right to be exempted from the imposition by Ju[^]agadh of new taxes at Pattan and Prachi ?
- "(2) If they have any right how much of it is founded on the Kalambandi of 1813 and how much on old custom ?
- " (3) What authority has the Gaekwad in Prachi ?" *

While on this question Baroda took the stand on the Kalambandi of 1813, the Political Agent, Kathiawar hinted that Junagadh Darbar was prepared to accept the arrangement of 1877 of Mr. Peile that officials of British as well as of Baroda Governments should not be taxed ** and Baroda's claim over pilgrim dues at Prachi could not be held as Prachi was not mentioned in the Kalambandi of 1813.

Junagadh Government thereupon made a request to place the question before the Government of Bombay or India and desired following points to be settled.

- (1) In respect of bathing fees at Prachi kund.
- (2) In respect of ~~bath~~ census operations at Prachi and Somnath Patan.
- (3) In respect of action of Kodinar Vahivatdar in taking depositions of people in the Dharamshal at Somnath. %

Over and above these complaints of sacrilegious acts committed by Mahomedans in Prabhas Pattan were lodged with Baroda Government by

the people from time to time. The Chief complaints were invariably with regard to the construction of a Musjid or sembrance of it near temples, fishing in the river Triveni, mutilating idols, cutting trees held in veneration by the Hindus and killing cows and opening liquor shops in the vicinity of the w locality. Baroda Government in its letter to the Resident desired that officers from both sides should investigate the cases, but Junagadh ignored the suggestion it seems.

Meanwhile Bombay Government's decision * which was given and was favouring Junagadh was upheld by the Government of India regarding claims of Baroda Government and intimated Baroda Darbar that official advocacy of the cause of the Hindu subject of Junagadh by Baroda could not be recognised. But the question did not come to any finality till 1892, when the Residency communicated the substance of the Resolution of the Government of Bombay whereby it was declared that Baroda could not interfere in the dominions and possessions of the Junagadh State, and that "Prachi Kund and Prabhas Pattan were within these dominions and subject to the sovereignty of Junagadh. Neither as part of Amreli nor of Kodinar can the Baroda Darbar claim these localities as under its jurisdiction or sovereignty." %

The Government of Bombay decided that:-

"Native States of India are uniformly subject to one Imperial jurisdiction and protection and the superior authority in Kathiawar is vested in the British Government, any intervention, therefore, by Baroda in matters affecting the internal administration, of the State of the leading Chief of Kathiawar, more

especially within the sphere of "these delicate questions which concerns the religious disputes of the Hindu and Mohemedan communities cannot be allowed (Government of India Resolution.) "The Governor of Bombay in Council is of opinion that the case is covered by their letter of instructions, dated the 3rd May 1820, and in the words of Mr. Mount Sturt^A Elphinstone, the conduct of the Junagadh State, in respect to the treatment of its Hindu subjects at Prabhas Pattan is no concern of the Gaekwar unless we call for his aid ."*

This decision was upheld by the Government of India.

However, some of the Baroda officials continued using the Kund even after this decision and of this, in 1893, Agent to the Governor General took the serious view. The Junagadh authorities were vigilant and watchful with regard to these bathing fees and exacted them even from Shrimant Mbalsabai Gaekwad, widow of the ex-Gaekwad Malharrao. On Baroda's representation to the Agent to the Governor General of this incident, the latter promised that he would endeavour for the arrangement that the members of His Highness the Gaekwad's family may be exempted from the duty on notice being given of an intended pilgrimage to Prachi but nothing further can be done.

Baroda appeared to have made another effort for a reconsideration of the decision in its favour. (Vide Letter No. 5344 dated 13th March 1893)% . It maintained in this letter that the aspect of the case in 1892 when the Government of Bombay gave its decision was, as had been distinctly said, between two Native States "subject to one Imperial

*Selection No. XXVIII P. 522.
% " " P. 549

jurisdiction and protection," and not as between a Suzerain State and its tributary with the British Government as the Paramount Power, although in 1820, when the management of the Gaekwad's tributaries in Kathiawar was transferred by him to the British Government it was specially enjoined that, care must be taken in all transactions with the tributaries to maintain the remembrance that his (His Highness the Gaekwad's) rights still exist."*

On this representation the Government of India refused to make any alteration with the result that Baroda appealed to the Secretary of State, who in turn did not find any reason to entertain Baroda's appeal (Vide Letter No. 8842 dated 11th July 1896 of the Resident.)%

One of the important features of this case was the distinct method of sending the memorials and form of appeals to His Majesty's Secretary of State, which was laid down by the Government of India. The Baroda Government was informed that in future the appeals must be in proper Memorial form.@ and signed by His Highness the Gaekwad himself on each sheet i.e. each leaf, without which appeals to that authority would not be forwarded.

