JUDGMENT

OF

THE SOVEREIGNTY CASE OF VEJALPUR

IN

POLITICAL APPEAL NO. 2 OF 1890-91.

DHRANGADHRA STATE *vs.* MORVI STATE

DELIVERED BY,

F. C. O. BEAMAN ESQR. C. S.

Judicial Assistant Political Agent,

KATHIAWAR.

PUBLISHED BY

GANESHJI JETHABHAI

KATHIAWAR AGENCY PLEADER.

PRINTED AT

"THE SHREE JASHVANTSINGH PRINTING PRESS."

BOMBAY.

1893.

THE SOVEREIGNTY CASE OF VEJALPUR.

IN THE COURT OF THE POLITICAL AGENT, KATHIAWAR.

Political Appeal No. 2 of 1890-91.

Political suit No. 32 of 1875-76 of the Court of the Assistant Political Agent, Halar Prant.

THE DHRANGADHRA STATE.....*Appellant (Original Plaintiff.)*

vs.

THE MORVI STATE.....*Respondent (Original Defendant.)*

Claim:—Sovereign Jurisdiction over the village of Vejalpur.

JUDGMENT.

1. The village of Vejalpur, to determine the sovereignty over which this suit has been brought, lies in the extreme north-east of the Machhu Kantha, and close to the boundary which now divides the Halar from the Jhalawad Prant. Territorially it is situated in the Halar Prant, and is bounded on the north-west by Khambhalia, a Malia village; on the north-east by Ghantila, a Morvi village; on the east by Survadar, a Dhrangadhra village; and in the south by Khakhrechi, a Malia village.

2. Both Dhrangadhra and Morvi claim sovereignty over Vejalpur, and support their respective claims by numerous allegations and proofs which will be dealt with in detail. The usufructuary enjoyment of the village is with certain Rahtor Girasias, who claim the status of Mulgirasias. Upon the theory of the Dhrangadhra case, the Rahtor Girasias would be *Jivaidars*; upon the theory of the Morvi case, they would be Mulgirasias.

3. The actual pecuniary interests of the litigant States, which are at stake, are inconsiderable, but the substantial question in issue, the question of sovereignty, is directly of great importance, and indirectly may have far reaching effects. And it is in view of this aspect of the case rather than of its concrete money expression, that it must be deemed worthy of the most careful investigation. No labour, however great, would be thrown away in examining the numerous pleas and precedents of the parties, and in endeavouring to establish upon a firm basis rights, which have to be traced to the opera-

tion of causes often very remote, and the development of modern ideas out of the vague and indeterminate notions, which prevailed upon this subject in earlier times. Jurisdiction, which is the form the main plea has generally taken throughout these proceedings, although in advanced systems of law, it is universally recognized as an emblem and essential of sovereignty, had little, if any, definite jural meaning in Kathiawar before the advent of the British power. And even long after the establishment of the Agency there does not appear to have been any very clear conception of the true relation existing between jurisdiction, that is to say, the power of dealing judicially with civil rights, and punishing wrongs, and sovereignty. It is only after the summary classification introduced by Colonel Keatinge in 1864, that modern ideas began to be associated more or less crudely at first, but with ever increasing clearness as time went on, with the term jurisdiction. The legal and political consequences flowing from an accurate conception of the term, and the correct application of the power implied in it, are now conceived with some degree of precision; and there is no point upon which States are more punctilious and exacting at the present time, than the preservation of such jurisdiction as they may possess, in its unimpaired integrity. Any invasion of this prerogative is immediately and persistently combated.

4. This dispute unfortunately arose only four years after Keatinge's classification, when the full scope and consequences of the change had been hardly appreciated at their true worth. And the evidence upon which it has to be decided is principally drawn from a period during which all the habits of thought on the subject were inexact, and when the practice was correspondingly lax. To such conditions it is due that the enquiry has embraced complications, and perhaps irrelevances wholly disproportionate to the issue involved, were that issue to be tried out between parties to whom the systems of western law, and the practicies based upon them, had long been familiar. It will be the duty of the Court to trace through the mass of recorded evidence those lines of thought and conduct, which comparative jural history teaches us to anticipate as the legitimate forerunners or substitutes under other conditions, of the mature conception of jurisdiction in its modern form.

5 In this connexion it may be proper to observe that any enquiry in to the conflicting rights of two States to exercise jurisdiction over a piece

of territory is strictly speaking an enquiry within the province of international law. The remedy, where such a right was refused, would ordinarily, I suppose, consist in an appeal to arms; or amongst nations comprised with in the definition " the family of nations," *via* amicabili, by an appeal to arbitration, by negotiation, or by the mediation of the other States within the international circle. In Kathiawar, however, the conditions are different; the States are invested with what jurists would call semi-sovereignty; or are under protection. They have no right to initiate war as a means of obtaining redress of grievances. Their position presents considerable analogies to the topics of infancy, coverture, and tutelage in private law. The nature of the right in issue ought not, however, to be obscured by modifications in the adjective law available for its enforcement. Jurisdiction, according to Professor Holland, is an antecedent international right in rem. Now the cause as it has been submitted to this Court has taken the form of what is locally known as a political suit. The principal distinctive attributes of such a suit, are that the Court has a larger licence in admitting evidence; that many of the forms of the civil law are relaxed in favour of the parties, subject to the consent and approval of the Court; and that all considerations of equity, in the popular sense of the word, have ampler play than it would be expedient to accord them in the administration of municipal law. The status of the parties, as well as the nature of the cause, entitle them to great indulgence in stating their arguments and fortifying them with evidence of every description It is not my practice in cases of this sort to exclude any evidence which the parties may offer, except such as must necessarily be valueless; I prefer to take the entire case as it is offered to me, without insisting too strictly upon objections which might be taken to parts of it under the Evidence Act, and then to endeavour as far as I am able to sift the record, attaching the fullest weight to all that is in my opinion relevant in the widest sense of the term, and rejecting all superfluities.

6. The origin of the case may be shortly given as follows:—In order to check the custom of Infanticide, Government organized a system of returns, to be submitted by all States in whose villages Jadeja Girasias resided. These reports were prepared by subordinate officials, known as Infanticide Karkuns. On the 4th September 1868 Wamanrao Govind, and Bhavanishankar Gokalji informed Colonel Anderson, who was then Political Agent, that both

Morvi and Dhrangadhra were entering Vejalpur in their Infanticide returns: and that consequently the value of the statistics was being impaired. On the following day Morvi addressed a Yad to the Political Agent on the same subject, complaining in strong terms of Dhrangadhra's action. The Political Agent directed Dhrangadhra to abstain in future from entering Vejalpur in its lists; and if it had any grievance in the matter, to go to the Prant Court to complain. Nothing was done upon this for eighteen months. At the end of that time Morvi sent a small party of horse and foot to Vejalpur, ostensibly to keep the peace among the Dedas who were giving trouble at that time. This is known throughout the case as the first Thana. Dhrangadhra complained, and the Thana was withdrawn. Four months later Morvi sent another Thana to Vejalpur. Thereupon Dhrangadhra again complained, and there was a good deal of correspondence. Ultimately on the 28th April 1872 Mr. Jardine, at that time in charge of the western division, peremptorily forbade Dhrangadhra to meddle further in the matter; and ordered it, if it had any just claim in regard to Vejalpur, to file a suit in the Prant Court. Dhrangadhra protested against that order, but it was finally upheld; and in 1876 Dhrangadhra filed the present political suit. The foregoing is merely the most compendious sketch possible of the main incidents giving rise to this litigation and bringing into prominence the rival causes of action. According to Morvi, the true cause of action arose in 1868 when Dhrangadhra was warned not to continue entering Vejalpur in its Infanticide returns. The points of difference which were then sharply defined, gave Dhrangadhra according to Morvi's contention, ample notice of the substantial issue that would have to be fought out. Dhrangadhra, on the other hand, claims that it had no sufficient notice of Morvi's attitude and pretensions until the Thanah was placed for the second time in Vejalpur, and its protests against Morvi's action in that regard were overruled. Most of the papers relating to these matters, will have to be separately and critically considered with reference to (*a*) their special bearing upon the question of *lis mota* (*b*) their general bearing upon other features in the case. At this stage it is sufficient to say that the Court, after a great deal of discussion with the learned counsel engaged, ruled that the controversy was mooted in 1868, and that all evidence, which came into existence after that date, must be treated as *post litem motam*. In dealing with the papers I shall probably find occasion to repeat and embody in this judgment the reasoning upon which that ruling proceeded.

7. It will perhaps be convenient to deal with the papers between 1868 and Mr. Jardine's order of 1872 exhaustively here, in order that a clear idea may be obtained of the relative positions of the parties in Vejalpur, and the claims to sovereignty over that village, which they put forward at, or about, the time this litigation took a definite shape.

8 Exhibit M1 is the Infanticide Karkun's report to Colonel Anderson, dated 4th September 1868. "There live" say the Karkuns, "three or four Jadeja Rajputs in the village of Vejalpur which Dhrangadhra and Morvi go on entering in the lists. The Daftar being therefore examined, it is found that the said village of Vejalpur is being entered in the list of Morvi State from the year 1841 A. D., and that in the list of Dhrangdhra State it is being entered since the year 1863 among four or five villages entered as those in which Jadejas were found to have newly come and settled." On the next day *viz*: the 5th September 1868, Morvi submitted a Yad to the Political Agent, which is recorded as M2. A good deal of importance attaches to the language of that Yad. It runs as follows:—

"The village of Vejalpur being subordinate to this State, the civil, criminal and other jurisdiction is up to this day being exercised over it by this State. Recently the Karkun of Jadeja girls census department having noticed that both Morvi and Dhrangadhra go on entering the village of Vejalpur in their lists and that it is thus twice written over, informed Azam Rao Sáhib the Daftardar in the Office, and asked him how he should act in the matter. In reply he might have been told to report the matter to Bada Sáhib. At this time Jetha Gangaram, Vakil for this State, was present in the office for some business. He having heard this reported the matter here. On the receipt of this strange information various doubts arose. In order to enquire into the matter, the head of the village was summoned in presence. On inquiring he clearly writes. The said village is under Morvi from ancient times. We never had any connection with Dhrangadhra. So also no man of Dhrangadhra ever comes to our village to prepare the list of Jadeja daughters or for any similar business. On one occasion it (Dhrangadhra) sent us a notification to adopt uniform weights and measures, but it was immediately returned with a word that it had no authority over the village; therefore a rebuke was sent that it should not in this manner sow seeds of quarrels and brawls, &c. In our village there is only one house of Jadeja

Girasias. The Morvi Durbar's Mehta comes and makes inquiries about it. One Jadeja Kasiaji who is in straitened circumstances, has for food only entered in the service of Vipra Raghu in Halvad. Therefore Dhrangadhra might have submitted a list of his family, &c. This is what he writes among other things. On reading this we were much surprized. On the enquiry of one matter the list of Jadeja daughters, it is also brought to light that it (Dhrangadhra) had sent a proclamation of adopting uniform weights and measures. At first we had some dispute with Dhrangadhra about our Majmu (joint) village, &c. During the interval, the officers of the Political Department were much disgusted of the intrigues of Dhrangadhra. Owing to such reasons we compromised with Dhrangadhra at the word of the Daftardar even at the risk of loss in some matters. Still from what is described above it plainly appears that Dhrangadhra not only desires to increase quarrels but to create a footing in another's village by such fabrications. But this cannot be allowed on any account. Therefore we have been forced to encroach upon your valuable time. We own jurisdiction over the said village of Vejalpur from ancient times; Dhrangadhra has not the least connection with it. But Vejalpur is distant from us and near to Halvad, therefore it will not fail to clearly appear to your Honor on inquiry that Dhrangadhra in order to create a dispute in future surreptitiously makes such frauds. Due *takid* will therefore be made on it, and *Paka Bandhobast* to prevent it from doing such things in future. And hereafter if it will come to our notice that a man of it has come in our territory for such business, we will apprehend and deal with him in a manner in which persons committing offences against the State are dealt with. Such a warning should be given to Dhrangadhra through the *Agency Gazette*. And if the name of Vejalpur has been entered in the list of Jadeja daughters by Dhrangadhra, you will give orders to strike it out therefrom, and give notice in the *Gazette* to that effect." With reference to this Yad, I ought perhaps to notice here that Dhrangadhra vehemently contends that it is a mere tissue of falsehoods, and that, while Morvi so pretends in it to have only just become apprized of Dhrangadhra's action in entering Vejalpur in its Jadeja census returns, it must in fact have been well aware, at least as far back as 1865, that Dhrangadhra was doing so. This contention rests on M352. That is a letter addressed by the Vahivatdar of Devalia to the Morvi Durbar, dated Shrawan Sud 4th 1922 or 1865-66 A. D., informing Morvi that from information received he (the

Vahivatdar) has reason to believe that the Rahtors of Vejalpur are endeavouring to put themselves under Dhrangadhra. As an illustration of this tendency the Vahivatdar reports that recently the Dhrangadhra Mehta had come to Vejalpur on pretence of taking Infanticide returns. Whether the attitude adopted by Morvi in M2 was feigned or real need not yet be discussed. That is a topic appropriate rather to the consideration of the general bearing of these documents on the rival pretensions of the parties to a certain status in Vejalpur about the year 1868. At present I am rather concerned with the particular bearing of these papers on the initial question, when was the present controversy really raised? Upon M1 the Political Agent delivered an order to the following effect:— "On seeing the said report it appears that Morvi has the Vahivat of many years of entering the said village in its own list, while Dhrangadhra appears to have entered it only from the year A. D. 1863. Therefore Dhrangadhra Vakil be told not to enter it. Or if it should have a claim, it must establish it by filing a complaint in the Prant. Both the Vakils be told that this order will not affect in any way the decision that will be arrived at after hearing both the parties.

"The fact that the Infanticide Karkuns did not report till now though the matter has been continuing for 5 years (last) throws strong suspicion on their character. And there is moreover a greater reason for suspicion, because being called in our presence and questioned (on the point) they were not able to give any satisfactory reply. This is a very serious fault they have committed. Still taking into consideration that it is the first of its kind (they have committed), they are fined Rs. 10 each. In order to deduct this fine from their next pay, this Shera be shown to the Local Fund Daftar. And this report be filed with the Yad from Morvi on the matter." It appears further from the endorsement that this order was shown to the Karkuns concerned: to Madhavji Khetsi, the Dhrangadhra Vakil and to Jetha Gangaram, the Morvi Vakil.

9. It was strenuously argued on behalf of Dhrangadhra that there is nothing, either in the Shero or in the endorsement, to indicate that Morvi's Yad M2 was shown to Dhrangadhra's accredited representative. And, as a consequence, that Dhrangadhra could not have been aware of the claims to sole sovereignty which Morvi had therein put forward. But, even conceding the validity of that argument for a moment, it still appears to me incontrovertible that

from the terms of the Shero itself, the Dhrangadhra Darbar had adequate notice of the fact that their sovereignty over Vejalpur was challenged. And here it is as well to draw a distinction. In argument the learned counsel for Dhrangadhra constantly repeated that the mere unsupported entry of any village in the Infanticide returns of any State was no sufficient proof that the said State possessed sovereignty over such a village [*vide* Wadala case and Colonel Anderson's remarks therein on this subject]. But, admitting for the sake of argument, that entries of that nature are not conclusive proof of sovereignty: yet the right to include villages in census returns, as distinguished from the unauthorized act of so including them, is clearly derived from the relation subsisting between the State as sovereign and the village as subject. A State gains no advantage by entering villages in its Infanticide returns: while it does incur a responsibility. If it were not that every State claims the right as sovereign to manage its own internal affairs there is no conceivable reason why it should make any returns of this nature at all. And it is because the right to answer in this and cognat ways for its subjects implies the corresponding relation of sovereignty: that States desirous of enlarging the sphere of their dominion may frequently have enterned villages in Infanticide returns and the like, with a view to creating evidence of their sovereignty over them. So long as the acts were clandestine or undisputed, it could very well be argued that irresponsible entries of that kind could not create rights where no rights existed. But it must be plain that, as soon as another State came forward and asserted that the State, so entering villages in its return, had no right to do so, because they were not subject to it; the latter was at once put to proof of its sovereignty, as being the only source from which the right now in issue could be derived without challenge. It is not pretended that any State may promiscuously include in its returns villages which are certainly within the dominions of another State. Its sole authority to do so depends upon proof that it occupies the relation of sovereign to the village or villages so entered. Where then there is a distinct issue raised between two States as to which of them has the right to answer for a given village; and that issue is unambiguously stated and brought to the knowledge of the States concerned, it logically follows that both States must be held to have been fully informed that a challenge has been given to their respective authorities, in their capacities as sovereigns, touching the particular village concerned. It appears to me utterly unsound to argue that a State's privilege of entering a certain village, as a village subject to its suzerainty, in its official returns can

be dissociated from the larger privilege of sovereignty from which the lesser derives: or that the lesser could be brought in question without directly and by necessary implication importing the larger also. and it follows from the foregoing that as soon as Dhrangadhra was apprized by Colonel Anderson's order that its right to continue entering Vejalpur in its Infanticide returns was suspended pending its establishment of that right by formal proceedings; it had due notice that the matter now in issue namely the respective claims of morvi and Dhrangadhra to sovereignty over Vejalpur, was in controversy. This too entirely irrespective of the secondary consideration, whether or not, it had been informed of the terms of Morvi's Yad M2, which explicitly assert Morvi's exclusive jurisdiction and sovereignty over Vejalpur. For the purposes of this argument it is immaterial to enquire whether that was an honest or a disingenuous protest. Even were it the latter, it would be quite sufficient if Dhrangadhra had notice of it, to put the litigation, upon which this Court is now engaged into motion. I may add however that considering the practice which then obtained and after taking the opinion of Mr. Chamanrai, the Agency Daftardar and a gentleman of large and varied experience in such matters; this Court thinks that the probabilities are largely in favour of the conclusion that the Yad which was put up with the Shero, was shown, as well as the Shero to the parties concerned. Now, as touching the question what evidence is admissible under the special provisions of Section 32 Indian Evidence Act, the law is that "the statement to be relevant must have been made before any controversy as to such right, custom or matter had arisen. And again "The commencement of the controversy does not mean the commencement of the suit, but the commencement of that dispute which has ultimately led to litigation." That is to say that a distinction must be drawn for the purpose of determining this question, between the cause of action and the commencement of the controversy. It may be, as Mr. Wadya argued, that Dhrangadhra's cause of action arose from the date of Mr Jardine's order of 1872; though I do not feel called upon to express my assent to that proposition. But as I have just shown the controversy in precisely the shape it has since retained, was mooted in 1868: and all evidence of jurisdiction or sovereign acts coming after that date is tainted with the suspicion of being *post litem motam.* I should not have thought it necessary to deal with this point at such length, had it not been for the apparent inability which so able a counsel as Mr. Wadya displayed to

appreciate a distinction that is in my judgment self evident [*vide* page 13 of the court's printed notes].

10. Now assuming for the present that M2 was an honest expression of Morvi's sentiments and beliefs with regard to its rights over Vejalpur, and the alleged infraction of those rights by Dhrangadhra; its claims and the grounds upon which they are founded in 1868, may be briefly summarized thus:—

A.—That the village of Vejalpur was subordinate to Morvi; and that Morvi had been exercising complete jurisdiction over it.

B.—That it had been subject to Morvi since ancient time: and that it never had any connexion with Dhrangadhra.

C.—That by means of fabricating evidence Dhrangadhra was endeavouring to get a footing in Vejalpur.

D.—That Morvi has owned since ancient times and still does own jurisdiction over Vejalpur. And is prepared to punish any Dhrangadhra official or servant who should come to Vejalpur with the object of asserting any connexion between it and Dhrangadhra.

11. And assuming again that Dhrangadhra was made acquainted with the above claims and allegations, it is noteworthy that it took no immediate steps to contradict them, or to issue any counter manifesto.

12. I have already dealt with and finally disposed of the special bearing of those papers on the question of *lis mota*, and I do not intend to revert to that topic. The Court has given its ruling upon the point, and has fully stated the reasons upon which that ruling proceeds. It remains to consider the far more important bearing which these papers, the group, I mean, commencing with the Infanticide correspondence and ending with Mr. Jardine's order of 1872 upon the Thana dispute, have or may have, generally, upon other principal features of the case. Before passing on to the letters and orders which were written and delivered on the subject of Morvi's two Thanas, it will be as well to deal once and for all with M1 and M2.

13 I have already said that according to Dhrangadhra's view M2 was merely a fiction designed to meet some such uses as those to which it has

since been put. "M1 and M2" said Mr. Wadya "are wholly irrelevant. The addition of Vejalpur to the Dhrangadhra list of villages included in its Infanticide returns possessed no particular significance. Other villages as well as Vejalpur were similarly added to the list when it happened to come to the knowledge of the Dhrangadhra officials that Jadeja Girasias had gone to live in them. M2 implies that the Morvi Thakor now for the first time had come to know that Dhrangadhra was entering Vejalpur in its lists. But M352, dated three years earlier, conclusively proves that that implication is false. There was only one house of Jadeja Girasias in Vejalpur: and that being so, it is not at all surprising that Dhrangadhra should have omitted to enter the village in its returns."

14 That being the argument, I will first give the substance of M352 upon which Dhrangadhra relies to prove that M2 is substantially false. M352 then is a report from Prabhashankar Madhavji, joint Vahivatdar of Devlia, to the Thakor Sahib of Morvi, dated Shravan Sud 4th 1922 (1866). He commences by stating that "Vejalpur is a village belonging to Morvi and that the Girasias thereof have a design of transferring their allegiance to Dhrangadhra. Their attempts in this direction are known to the Hazur. Two instances of that nature have come to my knowledge." He then goes on to give the case of Jadeja Muluji of Khirni under Kutch. "This man came to live in Vejalpur a few years after Samvat 1881. He had three unbetrothed sons of whom the eldest was Kasioji aged 25, the second Haboji aged 16 and the third Devoji aged 10. Of these Haboji and Kasioji had gone to live in service at Halwad. Muluji and Devoji continued to reside in Vejalpur. Muluji's wife had died some seven or eight years ago: and had left no daughter. But in order to enter this family in the Infanticide returns a Dhrangadhra Mehta, called Devshankar, had come to Vejalpur with three horsemen: on his way he had spent the night at Devlia. Thereupon the writer made enquiries and found that Dhrangadhra Mehtas had been to Vejalpur on more than one occasion previously. This he learnt from Muluji. If such a record had been made it would operate as a precedent." The Vahivatdar then goes on to give the case of a Koli Shavo, who had committed suicide in the limits of Khakhrechi. This, however, is less important for my present purpose: it appertains rather to that division of the case which embraces instances of the exercise of jurisdiction. From the Shero on this report it appears that Morvi inflicted a foot *mohsal* on the Girasias of Vejalpur for their conduct in this matter. The

mohsal was continued for 32 days and was remitted upon the Girasias passing an undertaking to Morvi that they would not repeat the offence (M353, 355).

15. Now from this we gather that there had been one Girasia family at least in Vejalpur since a few years after 1881 Samvat; say 1885 Samvat (1829 A.D.). M1 tells us that Morvi had commenced entering Vejalpur in its returns in 1841 A.D., and that Dhrangadhra had commenced doing the same in 1863, A.D.. Facts like these make for the conclusion that the information possessed by States concerning the residence of isolated Jadeja families in small outlying villages, was extremely inaccurate, and may have been in a great measure fortuitous. It is also to be noted that there was no Jadeja girl in Vejalpur at the time M352 was written. The object of these returns being to preserve the lives of Jadeja maidens, it is antecedently probable that where there were no maidens in a village the mere fact that a single male Jadeja resided in it would not necessarily suffice to excite the vigilance of the State authorities. On the other hand, it must not be understood that in theory the Infanticide returns were restricted to the cases of families including female infants. On the contrary, in view of the fact that this peculiar crime was invariably committed immediately on the birth of the girl, the duty of the infanticide staff was or ought to have been concentrated upon every case where births were possible. The most that can be said is that where in a remote frontier-village a single member of the Jadeja clan had come as an immigrant to take up his abode, the authorities might very well have remained in *bona fide* ignorance of the fact for years. But the fact remains that Morvi was the first to find out that there were Jadejas in Vejalpur: and had been entering the village in its infanticide returns for more than 20 years before Dhrangadhra. While then, on the one hand, M352 certainly tends some colour to the charge that some of the assertions in M2 were rather pretended; and some of the indignation rather assumed than real: on the other hand, it points to the fact that there had been Jadejas in Vejalpur for many years, and to that extent undermines the arguments with which Dhrangadhra has endeavoured to meet the undoubted fact that Morvi had been including Vejalpur in its Infanticide returns for twenty-two years before Dhrangadhra began to do so. Bearing in mind also the fact that the Rahtors of Vejalpur had been *mohsalled* in 1865-66 for permitting Dhrangadhra officials to obtain Jadeja Infanticide statistics in the village: and that the Rahtors had engaged

not to repeat the offence, the language held by the Vejalpur headman and embodied in M2, *viz*: "We never had any connexion with Dhrangadhra: so also no man of Dhrangadhra ever comes to our village to prepare the list of Jadeja daughters," reads rather strangely. Knowing of the engagement into which the Rahtors had entered in 1866 (M 355) as it must have known why, asks Dhangadhra, did not Morvi enforce that bond in 1868 instead of writing the Yad M2? No categorical answer to that question was given: nor is it easy to see how one could be given: conjectural reasons might be assigned of course: and they might equally, of course, be the true reasons. Again they might not. But the point has not in my judgment the importance which Dhrangadhra would seek to attach to it. Even though Morvi might have had an administrative remedy in its own hands: we ought not to lose sight of the effects which might have been and very likely were produced upon Morvi by the knowledge that Dhrangadhra's irregular action in the matter (I mean of course, irregular from Morvi's point of view) had been made the subject of a reference to the Agency. In 1865-66 the alleged insidious attempts of Dhrangadhra to gain a footing in Vejalpur had not gone beyond the knowledge of Morvi and a few local officials. Morvi probably thought itself quite able to deal with the matter at that stage itself: and did so. In 1868, however, a report raising an issue of the first importance, as both Morvi and Dhrangadhra must have clearly realized, was submitted to the Agency. I am not surprised that under those circumstances Morvi should have elected to put upon record the very strongly worded protest it did: though it is difficult to account consistently with perfect honesty of expression for the omission of any allusion or reference to what had occurred three years earlier. Other hypotheses might be conceived to explain its conduct. It probably felt with the suspicion and timidity characteristic of the oriental at a certain stage of development that its case would look stronger in its simplest form; based upon the broad assertion of a first invasion of its sovereignty. Nothing was to be gained by entangling the present issue with connected events of which the Agency probably knew nothing. To have alluded to the fact that Dhrangadhra had been detected and thwarted in similar designs a few years previously, would have exposed Morvi to the rejoinder "you dealt with the matter yourself then: why do you need our assistance now"? And the real reason being *quod tantum*, an admission of weakness and dependence would have been neither pleasant to give nor

very easy to establish. Hence this Yad ,which is not exactly an appeal to the Agency so much as a formal protest which in the ordinary course of things, if it were once accepted, would at a later period secure the support usually given to a Government record. These speculations, however, are not of very great importance. It matters very little for the purpose of this enquiry whether Morvi knew in 1865 that Dhrangadhra intended to set up a claim to sovereignty over Vejalpur by means of its Infanticide returns: or whether it first came by that knowledge in 1868. The disingenuousness or otherwise of the language of M_2. upon which so much time and discussion has been spent, is of secondary importance: it is of primary importance to grasp the facts underlying that language and their true bearing upon this large controversy. So far as this isolated factor in the case is concerned, the entry of Vejalpur in Infanticide returns and the probative value of such entries, not very much more need be said. It is quite undisputed that Dhrangadhra was twenty years and more behind Morvi in discovering that there were Jadejas in Vejalpur: and consequently in entering Vejalpur in its official returns. Now, if as Dhrangadhra argues, Vejalpur was its village it is to say the least singular that its information in regard to the population should have been more defective than that of Morvi. Nor is this difficulty susceptible of any very satisfactory explanation on the ground of the village's topographical situation. It is a part, though of course not a very important part, of Dhrangadhra's case, that the situation of the village gives rise to the presumption, in the absence of proof to the contrary, that it formed a part of the Dhrangadhra State: in other words that it was at least as near to Dhrangadhra territory as to Morvi territory. Leaving aside mere lands, and looking to important towns in which officials might be expected to reside and collect official statistics, a glance at the map will show that Vejalpur is considerably nearer to Halwad, the ancient capital of Dhrangadhra, than to Morvi. How then it came about that Morvi knew of the Jadejas in Vejalpur twenty years before Dhrangadhra became aware of their existence, is a problem not very easy to solve so long as two of its factors are I., that Dhrangadhra was, II. that Morvi was not, sovereign of Vejalpur. Convert these two propositions and there is no problem remaining to be solved. During the pleadings the learned counsel for Dhrangadhra laboured with much ingenuity to prove that the Jadejas had

left Vejalpur some where about 1910 Samvat, (1854 A.D.) and had only returned in 1918 Samvat (1862 A.D.) which he said was a rational and sufficient explanation of the apparently anomalous circumstances of Dhrangadhra having only entered Vejalpur in its list in 1863 for the first time. This argument is, I believe, solely concerned with the identity of one Jadeja called Kasioji. I have already quoted a passage from M352 showing that he and Haboji had gone to take service in Halwad. A reference to the Morvi Infanticide returns (M357) shows that his name disappears in 1855 and re-appears in 1863. But in the meanwhile Morvi was submitting returns for Vejalpur. Kasioji was not the only Jadeja resident in the village: and the argument, though ingenious enough, appears to me to be inconclusive. It may very well be said by the other side that Kasioji's return from Halvad gave Dhrangadhra a useful opening of which it was not slow to avail itself. So far then it appears to me that touching the mere question of fact, which State can most satisfactorily establish its practice of having entered Vejalpur in its Infanticide returns, Morvi has incontestably the stronger position.

16 The next thing to considered is how much value ought to be given to a fact of that sort in deciding between conflicting claims to sovereignty over a village so entered in Infanticide returns. Upon this point the Court below has exhibited some inconsistence. At page 2 of the printed judgement the court cites with apparent approval the ruling in the Bedia case to the effect "that *mohsalling*, levying certain rights and answering for villages in Infanticide and other departmental returns, are proofs of sovereignty." At page 10 again the Court compares the value of these statistics very unfavourably with the value attaching to Deshjhadas. "Many *Patraks* and statistical tables" it says, "have been put in as evidence to show that both parties have at times, in furnishing them to the Agency, included Vejalpur in the State for statistical purposes. As a rule these are of no probative value; they were prepared by the State and were never scrutinized by the Agency. The collection of statistics was what was aimed at and not an enquiry as to whether every village mentioned, belonged as a matter of fact, to the State furnishing the table. It has been shown that both parties furnished the Infanticide *Patrak* for some years before it was found out and then it only came to light owing to there being a special department to verify statistics. Such

Patraks as returns of Bharvads, of Mulgirasias or having been submitted to the Agency, containing Vejalpur statistics *inter alia*, does not in my opinion prove anything, but on the other hand the failure of Dhrangadhra to enter Vejalpur in the Deshjhada as one of its villages, is very significant and raises an adverse presumption." The sound rule, as it seems to me, can be very simply and briefly stated to be that statistical returns of this sort are proof of sovereignty, but not necessarily conclusive proof. If we wish to be satisfied of the substantial connexion between sovereignty and the right to make returns of this nature (as opposed of course to a surreptitious and unauthorized making of them), it can easily be done by putting an extreme case. The absurdity and impropriety involved in the inclusion of Morvi town in the Jamnagar Infanticide returns, are at once self evident. Nothing of the kind would be attempted: nor if it were attempted could it be tolerated for a moment. The reason, of course, being that it is universally acknowledged that Jamnagar is not at the present day sovereign over Morvi. And the principle to be deduced from this is that the right to answer for its subordinate villages is a direct consequence of a State's sovereignty. A State may of course include the villages of another sovereign in its statistical returns: but it has no right to do so. As soon as the act is challenged, the right is put in issue and has to be determined. And according to the decision upon the issue of right the act will continue or will cease. There can, I apprehend, be no question of the correctness of this doctrine. Any deviation from it except upon the single hypothesis of joint sovereignty, a topic which will be discussed later, would utterly confound all recognized principles of separate administration.

17 Now looking to the intimate connexion between the right to answer for subordinate villages in those returns and sovereignty, it would follow upon the proved fact that a State had been uninterruptedly and without challenge entering a certain village in its Infanticide returns for a long period, *e. g.*, 20 years, that any other State which then came forward and challenged its authority to continue doing so, or to have done so in the past, would in the first place have to nagative presumption in favour of the former State, arising out of its long and peaceable series of acts. For when acts are done in virtue of a certain definite right and are continued without dispute for a number of years, the right upon which they depend, has *prima facie* some of the authority of prescription. The party, seeking to disturb or anual it, is not on a footing of equality with the party exercising it, as

he would have been had the right been challenged upon the first occasion upon which any act had been done under colour of it. It is true that as between States in Kathiawar the prescriptive acquisition of adverse rights, is a subject upon which there can hardly be said to be yet any settled doctrine. But the circumstances relating to the inclusion of Vejalpur in the Morvi Infanticide returns which these papers disclose, are very good warrant, as it seems to me, for imposing upon Dhrangadhra the duty of proving that the entries so made were fraudulent or mistaken. And in discharging that duty it would naturally rely upon proof of its own sovereignty: proof drawn from various sources and illustrating the origin and continuance of the sovereign relation between Dhrangadhra and Vejalpur. Thus if it could be shown that Dhrangadhra and not Morvi has always exercised certain prerogatives which imply sovereignty, in the village of Vejalpur: that it has received the tribute which a sovereign State receives: that it has in its capacity of sovereign performed administrative acts inconsistent with the theory of any other State being sovereign in Vejalpur: that it has exercised Civil and Criminal jurisdiction in the sense in which those terms were loosely understood: that it has always demanded and received the allegiance of the Girasias and so forth: then no doubt the presumption naturally arising out of the Infanticide *Patraks* in favour of Morvi would be completely rebutted. For the statement that Morvi had the right to enter Vejalpur in these returns because it was the sovereign of Vejalpur: while from other sources it is demonstrable that Dhrangadhra and not Morvi was in fact the sovereign over that village, carries its own refutation with it.

18. In the course of the pleadings Dhrangadhra frequently reiterated the plea that for the purposes of this enquiry both States started upon an equal footing: and that there was no foundation fot the rule tacitly or expressly adopted in the Court below that Morvi was in possession and that the burden of proof lay upon Dhrangadhra. At the commencement of Dhrangadhra's case an intention of falling back upon a theory of joint sovereignty and concurrent jurisdiction was faintly adumbrated. Now in the first place, I think, the Court below was right in the view it took of the respective positions of the parties. The terms of Colonel Anderson's order, taken in connexion with the materials which he then had before him, can leave no reasonable doubt that rightly or wrongly he regarded Morvi's position in Vejalpur as superior to Dhrangadhra's, and that his intention was to leave Morvi in possession until Dhranga-

dhra could make out a good case in support of its plea to sovereignty. No doubt it is very true that in those days there was a pronounced tendency to avoid raising large and definite issues such as those which have come into prominence during the subsequent proceedings in this case. "The Agency" said Mr. Wadya, "was here simply to keep the peace: not to adjudicate between the States on questions of title." It may be so; but even four years later and after the episodes of the two Thanas with which I am just about to deal: it is plain enough that Mr. Jardine took the same view of the position and duties of the disputants as Colonel Anderson had done. In the second place though I may have occasion to revert to the topic later, it is enough to say here that as the case proceeded the learned counsel for Dhrangadhra committed himself to arguments and principles quite inconsistent with any theory of joint sovereignty. Approaching the case with some timidity or at least diffidence, he appeared anxious to leave open a way of escape from the consequences of a negative answer to the question, was Dhrangadhra sole sovereign over Vejalpur? But gaining confidence as the voluminous materials of the case passed through his hands, the line which he ultimately adopted leaves no room for any compromise; Dhrangadhra according to its pleadings, was original grantor and sole sovereign: Morvi was nothing more than an interloper and a levier of black mail. In any case the issues would have probably narrowed down to the simple question whether since Walker's settlement Morvi or Dhrangadhra has possessed sovereign rights over Vejalpur. And in answering it we should have to determine in the first place what are sovereign rights, or rather what were sovereign rights in those days, over a village in the full usufructuary enjoyment of third parties: as well as to scrutinize every part of the evidence which could throw any light upon the natural exercise, or the usurpation of such, or cognate rights, by either party. In that shape the problem is quite sufficiently complicated: there is no need yet to add to its complications other enquiries, having for their object to ascertain whether the village owned a joint allegiance to, and was subject to the concurrent sovereign jurisdiction of both the claimant States. In its appropriate place I shall show that joint sovereignty over the same thing is a contradiction in terms: as indeed in the strictest sense, is full concurrent jurisdiction.

19. I now proceed to dispose of the exhibits relating to the two Thanas,

20 M3 is a Yad, 7th February 1870, submitted by Dhrangadhra to the Political Agent complaining that Morvi in order to manufacture evidence of its sovereignty over Vejalpur, had sent a party of horsemen (and later on it is stated "of horse and foot") to Vejalpur to intimidate the Rahtor Girasias into giving a written acknowledgment of their subordination to Morvi. The Yad opens by stating that Vejalpur belongs to Dhrangadhra and was granted to the Rahtors. It complains of the oppression practised by the Morvi Sowárs on the villagers and so forth: and ends up with a request that the Sowars may be ordered off, and Morvi forbidden to exercise any further authority in the village. Upon this there is an order by Colonel Law, calling upon Dhrangadhra to produce proofs of its enjoyment &c. (dated 8th February 1870). At the same time Colonel Law wrote to Captain Nutt who was then in charge of the Western Division, directing him to see that Morvi did nothing further in the way of strengthening its position in Vejalpur, pending receipt of Dhrangadhra's proofs.

21. M4 is a vernacular Yad, dated 8th February 1870, from the (incharge) Political Agent, Colonel Law, to Captain Nutt, saying that there was a dispute going on between Morvi and Dhrangadhra about Vejalpur: that Dhrangadhra had complained of the imposition of a Thana there: and that Captain Nutt was to see that the *status quo* was maintained; that Morvi should do nothing "new," and that the Thana should be removed.

22 M5 is Morvi's reply to M3: in which it denies the truth of Dhrangadhra's allegations generally (those I suppose chiefly that Morvi's men were maltreating the villagers: and were trying to extort a written acknowledgment of submission &c.): states that all the world knew that Vejalpur had since ancient times belonged to the Morvi State: denies that they had placed a Thana in Vejalpur at all: that there were certain Deda outlaws and that the so called Thana was probably a party out in pursuit of them: that Morvi had no other occasion to keep Sowars in Vejalpur, dated 26th February 1870.

23. D1-3 are Modikhana accounts showing that the Thana was kept in Vejalpur from Posh Vad 12th to Mah Sud 7th, 1926. That is to say that on the same day on which Dhrangadhra complained (M3), the Thana was withdrawn. D4 is a letter from Haloji, Abhesang, Amarsang and Devoji, dated Posh Vad Amás, 1926 (or 7 days before M3) to the Raj Sahib

of Dhrangadhra: in which the aforementioned Rahtors of Vejalpur complain bitterly of the Thana and protest their allegiance to Dhrangadhra.

24. D5 is a Yadi by the Halvad Foujdar to the Dhrangadhra Hazur on the same subject: protests generally against Morvi's aggressive policy.

25. D6 is Devoji's deposition before the Karbhari of Dhrangadhra, dated 3rd February 1870: D7 is the deposition of Noghan Bhim of the same date. D8 in which it is stated that Vejalpur was given to the Rahtors of Dhrangadhra: and that Morvi had never sent a Thana there before &c. In fact these papers are the basis of M3. D8 is an order from the Dhrangadhra Hazur Daftar to the Halvad Foujdar to proceed to Vejalpur and turn the Morvi Sawars out. D9-10-11 are none of them of much consequence.

26. These papers were adverted to by Dhrangadhra as showing that the Thana had been then imposed for the first time. But it must be borne in mind that under this Court's ruling all this evidence is *post litem motam* and consequently does not merit the attention which it otherwise certainly would. By this time both Dhrangadhra and Morvi knew very well the kind of evidence upon which they would be obliged sooner or later to rely: and nothing could be easier than to multiply this kind of irresponsible statements at will.

27 M6 is a Yadi from Morvi to Captain Nutt in charge Western District, in which Morvi asks time to produce their evidence: as owing to the sudden death of the Thakor Sahib all the State records were under seal.

28 Upon this batch of papers the learned council for Dhrangadhra asked the Court to note that "the Agency called upon both sides to prove their possession: neither side's statement was accepted without proof. About that time there were many instances of two States owning some kind of concurrent jurisdiction in one and the same village." Well, it has to be remembered, that most of these orders emanated from Colonel Law: and that officer certainly seems to have been inclined to take a favourable view of Dhrangadhra's case. This becomes plainer still from the terms of D12. I do not mean, of course, to imply that Colonel Law showed the least improper bias: he probably had his own views: and very likly would have held them without

much modification had the orders of 1868 been present to his mind at the time this dispute arose. It does not appear however that in spite of the fact that Dhrangadhra had attached a copy of M1 toM3, the Thana cases were regarded as being in any way governed by Colonel Anderson's decision upon the Infanticide return dispute. Nor, at the present time, does it really very much signify what the individual view of the Assistant Political Agents upon the respective merits of Dhrangadhra's and Morvi's claims were. We knew that there was a good deal of controversy: and what is more important to our present purpose, we know how that controversy terminated: as will presently appear.

29 M7 is a Yadi from Morvi to Captain Nutt, dated 19th March 1870, in which Morvi insists upon its sovereignty, and requests to be allowed to continue in the exercise of administrative control over Vejalpur as heretofore. This Yadi appears to have been called forth by M4.

30 D12 is a letter from Colonel Law to Captain Nutt, dated 30th April 1870, in which he speaks of the "conflicting claims of the States of Morvi and Dhrangadhra to the village of Vejalpure," and forwards certain Dhrangadhra proofs. The most important of these relate to the year 1869 and are consequently of no real probative value. But in Colonel Law's judgment they established "the fact of the Dhrangadhra actual possession at this day." He further says that "there are other proofs eqally strong relating to former years:" and recommends, that, under the circumstances, Morvi should be made Plaintiff.

31 M8 is a Shero by Captain Nutt, dated 5th May 1870, calling upon Morvi for its proofs re-Vejalpur, and ordering it to abstain from all further aggressions until some settlement had been made. M9 is a Yadi from Morvi requesting an adjournment as all its records are under seal. M10 is another Yadi by morvi, dated 21st September 1870, recapitulating the salient features of the Infanticide returns' quarrel: and insisting upon Dhrangadha being put in the position of a Plaintiff. M11 is a letter from Captain Nutt to Colonel Law, dated 2nd February 1871, forwarding M10.

32 D13 is a Yadi from Dhrangadhra to Colonel Law, dated 20th March 1871, asking that Morvi may be made Plaintiff, and a Shero thereon by

Colonel Law to Captain Nutt saying that the Political Agent's Shero was neither favourable nor prejudicial to either side, and adhering to his previous opinion that Morvi should be made Plaintiff.

33. M12 is a Shera by Captain Nutt, dated 12th May 1871, conveying the Political Agent's decision that in the dispute pending between Morvi and Dhrangadhra re-Vejalpur, Dhrangadhra is to be made Plaintiff. M13 is a Yadi by Dhrangadhra to Mr. Jardine complaining of a Thana which Morvi has just placed there. It would appear that Morvi had done this on the authority of M12. This is the second Thana which was put in Vejalpur some where about Ashád, 1927 Samvat. M14 is another complaint submitted by Dhrangadhra to Mr. Jardine on the subject of this Thana, and other acts of oppression done by Morvi in Vejalpur. D14 is a petition by Rahtor Dewaji Agraji to Mr. Jardine, dated 26th September 1871, complaining of this Thana. On M14 there was correspondence between Captain Nutt and Mr. Jardine. Captain Nutt wrote that the Political Agent had clearly ruled that if Dhrangadhra had any claims to make upon Vejalpur it must make them in the Prant Court: and that it ought not any longer to be heard promiscuously. Thereupon Mr. Jardine passed his order of the 26th April 1872.

34. M17—this order is headed "Dispute about the sovereignty and jurisdiction over Vejalpur between Morvi and Dhrangadhra." It is therein announced in the plainest language that Morvi is, for the present, in possession, and that Dhrangadhra must, if it has any claims to press against Vejalpur, do so by regular process. It is contended for Dhrangadhra that the gist of this order is entirely novel. The heading indicates the definite presentment of a claim which hitherto had only been advanced by implication, and indirectly. The memo referred to in the order had never been in Dhrangadhra's possession. That order, Dhrangadhra contends, amounts to an authoritative and totally unexpected dispossession; against which it had no other remedy than by civil suit. If in fact, at the time the suit was filed, Dhrangadhra was out of Vejalpur; it was put out by an order of the Agency, the nature of which it could not possibly have anticipated.

35. That is how the case stands upon the papers relating to the two incidents of *(a)* the Infanticide returns and *(b)* the Thanas. Upon it Dhran-

gadhra wishes to have it held that inasmuch as the first Thana was withdrawn in answer to its protests: and as Mr. Jardine's order of 1872 related only to the second Thana: the position of the parties in Vejalpur, up to 1872, was precisely the same. Neither had any better right to be considered a possessor than the other.

36 The upshot of the discussion upon both these episodes appears to me to have been substantially the same. One officer who took part in it, Colonel Law, was for assigning Dhrangadhra the superior position and relegating Morvi to the remedy of a political suit. But in this view he stood alone: and he was authoritatively overruled by the Political Agent. Nor, as far as I can judge from his letters, did he ever adopt the view that the parties were in *pari statu*. In his opinion Dhrangadhra had furnished sufficiently good *primâ facie* proof to be entitled to the possession and its consequences until Morvi should succeed in formally ejecting it. That that opinion is open to certain obvious objections has already been made apparent. The proofs, which principally determined his judgment, were proofs of a period *post litem motam*; and although he speaks in general terms of similar proofs relating to former years, it is hardly to be supposed that for the purpose only of determining the *primâ facie* possession and the position to be occupied by the parties when they came to sue, they would outweigh the reasonable presumption in Morvi's favour created by the Infanticide returns: especially after that presumption had once already been accepted by the Political Agent for that purpose except in regard to the questions of admitting evidence between 1868 and 1872: and apportioning the burden of proof, the Thana incidents are of little value to either side: the entries in the Infanticide returns must, however, carry all the weight they are entitled to in treating of the various bodies of evidence going to prove jurisdiction and sovereignty upon the general case: as well as in the more restricted bearing they have on the origin of the dispute; in which latter light they have now been fully discussed and disposed of. As evidence of jurisdiction they fall into the same category as Deshjhadas, opium farms and other topics of that nature: and when that part of the case is under examination some further comments may have to be made upon them.

37. The cause to be decided having originated as described in the preceding paras, it will be convenient here to state the pleadings of the parties.

Dhrangadhra's first plaint stated (*a*) That Dhrangadhra had granted the village in ancient times. (*b*) That the Rahtors have admitted Dhrangadhra's sovereignty. (*c*) That by many reasons and proofs Dhrangadhra is sovereign.

38. This plaint was obviously defective. It displayed no real cause of action. The fact that Dhrangadhra had granted the village in ancient times, even assuming it to be a fact, would not touch the question of its present sovereignty. The admissions of the Rahtor Girasias, *per se*, would carry little weight. Sovereignty cannot be decided by the opinion of subjects: nor could the Girasias of a Morvi village convert Morvi's into Dhrangadhra's sovereignty by their own admissions. If by the admissions of the Rahtors is meant their acquiescence in the exercise of sovereign rights by Dhrangadhra, to that extent the evidence would be well enough. But even so the source from which those rights were derived, would have to be cleary shown: and by some better evidence than mere acquiescence. I believe, however, that the statement in the plaint was intended to be limited to the verbal admissions of the Vejalpur Girasias. And these, though they may deserve attention if they should prove to have been made without special motive and *ante litem motam*, could scarcely be conclusive under any circumstances. The Court below observed "The next point, relied on by Dhrangadhra, is the alleged admission of their fealty by the Rahtors. *These admissions are of the present day and* prove nothing." The Court goes on to say with truth that in making admissions of that sort the interests of the party making them are his only guide. The mere statement of a Girasia that his village was subject to one state and not to another, could not be held binding, in the absence of other evidence, upon the Chiefs concerned.

39. The third plea is couched in such vague terms as to give no real notice of the case upon which Dhrangadhra relied. An amended plaint (Index No. 7) was then filed in which it was stated that Dhrangadhra had originally granted the village to the ancestors of the Rahtors who were now enjoying it: that from before Walker's settlement and uninterruptedly since, up to the year 1870 Dhrangadhra had been exercising sovereign jurisdiction over it: that the cause of action arose when Morvi placed the Thana in Vejalpur in 1870: and prayed that the village might be declared subject to the Dhrangadhra sovereignty and that Morvi's claims over it might be rejected. In summing up Dhrangadhra's case Mr. Wadya amplified the statement of claim thus:—

(*a*) Dhrangadhra granted the village.

(*b*) From the date of grant to Walker's settlement we have shown the service connexion of the *Rahtors* with the Dhrangadhra State.

(*c*) We have proved the payment of *jama* from 40 years before Walker's settlement to the date of the dispute, regularly and submissively.

(*d*) Consequently Government guaranteed Vejalpur to us.

(*e*) There is not the slightest evidence to prove that, since Walker's settlement, we have relinquished, or been deprived of, the sovereignty in any way.

(*f*) On the other hand we have shown that the Rahtors always looked to us as sovereign.

(*g*) If Morvi conquered the village (since they do not pretend to have granted it) should we find Dhrangadhra still exercising sovereign authority over it?

(*h*) Morvi has some connexion with Vejalpur: that is admitted. It was never the connexion between sovereign and subject. It originated in indirect and furtive interference.

(*i*) The Morvi levy is neither *santi vero* nor *jama*. But even if it were called *jama* it would not exclude our sovereignty: *e. g.*, Kotharia, a Vankaner village, pays *jama* to Morvi.

(*j*) Morvi was really taking an *udhad vero* from Vejalpur from Walker's settlement up to 1880, Samvat (1824 A. D.), and in 1892 Samvat (1836 A. D.) it was for the first time called *jama* (page 47 of the pleadings).

40 Morvi's case is, that, up to the 7th February 1870, Dhrangadhra never even laid claim to the village of Vejalpur.

II. That, Morvi alone has publicly, and uninterruptedly exercised every prerogative of sovereignty in Vejalpur.

III That Morvi alone has been continuously recognized by the Agency

as sovereign of Vejalpur: and that that alone is conclusive of the case upon the authority of four decisions (*a*) Bedia (*b*) Katuda (*c*) Márad (*d*) Chamaraj.

IV. That, wherever any outsider had anything to do with Vejalpur, Morvi was always looked to, as being responsible for the village.

V. That Dhrangadhra has throughout acquiesced in Morvi's sovereign authority over Vejalpur, and in the Agency's recognition of it.

VI. That is 1851 A. D. Dhrangadhra timidly challenged Morvi's sovereignty: but did not assert its own. On the contrary it sought to treat the Rahtors as independent.

VII. That the Agency treated the doubt, thrown by Dhrangadhra on Morvi's right to exercise sovereign powers in Vejalpur, with contempt: and that Morvi met it with an indignant repudiation.

VIII That in spite of once having raised this doubt Dhrangadhra subsequently continued to acquiesce in Morvi's sovereignty over Vejalpur.

IX That Dhrangadhra surreptitiously entered Vejalpur in its Infanticide returns for the first time in 1863.

X. That Dhrangadhra was reluctant to file this suit.

XI That each individual act of sovereignty performed by Morvi in Vejalpur was a distinct challenge to Dhrangadhra to come forward and assert its rights, if it had any.

XII. That all these facts, taken together, raise a violent presumption against the genuineness of their evidence (pp. 87, 88 of the pleadings).

41 From this statement of the opposing cases it is plain that both parties claim sovereignty in its true sense: the theory of a joint control finds no place in Dhrangadhra's summary nor in its plaint. It is true that Dhrangadhra admits, as a matter of course, that Morvi had "some connexion with Vejalpur"— a fact which it would be fatuous to deny. But it is contended that this connexion originated in the very common practice of weaker societies paying their stronger neighbours a kind of black-mail. That which Morvi calls *vero* or *jama* and claims to have levied in virtue of its sovereign supremacy, Dhrangadhra describes as Pal. There are throughout Gujarat and Kathiawar

innumerable instances of the payment of Pal or Toda *giras* payments, which it is perhaps unnecessary now to state, do not imply sovereignty in the recipient. On the other hand Morvi, while asserting its plenary sovereign authority over Vejalpur, cannot deny that Dhrangadhra has always taken 16 Rs. from Vejalpur under the name of *jama*. The very complicated considerations, arising out of an examination of all the circumstances attending these rival levies, need not yet be entered upon. It is enough to say that I do not recollect that Morvi offered any very confident explanation of the Dhrangadhra levy: leaving it rather to be inferred that it was a survival of some old world state of affairs, of which no accurate description could now be profitably attempted. Taking *jama*, however, does not necessarily indicate sovereignty: witness the instance of Kotharia, a Vankaner village, paying *jama* to Morvi, given by the learned counsel for Dhrangadhra.

42. The correctness of several of the main positions contended for by the parties, depends upon a review of the evidence offered in support of them. Other issues raised, some directly and some by implication, are rather to be determined by an examination of precedents and the application of what under all the circumstances of the case, appears to be the appropriate Law. And this branch of the enquiry, being in its nature rather preliminary, may very well be treated before entering upon the voluminous record.

43. Such issues are for instance:—

I. What if any period of limitation ought to bound the present enquiry?

II. What is the nature of the evidence usually accepted as good evidence of sovereignty and jurisdiction?

44. And under these two principal issues several co-related topics, of secondary but not necessarily of trifling importance, can also be examined and disposed of. It will be observed that in the course of the pleadings this Court was frequently referred to local precedents. The same cases have been repeatedly quoted as authorities upon different points; but for the sake of convenience and, I hope in the end, lucidity, I propose to take up all the precedents cited together; examine them: compare their points of similarity and difference: extract from them any common underlying principles that may be of service here: and so avoid the need of involving the course of this judgment by constant digressions into the older case law.

45. The principal authorities given by the learned counsel in their addresses are,

I. The Bedia case.
II. The Katuda case.
III. The Márad case.
IV. The Chamraj case.
V. The Wadala case.
VI. The Sáràpádar case.
VII. The Meghwaria case.
VIII. The Nilakha case.
IX. The Sardhar Pati case.
X. The Laloi and Lowarsal case.
XI. Mr. Peile's report on Mangrol affairs, 10th October 1877.
XII. The Kotharia case.

46. In the Bedia case it was held (*a*) that it was not necessary that Gondal should show how it came to exercise the power of sovereignty over the village in dispute which was originally a part of the Sisang-Chandli Taluka. (*b*) That the proofs of Gondal jurisdiction over the village for 48 years were good to be set aside. "We have to deal with facts as we find them, and the proofs of Gondal jurisdiction from a period of fourty-eight years are too good evidence of their right to be set aside as of no value. Gondal, it would seem, assumed the jurisdiction of Bedia from A. D. 1820, and in all probability from a period antecedent to that date, nor have the Girasias, till the present time, considered themselves aggrieved." Here then is an authority, for what it is worth, for the proposition that the Agency Courts, in dealing with vexed questions of jurisdiction, need not go further back than an undisputed exercise of jurisdiction since the year 1820. That year is of course selected as being the year in which the Agency was established. As a general proposition of law it is opposed to the best authorities and to the generally accepted rule that disputes of that nature must be referred back to 1807, or Walker's settlement. It was not probably the intention of Colonel Anderson in deciding this case to overrule the law under which, in all Kathiawar Courts, interstatal claims relating to sove-

reignty, jurisdiction, possession and the like, are always investigated with regard to the rights of the parties at the time when Walker's settlement and the British guarantee stereotyped those rights for ever. That has long been a maxim to which an almost superstitious reverence attaches, and even where the reasons, upon which it is grounded, are least understood, it is well known and unhesitatingly followed. I notice, however, in this and several other ancient precedents a curious tendency to regard the two epochs of Walker's settlement, and the founding of the Agency as identical for the purpose of limiting enquiries into statal titles. Such a confusion of ideas upon a radical point of local law illustrates the extreme haziness with which general principles were conceived, and the strange indifference displayed towards the reasons underlying broad rules of law. It hardly needs demonstration to show that what are very good and sufficient reasons for the rule that no enquiries can be permitted into the titles of States and Talukdars guaranteed in 1807, are no reasons at all for limiting similar enquiries to the year 1820. It ought to be obvious to any person, who cares to reflect, that the simple reason why local Courts declined to go behind the settlement, was that a certain tribute was then fixed in perpetuity upon the basis of certain landed possessions which were reciprocally guaranteed in perpetuity. Without allowing the policy of re-adjusting permanent tributes for cause shown—a policy which has never, I believe, found much favour, it would be obviously inequitable to permit enquiries which might result in the loss of some of those landed possessions upon the basis of which the tribute was fixed. And so it came to be generally understood that any guaranteed tribute-payer, whose title to any portion of his lands or State was called in question, might answer the claim by proving that he was in actual possession when his property was guaranteed. It is perhaps hardly necessary to add that the original object of this rule was to prevent enquiries into such titles extending further back than 1807. It was in conception, I believe, strictly limitative and not amplificative of the common doctrine of acquisition by prescription. That is to say that, whereas under ordinary circumstances it would be necessary for a person, resisting a claim on the ground of ancient and undisturbed possession, to prove that he had had such possession for a statutory number of years, twenty or thirty or twelve as the local law might stand, under this special rule he was not obliged to go further back than Walker's settlement. Suppose, for instance, a claim of that nature had been made in 1820, thirteen years prescriptive enjoyment, since it was found to exist in 1807, would suffice to give the title of

the possessor permanent legal validity, or even for that matter an interrupted enjoyment would do equally well if the person, relying upon his prior title, could show that it was existing and guaranteed at the settlement. And it is no doubt due to that consequence of the rule that its application has in recent times, as I cannot help thinking, been very strangely inverted. The modern doctrine founded on the old rule, for which there is very good authority too, is that when any issue of this nature is raised between States the operation of the ordinary law of limition is abrogated, and no matter how long after the settlement of 1807 the title in question came to be litigated, yet the parties are to be referred back to their positions in the year of the settlement. For instance, if the British rule lasts another hundred years, and this law still obtains, it will follow that a State claiming possession against another in 1990, although the latter can prove peaceable and undisturbed possessin for 150 years, will be entitled of right to have the question investigated with reference to the rights of the parties and their actual possession in 1807. And this appears to me to be a manifest *reductio ad absurdum*. I understand, on the contrary, that where the right in issue between the parties is susceptible of acquisition by prescription, the law applicable to States in Kathiawar is the same as that applicable to private individuals; and that if one of the States can prove that it has acquired a prescriptive title according to the statute law, whatever it may be, that will be a good ground for finding in its favour irrespective of what may have been the possessoin in 1807. It might be argued that that view defeats what was the admitted object in view when the older law was laid down and approved, namely, that the territories guaranteed to a tribute-payer, upon which his tribute was calculated, must be preserved intact for ever. I am not of that opinion; I think that it could not be the intention of the paramount power to constitute itself for ever the ward of the guaranteed Chiefs in this one regard, whereas in other respects they are to all intents and purposes *sui juris*. I perceive a broad distinction between refusing to open enquiries into the manner in which guaranteed possessions were acquired, and refusing for ever to allow the operation of well recognized principles of law upon the aggregate of proprietary rights at one period sharply and peremptorily defined. Whether or not sovereignty is a right which is susceptible of acquisition by prescription, is another question altogether. I have made these remarks, because although the view which they express will not affect my judgment in this case, the opportunity appeared to be favourable for

challenging the soundness of a doctrine, which in its modern form, seems likely to have very dangerous and far reaching consequences.

47. It is interesting to note that in the judgment under consideration rights, analogous to the rights acquired by prescription, are recognized without any direct reference to their origin in Walker's settlement. "Their (*viz.*, the Girasias') right of protest even supposing (which we have no authority for doing) that Gondal's assumption of jurisdiction dates from 1820, would be barred by lapse of time." As the law then stood it is very questionable whether that position could have been sustained. But it has its value as indicating a willingness even so early as 1868 to apply principles, familiar to every system of civilized private law, to a case of this character. Although Gondal's title may not have been unassailable, it was held that the Girasias, who impeached it, were barred by nearly fifty years' acquiescence from setting up an earlier title of their own, even though the latter may have been derived from the settlement of 1807. Throughout this and most similar judgments the term jurisdiction is used as synonymous with sovereignty; and inasmuch as, strictly speaking, jurisdiction is a distinctive mark of sovereignty no real confusion ensues nor are the issues obscured. The Court goes on to point out portions of the evidence which clearly establish Gondal's jurisdiction, (or sovereignty) over Bedia. These are:— 1. Proof that the Zortalbi was paid by Gondal on behalf of Bedia. 2. Proof that Sisang was *mohsalled* (presumably by Gondal) to deliver up a Bedia outlaw for trial. I omit the third set of proofs which are peculiar to that individual case. The Court then goes on to say "Gondal has, I consider, shown by various other proofs such as mohsalling, and levying of certain rights, as well as answering for Bedia in the Infanticide and other departmental returns, its sovereignty over the village."

48. Morvi principally insists upon this precedent as proving that possession for a long time without challenge, and the undisturbed exercise of jurisdiction during that period, will suffice to do away with any necessity to go so far back even as Walker's settlement. That mohsalling, and answering for a village in departmental returns, including Infanticide returns, are good proofs of sovereignty.