There was still another phase of this dispute with Junagadh which related to the claim of Gaekwad's Government to possess a right to appoint a worshipper to Somnath Mahadeo in Prabhas Pattan, which was contended by the Junagadh State. It is an interesting story while at the same time important one as in it the interpretation of the Settlement and decision of Government of India of 1896 was required to be invoked.

*. Selection No. XXVIII P. 576
%. " " Pp. 618-677 B
@ " " P. 616

invoked which may be narrated here.

One Haxi Vashdev was appointed Pujari (worshipper) of ----- Shri Somnath Mahadeo by Baroda Government. He died in 1898 , leaving a son Jatashanker and a widow Bai Maya, who was the step-mother of the former. Jatashanker moved the Kodinar authorities of the Gaekwad Government for appointing him in his father's place and his son Sakarlal his successor as Chowridhar. On being asked by the Kodinar authorities whether he would act according to the agreement passed by his father, he refused point blank. The widow, however, appeared to be willing to act according to the agreement and she applied that she should be allowed to appoint a Pujari on her behalf.

Jatashankar, having the keys of the temple with him, continued to work as Pujari without waiting for the permission of His Highness' Government and managed to get the support of the Junagadh State. He was asked to relinquish his charge till his confirmation by the Baroda State, but to no purpose.

As the result of the general dispute between Jatashankar and his step-mother, the Junagadh Darbar intended to place the temple under attachment. On hearing of this, the Aval Karkun of Kodinar went , under orders from the Naib Suba, to the temple with some Police guard and posted notices on the walls thereof. As this action was improper, the Suba at once wired the Aval Karkun to leave the place and withdraw the police-guard. Immediately after the departure of Aval Karkun, the Pattan (Junagadh) Vahivatdar went to the temple, attached Government property and placed a Japti Karkun, who handed over the attached Government property to Jatashankar and allowed him to do worship, etc.

Soon after the Junagadh authorities complained against the action of the Baroda Government's Kodinar officials to the Political Agent, Kathiawar who referred the matter to the Resident at Baroda with the remark that the appointment of the Pujari by Junagadh seemed appropriate and his succession might be accepted by the Baroda Government as the Kalambandi of A.D. 1813, had been held to be a dead-letter.*

The interference of Junagadh was, in the meanwhile, brought to the notice of the Assistant Resident, Amreli, by the Suba, who arranged for the attachment being raised. But Jatashanker continued to do the Puja.

The main contention in the case was the right of His Highness's Government to appoint a Pujari. Junagadh contended that as a sovereign authority in Pattan the nomination by that Darbar of the Pujari must be accepted by the Baroda State. Baroda Government urged that the right in question belonged to them, as under the Kalambandi of 1813, the management of the temple was vested in them. The said Kalambandi was not a dead letter as supposed by the Political Agent, Kathiawar. In accordance with the terms thereof, the Baroda Government said, Junagadh still paid to His Highness' Government annually 2000 korees towards the expenses of Mehta and the temple, and the other articles of the same in regard to Kodinar and Amreli were still in force. The Government of India had only modified the Kalambandi, in the Prachi Prabhas controversy, to the extent that His Highness' Government cannot officially advocate the cause of all the Hindu subjects of

*H.P.O. From a Representation dated 15-9-12.' Pp. 39-40

Junagadh, but the document was not rendered null and void. Moreover, the claim to the post of the worshipper did not constitute a case of succession that could be decided by the Junagadh Courts in the exercise of their Civil Jurisdiction, as the post was not a hereditary one. It was purely a case of appointing a fit man to the vacant post and as such, it fell within the cognizance of the authority that weild^{ed} the management of the temple i.e. His Highness' Government.