49. The Katuda case possesses some singular features. It appears that the village of Katuda belonged to the Chuda Darbár, but that at the time

of Walker's settlement it was mortgaged with possession to Wadhwan. The tribute was, however, included in the tribute due from the Chuda Táluká. It appears that Wadhwan retained the possession and paid the tribute in the name of Chuda. That was the state of affairs existing in 1820, when the Agency was established. According to Colonel Law, who wrote a memo on the case which it seems to me Colonel Keatinge misunderstood in deciding it, it was probably in 1820 or thereabouts that Wadhwan got possession of the village, consequent upon the disintegration of the Chuda Taluka, and the disorder which prevailed in it at that time. In 1863 the Political Agent, apparently thinking it undesirable that the jurisdiction should be with one State, *viz.*, Wadhwan, while another was nominally answerable for the tribute, directed as a mere matter of adjustment, that the tribute should be transferred from Chuda to Wadhwan. The Chuda Thakor naturally objected and prayed that the Wadhwan Thakor might pay him the tribute direct for transmission with the rest of the State tribute, so long as the usufructuary enjoyment of the village remained with Wadhwan. According to Colonel Law Chuda's sole objection to the change, which the Political Agent had just carried out, was based upon a point of honour. "Its future object" he went on to say, "is confessedly to found a claim to jurisdiction over Katuda upon the fact of paying the tribute; but it should be our object to prevent by a distinct prohibition any attempt direct or indirect to disturb a possession that dates as far back as this Agency." Thereupon Colonel Keatinge decided the case. He held that Wadhwan had been in undisturbed possession of Katuda since Walker's settlement. Since the advent of the Agency the tribute had been always paid into the Agency treasury by Wadhwan, where it was credited to Chuda as a matter of account. He went on to say "This village has from the commencement of our connexion been under the undivided authority of the Thakor of Wadhwan; no single fact has been brought forward in refutation of this; and under the circumstances it is out of the question that we should interfere with an undisturbed possession of at least 60 years." Colonel Keatinge's name is associated so intimately with a period of great development in this province; and that officer's reputation has always stood so high that his judgments at the present day carry more weight than they are always entitled to. Here, for instance, I confess myself unable to understand upon what principle the case for Chuda was thus summarily dismissed. Colonel Law, who supplied the facts to which Colonel

Keatinge applied the law, acknowledged that the village was Chuda's, and that it had been recognized at the settlement as an integral part of the Chuda Taluka. A specific portion of the Chuda tribute was fixed upon it, and this was regularly paid up to 1863 in the name of Chuda by the usufructuary mortgagee. In Colonel Law's opinion it was doubtful whether Wadhwan obtained actual possession before 1820, when the Chuda Chief was deposed by British arms and imprisoned; and the administration of the Taluka was entirely disorganized. Seeing that the village was guaranteed to Chuda at the settlement, and a part of the Chuda tribute fixed upon it, the point hardly seems to admit of any doubt at all. Clearly had Wadhwan then had possession, and been exercising all sovereign rights over the village, it would most certainly have been included in the Wadhwan, and not in the Chuda guarantee. And it was to meet precisely such a case as this that the law, which I discussed and explained a short time ago, was devised. The gloss, which Colonel Law put upon it, is instructive and interesting. It should be our object, he says, to prevent every attempt to disturb a possession dating as far back as the Agency. Upon what particular principle he selected the advent of the Agency as a suitable period of limitation, unless because it was a prominent fact in local history, I have not been able to conjecture. The advent of the Agency gave no new colour to existing rights and obligations; it stereotyped nothing; whereas Walker's settlement had stereotyped the entire system of landed estates throughout the province. There is nothing, however, to be gained by emphasizing further the singular tendency which, as I have said, can be traced in most of the cases decided about this time, to treat the two events, Walker's settlement, and the establishment of the Agency, as practically identical in regard to their legal bearing upon the titles of all tribute-payers. No one, at the present day, attempts to found any new rights, or to attribute any abrupt and extraordinary alteration in the character of existing rights, upon, or to the establishment of the Agency. The final decision is only noteworthy because it proceeds upon a statement of facts distinctly opposed, as it seems to me, to the submission of facts with which it was dealing. But for the purpose of this enquiry it will suffice to observe that Colonel Keatinge gives a direct expression to the law, that nothing will avail to disturb a possession guaranteed by Walker; the remarkable feature being that the law so laid down should have resulted in a finding for Wadhwan. It is to be regretted that no indication is contained in

the memo or in the judgment of the kind of proof which was deemed conclusive of the fact that Wadhwan had had complete jurisdiction in the village. Possibly the point was not disputed; since it does not appear to have been part of Chuda's case to deny that, latterly at any rate, Wadhwan had been in actual possession.

50. The next precedent to be considered is the Márad case, and here again the decision, if it can be said to be referable to any true principle at all, rests upon principles so vague that they are of little practical utility as guides. There were several claimants to the village; amongst others certain Charans who, I suppose, claimed as Mulgirasias. Their claim was rejected summarily; the reason assigned being "the fact of the village never from the period of Colonel Walker's settlement having been entered in any list or return as a separate jurisdiction; and never having been assessed for tribute." It is not very easy to reconcile this dictum with the same officer's decision in the Katuda case; but that is not of much importance, since it will be evident that in those days each case was decided upon its merits without any particular regard to principles of universal application, or any very anxious search for the reasons underlying the maxims quoted and relied upon. The Thakor of Wadhwan also laid claim to this village on the strength of an ancient grant inscribed on copper coins, dated A. D. 1747; as well as upon an asserted right to levy Pal. Both these grounds of claim, entirely irrelevant as they really are to the question then in issue, appear to have carried a good deal of weight. A grant or a title, dating as far back as the middle of the eighteenth century, unless supported by actual possession at the time of Walker's settlement in the beginning of the nineteenth, could be of no possible use to the party relying upon it. And it is the more surprising that any countenance, even by implication, should have been given to the contrary opinion, when we remember that in disposing of the Charans' claim in the immediately preceding portion of the judgment, the reason given for throwing it out without any further enquiry, was a reason directly involving recognition and approval of the doctrine I have stated. The Charans, in fact, relied upon the identical ancient grant, upon which, Wadhwan relied; the only feature distinguishing Wadhwan's case from their case, was the alleged levy of Pal by the former. So far, however, from Pal being an evidence of sovereignty, it is exactly the reverse; nor do I think that any person, acquainted with the subject of *giras haks*,

would be found, at the present day, to deny that proposition. The manner in which the right to levy Pal, as an evidence of sovereignty, is discussed in this judgment affords a striking illustration of the imperfect and inaccurate knowledge possessed at that time even by officers whose reputation gave their judgments much of the weight ordinarily attaching to expert opinion. Ultimately the sovereignty over the village was awarded to Muli under the following circumstances, and for the following reasons:—It was found as a fact that the village had passed into the hands of Muli, (the judgment does not say how) in 1825; or about 18 years after Walker's settlement. It was held to have been an irregular transfer and probably prejudicial to Wadhwan, who was not a party to it. But regular or irregular it was accomplished; and no one complained of it for about forty years. In the meantime in many cases where the responsibility for crime was thrown on Marad, the surrounding Talukdars demanded compensation from Muli, and that State acknowledged its responsibility It appears from judgment that, at an earlier date, Colonel Lang doubted Muli's right to be recognized as sovereign, and was inclined to acknowledge the Charans as a seperate community. For purely administrative reasons, however, Colonel Keatinge declared that that course was out of the question, and found in favour of Muli on these grounds. "The position of Muli has been tested during many years, by claims for compensation, which it has always met; it is actual owner of the greater portion of the revenues of the estate, and has acquired, by lapse of time, a better title than Wadhwan can claim by the old deeds on copper now produced." As an aid to a scientific classification of principles applicable to cases of the kind, this judgment appears to me to be worse than useless; it seems to present examples of almost every fault of reasoning which the character of the enquiry, and the materials collected together for the determination of it, rendered possible. It implies that Courts ought to look to ancient titles long anterior to the settlement, which is certainly a doctrine opposed to the law, and the practice of the province, as well as to almost every other judicial pronouncement by the same authority on the same subject. It implies that the taking of Pál is a useful evidence of sovereignty; which is absurd. It brushes aside the rights of the Charans to an independent status, whatever they may have been, upon grounds of so called administrative expediency, and without paying any attention to what their legal position may have been, and in the opinion of so old and experienced an officer as Colonel Lang probably was. It recognizes an irregular transfer

made in prejudice of the rights of another State, and without that State's knowledge, 18 years after the settlement. But apart from these serious defects, the judgment is, of course, valuable to Morvi now, as authoritatively laying it down that when a State is called upon by adjoining States to answer for the delicts of any given village, and does so, and when that state of affairs continues for many years, it is sufficient evidence, in the absence of any better, to hold that the said State is sovereign over the said village.

51. The Chamaraj case. In the first judgment in re-claim to sovereignty over Chamaraj, it appears (*a*) That the village lay on the borders of the two claimant States, Wadhwan and Dhrangadhra. (*b*) That the whole village originally belongd to Dhrangadhra (*c*) That 14 generations previously half the village had been assigned by the reigning Chief of Dhrangadhra to his son Ramsingji whose descendants were the Girasias, at the time the case was heard, of another Dhrangadhra village. (*d*) That the village consisted of two distinct and equal divisions called one the Wanta, and the other the Talpad. (*e*) That the Wanta belonged to the Girasias, descendants of Ramsingji aforesaid, and the Talpad, with all lands appertaining thereto, belonged to Wadhwan.

52. So much seems to have been admitted. The Dhrangadhra allegation, which is not very material here, was that the Jiwa Girasias, Ramsingji's descendants, had mortgaged the Talpad to Wadhwan without the knowledge or consent of the Dhrangadhra Darbar.

53 The Wadhwan case was that the village had formed part of the Wadhwan State from a period long anterior to Colonel Walker's settlement: but that there were no means of ascertaining how it had passed from the sovereignty of Dhrangadhra to that of Wadhwan. A possible explanation was suggested: that it might have been given in *Giras* to the first Chief of Wadhwan who was a cadet of the house of Dhrangadhra.

54. The cause of action arose in 1867 A. D. It is stated in the judgment that Dhrangadhra did not originaly claim jurisdiction over the whole village, but only over the Wanta: later the claim was enlarged to cover the whole village: and this in the course of the trial. Dhrangadhra argued that its sovereignty was inferable from the original grant; from the fact that its sub-

jects were admittedly proprietors of the Wanta; and from evidence that it had always exercised sovereignty. It seems worth while to set out the facts, and the pleadings in this case in some detail: because it must at once be plain that, between it and the claim which Dhrangadhra is now putting forward to sovereignty over Vejalpur, there are many striking points of similarity. Here, too, Dhrangadhra relies upon an ancient grant: and, if not upon the fact that there is a Wanta held by its subjects and paying its share of Dhrangadhra tribute: on the similar, though stronger, ground that the entire village, Wanta and Talpad, both are in the enjoyment of the descendants of the original grantees who have never shaken off their allegiance to the Dhrangadhra State. And lastly, of course, Dhrangadhra relies upon evidence of the exercise of sovereignty and jurisdiction. On account of this marked parallelism between the two cases it is especially interesting to note the manner in which the Chamaraj case was disposed of, and the principles which seem to have been then approved. The evidence of the exercise of sovereignty, which is described as "rather meagre", appears to have consisted of the levy of Peshkashi on the Wanta, tax on successions and marriages in the family of the Dhrangadhra Chiefs, and of the exercise of a sovereign control over the Girasiás, proceedings in all matters in which they were personally concerned, or their Giràs in Chamaraj affected.

55. I pause here to point out what the true connexion between Wanta and Talpad is, and the inferences usually to be drawn as to the sovereignty, where that division of property is found to exist. It is quite evident that the court, which tried the Chamaraj case, had had very little practical experience of the Wanta system, or the curious phenomena it frequently presents. During the Mahommedan or Maratha conquest of Gujarát the conquerring power, as it subdued villages, appropriated to itself the heart of the village, the Talpad, with a considerable share of the village lands known as Talpad lands in contradistinction to the Wanta lands. A share (Wanta) of the village was then restored to the original proprietor, or any neighbouring Girasia whose power and turbulence made it worth while conciliating him: on the understanding that he was to refrain from molesting the Talpad inhabitants, and to join with them in resisting external invasion. This being the simple and easily intelligible explanation of the Talpad and Wanta system in theory, it is not desirable or necessary in this place to dwell upon any of the numerous

causes which in practice led, as before remarked, to the development of Wantas and Talpads retaining indeed the original name, but none of the characteristics or natural proportions which the names imply. These abnormal phenomina are common throughout Gujarat and especially in the dominions of His Highness the Gaekwar of Baroda. But what is important to bear in mind is that in earlier days, when jurisdiction had no very clearly defined meaning, it was an extremely common practice for the Wanta and Talpad Lords to exercise the powers which stood for jurisdiction in these days over the Wanta and Talpad respectively. Later when the consequences, growing from the exercise of jurisdiction, began to be more clearly understood, there was for several years a sharp struggle to preserve the ancient practice, and to get authority for the doctrine that a Wantadar was as much sovereign over the Wanta as the Talpad Lord over the Talpad. This position was utterly unsound in theory and was also found to tend, under better perfected system of judicature and administration, to be equally bad in its practical results. The battle was fought out mainly between the Rewa Kantha Agency (since incorporated with the Punch Mahals) and Baroda; and it is quite within recent times that it was finally decided that where Wantas were situated territorially within the limits of Baroda jurisdiction the sovereignty and jurisdiction over them was to be with Baroda. At the same time, since it could not be denied that the Wantadars themselves, for the most part jurisdictional Chiefs, had been in the habit of exercising some sort of jurisdiction over their Wantas, they were compensated in a lump sum calculated upon twenty times the average annual receipts for jurisdiction within the said Wantas during the preceding twenty years. This brief digression has seemed to me necessary in view of the very vague conceptions of the true origin, theory and consequences of Wanta tenure, which, I think, must have prevailed some twenty years ago in Kathiawar, since I find them generally prevalent still. I have, of course, given nothing more than the simplest outline of a subject, which presents many features of considerable difficulty: but from what I have said it will at once be seen to follow that theoretically the Talpad Lord must in every case be sovereign and possess jurisdiction over a village comprising Talpad and Wanta. That this was by no means always or indeed, commonly the case in practice is mainly attributable to the indifference to or ignorance of the subject which marked the Mahommedan and Maratha dynasties in Gujarat; as well as to the generally accepted

sentiment of the country side that every Chief and Talukdar was, if he had the power, magistrate and judge over his own land. The point of real divergence between those ideas and the modern ideas on the subject being that the former did not by any means necessarily associate magisterial functions with sovereignty in the larger sense of the term, while according to the latter the exercise of jurisdiction can only derive validity from, and is an inseparable mark of, sovereignty.

56. Reverting again to the evidence of sovereignty brought forward in the Chamaraj case, it would be very fairly conclusive but for the fact that the persons over whom it was exercised were acknowledged subjects of and resident in Dhrangadhra. The judgment is not very explicit on the point, but I conclude that to be the meaning of para. 15: and if it is, it introduces a new complication into the question to be tried, of which the Court was probably unconscious. How far the sovereign authority of a State over its subjects, possessing lands in a foreign State, will go to support a claim to sovereignty over the said lands is a question which was not considered in the Chamaraj case and need not be discussed here. It is quite plain from what follows in the 16th para. that the Court did not believe that Dhrangadhra had been exercising sovereign authority over the Talpad part of the village nor indeed over the entire Wanta; such sovereignty as it exercised seems to have been strictly limited to the concerns of the Jiwa Girasias who were confessedly its own subjects. Dhrangadhra was thus remitted to such right of sovereignty as might be held to be a necessary consequence of the original grant.

57. Wadhwan's case was remarkably similar to Morvi's case here. It relied upon a possession anterior to the settlement of 1807, and upon a peaceable and uninterrupted exercise of sovereign control ever since. It also, very rightly, laid stress upon the maxim that the Lord of the Talpad is Lord of the village: though that is a feature not reproduced in the Vejalpur case. Curiously enough, as in all the other precedents I have been examining, the first evidence of Wadhwan's possession dates from the year 1820: when it appears that Chamaraj is on the record as a Wadhwan village. Wadhwan can give no account of the manner in which it became possessed of Chamaraj. The Court thought that if the whole village had been given to the Jiwa Girasias the most probable way in which Wadhwan acquired

the Talpad would have been by mortgage. That is not so according to the true theory of Wanta and Talpad which invariably pre-suppose a conquest. The terms are, of course, loosely used under the influence of false analogies: and I question very much whether there are many genuine instances of Wanta and Talpad in Kathiawar. Certainly where a village had been given in Giras: and the Girasia had mortgaged a part of it the terms Wanta and Talpad denoting the dual ownership would be wholly misplaced. The other theory, propounded by the Court in para. 24 is much more probable: but interesting to me though the discussion of all forms of Giras tenure in Gujarat always is, I must remember that this portion of the Chamaraj case has little practical bearing on my present subject.

58. It was next held that the possession was clearly proved to have been with Wadhwan since 1820; when the village is entered in a Deshjhada Yad as a Jivai village; and again in 1843 it is entered in a statistical return as a Jivai village. This is rather puzzling: because if the Girasias held the Wanta from Dhrangadhra their position under Wadhwan would, I imagine, have been that of Mulgirasias. Chamaraj was also included in Wadhwan's return of fortified places in 1845 just as we shall see later on that Vejalpur was included in Morvi's return of fortified places. The degree of trust which should be reposed in such returns was duly discussed, and though the Court allowed that there was some force in the Dhrangadhra argument against their conclusiveness: yet it evidently looked upon them as useful evidence. Other exhibits were quoted to show that "Chamaraj was understood by the Agency officers generally as belonging to Wadhwan." The same kind of evidence forms a material part of Morvi's case here. "In exhibit No. 12" [para. 30 of the judgment] "especially Colonel Lang in A.D. 1846 in disposing of a case distinctly states the village to belong to Wadhwan. It is true, Dhrangadhra says, he protested against this; but in the Yads put in by him he only demurs to the manner in which the particular case was settled, though he describes the village as belonging to his Bhayat." Almost exactly similar circumstances can be found in this case. In the end judgment was given for Wadhwan although it is noteworthy that Dhrangadhra is said to have lost the Hakumat at some period anterior to 1820, and not 1807. The judgment goes on to say "whether the Bhayat could transfer

§ I do not think there can be any doubt on the point: in theory they certainly could not.

such rights to Wadhwan without the consent of the Paramount Power may be doubtful § but being a fact accomplished nearly half a century or it may be longer ago, it cannot, in my opinion, be questioned now, and Dhrangadhra's claim which is in fact to recover possession of rights which he has allowed to slip from him must be rejected as inadmissible." That is an explicit acceptation of the rule that sovereign rights, in the same way as personal private rights, could be acquired by prescription, and lost by neglect to enforce them, without any regard to a particular point of time from which such prescriptive adverse enjoyment must come into active operation. It was thought to be enough that Wadhwan had exercised sovereign rights for "so considerable a period" namely, about 48 years: without pausing to enquire whether at the time of the settlement, 60 years previously, these rights had been guaranteed to Dhrangadhra. To that extent the judgment is in accord with the innovation which I proposed in an earlier part of this judgment, to make in the existing law; but at the time it was delivered I have no doubt that the rule upon which it proceeded was one of very questionable authority. The case went up on appeal to Colonel Anderson who held that "there is sufficient proof shown that since A. D. 1820 the whole village has been under the control of wadhwan. It is down amongst the list of villages called for and submitted in 1849, and does not appear in the lists submitted by Dhrangadhra. It appears also from the documentary evidence put in by Wadhwan that it took the Sankli Zamin or security for good conduct from the whole of Chamaraj including the Wanta and exercised other acts of sovereignty such as granting of passes, infliction of fines and other treatment of cases connected with the management of the village in question." And after criticizing Dhrangadhra's evidence, and holding that the Jama, which it professed to levy on Chamaraj, was really levied on its own subjects, the Girasias of Jiwa, the appellate Court said "the Dhrangadhra claim to jurisdiction, if it had any, has lapsed by lying dormant for half a century if not longer." The Court's opinion of what was good proof of sovereignty warranting a finding for Wadhwan is the most valuable portion of the judgment taken is a precedent for this case.

59. The Wadala case is a precedent relied upon by Dhrangadhra. The Taluka of Satodar-Wavdi and the State of Jamnagar claimed jurisdiction over the village. From the judgment in appeal, which is the only record of the

case I have, it appears that the decision was given in favour of Jamnagar almost solely upon the ground that it had levied a Santi Vero on Wadala. The appellant, Satodad-Wavdi, argued that the levy was not a Santi Vero, but an Udhad Vero.* A Santi Vero was held to imply sovereignty in the State levying it: while an Udhad Vero was not. Very similar arguments will be found to have been used in this case; the Jama, which Dhrangadhra takes from Vejalpur, is said to have fluctuated, just as the Vero taken by Jamnagar in Wadala was said to have fluctuated: and this fluctuation is said to constitute the essential distinction between an Udhad and a Santi Vero. On the other hand, Morvi appeals to the same arguments and strenuously urges that its levy, which Dhrangadhra calls Pal, was a fluctuating and hence a Santi Vero implying sovereignty. Satodar-Wavdi was also able to point to the fact that Wadala appeared in its Deshjhada: while it did not appear in the Jamnagar Deshjhada, a piece of evidence, which in the cases previously examined, was held to be good proof of sovereignty. Similarly Wadala was included in the Satodad-Wavdi Infanticide returns and Satodad-Wavdi relied on evidence proving the exercise of civil and criminal jurisdiction in Wadala. *Per contra* Jamnagar relied upon a security bond which it had given in 1850 for its subordinate Girasias: and in which Wadala is included. The Court held that the evidence of exercise of civil and criminal jurisdiction was *post litem motam* and could not avail Satodad-Wavdi. "No attempt" it said "has been made to show exercise of criminal jurisdiction anterior to this date." The Court further held upon the evidence that the tax, which Nagar had been taking from 1835–1843 and from 1844–1864, was of the nature of Santi Vero. The Court held that "the Vero taken was for plough-tax and the right to levy that, gives the right of jurisdiction." No evidence of the rights of the parties in 1807 seems to have been thought necessary. Then comes the passage upon which Dhrangadhra principally relies: "it is right to state here that the fact of one Táluka including a village in the lists, it is ordered to send into the Agency, is not in itself sufficient proof that that village belongs to it. No enquiry was ever made into the accuracy of these lists, and in several cases, which have come before the Agency, it has been found that both parties had mentioned the same villages as belonging to them." It is to be observed that, even if we accept this dictum as having authority, it is subject to two qualifications. In the first place the Court holds that mere entries in statistical returns are not sufficient, *i. e., conclusive* proof of ownership:

and the opinion rests upon instances in which both claimants have entered the same village in their lists. Where that is the case it is obvious that the entries can have very little probative value. But it certainly does seem surprizing that if a state knew that it had any claim to sovereignty over a particular village or had a reasonable belief that such claim could be sustained, it should entirely omit the name of the village from its Deshjhada or official list of landed possessions: while on the other hand some other State was including the same village in its Deshjadha. Except upon the point that the levy of Santi Vero is one of the distinctive marks of sovereignty, a proposition which, as far as I know, no one is inclined to dispute, this precedent is of little value.

60. In most of its principal features the Sarapadar case presents a marked contrast to the precedent last examined. The claim was decided in the first instance by Colonel Watson; and in appeal by Colonel Keatinge. Of course at that time (1863) Colonel Watson had not acquired the knowledge of Giras law and the experience of local customs, which afterwards entitled him to the reputation of a specialist in certain matters relating to the history and customs of this part of Gujarat. Nevertheless, there are points of interest in his judgment which I will briefly notice where they appear to me to have a direct bearing on the arguments used by either party in this case. *(a)* The Court held that the imposing of a mohosal, (although a good link in a chain of evidence,) was not proof positive that jurisdiction lay with the State which inflicted the mohosal. Now a large part of the evidence in this case is concerned with mohosals alleged to have been inflicted by Morvi on the Rahtors of Vejalpur. But though in theory one would be inclined to hold that the right to inflict a mohosal implied sovereignty, it is undeniable that in practice States, which made no pretence to sovereignty over adjacent villages, did on occasion inflict mohosals upon them. As, for instance, upon this record we find that Malia mohosalled the Rahtors of Vejalpur for the non-discharge of some civil debt. The truth of the matter being, that in crude stages of social development people are inclined to respect forms and obey facts: without troubling themselves to trace out and establish connective consistent principles. There was evidently no very clear perception in those days of the sanction upon which the legitymate exercise of sovereign rights depended: and though, truly speaking, mohosalling ought to be a mark of

sovereignty, and ought to be ascribed to the same principles upon which the relative rights and obligations of monarch and subject are throughout determined; there was a natural tendency to confuse it, in common with most other exercises of positive authority, with a class of acts depending for their sanction not upon law but upon force. I should be inclined to hold that mohosalling is always good proof of sovereignty; but that the conclusive effect of that kind of proof is liable to be seriously impaired by the considerations I have just indicated.

61 As to the confession of the Girasias of Sarapadar that they were *tabedars* of Nagar and had nothing whatever to do with Mulila, "this," observed the Lower Court, "is no proof at all." For if there was any feud between Mulila and Sarapadar (which there was and the Sarapadar Girasia was out in Báhirwatia against Mulila in 1844) the Girásiás would say this to a certainty." The general truth of these remarks cannot, I think, be disputed: and it has a distinct bearing on the present case: because here too the Girásiás are alleged to have expressed their fealty to one of the parties. The Court then goes on to say "with regard to the question of Vero it must be understood that Vero is divided into two kinds, one called Sánti Vero, which is of a fluctuating character and is paid by the peasants to the Talukdar who exercise jurisdiction; the second kind of Vero is called Udhad, and is a fixed amount payable to a neighbouring State who has claims over the Taluka." And it was further held that Nagar had been receiving annually a fixed amount of 798 Koris. "This" said the Court, "I consider Udhad, and as such conferring no right of jurisdiction." The full significance of these doctrines, the soundness of which is, I believe, beyond question, can hardly yet be apparent; but when we come to consider the evidence relating to the rival levies of the parties in Vejalpur, it will be seen that they have a very important and direct bearing on one of the principal issues in this case.

62. The Court then took up another point in the evidence produced by Mulila, as proof of sovereignty. "Then in the list of villages belonging to the different Tàlukàs in the hands of Government for the purpose of ascertaining the particulars of Infanticide among the Rajputs, it is down as a Mulila village and not as a Nagar one. Now were it a Nagar village, it would be down in the Nagar list." It is evident that the Court attached the highest importance here to the inclusion, or omission, of a village from the Infanticide

returns; while in the Wadála case the same evidence was put aside as of hardly any value. I must say that for the reasons, which I have already given, I am inclined rather to favour the view taken of this kind of evidence in the Sárápádar than in the Wadála case. Here is another passage from the judgment, which was a good deal quated during the pleadings, "in such a dilemma it appears to me to be the safest course to depend more on the real, *bona fide*, genuine and original documents, such as the Choprees recording the levy of Santi Vero and the Infanticide list of villages in the hands of Government than on sheros or orders on petitions which are read over by a Sarishtadár, purhaps fifty to sixty in a day, and nothing is more probable than that a mistake may occur in these orders."

63 In the appellate judgment delivered by Colonel Keatinge, that Officer for the most part agreed with the Court bellow. In regard to the alleged declaration of allegiance made by the Girásia to Jámnagar which Colonel Watson treated, and rightly as I think, as no proof at all, Colonel Keatinge thought that if any action had been taken upon it and if Sarapadar had there and then been incorporated with the Chiefdom of Jamnagar, the admission and its consequences would have been binding upon the Girásia. This view appears to ignore entirely the rights of Mulila; nor can I consive any circumstances under which a mere profession of allegiance made for temporary and interested purposes, could affect the sovereign rights of others. Upon this point I quite agree with the view adopted by Major Ferris.

64 To the appellate Court the Nazaránás taken by Jamnagar appeared to be the most important part of the evidence, but upon further investigation the Court found that these Nazránás were not of the nature of fines paid on succession to the estate by the Girasias of Sarapadar but were marriage and other presents given on the occasion of festivities in Jamnagar. Those presents, the Court found, are given not only by subject but by others of inferior rank to the Chiefs, though not within his jurisdiction; and consequently are not to be regarded as proofs of jurisdiction. The Appellate Court next held that the evidence of the Infanticide returns was important. The rest of the judgment is immaterial.

65 In the Urla case, incidentally alluded to, it was held that a fixed Vero, paid to Nawanagar, gave no sovereign rights, and while the Udhad

Vero was continued to Jamnagar, the jurisdiction and sovereignty over the village were assigned to Dhrafa. All these decisions proceed upon what was then generally an accepted principle, that a fixed, or Udhad Vero, was quite distinct from a fluctuating or Santi Vero; and that while the latter did, the former did not necessarily imply sovereignty. The doctrine seems to owe its existence to the opinions of the local Officers, though I have not yet come across any scientific explanation of the distinction which is thus drawn between the two kinds of Vero. And it is noteworthy that the correctness of the rule was impugned on what appear to me to be very reasonable grounds in the appeal which Jamnagar preferred against the Sarapadar decision. But that is a question the thorough discussion of which may be conveniently reserved for the present. So far as the law was understood at the time to which these precedents relate, no doubt appears to have been entertained in any quarter of the soundness of this principle; it appears to be the one point upon which all the decisions are consistent.

66 The Meghwadia case is another singular precedent, proceeding as it does, upon no very clearly defined principles, and in many points conflicting with such current of local law as could then be said to exist on these questions. It also appears to have been prepared in the vernacular, and therefore may not be a very accurate expression of the Judge's real meaning. One of the most startling propositions in the judgment appears at the outset. We are told that undoubtedly the village belonged in former times to Paliad, one of the claimants; "but this fact is not relevant to the dispute. The question is who has the sovereignty over the village of Meghwadia at the present day." The present day, be it remembered, was 1869. It could not now be seriously argued that the original and not too remote ownership of one of the claimants was entirely irrelevant; nor, I think, that the decision of such an issue as was then raised, must depend upon the actual possession at the time of action, as though the proceedings were being held summarily to prevent a breach of the peace. The Court then found that Bhavnagar, the other claimant, had undisputedly enjoyed the Vero for thirteen years. This Vero, or whatever it was, seems to have subsequently become merged in a kind of fixed Jama, and thereupon it may be inferred from a passage in this judgment that the Court below drew the usual distinction between the connotation in regard to sovereignty of Santi, and Udhad Vero.

But here the Court treats that distinction with indifference. It says "but in whatever way it may be taken Bhavnagar does not lose its jurisdiction, for firstly it is an admitted and self evident fact in Kathiawar, that whoever has the right to Jama (tribute), Peshkashi, or Vero in scattered villages, exercises jurisdiction over them." This is laying down quite a new rule, and laying it down in the broadest terms. I am not yet prepared to say that it is wrong but it is in direct conflict with all the other local decisions, and it could scarcely then be said with strict accuracy that such a rule was admitted or self evident. Curiously enough the settlement of 1807, which seems to have been lost sight of altogether in several of the other precedents, is cursorily referred to here. Both the parties, it is said, had a claim to this village at the time of the settlement: and Bhavnagar included it in its list. At the present day that fact would be regarded as the surest ground upon which to rest the Bhavnagar claim: but in 1869 the fact was barely mentioned and no conclusion seems to have been drawn from it. The judgment seems really to have hinged mainly upon the evidence which Bhavnagar was able to produce of having more than once imposed mohosals upon Meghwadia. This affords a singular contrast to the line adopted in regard to that kind of evidence in the Sarapadar case. "We now come," says the Court, "to a point of importance greater than that of all the above ones. The Lower Court does not seem to have laid sufficient weight upon it. This relates to the mohosal imposed by the Bhavnagar Durbar upon the Girasias of Paliad: *which is an exercise of undisputed sovereignty.*"

67. Again "Bhavnagar received the Chandlo and Sukhdi dues: and so it is not, as the Paliad Girasias say that the Bhavnagar Durbar was to remain out of the village and had a right to take only the Jama, and that the Darbar's right was confined to that levy only from the village." And in the result the jurisdiction and sovereignty were awarded to Bhavnagar. This precedent is chiefly interesting as illustrating the flux of opinion upon the same set of considerations, which were constantly recurring about that period in cases of this nature. Whether or not the character of the leavy, taken by a State from any village, had any essential bearing upon the relations it bore to that village: whether or not the evidence contained in statistical returns was valuable proof of sovereignty: whether or not sovereignty could be argued from the infliction of mohosals: whether or not the decision

of these questions mainly depended upon the state of affairs existing in 1807 and then guaranteed by the British Government: were all questions upon which the ideas of the Courts seem to have been vague and discordant. Nor was any attempt made, it would appear, to systematize them and evolve principles of universal applicability.

68 The Nilakha case introduces an entirely new principle and one upon which Dhrangadhra strongly relies. It will not be necessary to go at any length into the facts of the case.

69 The village of Nilakha was in dispute between Junagad and Gondal. The appellate judgment, delivered by Colonel Keatinge, is of the briefest and gave the jurisdiction and sovereignty to Junagad. Up to that point the case is of no value. But the Appellate Court went on to say "There are besides some principles of provincial policy which dictate that Nilakha must remain to Junagad. These are (1) That where the actual possession is *doubtful, the village presumably belongs to the Taluka from which it was originally granted*, or of which its Mulgirasia is a Bháyát. (2) Where one Taluka is entitled to an Udhad or lump sum only, and another Taluka is entitled to make the collections from the ryots, the latter is presumably the owner."

70 I should not myself describe either of these principles, especially the second, as a principle of provincial polity. Nor should I attach very much importance to any such principles correctly defined unless I was satisfied that they had been determined after the examination of sufficiently numerous data; and with regard to something more than what may have been conceived to be the administrative expediencies of the particular case. Nevertheless the first "principle of provincial polity" is naturally enough most strenuously advocated by Dhrangadhra as being both sound in theory and unexceptionable in practice. In the event of the Court being unable to descriminate between the value of the conflicting claims put forward to the sovereignty over Vejalpur, and consequently being obliged to hold in a sense that the village, so far as its dominium was concerned, was a kind of no man's land: Dhrangadhra could of course, fall back upon the plea that the usufructuary possessors are shown historically to have had some sort of connexion with it and none at all with Morvi. Referring to the "principle of provincial polity" Dhrangadhra would then be in a position to claim sovereign rights over the village on

the score of some ancient grant to the Rahtors who might be its, but could not possibly be Morvi's, Bhayat.

71. Before I criticize this position in more detail it may be as well to follow the case to its conclusion and so determine how much, if any, authority attaches to the principle in support of which it is, I believe, the only available precedent.

72. Government reversed the judgment of the Political Agent (Colonel Keatinge) and remanded the case for further enquiry; but this without any specially expressed disapproval of the two principles of provincial polity which appear in the reversed judgment in the form of *obiter dicta*. Four years later Government decided the case in an elaborate Resolution, dated 16th May 1878. The judgment opens thus "The fiscal rights in the village of Nilakha have already been determined, and it only remains to decide who is entitled to civil and criminal jurisdiction. But as the power and title to levy revenue and the power to adjudicate matters, affecting the relations of the members of a community to each other, are ordinarily component parts of the same sovereignty, the two questions cannot be considered separately." Theoretically that may be so: but in practice throughout the whole of Gujarat (and probably Kathiawar also) it certainly would not be true. For example to cite only the innumerable instances of Wanta tenures, of which I have previously given an outline sketch, which are found scattered broad cast over Baroda and Gujarat. Here the power and title to levy revenue and to make all fiscal and administrative arrangements in the Wanta, admittedly belonged to the Wantadar and did not form component parts of the sovereignty which always in theory, in recent days in practice also, rested with, and has been authoritatively assigned to the Talpad Lord. When I come to dispose of the topic of joint sovereignty and concurrent jurisdiction I shall have occasion to illustrate my criticism and conclusions from the same interesting and abundant materials. And it was in view of the use that I intended to make of the Wanta tenure that I gave a short description of some of its characteristic features, (a description which may at the time have appeared out of place and irrelevant) while analyzing and appraising the worth of the Chamaraj precedent.

73. The judgment then goes on to quote from Colonel Keatinge's (reversed) judgment the two principles of provincial polity: but whether with

approval or not does not subsequently appear. The case was decided upon other grounds. After an elaborate discussion of the merits, (of no value here) Government gave Junagad the sovereignty over Nilakha. The case was then finally decided, though the grounds of the decision are given more amply, as Colonel Keatinge had decided it in 1867. Amongst other observations upon the evidence of jurisdiction submitted in the case Government said "The collection of fines for cattle trespassing and for settling disputes cannot moreover be considered decided proofs of the exercise of sovereignty." I extract that passage because every authoritative pronouncement throwing any light, however feeble, upon the difficult and vitally material question of what is, or was in those days, good proof of the exercise of sovereignty, is exceedingly acceptable.

74. Reverting now to Colonel Keatinge's first principle of provincial polity, it may be noted in the first place that the word used in Colonel Keatinge's formula is "possession." He probably meant dominion, the Roman dominium, or ownership as opposed to the possessio, or physical possession. In the class of cases which are now under examination the latter right is not in question nor is it easy to imagine how the possession (in the correct sense of the term) of a village could ever be so doubtful as to give effect to Colonel Keatinge's principle. On the other hand in a rude state of society, such as existed in Kathiawar some fifty years ago, it could never have been easy to decide between the merits of rival claims to sovereignty over villages the actual possession of which was in the hands of third parties. In the case of some villages, frontier villages especially, it may have happened that after being granted to their resident owners by some larger sovereign State, the ties of allegiance became loosened by the lapse of time and the operation of numerous easily conceived causes. As in those days, and under such circumstances the only concrete manifestations of sovereign authority were probably the levy of Vero, and certain royal dues: and as, in regard to the former, the tendency always must have been for the levy to take a consolidated shape if the connexion between the village and parent State was weak and distant; while in regard to the latter the discharge of such obligations became, after a time, very much a matter of sentiment and at the option of the Girasias who were too far away from the central power, and too independent of it to feel under any very pressing compulsion; it would very often happen that the sovereign authority originally no doubt exercised by

the State over the granted village, lost in time all real substance and remained only as the shadow of something which had existed but had passed away. In the meantime other claims to the substantial right might be in process of active development from other quarters, and resting upon a different foundation altogether from that of the natural allegiance due by the Bhayat or grantees to their parent State. As the conception of sovereignty was mainly filled with the idea of levying tribute and the power of coercion in certain administrative matters: and as the conception of jurisdiction may be said to have been almost entirely unknown: it is easy to understand how complications arose: and how it so often appeared at a later time that two States, both laying claim to sovereignty over some outlying village, had been exercising very similar rights over it at different periods, sometimes, though not so often at concurrent period, of its history. It was probably in face of phenomena of this kind, the causes and explanations of which are so verious, often so obscure that it is not surprising to find that no attempt has yet been made to trace and classify them in a scientific manner, that Colonel Keatinge determined to solve the very real difficulty with which he foresaw the Courts might at any time be confronted, by lying down the simple rule that, in cases where the dominion over a village was in dispute, and the evidence was not conclusive in favour of either party, it should be assigned to the State from which the village could be proved to have been originally granted. Whether that is an authoritative solution; and a solution upon which Courts ought to act to-day, may very fairly be doubted. It is evident enough that in every case, if the enquiry could be made deep enough and complete enough, one of two results must follow. Either it must be found that no State exercised any sovereignty over the village, or that a particular State did exercise sovereignty over the village to the exclusion of the similar pretensions of all other States. In the former case the logical conclusion would be that the village was antonomous; that it was itself a sovereign State; and that is what Colonel Lang clearly was inclined to hold in the Chamaraj case. But inasmuch as we do not in Kathiawar recognize independent States with which no settlements were made, it is impossible, except in the case of a guaranteed tribute-payer, to adopt that view. And to get over the difficulty Colonel Keatinge proposed to apply the tests of grant and consanguinity. On the assumption that the village not having been independent at the settlement, it must have fallen under the dominion

of some of the guaranteed States, the only question of practical importance to be decided is under the dominion of which of them is it now to be replaced ? This rule, however, is likely to conflict with the much better established rule that the Courts have now nothing to do with ancient grants, or consanguinity, or any other consideration arising prior to the settlement of 1807. In the eye of the Law (Kathiawar Law I mean) the world's history begins, for the purposes of all disputes of this kind, with the year 1807. I have already indicated some doubts whether that date is not too remote or at least may not soon become so: but I believe no one up to the time the present case came to be argued ever entertained the slightest doubt that it was remote enough. It appears to me that if no State can establish its sovereignty over a village at, and since, Walker's settlement in accordance with the very elastic interpretation, the local Courts have always been ready to give the term 'sovereignty': and in satisfaction of those extremely lax and liberal tests, which the Courts have usually applied in investigating such claims; the most that a Court would be under any obligation to do would be to declare the claims to sovereignty not proven and direct the village to be affiliated to the nearest Thána circle. Where, on the other hand, two or more States are able to point to a series of acts, all more or less indicative of sovereignty, done by them respectively in the same village at and since Walker's settlement; the duty of the Court is to decide which of those series of acts gives rise to the strongest presumption that at the time of the settlement, and from that time forward, the State doing them stood in the relation of sovereign (as it was then understood) to the village. And this being decided, the other acts also indicating sovereignty, and performed by other States, must naturally assume another character. Either they are legitimate Haks which may be continued or compounded for, or they are unauthorized exactions in regard to which the Court would give no relief: but evidences of sovereignty they can no longer be.

75. For as I have frequently stated or hinted the law knows nothing of joint or concurrent sovereignty over one and the same property, or thing. To speak of "joint sovereignty" is to use a contradiction in terms and to display total ignorance of the scientific definition of sovereignty generally accepted in all systems of Western jurisprudence.

76. Austen, to whom if to any single individual must be attributed the founding of the modern science of jurisprudence, says "the superiority which is styled sovereignty and the independent political society which sovereignty implies, is distinguished from other superiority and from other society by the following marks or characters:— 1. The bulk of the given society are in a *habit* of obedience or submission to a *determinate* or *common* superior; let that common superior be a certain individual person or a certain body or aggregate of in dividual persons. 2. That certain individual or that certain body of individuals is *not* in a habit of obedience to a determinate human superior." Again "In order that a given society may form a society political (apart from which there can, of course, be no sovereignty); habitual obedience must be rendered by the generality or bulk of its members to a determinate and *common* superior. In other words * * to *one and the same determinate person* or body of persons. For example: in case a given society be torn by intestine war and in case the conflicting parties be nearly balanced: the given society is either in a state of nature or is split up into two or more independent political societies." Austen Lecture VI.

77. It is evident enough from these definitions that the bare conception of sovereignty, if it be correct and scientific, excludes the possibility of joint adverse sovereignties over one and the same independent political society. The mistake arose, no doubt, from a study of the phenomena presented commonly enough where a village had in fact been partitioned between two owners: and where owing to the custom of the country and the ignorance of, or indifference to abstract legal ideas, each owner administered his own share of the village in a manner which, if not precisely analogous, at least corresponded clearly enough, with the exercise of sovereignty. But incorrectly as for the most part, these consequences were deduced from the theory of the original partitions; they never afforded any ground for the much more incurrect proposition founded upon them that the sovereignty over such villages was joint. They were indeed split up into separate societies owning allegiance to different Lords: or it was so understood for a time. The owner of the Wanta was sovereign in the Wanta and the owner of the Talpad in the Talpad: but that is saying no more than that very inconveniently fine lines of demarcation can be, and have been drawn between conflicting jurisdictions. The inconvenience was found to be so great, as civilization advanced, that recourse was had to the original theory of this tenure: and it then

became evident, as I think I have explained, that Wantas never ought to have carried sovereign rights with them. The jurisdiction and sovereignty were accordingly restored to Baroda over all its Wantas, and the Wantadars were compensated in money for any pecuniary loss they may have suffered by the abrogation of a right or privilege to which they never had any better claim than practice by consent. But where two States claim to have been exercising sovereignty over the same village it follows hypothesi that either one or the other of them may have done so: that neither of them may have done so, in which case the village, usless antonomous, is to be regarded as in a state of nature or anarchy: but that both of them cannot possibly have done so. These remarks, as supplementing those which have gone before, fairly exhaust, I think, all the useful considerations arising out of the Nilakha case. I have shown some reasons for doubting whether the so called principle of provincial policy is a principle carrying any authority with it: or whether it has ever been seriously criticized in regard to its utility as a practical guide. My own opinion is that it is unsound in theory and has never recently been followed in practice. It is exploded.

78 The Sardhar Pati case was a dispute between the States of Rajkot and Kotda-Sangani as to the right to exercise jurisdiction over the Kotda Pati in the Rajkot village of Sardhar: it was submitted to Mr. Candy, at that time Judicial Assistant, as arbitrator and after duly considering the evidence, and dealing with some of the fundamental principles, which ought to regulate the decision of such questions, he found in favour of Rajkot. His award is valuable in some respects, as being the first attempt among the precedents, yet examined, to arrange the facts in subordination to certain general theories: and to deduce conclusions resting upon broader foundations than the mere isolated phenomena of the individual case. I do not think the attempt was particularly successful; nor is the reasoning throughout the award altogether (as it seems to me) consistent. There is at the outset one broad distinction between the admitted facts in that and in the Vejalpur case. The 'Páti' over which jurisdiction was claimed, was a portion of the village of Sardhar: and it had been granted to Kotda by Rajkot. A very large portion of the judgment is taken up with an enquiry into the nature of the original grant; a topic, which for reasons previously stated, is altogether irrelevant. But whether the grant was made before Walker's

settlement for service or for any other consideration, it admittedly was a grant: and the resultant phenomena, therefore, present a very close analogy with the phenomena constantly presented by the Wanta tenure throughout Baroda. Mr. Candy was not, I except at the time, familiar with that subject: or with the policy which Government had quite as early (I believe, though without references I cannot speak positively) as 1883, determined to observe in dealing with it. Upon the pleadings and apart from any evidence it was plain that the sovereignty over the Pati must be with Rajkot. The second question, however, which had to be answered, was whether Kotda was entitled to any money compensation for loss of jurisdiction over this holding? It is generally true that a jurisdictional State or Talukdar owning a Pati or Wanta in the village of another jurisdictional State or Talukdar, did in earlier days exercise jurisdiction so far as the term was then understood over the said Pati or Wanta. I question whether there are any true exceptions to that rule. But as soon as it began to be realized that the exercise of jurisdiction depended upon the sovereign right of the party exercising it, there was a natural and fairly general protest on the part of the owners and true sovereigns against the continuance of this illegitimate right by subordinate landlords which not only had the direct effect of paralyzing administration and subtracting from the full powers which should be the co-relative of full responsibility; but indirectly aimed at impugning the sovereign right of the superior owner as distinct from the magisterial right of the feudatory or grantee. Given the facts, upon which this litigation rested, there was an *a priori* presumption on the one hand that Kotda had exercised some sort of jurisdiction over its Pati in Sardhar: on the other that it must now cease to do so under pressure of the superior sovereign right of Rajkot. And there is plenty of evidence on the record of precisely the kind that I should have expected to prove that Kotda did exercise a limited jurisdiction over its Sardhar Pati: just as in innumerable instances the Mahi Kantha and Rewa Kantha Chiefs exercised the same kind of jurisdiction over their Wantas in Baroda territory. But as Mr. Candy criticized all this evidence with the object of ascertaining whether it led legitimately to the inference that Kotda had been sovereign in the Kotda Pati: and was apparently unconscious of the existence of the extremely common and well authenticated class of cases I have alluded to, he was naturally driven to the conclusions *(a)* that there is no evidence to show that the donee State did unmistakably

exercise sovereignty in the Pati. (*b*) That the jurisdiction taken from Kotda in 1868 was different from the usual jurisdiction exercised by sovereign States at that period.

79. These findings, though they are both correct, betray total ignorance or forgetfulness of the distinction, unscientific certainly, but which nevertheless did exist as an historical fact and could be illustrated by instances taken at random over the length and breadth of Gujarat, between sovereignty and jurisdiction. The same state of affairs giving rise to the same practical confusion, existed for years in England. The feudal Barons had jurisdiction over their fiefs; though they were under the king's sovereignty. The condition was anomalous and indefensible in theory: but it frequently occurs at certain stages of social development: and is easily traceable to a natural desire on the part of powerful subordinates to arrogate to themselves as many of the emblems of kingly power as they dare; co-existing with apathy or timidity on the part of the sovereign. I insist so much upon a clear grasp of these facts; because it may obviously be of the first importance to apprehend clearly the true relation between jurisdiction (so called) and sovereignty at a period anterior to the development of modern conceptions; when we find that the principal proofs of sovereignty, upon which the parties now rely, consist in the evidence of having exercised jurisdiction over the village in dispute. And also because, unless the contrast between the ideas of the past and the present on this subject be vividly relized: and unless our notions of what the practice was, and how it came to be what it was, be accurate and historical, there would be a natural antecedent inclination to reject as preposterous masses of evidence which prove that two great landowners or States, were exercising jurisdiction side by side in one small village. The prepossessions of a modern lawyer might well feel insulted at having such a preposition seriously asserted: and yet under certain conditions, conditions which clearly may have existed in the Sardhar Pati case, though I do not say that they existed in the Vejalpur case, such a proposition would be almost certainly true.

80. Mr. Candy quoted from Mr. Peile this very instructive and valuable passage. "I may now say a few words as to the principle of British supremacy in Kathiawar.

"It has always been considered by the British authorities that the integrity of each Kathiawar State is guaranteed as it existed at the time of Colonel

Walker's settlement in A. D. 1808. Whatever territory was recorded as an integral part of any State at that settlement, remains an integral part of it for ever. And all territory included in a State is (in the sense explained above) under the jurisdiction of the Chief of that State. No instance is known to the contrary. It is not meant that subordinate Zamindars have not exercised the power of executing justice in their rough way. On the contrary, the subordinate Zamindars all at one time exercised that power. * * * But after definition of jurisdictions in 1863, and the introduction of regular Courts and Codes, it was not possible that the numerous subordinate Zamindars could continue to exercise judicial powers at their own will and discretion. The very intention of the reforms of that year was to strengthen each Chief in his own territory, and to promote therein a uniform and responsible administration of justice by his Court." (page 4).

81. That is a very luminous statement of a very valuable principle: and without going into a great many refinements and exceptional cases (under which it is conceivable that it might require modification) it could not very well be improved upon. I am not so satisfied that the effects of Walker's settlement are to be eternal: but that is a question for the future. Here I emphasize the authoritative pronouncement of the principle that in disputes, affecting the dominion or jurisdiction over any portion of the guaranteed territories of a State in Kathiawar, the test to be applied in settling the dispute, is whether, or not, the said territory was recorded as an integral part of any guaranteed State at the time of the settlement. It is to that principle that all the earlier precedents, which I have examined, ought to have been, though, in point of fact, the majority were not, referred. It appears to me to render wholly unnecessary the elaborate and interesting researches into the ancient history of Rajkot and Kotda, with which the award is lengthened: it bears out my opinion of the value of Colonel Keatinge's dictum in the Nilakha case: and it will be a good warrant for omitting to notice at any length that part of the present case which is concerned with the 18th century. It may be said here, as it evidently was said in the Sardhar case, that there were no means of ascertaining whether the property in dispute had been recorded as an integral part of the territories of either claimant at the time of the settlement. It will be time enough to consider what is to be done then, if the result of examining the evidence supports such an assertion. It is curious that Mr. Candy should have held, after a very careful examination of the

evidence before him, that there is nothing to show with certainty whether the Pati was actually treated as an integral portion of the Rajkot or Kotda Talukas at the time of Colonel Walker's settlement, or whether it was included in the Rajkot or Kotda payment of tribute and Zortalbi; but the inference, from Kotda not levying Vero in the Pati, is strongly in favour of Rajkot. (p. 26). One would naturally have supposed that there could have been no uncertainty about the guaranteed status of a town which, like Sardhar, was, at the time, the capital of a large guaranteed State. But the difficulty arose out of the fact that the Pati was not to be found separately guaranteed: also that Kotda had entered "a share of Sardhar" in its list. In consequence of the doubts, which these points occasioned, Mr. Candy would not hold that the 'Pati' was included in the guarantee of the town in which it lay. I should have felt no difficulty under the circumstances in finding that it did.

82. I quote again from Mr. Candy's award "with regard to the Pati being recorded as a part of either Taluka, reference may be made to the ruling of the Political Agent as long ago as A. D. 1825. Captain Barnewall, in the Hadala case, wrote that the Morvi Thakor 'can only be understood to pay his tribute from the possessions he actually enjoyed when Colonel Walker fixed it, that Officer having fixed the tribute of each of the Chiefs with reference to the possessions and produce they then actually enjoyed which he guaranteed.' And with regard to this question of tribute, reference may be made to the well known principle that the owner of the Vero has the jurisdiction, or as it is expressed in the *Mulk Sherishta* collected by Colonel Lang, "In estates jointly held the paramount authority rests with the possession of the right to levy Santi-Vero. Indeed it is said that the origin of Santi-Vero was a levy to pay for the tribute" (page 5). Where then there is a proved levy of Santi-Vero, it follows that the sovereignty must go with the right to make such a levy. But the absence of any levy of Santi-Vero does not necessarily imply the absence of sovereignty. For Mr. Candy points out that in the whole Taluka of Bhavnagar no Santi-Vero was levied. In the case of the Kotda Pati in Sardhar it was found that neither claimant had been levying Santi-Vero.

83. As it was, therefore, impossible to apply this test, Mr. Candy next considered the evidence of "miscellaneous acts of jurisdiction." "It must be

remembered," he wrote, (as Mr. Peile said in the Sarvania case, Political Appeal No. 2 of 1872-73), "that before the definition of jurisdiction in 1863, the exercise of jurisdiction was a function of the vaguest and most impalpable kind, and very little sought after; or as Colonel Anderson put it in the Meghvadia case (Political Appeal No. 38 of 1869), during the loose policy that prevailed with regard to justice prior to Colonel Keatinge's time jurisdiction and authority were abandoned rather than exercised" (page 5). And again "generally the acts of sovereignty are such as the imposing of fines, Nazaranas, Mohosals, &c., and miscellaneous proceedings, showing that the one Zamindar considered himself as in some measure subordinate to the other." The peculiar difficulty in the Vejalpur case is, as will appear later, that the Zamindars of the village, in other words the Rahtor Girasias, are shown, as the parties respectively allege, to have shown themselves subordinate to both the claimants.

84. As an illustration of the conditions under which a Talukdar may own separate Patis in the territories of another Talukdar, and retain separate jurisdiction over them, Mr. Candy cites the case of Badanpur, a Sorath village, in which the Wasawad and Jetpur Talukdars owned separate Patis with separate sovereignty "and therefore, till and arrangement is come to, the Bagasra Thanadar exercises civil and criminal jurisdiction." The illustration is serviceable as pointing to the transition from the old system, under which jurisdiction was regarded as separable from sovereignty, to the more modern notions on the subject. The remainder of the judgment, dealing as it does with the ancient history of the Pati: the evidences of sovereignty advanced; Deshjhada lists and so forth; although the topics are very similar to those which I shall have to treat of, is not of much service as a precedent. The reasoning, which approved itself to Mr. Candy on all these points, might not necessarily approve itself to me. Nor does it follow that the circumstances of the two cases, in respect to every item of evidence, will be the same. I have sufficiently indicated the grounds upon which I should feel inclined to dissent from some of the conclusions adopted by Mr. Candy. I have endeavoured to extract from his award all that is at present likely to prove of practical utility.

85. The Luloee-Loowarsal case was heard *ex parte* and the jurisdiction awarded to Nawanagar. In appeal the decision was upheld and no new trial

was granted. But the Appellate Court made these observations. "That decree (*i. e.* of the Lower Court) is founded on convincing evidence of the levy by the State of Nawanagar of fines, mohosals, and the *Vero, whether fixed or fluctuating*, rights that invariably carry with them the title to sovereignty." It is important to note here that no distinction, for the purposes of evidenceing sovereignty is drawn between a Santi-Vero, and an Udhad-Vero. This is in distinct conflict with the Wadala case precedent (*q. v. a.* para 59).

86. In his report on the dispute between Mangrol and Junagad Mr. (now Sir James) Peile wrote "I must remined you that it is necessary to distinguish what was formerly meant by the exercise of jurisdiction in Kathiawar from what is meant by it now. Colonel Walker tells us that in A. D. 1807 the subordinate Girasias were in their own villages independent, and that the actual executor of justice in his own village was the local Girasia or Zamindar. But it was the prerogative of the superior power to call on the subordinate Zamindar to see justice done, whether by causing restitution of property, or punishing or handing over a criminal. Regular judicial system there was none. Colonel Keatinge, addressing the Chiefs in 1863, says, "Bear in mind that up to the present time no State in Kathiawar has any judicial system, any written law, or any recognized civil or criminal Court."

"The prerogative of the superior Chief consisted then in the power to require the subordinate Zamindar to render satisfaction for complaints made through the superior Chief, and the note of dependency consisted in the obligation binding on the subordinate Zamindar to satisfy his Chief when a complaint was sent to him for redress." (paras 12, 13, 14). That being the characteristic state of internal administration between walker's settlement A. D. 1807-8 and Keatinge's new system 1863 A. D. it is obvious that the difficulty, in deciding between the conflicting claims to sovereignty, put forward by Morvi and Dhrangadhra respectively over vejalpur, is materially enhanced by the peculiarly vague kind of evidence upon which these claims must rest. The village, so far as possession and enjoyment went, belonged to the grantees, the Rahtor Girasias. The dispute between Morvi and Dhrangadhra began in 1868 or only five years after the introduction of Keatinge's scheme of graded jurisdiction. Consequently the only years, in which we could reasonably expect to find exercises of jurisdiction by either of the claimant States over Vejalpur, would be the years 1863-1868. Before 1863 we are relegated to a search after "the

note of dependency," consisting in the obligation binding on the subordinate Zamindar to satisfy his Chief when a complaint was sent to him for redress.

87. It is obvious that where a small and quasi independent village lay on the frontiers of two powerful States there might be a great many episodes in its history susceptible of interpretation into evidence of submission to both the great States in turn, as it happened in the course of events to be more exposed to the power of the one, or the other, of them. And even after 1863 it can hardly be supposed that the great and radical change, then introduced, immediately bore full fruit; and that States were at once found fully equipped and anxious for the exercise of adequate and exclusive civil and criminal jurisdiction. Or even if that had been the case, that there would have been immediate and constantly recurring opportunities for the exercise of jurisdiction in that sense over a small frontier village.

88. When these considerations are duly weighed, it will at once appear that the decision of the one main issue in this case is not likely to be greatly furthered by that portion of the evidence which relates to the alleged exercise of jurisdiction over the village properly so called. The right, which is put in issue, is an intangible right, the very nature and extent of which was most imperfectly understood until comparatively modern times; and it is the lack of all precise ideas upon the subject, and the consequently vague and unsatisfactory evidence upon which alone its existence in the first half of the century could be argued, which make the present adjudication unusually difficult. If the parties had joind issue upon a question of possession: or upon any other tangible and generally understood right; it would have been comparatively easy to compare the strength of their respective claims. But whereas here the right to be adjudged, only took definite shape within the last thirty years: while its inception dates back to 1808: and its existence during fifty years, when no one took much heed whether it existed at all, or to what it extended, has to be proved by evidence of its exercise, and not only that but of its exclusive exercise; large allowances have to be made for the inconclusiveness of the proof (if it be inconclusive): and the determination of the question in issue can scarcely even aim at that exactitude and juridical perfection which ought to characterize the judicial pronouncements of our Courts.

89. I have already quoted and commented upon paras 20, 21, 22, 23 of Mr. Peile's report from Mr. Candy's award in the Sardhar Pati case.

But it may be interesting to note a passage in the 36th para. affording, as it does, a marked contrast with the principle (if it can be said to have been fully grasped as a principle at all) of some of the precedents previously examined. In assigning his reasons for withholding a sympathy he might otherwise have extended to the Shekh, Mr. Peile says "But his pretentions are simply the invention of his father since A. D. 1830 and had no existence in the first 20 years of British Supremacy in Kathiawar" Mr. Peile's views were strongly and consistently in favour of referring all questions of the rights of guaranteed Chiefs and Zamindars to the year of the guarantee. It clearly never occurred to him to see in the establishment of the Agency in 1824, a new point of departure contradistinguished from Walker's settlement of 1807. There is no need, I think, to make further excerpts from this valuable State paper. The conditions of the Mangrol dispute with Junagad were essentially different from the conditions of this dispute. And the grounds, upon which Mr. Peile rested his decision that Mangrol was a dependency of Junagad, have no especial applicability to the facts of this case. The matter, with which Mr. Peile was dealing, was much simplified by the fact that Mangrol claimed independence in certain of its own possessions which had been included in the Junagad guarantee. Here, however, two rival States claim sovereignty over a village which neither will admit was guaranteed to the other: and to the possession and usufructual enjoyment of which neither has any claim. This showing obviously deflects the enquiry into altogether new channels.

90. Lastly I come to the Kotharia case. Here Morvi claimed the right to levy a certain annual sum, as Jama, from the village of Kotharia under Vankaner. Vankaner was, for some inexplicable reason, made plaintiff; a proceeding upon which the judge (Major Ferris) makes some very just strictures. That, however, is of no consequence now. The substantial issue in the case was, whether Morvi's levy was an authorized and enforceable levy or not? There was the usual limitation issue raised and decided against Morvi by Major Ferris. He held that though sovereign rights might be lost by adverse prescriptive enjoyment: no bar of limitation could operate to stop a sovereign from suing for his sovereign rights. Upon the principal issue Morvi argued that it had been levying the sum claimed from a period anterior to Walker's settlement: and that it had been styled indifferently Vero or Jama.