On Baroda Government pressing this view of the matter, the Residency referred the question to the Government of India, who agreeing with the Government of Bombay, held that the claim of His Highness' Government to have a voice in the patronage of the holy places at Pattan in virtue of the agreement of 1813, might be recognised, but that the claim under controversy being one relating private rights and property, should be established through the Courts of the Junagadh State.

It was pointed out in reply* that the right of management of holy shrines at Pattan was vested in Baroda Darbar's Government not as a private owner or manager but as a State that possessed Sovereign right in 1813. The right was obtained by a solemn document between the two States in their public capacity. It was, therefore, not a private right. Any dispute arising out of that solemn document between the two States was not a subject of adjudication by the tribunals of either States, but required disposal at the hands of an independent authority, i.e. the British Government. The case, therefore, required a settlement by political correspondence and not by filing a suit in the Junagadh

*H.P.O. 'From a Representation dated 15-9-12.' Pp.39-40.

Court. The Resident was, therefore, requested to submit the matter again to Government for reconsideration, but he appears to have refused to do so.

The matter, thereupon, was referred to the Department concerned by the Baroda Government for remarks, on which they intimated that "if the decision of the Government of India was final, our right of selecting a worshipper became merely a nominal one as it would be competent for the Junagadh Courts to adjudicate upon the claims of any other claimant who might come forward." They, therefore, suggested that the allowance of Rs. 80/- British P.A. paid by His Highness' Government to Pujari for the worship of Shri Somnath Mahadeo might be stopped. Hereupon, the opinion of the Legal Remembrancer of his Government was invited by the Baroda Darbar as to whether there were strong grounds for the institution of a suit in Junagadh Courts by His Highness' Government. That Officer, accordingly, went through the papers of the case and opined that there was some misapprehension as regards the decision of the Government of India. That decision meant, he said, that if there was a dispute between two individuals claiming the office of Pujari, as in the case under advertence between Jatashanker and his step-mother, it could be decided only by the Junagadh Civil Court, and that if the nominee of His Highness' Government for the Pujari's post was ousted in the Civil Court, they might cause an appeal to be preferred to the Political Agent Kathiawar and to the Government of India. It did not mean that His Highness the Maharaja should sue the Nawab of Junagadh in the Junagadh Court to establish his right to appoint a Pujari. After collecting the further

*H.P.O. 'From a Representation dated 15-9-12' P.41.

information, however, he came to the conclusion that the office of the Pujari was hereditary, subject to the removal of any particular incumbent on ground of disqualification, misconduct etc; that there was no such case then before His Highness' Government; that Jatashankar having become insane, his son, Sakarlal, the rightful heir was the Pujari, that there was no question of removing Sakarlal; that Baroda Government claimed the right of recognising and registering each new Pujari and paid an allowance of Rs. 80/- p.a. to him; that the allowance was stopped since Jatashankar proved refractory and his step-mother opposed his right and sought Baroda Government's help; that Sakarlal was willing to submit to the Gaekwad Government's authority; that if he came to us and applied for registration, the Baroda Government's local officer should entertain his application, register his name and grant him the allowance of Rs. 80 p.a. for the future,* subject to good behaviour; that Baroda Government might thus re-assert its right and keep up its exercise; and that the Government of India having recognised the right of the Baroda Government to a voice in the management of the affairs of the temple, nothing further remained to be done in the matter.

These findings of the Legal Remembrancer and his view were approved by the Maharaja, who issued necessary instructions to the Department concerned and thus the case was struck off from the file of pending political cases.

(3) The Gheer Boundary Case. %

This was a case of territorial and boundary dispute between the States of Baroda and Joonagadh.

* H.P.O. 'From a Representation date 15-9-12' P. 41 A.
% H.P.O. Selection No. IX 24286 'Gheer Case.'

The disputed tract comprised the portion of the mountainous region called the Gheer in Kathiawar.

The land in dispute was about 300 square miles.*

This case was decided by Col. J. F. Lester, Commissioner for Boundary Settlements between Baroda and Junagadh States, in 1870.