To this argument Major Ferris demurs. He says "Those terms, Jama and Vero, are of very ancient date and have totally distinct meanings. Jama is the tribute paid by subjects to their sovereign: Vero is the land or quit rent paid by the tenant to his land lord." This is another striking instance of disagreement between the authorities. Every other precedent without exception lays it down that Santi-Vero, at any rate, is a distinctive mark of sovereignty. According to Major Ferris, Jama is a better evidence of sovereignty than any form of Vero. Indeed Vero would according to his definion be no evidence of sovereignty at all but rather the reverse. In fact Major Ferris almost immediately emphatically lays it down that while Jama implies the existence of relations of political subordination, Vero would show that the recipient had a title to the Vero paying property but not to the fealty of the Vero-payers.

91. Again Major Ferris writes—"Before jurisdiction was defined in Kathiawar the larger States used to recover from the petty Girasias and lower Talukas payments on various pretexts. These were called Jama, Vero, Badshahi-Jama, Fero, Pal, Udhad, &c. All of them were in their nature black-mail and all had their origin in the power of the levying State to enforce payments. These levies represented the might and not the sovereignty of the levier; many of them have died out, others have, for various reasons, been acquiesced in by the sovereign lord of the paying party; others again, as in the present case are disputed" (pp. 9-10) I question seriously the general accuracy of that statement: I do not say that isolated instances might not be adduced in support of each of its assertions: but it appears to me to lose sight of many distinctions which might be and ought to be drawn between the essential characters of the various levies which it includes in a general category, "kinds of black-mail."

92. I do not propose to follow Major Ferris through his criticism of Morvi's evidence: though much of it is very similar to the criticism to which the mohosal documents produsedby Morvi have been subjected here. I note, however, with interest that Major Ferris found that the Jama (so called) fluctuated and that this circumstance gave rise to the inference that it was an irregular levy and not a fixed tribute. It will be remembered that in the other precedents the fluctuation or the rigidity of the Vero were held to imply that it was a sovereign or a non-sovereign levy respectively.

93. Dhrangadhra principally relied upon this passage. "The books were produced, as I remarked above, to prove Jama payment and the entries are made under the heading of Morvi's Jama Khata; but in the same books and account it is distinctly stated that the payments for 4 years was for "Pal". This was suppressed by Morvi when putting in the books and when pointed out by Wankaner was put in as exhibits W. 48. 49". (p.p. 11, 12).

94. In the result judgment was given for Wankaner: and the levy, which Morvi claimed, was pronounced to have been of the nature of "Pal" and unauthorized. This completes all that I think, it necessary to say of the precedents.

95. I collect from them with reference to the first issue (*q. u. a.* para. 43.) that the best rule, as the law at present stands, is to look to Walker's settlement in any dispute affecting rights which were or might have been guaranteed at that settlement. It is true that in a numerical majority of the precedents it appears that the local Courts were inclined to give effect to a much more limited rule of Limitation: and to hold that undisturbed possession since 1824, the year in which the Agency was established, gave a valid title: and this too as between guaranteed Chiefs and Talukdars. It is very doubtful whether those rulings were founded on any clearly conceived principle. On the contrary there are constant indications of a confusion between the consequences arising from a possession existing at the settlement and then guaranteed, and a possession uninterruptedly maintained through any long period. What constituted a sufficiently long period was never definitely laid down: but if the possession had lasted for thirty years or so, and was supposed to have existed at the time the Agency was established, the Courts seemed to think it gave as good a title as though it had been guaranteed in 1807.

96. The rule might and, I think, ought to be different where the right in issue is claimed by non-guaranteed Talukdars. This was one of the distinctions drawn by counsel for Junagad in arguing the limitation point between Mangrol and Junagad. With the whole of that argument I am inclined generally to agree.

97. But in the present case it was contended that no question of limitation could really arise. The sovereignty, which is claimed, was an intangible

right: the manner, in which it could and ought to have been exercised to give it its true legal and exclusive character, was either very imperfectly understood or not understood at all. Had the claims been to the possession of the village then it would have been comparatively easy for the party relying on long, undisturbed possession, to prove that he had had it: that he had tilled the fields; let them to cultivators, taken rent for the houses and the lands of the village and so forth: and that no one else had synchronously been exercising anything like the same rights of practical ownership. But here the evidences of sovereignty are so intimately blended with the exaction of dues, and the exercise of authority which admittedly do not prove and admittedly may fall short of sovereignty: that even at the present day when the legal import of the term sovereignty is definitely understood it is by no means an easy matter to distinguish between evidence which proves sovereignty and evidence which proves a relation which can hardly be defined otherwise than as *de facto* but not *de jure* sovereignty. And if the former existed to the exclusion of the latter there would be some ground for the argument that it had enured by prescription and that the *de jure* right had expired for want of user. But what is to be said when we find the legitimate and the illegitimate sovereignty occasioning contemporaneous and by no means mutually exclusive phenomena in one and the same village? For instance, mohosalling ought, in theory, to be an emanation from sovereignty: but nothing is commoner in fact than to find all the powerful neighbours of an outlying village (including no doubt its legitimate sovereign) mohosalling it indiscriminately—and in earlier times without occasioning any remonstrance or surprise. Theoretically it is only to the sovereign authority that acts of that nature can be referred for a legal sanction. But the task of discriminating for evidentiary purposes between instances of the undoubted exercise of this power, and of determining which of them can and which cannot be referred to an adequate legal source, remains as difficult as ever. It is obvious that nothing is to be gained by an argument which, upon the face of it, has a very strong tendency to work round a circle. The point to be reached, is the answer to the question, where resides the true legal sovereignty? the evidence, offered to assist us in reaching it, consists of acts which ought not to be but undoubtedly are done upon an authority very defective, and falling far short of the perfect legal sovereignty. And there appears to be

no very satisfactory criterion for determining from which of such acts it is safe and from which it is not safe to draw the required inferences.

98. Again, as I have shown, (*q. v. a.* paras. 75, 76) sovereignty truly conceived must be exclusive. But the sovereignty, which satisfied States in Kathiawar up to quite recent times, was by no means scientifically exclusive. It resolved itself rather, in the case of alienated villages, into a collection of revenue: and the right to insist upon justice being done in the last resort. The former mark of sovereignty should have been both recognizable and constant. But two main causes operated against its distinctive character. The first was the shifting nomenclature of the province and the carelessness with which terms, to which a special and rigid connotation is now sought to be attached, were interchanged. The second must be traced to the fact that money collections, which did not imply sovereignty but merely the power to injure or protect, were as commonly made by powerful neighbours as by the true sovereign. And although the nature of these different collections was originally denoted clearly enough by the distinctive terms applied to them, it very soon became difficult, at the present day it is sometimes almost impossible, to trace and classify them by the application of that test alone. Sometimes intentionally, no doubt, sometimes through indifference, sometimes owing to certain names having temporarily become almost synonymous, levies of a particular class came to be described by terms appropriate to other kinds of collections: and we are consequently in large measure denied the valuable assistance, which might have been derived under a more exact system, from the use of such words as Jama, Vero, Santi-Vero &c. &c., describing a State's levies from its own or other villages. That is one form of the difficulty: another is the disagreement between local authorities in interpreting such words: and assigning to them their proper significance for the purposes of drawing inferences touching sovereignty or ownership, or tenancy. I think, however, that the weight of authority is in favour of the old rule that 'Santi-Vero,' is a genuine and unmistakeable mark of *sovereignty*, as the word was formerly understood, and as it is the policy and intention of our Government to maintain it in a much larger and fuller sense.

99. The second prerogative of the sovereign in earlier times, the prerogative of calling on the Zamindars and feudatories subject to him to do justice in any particular case, appertains to the topic of jurisdiction. It in-

volves the modern doctrine that jurisdiction is an inseparable attribute of sovereignty: but in its application it must be evident how far it falls short of the fully developed conception. For while it asserts that with the sovereign lies the right to see justice done: it apparently imposes no corresponding obligation. And it is historically true to say that, while in the generality of cases the local Zamindar was responsible for the judiciary such as it was of his fief or barony, the extraordinary intervention of the sovereign in the exercise of this prerogative, was an extremely rare occurrence, and was usually limited to cases in which the Darbar had an interest. The subject is still further complicated, as in the case of mohosals, by the fact that there are instances of two or more States having interfered in this way with the internal administration of alienated villages. And although the note of dependency consists in the Bhayat, or Girasias, recognizing their subordination to an external power seeking thus to supervise and control their judicial administration; it is difficult to detect any such note, or at least to hear it unmistakeably, when we find more than one State claiming the prerogative, and the Girasias apparently admitting the claims of all with equal readiness or reluctance, as their mood at the time might happen to be. Nor should I myself be inclined to attach much importance to any distinction between voluntary or reluctant submission under such circumstances: especially where the distinction is founded on verbal allegations made after the event. The important fact is the submission: whether it was made cheerfully or grudgingly is not of great consequence. Any other view leads to the conclusion, previously discussed and disapproved, that subjects can have a private personal right of election between rival sovereigns; I mean, of course, with reference to the abstract rights of the latter over the territories in dispute; and subject to the proviso that the expression of personal opinion on the part of the subjects, was not general and did not extent to any act of revolution or rebellion which might have the effect of dissolving previous ties.

100. Where, however, we find the same kind of demands made by two States, both claiming sovereignty over a village: and we find that the proprietors acceded to the demands in both cases: and that this kind of thing went on for years synchronously, it would, I think, be idle for the villagers to pretend now that there was any essential distinction founded on their willingness or unwillingness to meet those demands, between the inferences legitimately to be drawn from those facts.

101. If every demand, which directly ought to have implied sovereignty, were just: and every demand, which did not imply sovereignty were unjust; then, given rival series of demands each claiming to imply sovereignty the fact that one of them had consistently and universally been cheerfully acquiesced in, while the other had been as consistently and universally resisted, would no doubt have a valuable bearing in determining which of those series of demands was just and which was unjust: or in other words which implied and which did not imply sovereignty.

102. But there are certain classes of demands which do not seem to have been considered unjust in those days, though they did not imply sovereignty: and in using the test just suggested, it would be indispensable that in estimating the value of acts showing a willing submission, or a spirit of resistance, to different demands, the essential conditions should be the same. In point of fact they seldom do appear to be quite the same. Nor where, on the one side, demands of this kind have been made at very rare intervals and have been submitted to without protest, while, on the other hand, they have been frequently made and invariably enforced in spite of protests, is it very easy to judge of the relative value of those bodies of evidence as bases for inferences for or against sovereignty. The question would be greatly simplified, if in every instance, the protests had emanated from the rival State claiming sovereignty; and had been founded on that claim. But it is plain that where the objections were made by the Girasias, to whom the so called sovereign mandates were addressed, considerations, arising out of the nature of the demands themselves are introduced and tend still further to perplex the subject. For supposing that Dhrangadhra had a right to enforce its views of justice as a revisional sovereign authority: but never did so except under circumstances agreeable to the Girasias, it is antecedently probable that the demands, emanating under those conditions from Dhrangadhra, would have been cheerfully acceded to. But supposing precisely the same ground of right, and that the demands were made frequently and against the interests or wishes of the Girasias, it is at least as antecedently probable that there would then be found evidence of resistance. The Girasias, indeed, were not very likely to theorize on the source of authority: its concrete manifestations, as affecting themselves, were all that they would understand: and, in proportion, as such manifestations of authority harmonized or conflicted with their immediate interests, would they be likely to submit to or resist them.

103. Under the conditions hereinbefore described, it is also plain that the only evidence of jurisdiction available before 1863 A. D., would be confined to isolated and inconsequent exercises of this vaguely apprehended sovereign prerogative. And it is a chief part of the difficulties, with which I have to contend, that owing to the inaccuracy of all local conceptions of the subject and the confusion of ideas and of practice with which it is surrounded and obscured, that which is ordinarily a principal and trustworthy indication of sovereignty, is of little value for that purpose here. I do not say, of course, that such evidence, as there is of jurisdiction in earlier days, is of no value: that evidence has its value in connexion with other allied topics: but it has not the conclusive force it would have, had the subject been as clearly understood before 1863 as it now is: and had its larger principles, as a consequence, been as systematically acted upon. The single fact, for instance, that two States both appear on occasion to have claimed and exercised this prerogative over the same body of subjects at almost the same time and without apparently raising any mis-givings, is quite enough to involve the enquirer, from a scientific stand point, in almost inextricable confusion. It also follows that since jurisdiction, as now understood, was not created in Kathiawar till 1863: and as the cause of action arose in 1868: there can be no question of limitation on that head. With regard to indirect proofs of sovereignty; inasmuch as they can hardly be said to be logically exclusive, it is further questionable whether in respect to them also, any considerations, derived from the modern Law of Limitation, could be profitably introduced. Upon a careful consideration of the salient features of this case, and an equally careful comparison between it and the principal local precedents, I conclude that the right claimed was created permanently in 1807: that from the nature of the right itself, and the general colour of local opinions and practices concerning it, it was not susceptible, formerly at any rate, of acquisition subsequent to 1807 by prescription. Or if that opinion requires modification, I would say that the party, claiming to have acquired sovereignty by prescription since 1807, must be put to the strictest proof that he has exercised every right, which was formerly understood to derive from sovereignty, adversely to and to the complete exclusion of the party who had it in 1807. It is not, however, Morvi's case that he acquired his sovereignty over Vejalpur by prescription since 1807. On the

one hand, Dhrangadhra alleges that he granted the village to its present owners somewhere in the XVIII century, and that ever since then he has maintained, according to the customs prevalent at the time, the relation of sovereign over and reversioner to the grantees. On the other hand, Morvi alleges that he became possessed of the village by conquest, or in some other way prior to 1807: that his sovereign status, in regard to Vejalpur, was an accomplished fact in 1807 and that it was then guaranteed to him for ever. That ever since that time he has consistently exercised sovereign rights over the village in accordance with the ideas prevalent in the country at the time: and that he has all along been recognized by the Agency as sovereign of Vejalpur. Upon that statement of case, I think, it must be evident from the preceding analysis of case law, and enquiry into principles, that the only point of limitation affecting the dicision of this dispute, is that the Court must look to what was the actual position of the parties in regard to this sovereign right at the time of the settlement in 1807. All the evidence, going to prove the exercise of sovereign prerogatives over the village subsequent to that date, and upto 1868, must be carefully scrutinized with the object of ascertaining what, if any light, it throws upon the conflicting allegations of the parties, that each of them was sovereign over Vejalpur in 1807, and that that sovereignty was there and then guaranteed permanently.

104. I also collect from the precedents certain kinds of evidence, which used to be considered good for proving sovereignty and jurisdiction. Such for instance, as the levy of Santi-Vero as opposed to Udhad-Vero: the inclusion of a village in certain statistical returns, especially Deshjhadas, payment of its Peshkashi or Zortalabi, Mohosalling, answering for the crimes of its inhabitants and so forth. While the precedents were under examination, I dealt fully with these and all topics more or less directly connected with them; and this elaborate analytical investigation ought to be of great service to me in dealing with the evidence put in by the parties to this case to prove their respective allegations. It has at least afforded me ample opportunity for giving those reasons, which appear to me conclusive against the right of either party to go behind Walker's settlement. And incidentally I have been led on to examine a great many theories and opinions, which are constantly coming to the surface in the investigation of many anomalous phenomena, presented by the Giras tenures of Gujarat and Kathiawar. Some

of these are of general, rather than special, importance: others have a direct bearing upon the issues now to be decided. An authoritative exposition of fundamental principles, appears to be urgently needed: so that in the future all questions of this nature may be answered consistently with reference to them, and not as heretofore with regard only to the peculiar and often merely superficial features of each case, without any clear apprehension of those factors which deeper research will, I think show, to be common to all.

105. in dealing with the evidence I propose to follow Mr. Wadya's classification. It has the merit of logical accuracy and lucidity. There were, he said, three main divisions of the evidence:—

I. That which related to the rights of Morvi and Dhrangadhra in Vejalpur prior to Walker's settlement.

II. That which related to acts of sovereignty and early jurisdiction before Colonel Keatinge's scheme of 1863.

III. That which related to the same class of acts between 1863 and 1868. If, he went on to say, the evidence on parts II, III is conclusive, there, will be no need to go behind Walker's settlements. But if not, we must go further back. Logically then, we ought to deal with parts II, III first. I have already stated, with ample reasons, my conclusion that all evidence, relating to sovereignty before 1807, is irrelevant. For the satisfaction of the parties, who are naturally desirous that whichever way the decision goes, every one of their arguements, and all their evidence should be fully considered, I may find it desirable at the conclusion of the case to say something about that evidence. Here it is enough to premise that it will not affect my judgment.

106. And first of the Deshjhadas or lists of villages submitted by the States to the Agency. On this subject Major Ferris (p. 10, 11. of his printed judgment) has the following remarks. "Many Patraks and statistical tables have been put in as evidence to show that both parties have at times, in furnishing them to the Agency, included Vejalpur in the State for statistical purposes.

As a rule these are of no probative value; they were prepared by the State and were never scrutinized by the Agency. The collection of statistics

was what was aimed at and not an enquiry as to whether every village mentioned, belonged as a matter of fact to the State furnishing the table. It has been shown that both parties furnished the Infanticide Patrak for some years before it was found out and then it only came to light owing to there being a special department to verify statistics. Such Patraks as returns of Bharwads, of Mulgirasias having been submitted to the Agency, containing Vejalpur statistics *inter alia*, does not in my opinion prove anything, but on the other hand the failure of Dhrangadhra to enter Vejalpur in the Deshjhada as one of its villages is very significant and raises an adverse presumption.

The Dehsjhada was a list, furnished by the State, on reqisition by the Agency, of all the villages belonging to it and within its jurisdiction. Now so far back as A. D. 1820, Morvi's Deshjhada (M116) will show that Vejalpur was entered as one of itsVero paying villages, while in Dhrangadhra's Deshjhada for the same year (M117) Vejalpur is not mentioned at all. Twenty four years later in 1844 A. D. Dhrangadhra furnished the Agency with a return of its villages in which Vejalpur appears (D34.) This would be important, could it be shown that the Agency called for it and that Morvi simultaneously furnished a similar return in which Vejalpur did not find a place."

107. I am not prepared to go so far as Major Ferris goes in saying that "as a rule these are of no probative value." In the absence of any existing dispute, I think, such records must always have some probative value, though it may fall very far short of the value of conclusive proof, and is liable to be impaired by many circumstances, which it lies upon the party alleging them to prove. A distinction, too, may very well be drawn between different classes of statistical returns, as Major Ferris implies. Some are no doubt of very little use: others may be important.

108. "Deshjhadas," said Mr. Wadya, "are not infallible,, and in impugning the absolute accuracy of M116, M117, he drew attention to several significant circumstances. He argued, in the first place, that in Morvi's list M116, Vejalpur was not mentioned: the village is written Vejalpur. This is, however, hardly a serious arguement. There can be no doubt that Vejalpur was the village denoted by the entry. Secondly he pointed out

that in this very Deshjhada, Morvi had included certain villages which are admittedly not its own *e. g.* Manawun, belonging to Malia: Kotharia, belonging to Vankaner: Kajardu, belonging to Malia; and Devalia, which belonged in part to Dhrangadhra. Similarly in the Dhrangadhra Deshjhada, M117, there are ten villages omitted, which admittedly do belong to Dhrangadhra, *viz.* 1. Bad 2. Hampur. 3. Adeli 4. Kabaria 5. Sarambra. 6. Pimpla. 7. Miani. 8. Asundrali, 9. Amrapur and 10. Pandetirth for which see subsequent Deshjhadas D34, 35, 36.

109. M116. is dated Sumwat 1876 (A. D. 1820) that is thirteen years after the settlement. Mr. Pandit referred to P283. of the Gazeteer to show that a name like Vejalpur would have been spelt indifferently Vejapur or Vejalpur. I find there that there was a powerful local tribe of Rajputs, called Vajas: and that *Veja* or *Vinjal* (which is much the same as Vejal) afterwards became a favourite name of the Vaja rulers. The point is not of much importance. Vejalpur was admittedly in existence in 1820: and there is no Morvi village called Vejápur.

110. Colonel Walker's report, dated 15th May 1808, must necessarily be referred to in this connexion. Paras 154, 155, 156, 157, 158, 159.—"I have now the honour to submit to the Honourable the Governor in Council a document of more general and extensive use and reference."

"155. This is a tabular statistical account of the whole of the countries and principalities in the western peninsula, arranged under their respective divisions."

"156. It exhibits, from the most accurate data, procurable, the possessions of the several Chieftains and their respective Bhayad, the number of fortified places they posses and the villages they enjoy."

"157. The revenues derived by the Chieftains, the amount payable by them on account of tribute, the desposal of the surplus, and an estimate of the population, is also attempted to be distinguished by separate columns."

"158. The compilation of this document has been assisted by persons whose habits and local acquaintance with the people and the country have greatly facilitated the acquirement of the necessary materials."

"159. It may, therefore, be received as a tolerably accurate exhibition of the subjects which it professes to illustrate; but every account of this

nature, however, must contain many errors and many inaccuracies, which are inseparable from the subject, and in a country like Kathiawar, destitute of every internal police or domestic institution to facilitate inquiries of this nature, the difficulty is also much increased by the natural jealousy of the people."

In the tabular statement, therein mentioned, Morvi is entered as possessing 125 villages. In Blaine's report, of 1831, Morvi is entered as a Taluka of 124 villages. At page 168 of that report, we find the Taluka of Tankara consisting of seven villages, entered as having been alienated for a term of years to a Baroda Saokar. Intermadiate between these two reports is the Deshjhada, M116, according to which the Taluka consisted of 117 villages, of which 112 were populated and five were waste. Assuming that the alienation of the Tankara Mahal had taken place between 1807 and 1820, and that in describing it as consisting of seven villages, Mr. Blaine excluded Tankara itself, it would follow that the Deshjhada of 1820 tallied exactly with Walker's return at the time of the settlement, and with Blaine's return 24 years later. In any case the correspondence is sufficiently close to corroborate very strongly the genuineness of the Deshjhada.

111. The arguments addressed to impeaching its correctness, are of two kinds, those namely derived from the unauthorized inclusion of villages to which Morvi had no right: and those derived from the omission by Dhrangadhra in a similar list of other villages to which it has now an admitted right. These arguments are of very different degrees of cogency. The latter, for instance, may be met at once by the answer (*a*) that there is no evidence such villages existed at the time the Deshjhadas were submitted; (*b*) that it does not adequately meet the case of one State entering as its own a village to which another State was admittedly entitled; but which the latter did not enter in its lists. The first clause of the second part of the answer is closely connected with the first rather than the second argument: but it meets the second argument also, when it is supplemented in the manner in which I have supplemented it. Because there is a manifest distinction between the case of two States, one of which had, and the other of which had not, the right to a certain village, *both* including it in their Deshjhadas and the case of one State, and that the State not so entitled, alone having done so.

112. The subsequent lists, in which the ten omitted Dhrangadhra villages are to be found, are D34 (dated 22nd January 1844), D35 (dated 8th August 1845), and D36 (dated 21st June 1845.) In the first place, I have to observe that these are not Deshjhadas and have not at all the same value as Deshjhadas. The latter were lists of all their villages furnished by the Jurisdictional States, in 1820, to the Agency upon its first establishment. The Agency's diplomatic relations with the States, and the details of its administration, must have been in great measure founded at first upon the information so supplied. Now D34 is a kind of general return, apparently for census purposes, including the number of houses in each village: the population: the number of Santis: and the revenue. It was submitted twenty years after the Deshjhadas: and it includes Vejalpur which is described at No. 87 as a Jivai village. Unfortunately no corresponding return from the Morvi State has been produced. What the information was required for, I do not know: nor whether it was taken from all the States in Kathiawar simultaneously. The return is initialled by Mr. Malet. According to it Dhrangadhra had 169 villages: whereas, according to M117, the Dhrangadhra Deshjhada, Dhrangadhra only possessed 110 villages in all, of which 75 were inhabited and 35 waste. The explanation is simple enough. D34 comprises every village in which the Dhrangadhra State possessed any Haks of whatever description: and, of course, Dhrangadhra does possess Haks which imply no sovereign right in numerous villages belonging to other States. Almost every large State is similarly situated. D35 and D36 are Dhrangadhra's and Morvi's returns of fortified places supplied to the Agency in 1845. Dhrangadhra has included, while Morvi has omitted, Vejalpur. But that is rather a separate topic than a part of the present argument. It is obvious then, I think, that the subsequent inclusion in lists of this sort of a great number of villages, not to be found in the Deshjhadas, though it may indicate the inaccuracy of the later lists, is no proof of inaccuracy in the earlier. Nor does it necessarily imply any inaccuracy in either: since the statistics were evidently compiled upon different principles, and to serve different ends. In this connexion, however, it will be convenient to compare the Dhrangadhra Deshjhada with Walker's and Blaine's returns, in the same manner as the Morvi Deshjhada was compared with them. M117, as I have said, gives Dhrangadhra 75 inhabited villages. Walker gives Dhrangadhra 65. The discrepancy was accounted for by Mr Pandit and, I think,

quite satisfactorily accounted for, by pointing out that the Deshjhada includes 8 (populated) Bhagya villages and 2 (populated) Wanta villages. These were probably excluded from Walker's statement: and the totals would then exactly agree. In 1831 Mr. Blaine gives Dhrangadhra 108 villages (presumably including the 35 or 33 waste villages). The Deshjhada gives it 110 including 35 waste villages. It is, of course, quite possible that between 1820 and 1831 two waste villages had absolutely disappeared, in which case again Blaine's statement would exactly agree with the Deshjhada. And the Deshjhada excludes Vejalpur.

113. Lastly it is easily conceivable that even were the increased number of villages, shown in the later lists, calculated upon the same basis as the Deshjhada and absolutely correct, new villages might have been founded in the territories of a large State between 1820 and 1845 under the developing influences of a settled and unassailable Government.

114. Now of the villages which Morvi is alleged to have entered without authority in its Deshjhada. The argument is that if Morvi could enter even one village, admittedly belonging to another State, in its Deshjhada, the probative value of that piece of evidence is enormously discounted: because if one village, why not more? If Manawun which belonged to Malia, and Kotharia which belonged to Vankaner, why not also Vejalpur which belonged to Dhrangadhra ? To complete the applicability of that argument, it would be necessary to show that when Morvi entered, say, Kotharia in its Deshjhada, Kotharia *admittedly* belonged to Vankaner and Vankaner did not enter it in *its* Deshjhada.

115. With regard to Kotharia Mr. Pandit replied that in point of fact there are *two* Kotharias: one of which does belong to Morvi and is a Khalsa village. The other is under Vankaner, and Morvi has only small rights over it. This allegation is supported by M120. This is a mortgage bond, dated 1880, A. D. 1824 hypothecating the revenues of the Morvi villages to one Jiwan Karamsi. It was put in to prove that Vejalpur belonged to Morvi, and was included in the Morvi Taluka: it is mortgaged with the other villages. When, however, this objection was taken to M116, that it included a Vankaner village. Kotharia, a reference to M120 showed that there were two Kotharias, one

of which was a Morvi Khalsa village. Some exception was taken to the genuineness of the document at the time it was put in: but apart from the fact that all objections of that character were abandoned later, it is plain that at the time the document was recorded neither party could have intended to rely on it for the purpose of proving that there were two Kotharias, and there could consequently have been no motive for making a false entry to that effect. M121, M122 also prove the point if further proof be necessary. On the other hand it is contended fairly enough that the absence of the second Kotharia (over which, it will be remembered, Morvi put forth something very like sovereign claims at a later date) from the Deshjhada, is an additional proof of the *bona fides* and accuracy of that compilation.

116. As to Kajardun, Mr. Pandit admits that it belongs to Malia now: but he enquires pertinently enough whether it belonged to Malia *then*, viz., in 1820. Originally it was a Morvi village granted to a cadet of Morvi other than Malia. In an account of Morvi at page 549 of the Gazeteer, we read that the other six sons of Kayaji (the Chief of Malia) received Giras as follows:—

1. Bhimji received Gungan in Machhu Kantha, and Naransari and other villages in Vagad.

2. Lakhoji received Nagravas in Machhu Kantha, and Patia and other villages in Vagad.

3. Raisingji received *Kajardun* in Machhu Kantha. This was about 1730 A. D. To what subsequent vicissitudes the village was exposed, I cannot say, but in 1866 it is said to have been allowed to remain with Malia on the score of long possession. The local precedents show that this was rather a favourite doctrine, and that it was not very definitely understood or very consistently applied. It is not at any rate impossible that Kajardun did belong to Morvi in 1820, and that it has since passed into the hands of Malia. Even had Morvi lost the actual possession earlier, there would be some excuse for it in entering a village, which had once belonged to the Darbar, and had been granted in Giras to a Bhayat, among the possessions of the State. If Dhrangadhra had done the same with Vejalpur, assuming that its allegations of a grant to the Rahtors in the 18th century are true, it would at least have been much more intelligible than its failure

to do so under the circumstances, and except upon the hypothesis that the village had long since to its own knowledge passed under the dominion of Morvi, can possibly be.

117. As for Manavun, it is a waste village and Morvi claims to have established a new village, Sultanpur, on the Sheem lands of Manavun. The old site appears on the map to have been included in Malia limits: but there is no village there: and Morvi's explanation is plausible. Manavun is not marked at all on the new map of Kathiawar prepared at the photozincographic office, Poona: Sultanpur is.

118. Morvi had joint rights with Dhrangadhra in Devlia: and on account of the resultant friction, a Zaptidar was put in charge of the village. Morvi had as much right to enter Devlia in its Deshjhada as Dhrangadhra had. The village appears, as was to be expected, in both M.116 and M.117. It appears that it has since been divided into two villages, old and new Devalia, the former of which is with Dhrangadhra, the latter with Morvi. It may be remarked that Dhrangadhra similarly entered in its Deshjhada Ghantila, which it then shared with Morvi. Subsequently Ghantila has become admittedly a Morvi village. The fact then, that Morvi entered Devalia in its Deshjhada, does not appear to me to raise any inference against its *bona fides* or accuracy.

119. In reply to Mr. Pandit, Mr. Wadya contended principally (*a*) that passages from Walker's own report, and from Jacob's report on the same subject prove that the Deshjhadas could not be regarded as absolutely accurate. That is probably true: such lists were likely to contain inaccuracies: and it would only be by comparing one with another that such inaccuracies would be detected. But it is questionable whether either Walker or Jacob contemplated the case of one State entering a village as its own although it belonged to another: and the latter inspite of its title, omitting to do so. The same general rules govern human conduct: and it is contrary to all experience to suppose that a State would wilfully surrender any of its landed possessions in this way. There would very likely have been a tendency to include in the lists, villages which did not belong to the States submitting them: but it is difficult to conceive why any State should have adopted the opposite course. (*b*). That Mr. Pandit had criticized the Dhrangadhra Deshjhada

by a different standard from that by which he had criticized his own. In dealing with the former he had omitted, in dealing with the latter he had included all the waste villages. This is true enough so far as Walker's report is concerned, though, as I have shown, it is doubtful whether it is equally true of Blaine's. But if the same standard be applied to both Deshjhadas in comparing them with Walker's statement, it would appear that Dhrangadhra had 45 more villages in 1840 than it had in 1807, while Morvi had 8 villages less: and I totally fail to comprehend how that result assists Dhrangadhra. If in spite of having 8 villages less than at the time of the settlement, Morvi still included Vejalpur in its Deshjhada of 1820: while Dhrangadhra in spite of having 45 more than at the time of the settlement, still omitted Vejalpur from its list of 1820, surely the probability that Vejalpur was included among the villages guaranteed to Morvi in 1807, is enormously strengthened. Lastly Mr. Wadya demurred to the Morvi explanation concerning the inclusion of Manavun (*q. v. a.* para. 117). In support of his contention he quoted Colonel Keatinge's decision in the Manavun case, dated 1866. I do not find the decision upon the record, and can, therefore, say nothing about it here. But I am sending for it in case it might throw any light on the subject. At present the result of my examination of the Deshjhadas, and my criticism of all the arguments advanced for and against them, is that I am forced to the conclusion that they afford both very good and very valuable evidence in favour of Morvi's contention that Vejalpur was guaranteed to it at the time of the settlement in 1807.

120. The next subject to be considered is how far the accuracy of the Morvi Deshjhada (M116) is impaired by comparing it with certain other pieces of evidence of a similar nature. M120 is a mortgage bond, dated 1880, (1824,) hypothecating the revenues of the villages of the Morvi State to a Banker Jiwan Karamsi, as security for payment of Government tribute. In this the revenue of Vejalpur is included. It was argued for Dhrangadhra that although this bond was executed only four years later than M116, it contains the names of seven additional villages. The bond enumerates 83 village in all as against 117 in the Deshjhada: and these 83 include seven, not to be found in the earlier list. It is not, I believe, contended that M120 purporte to be an accurate and exhaustive list of the Morvi villages. It

merely contains those villages, the revenues of which were mortgage Morvi's explanation is that new villages may have been founded during th period of four years which had elapsed since 1820 (M116). It is pointe out in support of that argument that among the villages included in M12 and not to be found in M116, one is called *"new Sadulka."*

121. M122 is a similar mortgage bond of the year 1834 A. D. c fourteen years later than M116. Here there are four villages which ar not to be found in M116. The total number is 87. The same argument apply to this as to M120. It is no doubt easier to explain the appearanc of four new villages within fourteen years than it is to explain the appearanc of seven new villages in four years. The former case, indeed, presents n difficulty. It is undeniable that during such a period many new villages migh be founded in a large State like Morvi. Another possible explanation is sug gested by Dhrangadhra in its final argument on this subject. These bonds said Dhrangadhra, only show that Morvi assigned to its mortgagee whateve Haks it might possess in the villages mentioned therein: and many of thes Haks, as according to our contention, in Vejalpur, did admittedly exist, althoug they fell far short of proof of sovereignty. The argument, of course, wa necessary to meet the fact that in both M120, M122,—Vejalpur appears amon the mortgaged villages. What was really mortgaged in Vejalpur, accordin to the Dhrangadhra case, was not the entire village but Morvi's Pal right over it. Upon the same theory, it is obvious that many villages might b included in such an assignment which could not properly be included in Deshjhada. It may be noted in this connexion that both the Kotharias, one o which belonged to Vankaner, were mortgaged by these bonds along witl the other villages.

122. With reference to the bearing of these documents on the direc issue; or in other words their value as proof of Morvi's sovereign control ove Vejalpur; a topic which has been partly anticipated in the last paragraph: i may be convenient to set against the Dhrangadhra argument that the inclu sion of a village in M120, M122 proves nothing more than the assignmen of certain Haks possessed by Morvi over it; the Morvi argument that thes mortgages were executed in the presence of the Political Agent, and were countersigned by him: that M62, M63, M64, M65 prove that the mortgagees levied the Vero in accordance with the terms of the bond, M120, for th

years Samvat 1880-1884: (A. D. 1824-1828:) and that Vejalpur is entered among the villages on the left hand side of the list over which, it seems, Morvi had more direct control than over the villages entered on the right hand side of the list. It is not very easy to appraise the worth of the last argument. Vejalpur ought to be a Mulgiras village: and as such would not be under more direct control than Bhayati villages. On the right hand side of the list, however, there are Bhayati villages. It is also to be noted that Kotharia appears on the right hand side. If Dhrangadhra's explanation of the true character of the property assigned be true: and it seems to me probable enough; then the fact that the Political Agent countersigned the bonds, would not enhance their probative value for our present purpose. It is not disputed and never has been disputed that Morvi had certain Haks in Vajalpur: nor would there be anything unusual in an assignment of such Haks together with the revenues of other villages in direct subjection to the Morvi sovereignty. But in M62, for the year 1880, there is an account in the State books of the Vero recovered from the 'Bahárgámda': and in that account it appears that 900 Koris *Vero* were paid to Jiwan Karamshi on account of Vejalpur. M63 shows the payment of 500 Rs. to Desai Shewakram, on account of half the Vero for Vejalpur for Samvat 1881. At present I do not see the connexion between this exhibit and M120, pointed out by Mr. Pandit at p. 79 of the pleadings. M64 contains an entry confirmatory of M120 for the year 1883, showing recovery of Vero from Vejalpur: and M65 is to the same effect. If the mortgagee under M120 collected *Vero* from Vejalpur, the circumstance might tell against Dhrangadhra's explanation that the mortgaged rights in Vejalpur were at best Pal. All these points will, however, demand more minute examination and fuller discussion when we come to deal with the evidence of Jama, and Vero, fixed or fluctuating. At present it suffices to say that I find nothing in M120, M122 to seriously shake the credit of M116: while taken in conjunction with it and some other considerations, which I have just briefly indicated, these two papers appear to me to strengthen Morvi's case and confirm the conclusions drawn from a comparison between M116 and M117.

123. M109, D35, D36. The first of these exhibits is a lekh passed to Maharaj Shri Vrajesji of Jamnagar by Morvi in 1905 (1849) granting in perpetuity the right to levy certain sums annually from every village under

Morvi including Vejalpur. 5 Koris were to be levied from Vejalpur. Twenty five villages are mentioned in M109 which are not mentioned in M116: the total number is 121. To meet the discrepancy Morvi said that it would be very surprising if the names of a good many new villages were not to be found in such a list, dated as it is 29 years later than the Deshjhada. It also includes the Tankara Mahal which was omitted from the Deshjhada. It is quite possible that new villages may be founded on waste lands: or that hamlets, originally affiliated to older villages, may in time absorb the latter. As too in the case of the mortgages it is likely enough that a grant of this kind would be extended to villages not subject to the direct sovereign control of Morvi. The latter argument, while satisfactorily accounting for the numerical discrepancy between the lekh of 1905 and the Deshjhada of 1876 Samvat, subtracts a great deal from the value of the former as evidence that in 1905 Morvi stood in the relation of sovereign to Vejalpur. As Mr. Wadya argued, payment of levies like this might very well be ascribed to the acceptance of the religious authority of the Maharaj, and not to any admission of Morvi's sovereignty. On the other hand Morvi contended that the argument broke down in face of the fact that in the year in which the levy was authorized by M109,—Morvi had mohosalled Vejalpur (M159): and that Morvi thus established its direct sovereign authority in this connexion. M159 will have to be dealt with when the evidence of mohosalling is under examination. At a later stage in the pleadings, Mr. Wadya pointed out that in several years there was no recovery from Vejalpur under the terms of M.109 and asked how it happened that if Morvi was sovereign, it did not under those circumstances enforce its grant by mohosal? Of course it does not inevitably follow that the Maharaj complained of the recalcitrancy of the Vejalpur Rahtors: that he even pressed his demands for the very small claim he had against them under the terms of his lekh: or that Morvi knew whether the payments had been made or withheld. But the fact that at the time the grant was made, Morvi had exercised its prerogative by mohosalling the Rahtors lends some support to the contention that if it could mohosal in one case it might as well have done so, had it chosen, in another: and that the sovereign authority, evidenced by the power to mohosal, is proved as much by one instance as by another. So far as any attempt has been made to impugn the correctness of M.116 by the contents of M.109 the latter exhibit appears to me of little or no value. D.35 and D 36, are returns of fortified places furnished to the Agency by Dhran-

gadhra and Morvi respectively in 1845 A. D. twenty five years later than the Deshjhada. These papers, like the preceding papers, just noticed, have been used for two purposes: firstly to impeach the correctness of the Deshjhadas and secondly as direct evidence of Dhrangadhra's sovereignty over Vejalpur. In the Dhrangadhra list Vejalpur is included: in the Morvi list it is not. The Dhrangadhra list enumerates 122 fortified villages: and over and above that number 34 deserted sites. This gives an aggregate of 156 villages or 61 more than in Walker's table. Vejalpur is described as fortified with a "wall, bastions and guard rooms". I commented briefly (*q, v. a.* para 112) on D34 which contains 169 villages: and I revert to that document here because, most of the adverse criticism to which it was subjected applies with equal force to D35: that is to say, of course, if these papers are put forward as evidence of Dhrangadhra's sovereign rights over every village named in them. The writer of D34, said Mr. Pandit, evidently had a *penchant* for inserting in this Patrak the names of villages notoriously subject to other States. For instace, it contains the names of *Jhinjhri* and *Achiana*, both belonging to Bajana: *Dudhrej* which is curiously enough an independent village with which the British Government has an agreement in reference to the lands of the Wadhwan Civil Station. *Narichana* and *Amardi*, both Sayla villages: and Khanderi also belonging to Sayla. Evidence on the subject was given by Mahashankar (witness 7 for plaintiff) *vide* page 3 of his printed deposition. "The witness is shown the Dhrangadhra Deshjhada for 1844 A. D. (1900 Samvat) from which D34 is taken and states after referring to it that Vejalpur is No. 87, Narichana No. 117, Amardi No. 130, Khanderi No. 131, Doya No. 132, Ronki No. 133, share of Chamaraj No. 161. The heading over No. 142 and subsequent numbers shows that the villages are Majmun, but are under Dhrangadhra jurisdiction, and the Darbar has exclutive rights to the following levies, Padian, Fines and fees, Deshdan. I have no knowledge of whether Petara village is under Lakhtar, or whether Dhrangadhra has only an Udhar of Rs. 20 over it. I do not know if Dudhrej is under a Girasia owning a separate jurisdiction, I know the village which is near Wadhwan, it is not under Dhrangadhra jurisdiction. The Dudhrej Girasias are Bhayats of Wadhwan. I do not remember if Petara village is under Dhrangadhra or not. Latuda is a Girasia's village, it is not under Dhrangadhra but under Wadhwan. I don't know if it pays 20 Udhar to Dhrangadhra. Jhinjhri is under Bajana, I do not know if it is a gate village, it is not under Dhrangadhra. Achiana is

now under Bajana, the Dhrangadhra Darbar has some Haks in it. It is not now under Dhrangadhra jurisdiction, who knows whether it once was. I see from the Deshjhada that Petara is No. 157, Dudhrej No. 158, Latuda No. 159, Jhinjhri No 160, Achiana No. 156. All these come under the heading commencing with No. 142. From the Deshjhada of Dhrangadhra for the year 1845 A. D. (1901 Samvat), from which D35 is taken and which is now shown me. I see No. 9 is Narichana, No. 120 Vejalpur No. 122, Ámbardi. Among the villages notified as belonging to the State, but waste, are Ronki and Doya." The Morvi assertion was that D.34 was wholly untrustworthy for these reasons: and its imputation was that the lists had been deliberately falsified to fabricate evidence of sovereignty over villages belonging to other States. I do not think there is much ground for the imputation. A reference to the list will show that most of these villages have remarks against them explaining their appearance in the return *e. g.* No. 117 Narichana 'is a Sayla Bhayat' No. 130 Amardi comes under a general heading of 'villages enjoyed by Charans and others' 161 Chamaraj 'a Wadhwan village.' 159 Latuda, a village of the Wadhwan Bhayats. 158 Dudhrej a village of the Wadhwan Bhayat. 157 Petara 'a Lakhtar village.' 156 Achiana "we have a fourth share with Bajana and there is a dispute going on about that in the Sarkar" and so forth. Though then there may not have been any bad faith in compiling the list: it is manifest that its accuracy is open to question, and that its value, as evidence of sovereignty over the villages named in it, is very slight. It is also noteworthy, though the point arises in considering the nature of the Dhrangadhra levies from Vejalpur, that in this list Vejalpur is described as paying an *Udhad* of 20 Rs. Mr. Wadya, however, contends that the heading *Udhad* was the Agency's and not Dhrangadhra's and that these were specimen forms (Namuna Patraks) sent round by the Agency to be filled up. Another point, more directly connected with my present subject, is that whereas in D18, dated the year before, Vejalpur is shown to have contained 34 houses, 103 inhabitants and 25 Santis: in D34 it is shown to have contained only 20 houses, 76 persons and 12 Santis. There was no famine in the intervening year: and no satisfactory reason is assigned for this singular deminution of the village lands and population. Morvi from this infers that D34 must have been concocted in the Dhrangadhra record office.

124. Now all the foregoing criticism is almost equally applicable to D35. Just as in D34, so in D35 we find the names of villages which are

certainly not under Dhrangadhra's sovereign authority: but the explanation in the latter case is not so satisfactory as in the former. Because while it was fair enough to include in a vague general return of all the State property and resources, every village in which the State possessed any Haks of whatever character: the same justification would not extend to including in a return of fortified villages belonging to the State, villages in which it enjoyed only petty rights. Narichana (No. 9) is entered without any explanatory comment: No. 66. Ghantila (which belongs to Morvi) is entered without comment: snd so is Ámardi which belongs to Sayla. The Patrak professedly contained only the names of villages belonging to the Dhrangadhra State: and the whole 122 villages enumerated were incorporated literatim in the Government Selections XXXVII p. p. 309-311. The thirty two waste villages are omitted. But the so called fortified populated villages include two villages which were waste. I cannot ascertain which waste villages Mr. Pandit referred to: but his assertion was not denied so, I presume, it is correct. (p. 99 of the pleadings). Such returns were not subjected to any very careful scrutiny: had they been, numerous inaccuracies, which have passed unnoticed for years could scarcely have escaped detection. This being the criticism directed against D35 which contains the name of Vejalpur: the omission of Vejalpur from Morvi's list of fortified places (D36) is explained on the simple ground that in point of fact it was *not* a fortified village. There is a marked contrast between D36 and D35. In the latter, as I have remarked, Dhrangadhra returned as 'fortified' a much larger number of villages than it can be proved by any trustworthy contemporary authority to have possessed whether fortified or unfortified. The Morvi list contains the names of 49 villages only. And it is instructive to note in illustration of my remarks on the omission of Vejalpur from Dhrangadhra's Deshjhada, and its inclusion in Morvi's, with the natural inferences to be drawn therefrom, that here Ghantila, which we have seen Dhrangadhra entered in its list of fortified places, is also entered in Morvi's list. Where two States believed that they had rights over the same village, it is antecedently probable that both of them would enter it in their statistical returns: and the omission to do so by either would give rise to an extremely strong inference that at the time such returns were compiled, it did not believe that it had any rights over the village in question. But with regard to statistical

returns compiled for a special purpose, such as the preparation of lists of fortified places, such an omission may be explained consistently with the assertion of a definitely conceived right to the village on the ground that the village was not fortified and so could not properly find a place in such a return. It is obvious, I think, that in the force and appositeness of this general argument, there is a broad distinction to be drawn between returns such as Deshjhadas, having for their object an exhaustive enumeration of each State's landed property: and returns such as those of fortified places, the scope of which might vary with each state's notions of what amounted to and what did not amount to a fortification. There is this also to be said that whereas every State had a common and intelligible interest in making its Deshjhada returns as full and comprehensive as it dared: there was no similar incentive to thoroughness and accuracy in rendering an account of its fortified places. It might very well have seemed rediculous in the eyes of some Chiefs to include, as others did, every small mud-wall and ruined tower in the definition of a fortification, and so make out that every village (including deserted village sites) in the State was a fortified place. We must in brief bear in mind the very wide difference between returns in the preparation of which there could have been no misunderstanding and no ambiguity of motive, and returns in the preparation of which there was the amplest scope for the exercise of individual interpretation, and the operation of easily conceivable motives of caution, policy, or vanity.

125. As to whether Vejalpur deserved a place among the fortified towns of Kathiawar, there is the evidence of Devoji and Haloji. Haloji is 60 years old and he deposes (p. 6 of his printed deposition). "There is no "Vajeri" (watch house) in my village. I don't know what "Vajeri" means. There is a room near the entrance gate of the village where the Havaldar sits." If the fortifications existed in 1845, Haloji, who would then have been about 17 years old, ought to have known something about them. Although he may not have been inclined to testify in favour of Dhrangadhra: yet he was called as a Dhrangadhra witness: and the statement which I have quoted, was made in answer to questions put by Dhrangadhra's counsel: questions the drift of which he could hardly have understood and consequently would have felt no inclination to answer falsely. Devoji, who is fifteen years younger than Haloji, said (p. 3 of his printed evidence) "In our village there was

near the Jhampa or gate a "Dhurio Vando (Wall) and near the Chora a "Dhurio Kotho. I saw these myself 25 years. In both the Kotha and the Vando there are stones, both have been removed and in their places are now houses." In cross-examination (p. 7). "When I saw the Kotho and the Vando they were both in ruins: and 4 feet high: they were built of mud. In 1919 Samvat—1863 A. D nothing was left of it." The result of giving these papers my most careful attention is that I neither think they can avail much to prove Dhrangadhra's sovereignty over Vejalpur, nor to discount the value, which I have said, ought, in my opinion, to be given to the Deshjhadas.

126. I come now to the evidence relating to the exaction of Veth or forced labour. The right to exact Veth is doubt indicative of sovereignty in its cruder development: though it may not be conclusive proof of it. The Court below observes. "The levy of Veth and such like arbitrary cesses is a distinctive feature of sovereignty, in as much as none but the jurisdictional Chief would have the authority to levy it and an unauthorized attempt would have been opposed *vi et armis*.

"Veth is of various kinds and is levied at the present day. Like all undefined cesses, it was open to abuse and some Chiefs were constantly extending the scope of it until the Rajasthanik Court stepped in and distinctly laid down, in what form and to what extent it was leviable. The commonest form in which Veth is levied is carts, either for carrying State property or for any other purpose, whenever the British Government requires to send stores, ammunitions or troops through a native Chief's territories, carts are demanded and the State requisitions them as Veth from its villages. Under this head the evidence is distinctly in favour of morvi" (p. 11). It may be questioned whether the general proposition is not stated rather too broadly: and without making such allowances as might be necessary for the different conditions of earlier days, and the less accurate conception of such terms a "jurisdictional sovereign" which in those times generally conduced to considerable laxity in practice. At the present day it is true enough. There are a great many instances of Veth in this case of which some are probably spurious and some genuine. Distinctions have to be drawn between the characteristics of the exactions and the circumstances under which they were yielded to, or resisted, or enforced.

127. M98, M99, M100. The first of these papers is an extract from the State Ávro book of 1878 Samvat, 1822 A. D. showing debit of 20 Koris to Mehta Vajeram Kirpáram on account of Veth from Vejalpur: and a corresponding entry to credit of the Gamda Veth Kháta. On the credit side are the words "the details of the money which you have received." Upon this and a great many similar exhibits arose the controversy about the probative effect of the so called 'Book keeping entries'. Upto the very conclusion of the pleadings, this moot point never failed to supply matter for at least half an hours debate and I should estimate that from the beginning to the end of the pleadings in appeal some eight or ten hours were taken up in disputing the point whether a 'Book keeping entry' proved that any money had been received. At the very end of the case Mr. Wádya introduced a new objection naturally arising as he urged, out of the somewhat modified interpretation put upon these entries by Mr. Pandit: namely, that inasmuch as they were admittedly not contemporaneous with the payments: and that as they were in the Darbar books and in its own favour, they could not support the arguments and conclusions sought to be based upon them (*vide* p. 612, Taylor on Evidence.) That it amounted in fact to the Darbar charging its agents with receipts on its behalf: and such evidence is not legally admissible (Taylor on Evidence 631, 634). (and I. b. p. 614. 615.). The controversy principally raged over the evidence adduced in support of instances of mohosalling: but as in the same way the probative value of M98 was attacked: and this upon the very same general grounds as above stated, it may be as convenient to take up this question of 'Book keeping entries' here as anywhere else.

128. Mr. Pandit said in his reply to Mr. Wadya, speaking of M98. "Mr. Wadya called this a mere book keeping entry. But there is nothing mysterious in book entries. They ought to show at once whether the money has been paid or not." Thereupon there was a protracted discussion upon which I noted "Mr. Pandit says that every debit entry proves that the money was paid on behalf of the State to the person so debited. Mr. Wadya says that it does not: but merely shows that sums so debited are to be recovered. And it is upon that distinct point of difference that the learned counsel join issue." This note was read at the time it was made and was admitted

to be accurate. As the case went on, and similar disputes arose over one exhibit after another, the matter got thoroughly thrashed out and eventually, I believe, I correctly represent the two views of these entries taken by Morvi and Dhrangadhra respectively, in saying that according to the former a debit entry to a Baksi or collector *of* Mohosals, fines and such like generally implied that the fine was *due*: that as soon as a corresponding entry appeared opposite the debit to the credit of the person or village fined, it implied that the money had been paid. The latter maintained that debit entries to a Baksi proved nothing: that they were in fact of the nature of budget estimates, and might or might not be realized. Really the two interpretations are substantially the same. Mr. Wadya was right in contending consistently that a debit entry *per se* did not imply a contemporaneous payment: and upon that ground, when it was virtually conceded by the other side, he based this argument against the admissibility of all this kind of evidence. Where, however, the debit entries are complemented by a credit entry it appears to me that they certainly do imply actual payment. M.175, which was used as a test document, contains a debit entry of a certain sum imposed as a Mohosal but *remitted*. Mr. Wadya argued strenuously that such a fact proved beyond doubt that the debit entries could not be evidence of recovery. It is to be noted, however, that although the item of 'Palo Mohosal on account of the Ghantila Patel's jowari' imposed on Vejalpur and remitted, is entered in the column of debits to the Collector, there is no specific sum of money debited to him as there is in every case where the Mohosals were not remitted. I may say at once that I do not intend to exclude any of this evidence under the provisions of the Indian Evidence Act: and that I propose to give it as much weight as it may appear to deserve subject to these two considerations. *a*. That the entries are for the most part in the State books, and that the Court has no means of tracing the payments in other accounts, and so finding a sufficient corroboration in each case. *b*. That a debit entry, where there is no corresponding credit, does not necessarily imply payment of the money. On the other hand it must be observed that the Court sees no reason to doubt the genuineness of the exhibits: nor has any serious attempt been made to show that the numerous extracts, produced from State books, have been fabricated for the purposes of this enquiry. Morvi, it is true, did commence an indictment of some of the Dhrangadhra exhibits: but the grounds upon which the criticism rested, were so weak that the attempt was not very vigorously pro-

secuted; and I am glad to say that the learned counsel for Dhrangadhra made no imputations of the kind against the large mass of Morvi evidence. I explained in the preliminary paras (*q. v. a.* para 5) of this judgment the principles which usually guide me in dealing with a question of this nature: and gave my reasons for believing those principles to be on the whole the best and the safest to be followed in cases of the kind. It generally happens, nor is the result, I think, to be deprecated under the exceptional conditions, that upon issues involving ancient and undefined rights in dispute between States, a Court gets upon its record a great mass of evidence which might have to be excluded altogether, were the enquiry to be governed by the strict provisions of the Indian Evidence Act. It has always appeared to me more satisfactory, and more in the interests of substantial justice, to examine all the evidence thus submitted by the parties, and after having carefully sifted and compared it to discriminate between what is relevant in the widest sense, and what is wholly irrelevant: between what is of material importance and what is of little or none. With these remarks, which sufficiently, I think, dispose of the constantly reiterated objections to some scores of exhibits on the ground that they are mere book keeping entries, I proceed to resume my examination of M98, M99, M100.

129. Mr. Wadya objected that in M98 there was nothing to show that the 20 Koris were recovered. In my opinion, as indicated in the previous para, the terms of the exhibit itself sufficiently prove this if the exhibit is genuine, and I see no reason to suppose that it is not. The paper gives no details of the Veth: but it is good evidence that as early as 1822 or two years after the Deshjhada, Morvi took Veth from Vejalpur. Mr. Wadya said that "Morvi argued that because M98 contained the words "*tamne Korio ponti che*" there was an explicit statement of recovery. But just the same kind of words are to be found in M 99, where there was admittedly no recovery." No one, I think, could understand more thoroughly than Mr. Wadya, who is a master of native accounts and the art of analyzing them, the distinction between M98 and M99. In the latter the Darbar has credited itself (evidently upon a list submitted by its Collector) with 10 Koris due as Veth, on account of grass supplied to Mr. Malet's Sowari, from Vejalpur. But on the other side there is a debtor account to the State's outstanding Veth dues, in which it is expressly stated that this sum of 10 Koris has not yet been recovered from Vejalpur. It is consequently shown

as a debt due to the State. The paper appears to me to explain itself: and I do not understand how it can be used as an argument against the interpretation I have put upon M98. It is true that in M99 the State has credited *itself* with an anticipated item of revenue: but in M98 the *Collector* is debited with the item of Veth and the *village* is credited with its payment, showing that the transaction was complete. In M99, however, the State debits itself on the head of uncollected items with the 10 Koris of revenue which it had anticipated receiving, and had entered accordingly in its credit estimate. M99, unlike M98, does not prove payment of course: but it proves that the Morvi State was looking in 1902 Samvat (1846 A. D.) to Vejalpur for a share of its Veth collections. Such an entry would naturally be of very little value if there were any room for suspecting that it had been made to create evidence of a right. But in 1846 no controversy had, as far as we know, arisen regarding the sovereignty over Vejalpur, and the entry appears to have been made in the ordinary course of State business. M100 is an order sent by the Morvi Darbár to the Ráhtors of Vejalpur to supply beds and bedding &c. on the occasion of a death ceremony, and remonstrating with them for their neglect in not having complied with a previous order to the same effect. This was in 1915 Samvat (1859 A. D.) Mr. Wadya remarked that between M98 and M99 there was a gap of 24 years: during that long period no Veth was recovered, and when it was demanded we only find "outstanding not recovered." Again between M99 and M100 there is a gap of 13 years, and then what do we find? opposition on the part of the Rahtors to the proposed levy. This was only 9 years before the origin of the present dispute, and so recently as that the Rahtors are found resisting Morvi's pretensions to sovereign authority over them. Mr. Wadya also said "The Rahtors were in fact mohosalled for not sending in the supplies demanded from them." Unless that assertion is founded upon an inference drawn from the language of M100, I cannot find any authority for it. On the contrary Mr. Pandit's argument, not a very strong one perhaps, was that there would ordinarily be no State account of such miscellaneous supplies: but as the Rahtors were not mohosalled for non-compliance, they must be presumed to have complied with the requisition. As to Mr. Wadya's other criticisms, it is certainly true that we have no evidence of the exaction of Veth during the periods specified, and that the Veth anticipated in M99 is not proved to have been paid. But in the first place it must be remembered that Veth is in its nature an extraordinary exaction to meet a special emergency:

and that in the case of a remote frontier village there would be few occasions for exacting forced labour: in the second place the nature of Veth exactions is often very trivial, and it is quite possible that there may have been several instances of which all record has long since been lost. Considerations like these, I need hardly perhaps add, apply equally to the cases of both litigant States. Veth is, further, an exercise of authority which must always be, and in point of fact always is, very unpopular: and it is natural to find subjects endeavouring to avoid performance of Veth. The mere fact that the inhabitants of a frontier village had disregarded a command to perform Veth, hoping that by tacit resistance they might establish a precedent for future exemption, would not necessarily go far to disprove the right of the State which issued the command. It hardly needs to be pointed out that unpopular exercises of the Royal prerogative in countries much further advanced in civilization than Kathiawar was, have been similarly met by passive resistance. To give the Rahtors' conduct in neglecting to furnish the articles demanded, the constructive weight, which Mr. Wadya urges, it should have against any theory of their political subordination to Morvi; it seems to me that there should be some evidence that they not only refused to comply with Morvi's requisition, but accompanied that refusal with some manifesto of independence, or assertion of allegiance to another sovereign. Nothing perhaps was commoner in Kathiawar than to find instances of refractory subjects refusing to comply with the most indubitably legitimate demands of their Chiefs: especially so when the central authority was remote, or not very powerful.

130. M101 is a list, dated 1914 (1915) 1858, of carts supplied by villages including Vejalpur. Mr. Wadya first said that the list was not very trustworthy because the addition of the carts seemed to have been altered. On sending for the original list, however, and examining it, the objection was found to be unsustainable. There is nothing more to be said against the paper: and it shows that in that year Vejalpur supplied two carts of fuel by way of Veth, to Morvi.

131. Exhibits M102, M103, M104. The former is an instance of Veth taken from Vejalpur in the year Sumvat 1915; the other two are 8 and 9 years later in point of time. The Veth taken was in the form of beds, bed-

ding, Karab &c. in connexion with the marriage of Motiba, &c. Dhrangadhra urges generally against these three papers that there is no evidence that the Rahtors ever complied with the requisitions. A mere demand for Veth, it is contended, is of no value as evidence of the right to levy it. I am not prepared to admit quite as much as that. On the contrary where the entries are unquestionably genuine, and show a *bonâ fide* belief that the State had the right to exact this kind of tax from Vejalpur, the instances, showing that attempts were made to exact it in pursuance of such right, appear to me to be evidence of a sort, though certainly not as good evidence as would be afforded by completer instances showing not only the demand based upon the right, but the acquiescence in the demand and implied admission of the right. But although there may be no further evidence directly proving compliance, I do not see why I am of necessity to infer that there was no compliance. It was argued on the other hand that the absence of all evidence of coercive measures, taken by the State to enforce these requisitions, raises a strong presumption that they were complied with. I have noticed the argument before; it does not strike me as being conclusive. But having regard to other incidents disclosed in the evidence, which certainly lend some support to the general assertion that Morvi was not in the habit of allowing neglect, or disregard of its orders, by the Rahtors of Vejalpur to pass unnoticed, it may be taken for what it is worth. And at least it appears to be as reasonable to assume in the absence of all evidence to the contrary that requisitions of this general character were complied with, as that they were made and entered in the State books at random and without any idea of enforcing them, or any authority to do so even were the will there. Observe, too, the nature of the things called for. First, beds and bedding; then two cart loads of fodder for camels, then one cart load of Karab. Now I think there is a good deal to be said for Mr. Pandit's contention, that once the articles had been supplied in conformity with the requisition, the matter would be looked upon as ended; no one would have thought it necessary to enter the receipt of such articles to the credit of the village as in the case of a money account. It is certainly more natural to presume, in the absence of all proof of resistance on the part of the Rahtors, that they gave the Karab, and the fodder for camels, which the Morvi State had demanded from them. The papers appear to me to be good enough

evidence on the point which they are intended to prove; and to show that in the years to which they relate the Morvi State levied Veth from Vejalpur. It ought, however, to be noted that the last two exhibits approach very near the origin of the present controversy in point of time. Generally speaking the evidentiary value of documents, produced in this case, varies with their age; the older the document the greater its value. Conversely it must be borne in mind that as a general rule the credibility of a modern document can be subjected to much more searching and satisfactory tests than that of an ancient document. This, at any rate, is the case in dealing with such documents as are generally offered in evidence in investigations such as the present; documents which are not always dealt with as rigorously as they would be if the case were being tried under the provisions of the Evidence Act. There is then a tendency to a rough kind of equilibrium in the value of the documentary evidence for the most part. Exhibit M105, dated Samvat 1901, shows the payment of 4½ Koris to Mehta Mangalji in lieu of grass and fuel, a Veth to be taken from Vejalpur. About this Dhrangadhra said that Mangalji was an Agency Japtidar, and it is not apparent why he commuted his Veth into a money payment. There is no entry produced in the State Ávro to show that the money ever went to the State. Morvi replies that Mangalji, who was Japtidar of the entire Taluka, could only have claimed Veth in his representative capacity; and that it was the same thing as though the State had claimed and exacted it. Again Dhrangadhra argued that although in the preceding exhibits Morvi said that the articles recovered were of such trifling value that there was not likely to be any credit entry of their recovery, here they pretend that there was a credit entry though the item is of just the same kind as the others. To which the answer obviously is that in this case the Veth was commuted into a cash payment.