The physical aspect and the configuration of the tract were described in the following extract from Captain Jacob's (afterwards Major-General Sir Le Grand Jacob, K.C.S.I.) report, which was the only authority available on the subject.

"This is a remarkable formation, worthy of a more detailed notice than the limits of this report permit. It may be described as a succession of ridges and hills covered with forest tress and Jungles.%

" x x x This extensive area is divided by two main valleys, running north and south, into which, from numerous hills and hillocks pour a vast number of streamlets that create the Singora and Raval rivers, which enter the sea near Korenar and Sunikra. The main line of communication are through these valleys. The Gheer has three other roads through it, but no cross communication save by difficult foot paths, * * During half the year, i.e. from the commencement of the monsoon to December, it is dangerous to reside in, owing to the Malaria produced by its extensive jungle and the poisonous quality of its waters . * * After the unhealthy months are over, droves of cattle frequent the Gheer, and temporary hemlets are created, inhabited chiefly by charans, of

these a few are sometimes tempted to remain throughout the year, but it cannot be said to have any fixed race of inhabitants. Even in the dry season, few can drink of its waters for many days together without affections of the stomach and otherwise suffering. Water and forage are retained here during seasons of draught after the plains have become dried up and in the nearest seasons, the cattle, from many miles round, here find enough to eke out a couple of month's subsistence, when all elsewhere is barren and dry.*

The disputed tract was surrounded by the Baroda paragra^{nahs}phs of Dhari and Danturwar (north) and Kodinar (south), and the Junagadh paraganahs of Cheylra (West) and Oonah (South-east).

Junagadh claimed the tract in dispute as belonging to its parganahs of Cheylra and Oonah. Baroda claimed it as belonging to its paraganahs of Dhari, Danturwar, and Kodinar.

Col. Lester had divided the case into two parts, namely -

- 1) The case of Kathiawari Gheer.
- 2) The case of Kodinari Gheer.

The portion of the Gheer claimed as belonging to the parganahs of Dhari and Danturwar was called by Col. Lester the Kathiawari Gheer.

The Kodinari Gheer is that portion of the tract in dispute which is claimed by Baroda as forming part of the Baroda Parganah of Kodinar.

The Gheer claimed by Kodinar is in Sorath. Sorath is one of the ten divisions into which the whole of the Kathiawar Peninsula is divided.

divided.

Junagadh is in Soruth, in which division ~~of~~ Kodinar also lies. In short, both Junagadh and Kodinar are in Soruth.

The pergunahs of Dhari and Danturwar are in that division of the Kathiawar peninsula which is called Kathiawar proper or simply Kathiawar. The Gheer claimed by the pergunahs of Dhari and Danturwar is claimed as being situated in this division, namely, in Kathiawar.

The portions of the pergunahs of Dhari and Danturwar concerned in this dispute have been formed of the possessions of the Kathi proprietors of Surrusia, Cheehai, and Danturwar.

With regard to Kathiawari Gheer, Col. Lester stated the issue as follows:-

"The question then for settlement is not so much whether this or that village, or neys, within that area, belongs to Junagadh or to Baroda, and whether that large tract of country which Baroda calls the 'Kathiawari Gheer' is wholly or in part, in Kathiawar proper, whether it was so at the date of Col. Walker's settlement, and whether it did actually belong in various proportions to the Girassias above named."*

Col. Lester thus raised the question whether there was any Gheer in Kathiawar or not, for, he observed, if there was no Gheer in Kathiawar proper, the pergunahs of Dhari and Danturwar, which were in that division of the Kathiawar peninsula could have no Gheer.

The whole of Col. Lester's decision hinged on this issue only

and to this issue Baroda Government took strong objection and submitted that the issue raised by Col. Lester did not meet the requirements of the case, in as much as, it involved a consideration of what were the exact definitions of Sorath and Kathiawar, and not of the rights of the parties as actually proved by evidence, whether the same be situated in the so called division of Sorath or of Kathiawar. Moreover Col. Lester was influenced, the Baroda Government stated, in dealing with the whole case by a preformed but erroneous opinion, though he, no doubt, believed it to be sound.