132. The Court below instanced all these papers, as showing the exaction of legitimate Veth. What is included under the term Veth, and what ought not to be so included, is a point possessing some importance in connection with the evidence which Dhrangadhra has put in to show that during the same period it too was exacting Veth from Vejalpur. Strictly speaking I should define Veth as forced labour; but the force of analogies under a system of loose classification effected by degrees the inclusion under that term of

all sorts of extraordinary exactions for a special purpose, or under pressure of a particular emergency. The distinguishing characteristic of Veth, as I understand, is that it must be exceptional; a regular recurring fixed levy could not, I think, fall properly within the meaning of the term Veth. And this distinction is of importance in estimating the value of instances of Veth for the purpose of proving sovereignty. The power to call upon a village at any given time for a contribution either in labour or kind, or even money, over and above its regular taxes, was certainly a mark of sovereignty. Contributions in kind at any rate very similar in their character to true Veth levies, perhaps only distinguishable from them by the features of permanency and fixity, were very often no mark of sovereignty at all. The latter might often come under the head of petty Giras Haks, which States and Girasias commonly took in villages under another sovereign. Applying this criterion the levies, which I have already examined, are, I think, properly called "legitimate Veth."

133. Exhibits M123—M142 deal with Veth taken by Morvi in Vejalpur, for the Agency. About M123 there was a good deal of confusion in the earlier arguments. In the Court below Mr. Pandit appears to have thought that the figure 8 against Vejalpur, meant 8 Koris, and represented the share of a lump sum of 636½ Koris paid by the Agency to Morvi on account of 400 carts, due to Vejalpur. It was upon this construction of the exhibit that Mr. Wadya first criticized it. When the originals were further scrutinized it appeared that the true facts were that a regiment was coming from Bhuj; that Morvi was called upon to provide 400 carts; that it accordingly called upon its villages including Vejalpur to contribute their quota of the total number requird; that a good many of the villages made default, and that the sum of 636½ Koris represents the total taken from these defaulters by Morvi; that the figure 8 against Vejalpur means that Vejalpur supplied 8 carts; and that as for the wages, if any, paid to the cartmen, they would have been paid by the soldiers, and so of course there would be no record of them here. These being the facts as ultimately ascertained, Mr. Wadya's arguments that there was no evidence to prove the recovery of the 8 Koris, or to show that Vejalpur complied with the recognition, do not apply. M123 is dated 1830 A. D. It appears that the regiment had to pass through Morvi and Dhrangadhra territory; that the Veth

carts were actually collected at Ghantila, a village in which at that time Dhrangadhra had a share; and that the order to furnish the carts was given to Morvi. Further that Morvi called upon Vejalpur to supply its share, and that Vejalpur did so. It seems that the Agency sent an order to the Morvi Japtidar to have the carts in readiness, and the resultant action was due to that order. Dhrangadhra argues that it could have had no knowledge of the method in which the Ageney Japtidar of Morvi was carrying out his instructions, and that as to the Rahtors it was all the same to them whether the order to find Veth carts came from the Morvi Japtidar or the Dhrangadhra State; in either case they would have had to find the carts. If this was a recognition of Morvi's sovereignty over Vejalpur it was only a recognition by the Morvi Japtidar, and Dhrangadhra was no party to it. On the other hand Morvi contends that from the very circumstances of the case, especially from the fact that this large number of carts was got together in Ghantila, Dhrangadhra must have been aware of what was going on. It ought to have known that Vejalpur had received an order from Morvi to supply Veth carts along with other Morvi villages; and if it had then had any idea of asserting its claims to sovereignty over Vejalpur, it would never have allowed such a dangerous and open invasion of its prerogative to pass without protest. It is all very well to argue that, as Vejalpur would have had to supply the carts whether it had received the order from Morvi or from Dhrangadhra, no inference can be drawn from the case, for, or against, the respective rights of those States over Vejalpur, now in issue. But that argument might well be used to minimize the value of all the evidence. It is only on the assumption that the exercise of certain prerogatives creates an inference that the sovereignty lay with the power which enforced them that this case can be argued at all. The value of this particular piece of evidence might no doubt be seriously impaired if the Juptidar were found to have included in his list at random adjacent villages admittedly not belonging to Morvi. But where every village, to which the order was addressed, is, with the single exception of Vejalpur, a village admittedly belonging to Morvi; and where, with regard to the only exception, we find that neither its inhabitants nor the State, which now claims sovereign authority over it, made any protest at the time; it must necessarily be inferred that the requisition then made was made of right, and has the evidentiary value attaching to all

other instances of the normal exercise of that particular kind of authority. With reference to most of these instances of Veth the learned counsel for Dhrangadhra argued that in no case was there a willing submission. As a rule people do not give Veth willingly: it is in its nature an oppressive exaction calculated to excite a spirit of opposition more or less pronounced as the subjects may feel themselves better or worse situated for asserting their right to exemption. Morvi argued, not without some force, that to extort unwilling compliance is better evidence of sovereign authority, than the mere willing response to a demand. And as regards the long gaps between the instances of Veth, the general answer was that the entries in the State books only relate to the levy of extraordinary Veth; and the occasions for such general and extraordinary levies must necessarily have been few and far between. I attach comparatively little importance to the point that the Regiment did not actually halt at Vejalpur.

134.* M124 is dated Samvat 1907 or twenty one years later. It is a letter from Colonel Lang, Political Agent, to the Thakor of Morvi, informing him that the 5th Regiment was about to march to Mándvi; and that it would make a halt at the village of Vejalpur belonging to the Morvi State. Morvi was accordingly told to get the requisite carts together. This is very strongly relied upon by Morvi, as a recognition by the head of the Agency of its sovereign authority over Vejalpur. It will be remembered that in the local precedents Agency recognition of a State's rights, was regarded as very important evidence of them. Dhrangadhra, however, contends that this was only an office order; that it did not pretend to the accuracy or authority with which Morvi now seeks to invest it; that Colonel Lang was probably informed at the time of writing the order that Vejalpur was under Morvi, and accepted the statement without enquiry. Great stress is laid on the fact that in the preceding year Colonel Lang had submitted a return of the fortified places of Kathiawar to Government, and that in that return he had shown Vejalpur as a Dhrangadhra, and not as a Morvi village. The return referred to was compiled from D35, D36 which have already been exhaustively examined and criticized. I think it much more likely that the information, upon which the present order was issued, would have been accurate than the lists of fortified places. It was hardly possible for the Political Agent to go through the latter with a view to ascertaining whether villages belonging to

one State had been wrongly entered in the list of another. Nor was there any very cogent reason for doing so. The object of the returns was to find out what towns were fortified; not to what States they belonged. And so long as Morvi did not cavil at the inclusion of one of its villages in a Dhrangadhra list, which it was very unlikely to do, [as I have shown that with regard to those statistics there was no particular reason why Morvi should suspect inaccuracies of the kind, or be on the look out for them,] the Political Agent would in all probability have accepted them as they were submitted without making any enquiry into their accuracy. But in making arrangements for the transit of a British Regiment through the territories of the native Chiefs, I think it extremely unlikely that the Political Agent, whose local knowledge at that time was probably more extensive and profound than it is in these days of constant transfers, would have issued orders to a State to provide carts &c. on the ground that the Regiment was to halt at a village belonging to it, without a very definite and well founded opinion that the said village did in fact belong to the said State. I am therefore obliged to dissent entirely from the learned counsel for Dhrangadhra's statement that "viewed in any light the value of such evidence is nil." On the contrary, I think, the evidence is very material, and strongly in favour of Morvi. No attempt was made to bring forward a single parallel case in which Colonel Lang had called upon a Chief to arrange for the transit of a regiment through a village admittedly not belonging to him; nor, although these regiments must have passed through Dhrangadhra territory, is there any evidence that Dhrangadhra ever requisitioned any Veth carts on that account from Vejalpur.

135. M125 is the list of carts requisitioned in obedience to M124 Vejalpur was called upon to supply 5 carts and did supply 2 (M126). And M127 shows that Agraji of Vejalpur was forced to pay Morvi 33 Koris in 1912 for his failure to supply the three carts in 1907. There has been a good deal of minute and rather superfluous criticism bestowed on all these exhibits upto M142 (*vide* p. 125 of the printed pleadings). The object of it was to show (*a*) that the regiment did not encamp at Vejalpur, or go through Dhrangadhra territory. (*b*) That the arrangements were entrusted to the Malia Japtidar (M128). M126, however, seems to prove that the regiment did halt at Vejalpur, and marched from Vejalpur at 8 P. M. I do not think the point

is of much importance. With regard to the second point Dhrangadhra argues that it had no occasion to complain of any invasion of its sovereignty because an Agency Japtidar of Malia had received instructions to make certain necessary arrangements for the marches and halt of a British Regiment. Now M128 is a letter from Captain Barr to the Morvi Darbar, forwarded by the Malia Japtidar as his authority for making certain arrangements in Morvi territory. At least that is how I understand it. Read with M129 there can be no real doubt that all parties understood the "*tamaru gam*" of M128 to mean Vejalpur, though no name is mentioned. Though the arrangements as a whole, were entrusted to the Malia Japtidar these papers show that Morvi's authority was not ignored: he was requested to delegate it for the special purpose of looking after a British Regiment which was to encamp at his village. If the Agency had supposed that Vejalpur, or any other village, at which the regiment contemplated making a halt, was subject to the Dhrangadhra Raj some letter equivalent to M128 ought to be forth-coming from the Dhrangadhra records. M130 is a Mohosali chithi from which we gather that a regiment was coming from Jodia to Ahmedabad; that by way of transport certain carts had to be collected at Hadmatia; that Morvi directed Vejalpur to send 5 carts there; but that Vejalpur disregarded the order; whereupon Morvi mohosalled the Rahtors; and the Mohosal lasted 23 days. Properly speaking this exhibit belongs rather to the evidences of mohosalling than to the evidences of Veth: but occasionally the pieces of proof upon one topic become entangled with the proofs of another. Although this must lead to some confusion, and repetition, it seems to be almost unavoidable. As for instance, though M130 is a proof of Mohosal it also indicates a precedent attempt to exact Veth, intimately connected with the subject to which the other exhibits under examination more directly refer. M131 is a Barkhast Chithi, showing that the aforesaid Mohosal was remitted. The argument upon these two exhibits, and commonly repeated upon other similar evidences of mohosalling, is on the one side that there is nothing to show that the Mohosal was paid: on the other hand that is of no consequence, for had Morvi not been at the time admittedly the sovereign of Vejalpur the Rahtors would not have submitted to the Mohosal for a single day. In connexion with my present subject these two exhibits are not very important. They show this much, that Morvi was making arrangements in Samvat 1912 A. D. 1856 for the passage of a regiment through its territory; and in fur-

therance of these arrangements called upon Vejalpur to supply Veth carts; that Vejalpur refused to do so; and that Morvi thereupon punished the Vejalpar Girasias. The Rahtors thereupon went to Morvi, made their submission and got a remission of the punishment.

136. M132 is directly connected with M128: and there was a great want of method in sandwiching M130, 131 between M129 and M132. In M132, dated 31st October 1855, Captain Barr refers to M 128 and again speaks of *tamarun gam*. The occasion for writing this letter was that the first estimate of the number of carts required, was found to be insufficient. Dhrangadhra says that M132 has nothing to do with Vejalpur in particular: Morvi says that if it be read with M128, M129, it must be taken to refer to Vejalpur: and that it was intended to refer to Vejalpur. Probably Captain Barr was not absolutely certain whether the regiment intended to encamp at *Venasar* or Vejalpur. According to Mr. Wadya it did in fact encamp at Venasar. But, as Captain Barr knew it would encamp at one or the other if not at Hadmatia: and as all three are Morvi villages, he used the indefinite expression "your village." I do not see what other explanation, consistent with the general spirit of the communication and its consequences, is possible. And if that is the explanation the letters from Captain Barr are as good evidence for Morvi as though they had contained the name of Vejalpur. M133 is an order from Captain Barr to Morvi, dated 21st November 1855, to make preparations at Hadmatia for a regiment which was coming through from Mandvi. Except indirectly, as illustrating the practice of informing the Chief concerned when a regiment was to halt at one of his villages, although the arrangements were entrusted to an Agency Japtidar, this paper is not of much consequence. Here though Morvi was told to co-operate, the Malia Japtidar was directly entrusted with the duty of making the usual arrangements for the regiment at Hadmatia.

137. M134, M135. The first of these letters is from Captain Barr, Acting Political Agent, to the Thakor of Morvi, dated 21st December 1855: and in it Captain Barr directs the Thakor Sahib of Morvi to make the usual preparations for the 17th Regiment which is to encamp at "your village of Vejalpur" else action will have to be taken under the circular Shero. Upon this Dhrangadhra enquires "What was the value of that vague and erroneous impression." I see no valid ground for describing Captain Barr's statement

in the first place as an "impression": and still less for describing it as a "*vague impression*". Whether it was erroneous or not, is precisely what this Court is now endeavouring to decide. But as a piece of contemporary evidence, it is certainly entitled to considerable weight. It is at least as likely as not that Captain Barr would have been right in his opinion upon a point of that sort: and this exhibit clearly shows what his opinion was. Exhibit M135 is a connected paper. It appears that the carts were got together in obedience to M134 at Vejalpur; that they remained there 3 days awaiting the regiment; but that the regiment did not come. Consequently Morvi demanded compensation. The document has this importance taken with its proper antecedents, that it shows to what an extent at that time Morvi's relations with Vejalpur were openly taken for granted, and passed unquestioned.

138. Of M136 the Court below said "From M136, A. D. 1864, it will be seen that the Political Agent camped at Vejalpur and that all arrangements were made for him by Morvi, who went so far as to Mohosal the Rahtors for not furnishing supplies (Veth). The Devalia Japtidar, who managed the joint village of Morvi and Dhrangadhra, instructed Morvi of the impending camp at Vejalpur, and told them to have everything in readiness. Dhrangadhra accounts for this by saying that the Japtidar was inimical to them but a friend of Morvi; besides their *ipse dixit*, however, there is nothing in support of this assertion. This 1864 A. D. is the same year in which Colonel Keatinge defined the jurisdiction of the Chiefs." (p. 11, 12). The learned counsel for Dhrangadhra argued that the exhibit did not justify the comments which the judge below had made upon it. According to his view it was only of a piece with the general policy of Balaji Mansukhram who was striving to establish Morvi supremacy over Vejalpur. (*vide* M352 post). On the other hand Morvi naturally lays great stress on the exhibit. The letter was written from Halvad one of the principal Dhrangadhra villages. The Political Agent's Sawari had been at Halvad and was moving on to Vejalpur. These facts must have been perfectly well known to all responsible Dhrangadhra officials. There must have been a Dhrangadhra Vakil with the Political Agent's camp, and he could hardly have remained in ignorance of the contumacy displayed by the Rahtors (M137, M138) and by implication of Morvi's attitude towards them and claim to sovereignty over them. Yet no one uttered a word of protest on behalf of Dhrangadhra: no complaint was made of Morvi's unwarranted aggression. With these arguments, I am dis

posed to agree. I attach very little importance to the Dhrangadhra theory that in writing M136 Balaji was deliberately constructing an elaborate plot, having for its object the substitution of Morvi supremacy for that of Dhrangadhra in Vejalpur. The letter appears to me to be *bona fide*: and deserves to be taken for what it is worth. Here then in 1864 we find that the Political Agent's camp was to be at Vejalpur: and that the Devalia Japtidar who was with the Sawari at Halvad, issued instructions from that place to the Morvi Agent in Devalia to make all the usual preparations in Vejalpur for the Political Agent's camp. As a last resource it was contended that no one was in the least interested in disputing the issue of such orders; that whether the Morvi Agent or the Dhrangadhra Agent had to make the arrangements in Vejalpur, it was the Rahtors who had to pay all the same. 'Why,' it was asked, 'should they have gone to Dhrangadhra to complain of having been obliged to supply carts to the Agency's orders. It did not matter to them through what channel the orders came.' That is rather poor argument, though perhaps the particular case will hardly allow any better. The point of importance is not so much that the Rahtors accepted the situation (for indeed they seem to have resented the proposed imposition with considerable spirit) as that Dhrangadhra who must have known that the Sawari was going to Vejalpur: that according to custom, if Vejalpur belonged to it, it would be asked to make arrangements there; but that in point of fact the Morvi authorities had received such orders, carrying the necessary implications of ownership and sovereignty over the village in question: nevertheless made no protest, thus, tacitly at any rate, admitting Morvi's position as sovereign over Vejalpur at that time. There could have been no ambiguity on any of these points: all concerned must have realized fully what the procedure implied: and it is only upon the hypothesis that at that time Dhrangadhra had no notion of asserting any sovereign rights over Vejalpur, that its conduct can be reasonably explained. And this, it must be remembered, was only four years before the present dispute originated.

139. M137 M138. These papers show that the Rahtors refused to pay certain bills on account of the Agency Camp's expenses: and that they even went the length of drawing swords on the Morvi Pattawallah. Thereupon Morvi reprimanded them and ordered Nathoji and Devoji to be sent to Morvi, and to give security that they will not repeat the offence. A Sawar

Mohosal is imposed. There has been a good deal of talk about the incident mentioned in these papers: more perhaps than it was really worth.

140. Dhrangadhra insists upon it as an instance of the manner in which the Rahtors repudiated Morvi's authority; pointing to the probability that all endeavours to exercise it, were of recent origin: and that it rested on no solid foundation. Nathoji and Devoji, it was said, were the two Rahtors who forcibly resisted Morvi: but they never made any submission. From M139 it seems that such submission as was made, was made by Abhesang, a creapture of the Morvi Darbar. Abhesang was fined 100 Rupees: although he was not the offender: the real offenders, Nathoji and Devoji, got off scot free: was this *bona fide* ? Probably the Dhrangadhra Vakil, who was with the camp, instigated the Rahtors to resist Morvi: for what better protest could have been made against such an unwarranted usurpation of authority than the conduct of the Rahtors themselves who drew their swords of the Morvi men?

141. On the other hand, Morvi says that the mere fact or personal resistance such as this: the outcome probably of heated temper: the mere fact that a Vejalpur Rahtor drew his sword, in the course of an altercation, upon a Morvi official, can hardly be considered to be proof that Morvi had no sovereign rights over the village. The same argument might as well be used with regard to hundreds of similar episodes to prove that the Agency has no ligitimate authority in the province. M139 shows that Abhesang and Agraji made joint submission to Morvi. "Abhesang and others" are the words of M139.

142. Again I think that the Morvi arguments are much the better. There is no value in the distinction which Dhrangadhra would draw between Nathoji and Devoji on the one hand, independent Girasias and opponents of Morvi's tyrannous encroachment: and Abhesang, on the other, a mere creature of the Morvi Darbar. It appears to me that the papers set out a common and intelligible transaction. When the bills for the Political Agent's camp came to be paid, there was a dispute and the Rahtors declined to pay, accompanying their refusal with threats and demonstrations of violence. For this they were reprimanded and punished by Morvi: and ultimately their representative Abhesang went into the Capital and apologized for the village. The Agency to this day, I expect, would under similar circumstances hold the headman

responsible: it most certainly would have done so in 1864: and Morvi in doing the same, was only following the custom generally prevalent throughout the country side. When Dhrangadhra asks "Was it serious justice to fine Abhesang for the offence of Devoji and Nathoji, it is very easy for Morvi to answer that the offence was substantially the collective offence of the village: and the punishment was inflicted upon Abhesang, not in his individual, but in his representative capacity. Dhrangadhra seemed inclined to hint that to punish such a serious offence by simple fine indicated a want of good faith in the matter. Nothing could be easier, however, than to show that even so late as 1868 A. D. the most heinous crimes were punished usually by fine: and that throughout Kathiawar imprisonment was comparatively rare. Lastly Dhrangadhra contends that the fine of 100 Rupees was never recovered. The paper in question is M141. The Rahtors also had to pay a Mohosal of ~~Rs~~ 5½ (M140), as well as the amount of the disputed bill 11½ Rupees (M139) and (M386). In opening his case the learned counsel for Dhrangadhra said "M140 shows that half the Mohosal was received. M141 shows that Abhesang was fined 100 ~~Rs~~." In concluding it he said "Again I say that the 100 ~~Rs~~ fine was never recovered." Well, it hardly seems worth while to discuss at length the question whether the 100 ~~Rs~~ fine was or was not actually paid. It was certainly inflicted in connexion with these acts of insubordination for which the headman of Vejalpur came to Morvi and apologized. The apology was prompted by the need of getting the Mohosal remitted: the actual and completed offence was quite distinct from the continuing refusal to pay for the supplies: the fine was for the former, the Mohosal for the latter. As soon as Abhesang came in and promised on behalf of the village to pay, the Mohosal was remitted: but that had nothing to do, or at least, had not necessarily anything to do with the exaction of a fine for a specific offence of assault.

143. M142 is an order of the year Samvat 1922 issued by Morvi to its subordinate Girasias to send in contributions of food and fodder, &c., on the occasion of Captain Hebbert's visit. Vejalpur was called upon to supply one cart-load of Karab and one cart-load of fuel. In the same exhibit there is another letter written eleven days later from which it may be inferred that the first order had not been complied with. The most that can be said is that there are no means of proving by accounts that the fodder demanded was sup-

plied. Nor is there any likelihood that such corroboration would have been forthcoming. Presumably the second call was complied with; but even were it not, the fact that Morvi included Vejalpur in a general requisition of the kind, would have its value. It is true that that value is or might be lessened by the late date of the exhibits, this call was only two years before the present cause of action arose. But if the evidence is of comparatively slight value on behalf of Morvi, it is of still less on behalf of Dhrangadhra. The latter uses it as an illustration of the futile attempts which Morvi was constantly making to establish an illegitimate supremacy over Vejalpur. As I have said there are no satisfactory means of ascertaining whether the attempt in this particular case was futile or not.

144. This being Morvi's evidence upon this branch of the subject, it has next to be compared with Dhrangadhra's evidence. D136 is the Kunvar's book showing levies, cesses and taxes from the people of Dhrangadhra. In this account, there are entries showing that the Vejalpur Bharwars supplied the Kunvar with two milch goats annually to give milk for his colts and fillies. The period covered by these entries is Samvat 1915—1926. But the evidence relating to the two years after 1924 was properly excluded. Dhrangadhra argues that these papers show that Veth was not only exacted but that the Bharwars of Vejalpur yielded a willing compliance. And it points by way of contrast to the relations indicated between Morvi and Vejalpur in M100 which bears date the same year, 1915 Samvat.

145. In meeting this piece of evidence, some attempt was made to discredit the genuineness of the entries in the Kunvar's book. I do not think that the attempt was very successful, and I have to treat the evidence on the assumption that it is genuine. The Court below in commenting on D136 said "the former of these, (*i. e.* D136) is a requisition for goats' milk for the colts and fillies of the heir-apparent of Dhrangadhra. To call this a Veth is a misnomer; it is not in the nature of one. Most probably the requisition was for payment." I do not quite follow the lower Court's meaning in the last sentence; but I am inclined to agree with it in thinking that strictly speaking this levy was not a Veth at all. A reference to the definition which I have given of the term Veth (*q. v. a.* para. 126.) will show that an annual supply of this nature does not correspond with its requirements. Devoji, who is a Dhrangadhra witness and in respect to other episodes in the history of Morvi's dealings with Vejalpur, is represented as an opponent

of Morvi's policy of encroachment, was asked about this so called Dhrangadhra Veth. He says (p. 8 of his printed deposition) "I do not remember if Dhrangadhra has any claim for Veth from the village. I do not remember any instance in which Dhrangadhra got Veth from our village.

Q. Is it false that for 8 or 10 years milch goats were furnished to the Darbar to provide milk for the horses ?

A. I do not remember.

Q. Remember.

A. I do not remember our village having given any such goats." At the time this levy was being taken the witness must have been about twenty years old at least; and had it really been of the nature of a village Veth, he, as one of the leading Girasias of the village, could hardly have been ignorant of its continuing existence through ten years. Mr. Pandit said for Morvi, "Is it not remarkable that throughout the period of 62 years with which we are dealing, no other instances of Veth can be found ? This levy, if it had been taken at all, might have been páncharai. It proves nothing. If these goats had been demanded as a matter of right, the men who gave them ought to have had some knowledge of the transaction." That line of reasoning appears to me to be sound and conclusive. It has been necessary to dwell upon this piece of evidence at greater length than it might appear at first to deserve. Because if it did in fact prove that Dhrangadhra was exacting Veth from Vejalpur at the same time that Morvi was doing so, it would present one more anomalous feature in a problem which is already sufficiently complicated. But if this supply of goats be regarded in the light of a Hak, the Bharwars alone probably and not the village collectively representing the person of incidence; it would not materially affect the determination of the issues to be here considered, nor would it fall directly within the scope of any of the larger principles upon which the determination of those issues depends.

146. D79, 81. These are orders issued by the Dhrangadhra Darbar to Vejalpur to send mud plasterers and carpenters &c. Date 1923 Samvat. There is in the first place some question whether these are genuine; since it appears from Devoji's evidence that there were no mud plasterers in Vejalpur. Nor could Devoji say that any carpenters were sent. On the other hand it is a

fair reply that no Girasia would be willing to admit the liability of his village for Veth; nor is Devoji's evidence on the two points upon which it is quoted against Dhrangadhra, necessarily conclusive. Just as in the case of some of the petty Morvi Veths, it is *prima facie* improbable that Dhrangadhra would be in a position to produce any corroborative evidence. All that I am able to say is that these entries do not go very far towards convincing me that Dhrangadhra was in the habit of levying Veth; it is to say the least singular that this, the only instance having the appearance of genuine Veth, happens in the year immediately preceding the present dispute.

147. D92-94 relate to precisely similar requisitions in the years 1924-1925, that is the year in which the dispute began. It is significant to observe in connection with the date, that "Dhrangadhra itself admits that no builders or carpenters came. They were only sent for by the State." (p. 12 of the Lower Court's judgment). Some exception is taken on behalf of Dhrangadhra to a passage in the same page of the Lower Court's judgment to the effect that beyond the *ipse dixit* of Dhrangadhra there was nothing to prove their assertion that the Devalia Juptidar was a friend of Morvi, and an enemy of Dhrangadhra. This, of course, in more direct connection with the value of some of those instances of Veth exaction by Morvi which have recently been considered, and the Lower Court was at the time, contrasting favourably with this Dhrangadhra evidence. The case against the impartiality of the Devalia Japtidar, out of which a great deal has been made, rests mainly upon M352. That exhibit will be noticed in its proper place. Here I need only say that, I think, the importance of the point which Dhrangadhra wishes to make out of this alleged bias towards Morvi on the part of the Japtidar, has been greatly overrated in the pleadings. Assuming that the bias had existed, I question whether it would have had the far reaching effects which Dhrangadhra now seeks to attribute to it. As for the rest of the Dhrangadhra evidence of the exaction of Veth in Vejalpur, (D151-166) it requires no detailed comment. Not even the learned counsel who represented Dhrangadhra with so much zeal and diligence, could find anything of importance to say about these exhibits. It was claimed for them generally that if they proved nothing more, they at least proved this much, that the Rahtors extended a cordial and uniform hospitality to the Dhrangadhra people. Conceded; but what follows? The Rahtors may have been most friendlily

disposed to Dhrangadhra, while they were not the less unquestionably Morvi subjects.

148. The papers are said to contain *inter alia* evidence of a Salami payment to the Raj Saheb on his return from a journey: of Lakhni payments and of payments to Rahtors when they went to Dhrangádhra on business. The latter class of facts seems to me comparatively unimportant. As regards the Salami payment, I suppose the reference is to D152, D153, from which it appears that Rahtor Pathabhai borrowed 10 rupees to give to the Raj Saheb as Salami, in the year 1924. Again just about the time when this dispute began. In reply for Morvi. Mr. Pandit said that even were the Salami payment true, it would prove nothing for jurisdiction; nor can I discover that the matter was again referred to by the learned counsel for Dhrangadhra.

149. D158, D159. All that Dhrangadhra had to say about D158 was that it showed fodder supplies to a Dhrangadhra lady while passing through Vejalpur. Morvi said a good deal more about it. There was no cause shown, said Mr. Pandit, why this Mehta and three Sawars ever came to Vejalpur. It is the first time that Dhrangadhra's Mehta and horsemen appear in these books though they cover the period from Samvat 1908. The exhibit is clearly a fabrication, and in view of the manner in which Morvi was complaining of the frauds which it alleged that Dhrangadhra was practising, Thakar Madhav ought to have been put in the witness box to establish the genuineness of the transaction. From which it may be gathered that the exhibit relates to a good many different matters. As it and D159 are fairly typical of the rest, I make a note of their contents D158. *a* Kankotri payment, namely to the bearer of a wedding invitation, one Rupee. *b*. Four annas by way of a Tip to the Dhrangadhra Chobdar. *c*. 1 Rupee to the Dhrangadhra Dádi, or bard. *d*. Two Rupees to the Dhrangadhra Lakhni wálláh (Lakhni—charitable assignment to a bard). *e*. Food supplied to the Halvad Mehta. *f*. Do. to his men. *g*. Cottonseeds supplied to the bullocks of the carriage of Dhrangadhra ladies. *h*. Food supplied to Halvad Mehta. *i*. Do. to Dhrangadhra Mehta and Sepoys. *j*. Food supplied to the Halvad Mehta when he brought the proclamation. D159 *a*. Food supplied to the Dhrangadhra Mehta. *b*. Food supplied to the Dhrangadhra Sepoy who came for the Jamma. *c*. Food supplied to Halvad horsemen. *d*. Food sup-

plied to a Sepoy of Halvad. *e.* Jamma remitted to the Raj Saheb. *f.* Two Koris paid to a Mir, or bard of Dhrangadhra. (*g.*) One Rupee Lakhni to Dhrangadhra. *h.* Food supplied to another Dhrangadhra Mehta. The first of these payments is in 1920, the majority of them are in 1922-1923. All of them are very near in point of time to the origin of this dispute. Nor do any of them, as it seems to me, possess much value with reference to the allegation that Dhrangadhra was in the habit of levying Veth. Most of these acts and expenses have the appearance of spontaneous private hospitality; and it is not surprising that the learned counsel for Dhrangadhra did not dwell much upon them. On the other hand, I do not go with the learned counsel for Morvi, the length of saying that these exhibits must have been fabricated. M159 contains an entry of food supplied to a Dhrangadhra Mehta in 1924 when he came to enter Jadeja Muluji's name in the Infanticide returns. But, as Mr. Pandit well remarked, Dhrangadhra produced no Infanticide return to corroborate this entry. Added to which it is suspiciously near the time of the origin of the dispute, and like the act out of which the dispute did actually arise. Mr. Wadya said nothing in answer to Mr. Pandit's criticism of this exhibit. I think I have said enough to show that in my opinion this batch of papers is of comparatively slight value for the purpose of proving that Dhrangadhra was in the habit of taking Veth from Vejalpur.