Col. Lester decided the issue he had raised, in the negative. He decided that there was no Gheer in Kathiawar proper, that all the Gheer was in Sorath, and that Sorath being only a synonym for Junagadh, all the Gheer belonged to Junagadh or forms a portion of the territory of that State.*

With regard to Kodinari Gheer, Col. Lester had divided the area between Eastern and Western quadrilateral and gave judgment on the evidence into two parts.

With regard to Eastern quadrilateral he decided, "To consider, however that such places within it, as have been actually in the possession of Baroda since 1838-40, it would be inexpedient now to call on Baroda to give up. For though they were in Junagadh territory, yet Junagadh derived no advantage from them. Baroda on the other hand, has done much for them, by populating them and bringing the land under cultivation. A generation has sprung up at these places who have learnt to consider themselves subject of Baroda.

"My decision therefore is that such places shall continue under Baroda on the Government of that State agreeing to pay Junagadh a fitting compensation for the loss." *

The similar decision was pronounced for the Western quadrilateral too.

Col.Lester's decision about the Gheer case came as a surprise to Baroda Government as stated by them in their appeal to the Government of India for a fresh inquiry into this dispute (Vide their letter dated 22nd March 1883) "The decision took the Government of Baroda by surprise as it transferred to the State of Junagadh bodily a large tract of country, which upto that date had known no other master than the Gaekwad.%

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"~~Inde~~ I need not say more to show how deeply dissatisfied the Baroda Government has been by the decision of Col. Lester. That Government has not ~~akk~~ accepted it to this day." @

Making few remarks on the question, whether or not the case was open for the intervention of higher authorities, in the letter quoted above the Baroda Government stated thus:

Firstly, In reply to an application made by Malharrao to the Resident, Col. Phayre, for certain papers alluded to in col.Lester's decision to enable him to submit a representation to the British Government he was informed that the condition of the Boundary Commissioner's appointment was that his decision should be final.

To this Baroda Government said they were not able to find any record as to the consent by Baroda Darbar being given, for the finality of the Boundary Commissioner's decision.

Again the Baroda Government pointed out that this dispute was first of all submitted to Col. Rigby in 1864, who was appointed for the purpose. But after having done some work, he left, and Col. Lester, who was appointed his successor took up and decided the case in 1870.

The condition, therefore, that the decision of the Commissioner should be final was violated; as a decision passed by Col. Rigby on a part of the case was set aside by Col. Lester.

Secondly, This Gheer case involved a very large tract of territory, that it was purely a judicial case between party and party there being nothing of a political nature in it; and that it involved a mass of evidence which it required a judicially trained mind to weigh and deduce conclusion from.

However, Baroda Government was quick to remarks, "It will not detract from his (Lester's) other high merits to say that Col. Lester had little or no experience and training required in dealing with such cases!"*

Thirdly, pointing to the delay in submitting the representation for reconsideration, nearly after thirteen years of the date of announcement of the decision of Col. Lester the Dewan stated that soon after the decision in April 1870, Maharaja Khanderao died. The decision itself was passed after 7 years of investigation and was

therefore, voluminous. The language of the decision viz. English was unknown to the officers of Khanderao Maharaj and which required to be translated in vernacular. During Malharao's time, who, however, did protest against the decision, ~~and~~ promised to submit a full representation, on being furnished with certain papers; but the troublous character of his short reign did not admit of his doing anything. And thus it fell to His Highness Sayajirao the III to take up the matter.

Fourthly, the Dewan, Kazi Shahbuddin contended the grounds of Col. Lester's decision and pointed out that:-

"(a) Col. Lester has attached undue weight to a stray sentence which occurs in a general report which Col. Walker made in 1808, after a short sojourn in Kathiawar. The sentence is "The large range of mountains in Soruth is called Gheer." Col. Lester has erred in concluding from this casual sentence that the whole mountaineous tract ~~is~~ dispute belongs to Junagadh.

"(b). Col. Lester has erred in considering as useless the Report of Col. Jacob of 1842, and the map attached to it, both of which furnish important evidence on the subject matter of dispute.

"(c) Col. Lester is wrong in not taking into consideration the limits of the Baroda Districts in Kathiawar, shown in an old map compiled from surveys made by officers of the Quarter Master-General's Department. Soon after the establishment of the Political Agency in Kathiawar.

"(d) Col. Lester has erred in attaching no weight to official communications addressed by Political Officers in Kathiawar ~~to~~ to the Gaekwad's authorities, which support the Gaekwad's rights.

"(e) He has also similarly erred in regard to official communications

communications addressed by Political officers in Kathiawar to the Gaekwad's authorities, which support the Gaekwad's rights.

"(e) He has also similarly erred in regard to official communications of like purport addressed by Junagadh itself to political officers.

"(f). He has erred in not attaching weight to Baroda's long and actual possession.

"(g). He has exceeded his authority in awarding to Junagadh territory in excess of what that State itself had laid claim to before the Political authorities in Kathiawar on the previous occasions.

"(h) Col. Lester is wrong in awarding to Junagadh a portion of the Gheer which was adjudged by a competent tribunal to certain girasias of Baroda in a case of dispute between those Girassias and the Government of Baroda." *

Fifthly, in the words of the Dewan, "to rebut the evidence alluded to above Joonagarh has, as will be seen from Col. Lester's decision itself, and the record of the case, produced very little -----evidence . Strange to say, however, that Col. Lester has taken upon himself the task of ^{ci}critisising the evidence of Baroda, instead of calling upon Joonagarh to rebut or controvert it. I do not mean to say that it was not competent to the Commissioner to scrutinise and sift the evidence in the case and determine^d what weight should be attached to it. But I submit that the duty of the Commissioner was to scrutinise and estimate the value of the evidence produced by both the parties relatively, and to determine which preponderated, and ^{to} what extent.

"In my humble opinion Col. Lester has failed to do this. He appears to have regarded Baroda as the wrong party and has devoted by far the greatest portion of his judgement in explaining away, in his own way, the evidence produced by it, evidence which, if placed side by side with what little Joonagarh has produced before a Judicial Tribunal, will, I feel sure, be regarded as ample to fully establish the rights of the Baroda Government." *

Baroda Government's request ~~was~~ for reconsideration of decision was, however, turned down by the Government of India. (Vide Residency letter No. ~~443~~ 4434 dated 9th May 1885)* and Baroda was thus left with the only option of sending a Memorial to the Secretary of State, which it did on 3rd April 1886. We may not go into details of the Memorial which was more or less based on the line adopted by the Baroda Government in their appeal to the Government of India for the reconsideration of Col. Lester's decision but note few points which Baroda Government appeared to have reiterated.

- (1) That His Highness Khanderao Maharaja or his Minister did not give an absolute consent or a consent without reservation, that the decision of the Commissioner should be final;
- (2) That any understanding that there might have been as to the finality of the Commissioner's decision, was annulled by the Government of Bombay, having sanctioned the reopening of a part of the case which had been decided by the Commissioner Col. Rigby;
- (3) That the Government of Bombay assured the then Maharaja that when the decision of the Commissioner was founded on the best and most reliable evidence it would be considered final but

if otherwise, the case should be thoroughly re-investigated.

- (4) That in political cases delay was no bar (Vide Despatch from the Secretary of State to Government of Bombay (Political) No. 8 of 28th February 1877) to appeal. ~~xxxx~~ "Indeed the delay in such cases are proverbial." *
- (5) That the Government of India did not communicate to His Highness' Government the grounds on which their appeal was set aside. It was maintained that in purely a judicial case like this, when a provision for an appeal to the higher authority was made, grounds on which the decision was based must be given.
- (6) That in this and all other cases what the parties concerned could be expected to take cognisance of was that which was communicated ^{to or} by them. The Minister said, "I submit this remark in order to prevent the possibility of communications which may have taken place between the Resident and the Commissioner or the Government of Bombay, being held as binding upon the Baroda Government. I know from experience that much that passes between the British Government and their officers, or between the officers themselves, ⁱⁿ the political cases, is not communicated to the Native States concerned. It is therefore only fair that these States should not be held bound by correspondence of which they know nothing."*

But the fate of this case was decided on 9th November 1888% when the Agent to the Governor General (Officiating) Col. F.H. Jackson, communicated to the Baroda Government, the decision of the Secretary of State for India 'not to disturb Col. Lester's award.'