150. D147 is headed "Padian Khate" and shows a payment of 6 rupees 4 annas as a wedding present to the daughter of the Raj Saheb. Well, whatever this may be, it is not Veth. Padian proper would very likely indicate sovereignty, implying as it does the right to levy extraordinary taxes. But having regard to the fact that the Rahtors of Vejalpur are connected by marriage with the Raj Saheb of Dhrangadhra, it is natural enough that they should make voluntary gifts on the occasion of a wedding in the royal family of Dhrangadhra. Compare with this D144, dated 1890, purporting to show that Dhrangadhra took certain Padians from the Rahtors on four different occasions: three on marriages and one on a death. Now these sums appear from the book to have fallen due in the years Samvat 1878, 1884, 1887. It appears to me very singular that the learned counsel for Dhrangadhra should not even have alluded to this exhibit in any part of his elaborate address. Unless there were something wrong about it, it ought to be at least as good a piece of

evidence as many others on which great insistance has been made. Perhaps the explanation is to be sought in the fact stated by Mr. Pandit that Dhrangadhra promised to corroborate it by D145 which was said to be a book of the Rahtors. Ultimately, however, that book was not put in. "They never" said Mr. Pandit "asked the witnesses anything about this book, nor summoned them to produce it. Evidently the circular was a fabrication which they found it too difficult to carry through." And in another place Mr. Pandit in criticizing D144, 145, characterized them as "an incomplete concoction." No defence was attempted. Such Padian as this, even were it genuine, would not, I think, amount to proof of sovereignty. The Rajasthanik Court is said to regard presents of this kind as mere exchanges of friendly courtesy.

151. D166 to which more frequent references were made than to most of these papers, contains four items (*a*) $\frac{3}{4}$ of a Kori to a Dhrangadhra Khavas, Samvat 1914 (*b*) $\frac{1}{4}$ Kori to a Dhrangadhra Mir, Samvat 1914, (*c*) $1\frac{1}{4}$ Kori to a Jani (Brahmin of Halvad), (*d*) 2 Koris to a Halvad Sepoy. Mr. Wadya claims that this proves payment of a Mohosal imposed on Rahtors in 1914. (p. 14 of the notes of pleadings). I think there must be some mistake: as I can find nothing in the exhibit which could bear that construction nor any word resembling 'Mohosalai'. I should say that these were more in the nature of promiscuous presents to the Dhrangadhra Sepoys, and that they prove nothing.

152. The Court below contrasted with this evidence Morvi's exhibits M83-M90. M83 shows that in 1867 Vejalpur contributed the equivalent of 14 Rs. viz., 42 Koris to the expenses of a Morvi Mehta who was going to the Gaekwar's camp. It appears from the exhibit that 319-8 were collected from the villages on this account: it does not specify from what villages. But they could hardly be all of them Dhrangadhra villages: and consequently the argument that inasmuch as the figures show a collection in Rupees converted into Koris: and as Rupees were Dhrangadhra, Kori's Morvi currency: the village must at that time have belonged to Dhrangadhra, seems to me of little value. Similarly the argument that because this was an irregular levy it can be no proof of sovereignty, appears to ignore the distinctive features of sovereignty. It is the rather a proof of sovereignty, I should be inclined to say, because it was irregular in the sense of not being fixed and recurring.

No doubt a levy irregular in another sense, and corresponding very much in fact with extortion by superior force, would not be a proof of sovereignty. But the person alleging that it was of that kind, would have to show that it was rather a robbery than an exercise of the crown's ordinary prerogative of asking for special benevolences to meet special needs. Here there is no proof that the levy was any other than it purports to be. So far from it indeed, that we find in another part of the same exhibit the whole collection from these villages debited in the State Ávro to the *Vero* account. I admit that the transfer seems to me a little obscure: but ancient native accounts present constant difficulties especially where we have not all the books in which to verify receipts and disbursements. For the present argument, I merely note the entry as indicating that the State treated the collection as quite regular and orthodox. And reverting for a moment to the currency argument, it may be pointed out that Morvi never had a mint of its own: its current coin consisted of Jamnagar and Cutch Koris. In a border village there might very well be a mixed currency upon which it would be extremely unsafe to raise any inferences as to the village's allegiance.

153. M84 is an extract from the Morvi State books of Samvat 1867 (A. D. 1811) showing levy of 20 Koris "Sutar" from Vejalpur. All that Mr. Wadya had to say about this was "no one could say that this was a Government cess." I really fail to understand why not. In the glossary of terms prepared by the Rajasthanik Court "Sutar Chámdu" is defined as "a cess taken from weavers and tanners for saddle girths, ropes, and other horse trappings: also for leather buckets." It appears to me difficult to say what the levy of Sutar in 1867 *was*, if it was not an ordinary Government cess.

154. M85 shows the receipt and entry in the Paidagri or revenue account of 4½ Koris from Vejalpur in Samvat 1868 (A. D. 1812.) I understand this to mean that there was a general Veth at the time for grass, and that Vejalpur commuted its contribution for a cash payment. It certainly has the appearance to me of a Veth and nothing else. In the critism of this exhibit some allusion was made, to other entries in the same account: but these were not put in and are not on the record: neither have they at any time formed any part of it. If Mr. Wadya had relied upon the circumstance mentioned at p. 15 of the printed notes of pleadings, he should have taken

care to put the entries in as Dhrangadhra evidence. They would not, however, have been of much value. I merely mention this because I find as I proceed with the case that a great many references have been made on both sides to facts and figures which are not, and never have been in evidence.

155. M86 is an account of the collections of "Khola Pàtharia" in Samvat 1883 (A. D. 1827.) The aggregate was 4,585 Koris and Vejalpur's share 675. This has been characterized by Dhrangadhra as a "begging expedition undertaken by the Morvi Thakor." Well, it was something of the kind. Khola Pàtharia, a spreading of the lap, means an invitation to make special contributions. The Aga's method of levying his annual income is very much of the same sort and will serve as an illustration.

156. Conceded that Mr. Wadya's contemptuous description of this levy was perfectly accurate, his inference therefrom that this has no bearing on the question of sovereignty, does not appear to me to be necessarily sound. As Mr. Pandit pointed out, such demands correspond closely with the aids and benevolences which sovereigns used to ask for and receive in feudal times. Nor, if there were in those days even the haziest and most inexact conceptions of the relations implied in the terms sovereign and subject, (and some such conceptions must be presumed as the basis of an enquiry like this) is it conceivable that the Morvi Thakor would either have demanded Khola Pátharia from villages belonging to Dhrangadhra or that if Morvi had done so, such villages would have consented to contribute. As to the entry of Khanji as a *Waghela*, I think, it may safely be presumed that this was a clerical error for *Rathor*. So far as this enquiry reaches there are no traces of any Waghelas in Vejalpur: and it is evident from the amount of the contribution that Khanji must have been representing the village and not making a private personal subscription. Mr. Pandit has stated that Khanji was a Rathor and was at that time the headman of the village. I expect that is the fact. Now it is notorious that about this period Morvi was in great pecuniary difficulties: so much so, indeed, that the entire Taluka was mortgaged. Consequently it was quite natural that the Chief should have had recourse to some such extraordinary methods of raising supplies. And I entirely agree with Mr. Pandit that whether you call it begging or by any other name, it is certain that the Girasias would not have paid such a large sum unless they had been in political subordination to Morvi.

157. M87, dated Samvat 1886, represents the collection of a religious endowment to which Vejalpur contributed 10 Koris. Dhrangadhra called this 'merely a Dharmáda payment to a beggar.' But it is plain from the exhibit that the State of Morvi collected the money.

158. M88, dated Samvat 1890 (A. D. 1834), is from the Rahtors Tejoji and Agroji to the Thakor of Morvi: complaining that while two of their carts had gone to load grass, a Sawar came and snatched off one of the bullocks' Jhools saying "pay the grass-tax and I will give you back the Jhool" but there never had been such a tax: the writers were subjects of Morvi; if Morvi thought otherwise that was Morvi's affair, &c. Dhrangadhra said of this that it showed that, at any rate, the Morvi Thakor thought that the Rahtors belonged to another jurisdiction. I think that construction altogether forced and unnatural. The act complained of was the act of a Sawar, not of the Darbar: the Rahtors complained resting their claim to redress on the ground that they were subjects of Morvi as much as the men of Piluri in which the grass was being cut and consequently were not liable to pay any special tax: but that if the Thakor thought otherwise he could do as he pleased. The concluding sentence is only another way of expressing emphatically the writers' assurance that Morvi knew as well as they did that they were Morvi's subjects. Nor is it any-where apparent that Morvi alleged the contrary. It is idle, I think, to explain such a petition, although its natural meaning is plain on the face of it, by saying that the Rahtors made an interested statement in order to avoid payment of a tax, and that the Morvi Thakor considered them to be aliens until they made that interested statement. The meaning of the letter is, in my opinion, plain and unmistakeable. It does not imply that the Thakor Saheb thought that Vejalpur belonged to another jurisdiction: but merely pleads for the writers that they could not be treated in a manner different from that in which all other Morvi Khalsa villages were treated.

159. M89 is rather an ambiguous document. It appears that a Patel was appointed over all the Bharwars by Morvi and had a Pagri given him. He then collected 183½ Koris from all the Bharwars in the various villages; so much per house; and the amount so levied from Vejalpur was 6 Koris. Mr. Wadya said that there did not appear to be any regularity in the payment of this due: that it was not paid annually as it should have been. I

do not perceive the force of that criticism. It seems to me that the levy was in its nature special; a sort of general contribution to celebrate the appointment of a Patel. Neither do I attach so much importance to the exhibit as Mr. Pandit did. He thought that it clearly proved sovereignty: for if Vejalpur had not been subject to Morvi why should the Bharwars of Vejalpur have consented to pay a single anna to a Patel appointed by Morvi? I do not say that is not fair argument: but it might be plausibly suggested that the Bharwars are a roving caste who dwell but little in fixed habitations and for the most part wander where they will over the open plains and grazing grounds of all States indifferently: and that such a tax might have been tribal rather than statal. It is also not quite plain to me that the Patel was appointed by Morvi. The exhibit is dated 1894 Samvat (1838 A. D.).

160. M90, dated Samvat 1923 (A. D. 1867), is a Sudharo cess collected from the villages of Bhayats and Girasias for town improvements. Vejalpur paid 90 Rupees. A mohosal had to be imposed in order to exact payment (M162). Of this Mr. Pandit said, justly I think, "The exaction of a Sudharo cess so late as Samvat 1923 (A. D. 1867) proves conclusively our position with reference to Vejalpur. If there could have been any doubt on the point, why did they not complain?" The evidentiary value of an act like levying a Sudharo cess so far from being diminished in proportion as it approaches nearly in point of time, the opening of the present dispute appears to me to be rather increased. It is true that had it been challenged by Dhrangadhra, the case would have been different. But since at a time when Dhrangadhra was on the very eve of formulating its claim to sovereignty over Vejalpur, Morvi threw down this open challenge by including Vejalpur in villages liable to a Sudharo for town improvements in Morvi; and Dhrangadhra declined to take it up; I think it ought to be plain that the evidentiary value of such an act done under such conditions is governed by different principles of appreciation from those which lead the Court at times to suspect the value of some sorts of evidence approaching in time very nearly to the date of the cause of action.

161. It must have long since become evident that strict accuracy in classification has not been studied either by the Court below nor by the learned counsel who pleaded the appeal. Nor perhaps was it to be expected

considering the crushingly onerous nature of the labours and responsibilities implied in the conduct of such a case. This Court also finds it quite impossible to re-analyze and re-arrange on a different system, the voluminous evidence with which it has to deal. The method pursued by Mr. Wadya had the merits of consistency and clearness, and after considerable reflection this Court thought that in writing its judgment it could not do better on the whole than follow Mr. Wadya seriatim through his pleadings. Hence it has happened that while nominally dealing with the subject of Veth, a good many levies, contributions, and exactions which are certainly not Veth have fallen under examination. All these are fairly described in the Lower Court's jndgment to the extent of Dhrangadhra's evidence (D151-D166) at least as a "multiplicity of other petty payments." But I do not quite agree with the Lower Court when it goes on to say that they have their counter part in Morvi's M83-M96. I have taken, as Mr. Wadya did, the group of papers M83-M90 for the purposes of comparison with D151-166; and in my judgment the result of that comparison is beyond all question in Morvi's favour. Immeasurably more so is that the case in a comparison of the evidence relating to Veth proper. So far then as the right to exact Veth may be regarded as an indication of sovereignty, this portion of the evidence proving as it does that Morvi's right to exact Veth was much better and more clearly established than Dhrangadhra's (if indeed upon a most liberal construction of Dhrangadhra's evidence it can be said that any such right is ever shown to have been inherent in the Dhrangadhra Darbar) leads to the connected conclusion that Morvi's claim to sovereignty over Vejalpur is better grounded than Dhrangadhra's. It will doubtless be remembered that the precedents showed that the greatest importance was attached, in determining between the rival claims of two States to the sovereignty of a village, to Agency recognitions. Now in spite of the strenuous endeavours of Dhrangadhra to explain away the numerous recognitions of Morvi's sovereign relations with Vejalpur contained in several of the preceding papers, the argument commonly being that it was not in fact the Political Agent but the Malia or the Devalia Japtidar who recognized Morvi's responsibility for Vejalpur: that evidence certainly seems to me to be of extreme value to Morvi.

162. Dhrangadhra and Morvi each argue that the other was committed to a deliberate scheme for creating evidence of jurisdiction over Vejalpur.

The Dhrangadhra theory is that the inception of Morvi's scheme can be traced in M352. That document was strongly relied upon to impugn the genuineness of M2, and to weaken the natural effect of that and allied papers and proceedings in Morvi's favour. In that connexion M352 was fully dealt with and its substance given (*q. v. a.* para. 14). But here also it is used in an endeavour to weaken the inferences in Morvi's favour which would naturally be drawn from the exhibits M123-M142. As I think the exhibit has been referred to more frequently than any other paper in the case, and as in the compilation of a long and unavoidably discursive judgment of this sort, I run the risk of either omitting some connexions in which the letter may seem to one or other of the parties to have a more than usually important bearing; or on the other hand of repeating my observations on one and the same piece of evidence; it will, I think, be convenient to take up here and finally dispose of M352 Its date, history and contents have, I think, been sufficiently given already (*q. v. a.* para. 14 *et sq.*): as well as its bearing on the questions arising out of M2. In connexion with my present topic, Dhrangadhra relied upon it, as I have just said, to prove that so called Agency recognitions of Morvi's sovereignty were in fact Báláji's. I have stated (*q. v. a.* para. 138) that in my opinion Dhrangadhra attempts to make too much capital out of the fact (if fact it be) that Báláji, the Devalia Japtidar, was well disposed to Morvi and inimical to Dhrangadhra. Morvi on the other hand challenges the fact. To me it seems of very little consequence, but I presume that since the parties appeared to set so much store by their arguments derived from this source, they would wish the Court at least to notice them. Major Ferris wrote (p. 12 of his judgment). "Dhrangadhra accounts for this by saying that the Japtidar was inimical to them but a friend of Morvi, besides their *ipse dixit*, however, there is nothing in support of this assertion." To this passage Dhrangadhra took great exception and pointed to M352 as a piece of conclusive evidence and something a good deal more than Dhrangadhra's mere *ipse dixit*. The passage in the document upon which Dhrangadhra relies is "consequently Balaji summoned those Girasias here, made a Takid to them that they should report the matter to the State of Morvi, and said that he also would write for it to the Thakor Saheb of Morvi. Then the Girasias stated that, as for them, it was necessary to write and announce the matter both to Morvi and

Dhrangadhra. Saying so the Girasias wrote a letter to Dhrangadhra. Such is what Balaji had to say. In that way compromising matter will get on the record." If, argues Dhrangadhra, Balaji had been as he ought to have been in his capacity of Japtidar for Morvi and Dhrangadhra alike in Devalia, strictly impartial, why should he have gone out of his way to inform Morvi that the Vejalpur Girasias were going to report an offence to Dhrangadhra as well as to Morvi? The argument appears to me as weak as the structure founded upon it is disproportionately imposing. It is perfectly possible that Báláji may have held his own views as to the true connexion between Vejalpur and Morvi: and that he might have held them consistently with complete freedom from biás as Devalia Japtidár. It is also possible that he may have had his suspicions of the Vejalpur Girásiás: or that he may have been prompted to say what he did by the ignoble desire of getting some one into trouble. This communication was evidently private and Dhrángadhra sees in that an aggravation of Báláji's perfidy. I confess, I do not. In a small village where in all human probability, Balaji and the writer of M352 often met and had little to say, it would be extremely natural that, setting all motives and after thoughts entirely on one side, Balaji in discussing Savo's suicide, should have gone into the details which gave occasion to Prabhashankar Madhavji to write M352, merely in the course of common talk. Then comes Morvi's reply. There is no foundation at all, says Morvi, for any imputations of collusion and so forth. In M250 it will be seen that Balaji had officially reported this matter to his official superior, the Extra Assistant Political Agent, Northern Division, Kathiawar. He had also officially reported the matter in March 1865 or three months before M352 to the Morvi Chief: there was no secrecy whatever in the matter. According to Morvi's views so far from Balaji having been improperly prejudiced in favour of Morvi, it can easily be inferred from M363 that Báláji was actively hostile to Morvi in 1851: and Dalpatram's evidence proves that in 1867 or two years after M352, he was actually in Dhrangadhra's service. I do not attach much importance to the argument founded on M363: but the others are at least good enough to dispose of the somewhat sweeping inference which Dhrangadhra has drawn and so positively insisted on, from the second para of M352. Dhrangadhra's reply to this was that the information which Balaji put in his official reports was not the information they

complained of: "we complain" said Mr. Wadya "that he privately informed Morvi that the Rahtors intended to report to Dhrangadhra." As against M363 which is too ancient, says Mr. Wadya, to be of any particular weight, set M267, M272 as evidencing Balaji's partiality in 1859. These papers relate to a Mohosal imposed on Rahtor Agraji of Vejalpur upon a report by the Devalia Japtidar. Well that only shows that in Balaji's opinion Vejalpur belonged to Morvi: and that that was his opinion is put beyond doubt by M352. But to conclude from that that his honesty was pawned to Morvi seems to me altogather unwarrantable. Lastly Dhrangadhra argues somewhat feebly that when it employed Balaji in 1867, it could not have known of his conduct as evidence in M352. That is an argument obviously beyond the reach of criticism. These being the arguments upon the question of fact namely whether M352 does prove that Balaji was acting in collusion with Morvi in 1885: my answer would be that it certainly does not. And upon that view the value of all Dhrangadhra's arguments drawn from the premiss that in 1865 Balaji was conspiring with Morvi to cheat Dhrangadhra out of its right in Vejalpur melts away: even supposing that, had the premiss been conceded, those arguments ever would have had any thing like the value which Dhrangadhra plainly put upon them. I note that in addition to the two topics with reference to which this paper has already been prominently quoted, it was used to depreciate the value of M90 (*q. v. a.* para.) upon the ground that the latter was an act done in furtherance of the scheme originated two years earlier in the former. So again it is used against M358: the implication being the same. With regard to the case contained in the exhibits M267-272 it was most strenuously argued that the Devalia Japtidar must have been acting in collusion with Morvi. The argument is more or less in the nature of a *petitio principii* and it is clenched by the usual reference to M352. Upon M267–M272. Dhrangadhra argues that (*inter alia*) Balaji's bias in favour of Morvi is clearly established in 1859: and that it continued down to 1865, witness M352. I have now mentioned every use to which M352 has been put: and I have reproduced every argument of importance to which it has given rise. If in my own opinion I have done it a great deal more than justice: at least Dhrangadhra cannot say that in estimating at next to nothing the construction it has put on M352 and the arguments it has deduced from that construction, I have done so hastily or without due regard to all that may be urged for the contrary opinion.

163. This section of the evidence then tells doubly in favour of Morvi: directly, to the extent of proving that Morvi used to exact Veth in Vejalpur; and indirectly as proving that the Agency officially recognized Morvi as the sovereign of Vejalpur. The right to exact Veth is as has been said, an indication of sovereignty: and in theory at least could only be derived from sovereign authority. The official recognition by the Agency of a State as sovereign over a village at a time when there was no dispute upon the subject has always been regarded as relevant and material evidence in favour of that State, should its sovereignty over such village be at any later period called in question.

164. Nazarana payments. On this subject the Lower Court writes. "Both parties can show payment of Nazarana (D138 to 143, M94 to M96 and D147-159).

This should be evidence of sovereign rights; it can only be supposed that the term Nazarana in the State books has been wrongly used and that the payment was more in the nature of a present.

Morvi argues that their levy of Nazarana was in the years A. D. 1843, 1859 and 1860, whereas Dhrangadhra's were in 1866 after they had commenced to create evidence in support of the scheme to claim the sovereignty over Vejalpur." No doubt if both sides could prove the contemporaneous payment of Nazarana: and if the payment of Nazarana denoted the relation of sovereign and subject we should again be brought face to face with anomalous conditions. It is rather a slipshod and illogical way out of the difficulty, however, to conclude that when the payments were entered in the State books under the head of Nazarana, they were wrongly so entered; and that the payments were in fact rather in the nature of a present. In the first place it may be objected that Nazarana levies are theoretically of the nature of presents in essence. Those who refused to give that particular kind of present might, no doubt, be coerced into doing so by the authority to whom the present was due. On the other hand, there is nothing in the nature of the case to prevent Girasias of the same blood making such presents spontaneously to a Darbar, even though the Darbar would not have had the right to exact them. And presents given under such conditions might, I apprehend, be entered rightly enough under the head of Nazarana. In the second place, this method of disposing of the difficulty leaves it uncertain

which levies were wrongly entered in the State books as Nazarana: and from which inferences in support of the clrim to sovereignty can and from which they cannot be correctly drawn. I may also observe that this loose practice of bracketing a long list of exhibits as proving or bearing upon a particular point has considerable drawbacks. Here, for instance, I find that just as the Lower Court implies that Dhrangadhra can prove its Nazarana payments by exhibits D138-143 and D147-159; so the learned counsel for Dhrangadhra argued that Dhrngadhra's evidence on this point commenced in Samvat 1822 (A. D. 1766) (D138) (*vide* p. 15 of printed notes of pleadings). But so far as I can make out, there is not a word in D138 about Nazarana. Nor for that matter in a single one of the papers bracketed by the Court below as referring to the Dhrangadhra levy on this account, except only D142. D148-149 which were offered to prove the levy of Nazarana on the accession of the present Raj Saheb in Samvat 1925 (A. D. 1869) were, of course, rejected, on the ground of being *post litem motam.* Consequently I am quite unable to discover upon what the argument quoted by the Lower Court without any comment, is supposed to rest. The only piece of Dhrangadhra evidence on the subject shows the payment of 5 Rs Nazarana in Samvat 1901 (A. D. 1845) not 1866. A. D.

165. So far then as Nazarana proper is concerned, all the evidence I can find on the point is for Dhrangadhra D142: and for Morvi M91, M92, M96. Curiously enough the Lower Court has referred to M94, M96 as proving Morvi's Nazarana; documents, two of which have nothing to do with Nazarana at all: and has omitted M91, M92 altogether. Comparing the evidence, there can be no doubt that the balance inclines markedly in Morvi's favour. Levy of true Nazarana, *e. g.*, Gadi Nazarana upon the accession of a new king, is necessarily a comparatively rare event: and Dhrangadhra has very good reason to regret that the Raj Saheb happened to ascend the Dhrangadhra Gadi just one year after this cause originated. Since they are thus precluded from putting in evidence which, if genuine, would, no doubt, have been very favourable to them. On the other hand looking to the alleged historical connexion between the Vejalpur Rahtors and the Dhrangadhra house, it would not, I think, necessarily follow that a gift of Nazarana by the former must imply political subordination. Even though the Rahtors had become politically the subjects of Morvi, they might still preserve the

tradition of their alliance with the reigning family in Dhrangadhra, and voluntarily, as kinsmen, make congratulatory offerings to the new head of a Royal house to which they were themselves related. On the other hand the fact that while there were no such sentimental reasons prompting the payment of Nazarána to the Morvi Gádi, it is proved that in Samvat 1885 (A. D. 1829) the Vejalpur Rahtors did pay Nazarana on the accession of Prithiráj: and again in Samvat 1904 (A. D. 1848) on the succession of Ravaji, is extremely strong evidence of the existence of the relations of sovereign and subject between Morvi and Vejalpur Ordinarily speaking the levy of Gádi Nazarána is recognized by the Rájasthánik Court as a sovereign right: although it was pointed out in the pleadings that in one case Colonel Keatinge thought it might not be sufficient in itself to prove sovereignty; but might have been a free gift. I have just indicated conditions under which that view would probably be correct. The test seems to be whether in the absence of any predisposing motives of blood relationship, &c, in the donors, the State claiming to be sovereign has received Nazarana as a right: and where it has been withheld, has succeeded in exacting it.

166. Observe then that in the second instance (M92) the Gadi Nazaráná was not paid for two years. The Thákor Sáheb ascended the Gádi in 1902 and the Nazarána was recovered in 1904. In the meantime the Vejalpur Girásiás had been mohosalled ten Koris (debited to Shámji Gangárám) for the non-payment (M152). *Per contra* D142 is not a Gádi Nazarána: but seems to have been a contribution to the expenses of the Ráj Sáheb's pilgrimage. No doubt this would imply some relationship between the village and Dhrangadhra: but it is susceptible of explanation, perhaps, on the theory of the marriage connexion. Then there is Morvi's M96 which Mr. Wádya calls a bribe. It seems that there was a dispute in Vejalpur between the rival headmen: and that Abhesang was made Mukhi by Morvi whereupon he paid 65 Rs. Nazarána to the Morvi Darbár. A practice of that sort was probably common enough in early days. Very analogous is the procedure in claims for civil remedies described by Jacob "If a man have a debt to recover he consents to give up a certain share of it to the Chiefs, who thereupon proceeds to coerce the debtor; *but this process is often one of rival bidding for the Chief's favour.*" I agree with Mr. Pandit in thinking that the morality of the transaction is quite irrelevant. If the Morvi Darbár had no authority, why should the Vejalpur Patels have paid Morvi a single pie for mediating between them

and settling their disputes. So far then as Nazarana may be regarded as a mark of sovereignty, there can be no question that Morvi has better evidence in support of its claim than Dhrangadhra. It is not necessary to notice certain other contributions such as Vihvá Vadhávo, Kankotari, &c., record of which is to be found in these papers: since both parties have either tacitly or expressly admitted that payments and presents of that nature are of little or no value as evidence of sovereignty.

167. I come now to a consideration of the evidence on both sides relating to the rival levies in Vejalpur. It is admitted that Dhrangadhra has regularly received 16 Rs annually (20 Rs credited, 4 remitted) from Vejalpur since Walker's settlement. It is also admitted that Morvi has been receiving since Walker's settlement a sum varying between 350 and 1,045 Koris annually from Vejalpur credited in the State books as 'Vero,' and 'Jama'. Dhrángadhrá's annual levy is also called 'Jama.' There is evidence going back to a period long anterior to Walker's settlement which, contrary to the usual practice, may, perhaps, be considered with some profit, as throwing light upon the real nature of these contemporaneous payments. It will be remembered that the precedents gave among other rules this, that the levy of Sánti-Vero is an infallible mark of sovereignty. But taking that as the basis of a great deal of very elaborate argument and criticism, the learned counsel for Dhrangadhra appears to me to have fallen into the mistake of supposing that the rule implied *inter alia* that the levy of, *e. g.*, Udhad-Vero, negatived the existence of sovereignty. This is a fallacy. Assuming that the general proposition that Sánti-Vero denotes sovereignty while Pál is incompatible with true sovereignty, be true there lie between these two extremes, a number of possible fiscal relations, such as Jama, Salámi, Udhad-Vero, Vero, &c., which while they may not so infallibly denote sovereignty as Santi-Vero, yet are not as far as my experience enables me to express an opinion necessarily inconsistent with it. I have very little doubt that Mr. Wádya was quite conscious of this difficulty: although at times his language would lead to the inference that he had temporarily lost sight of it. For it will be evident that his energies were chiefly directed to proving that Morvi's levy had been in the beginning Pál, and had never changed its essential nature. Major Ferris observed "There seems no ground for supposing that this levy was in the nature of Pál or black-mail, on the contrary its steady

continuance would tend to destroy the supposition, for, in former times, the infliction of Pál was an arbitrary act of tyranny that was only submitted to so long as the inflictor was strong enough to enforce it." (p. 9). And I may at once premise that after studying the evidence very carefully and giving my fullest attention to the elaborate arguments used by Mr. Wádya in pleading the issue, I have no doubt that Major Ferris was right. I shall not unfortunately feel justified in treating this branch of the case quite so compendiously as Major Ferris did; but while endeavouring to do reasonable justice to what has been pressed upon me by the learned counsel for Dhrangadhra, I shall aim principally at compression.

168. It may be as well to take up in *limine* the very obvious difficulty with which we are confronted. There is no possibility of denying that both Morvi and Dhrangadhra have been levying from Vejalpur ever since Walker's settlement, certain taxes, called by Dhrangadhra 'Jama:' and by Morvi 'Vero' and 'Jama.' And it would seem to follow that either no inference in favour of sovereignty can be drawn from such levies or that there has been a joint and continuing sovereignty from Walker's time up to this dispute. The latter alternative is exhypothesi (*q. v. a.* para. 75) impossible: and Mr. Pandit to some extent seems to have accepted the former when he said "Now the Udhad evidence is all irrelevant" (p. 116). Though this *dictum* is in my opinion almost, if not quite, true, it plainly imports a qualification. So far as Dhrangadhra's case is concerned, there is no room for argument against the statement that Dhrangadhra's levy has ever since Walker's settlement been an 'Udhad' or consolidated lump annual payment. And whether such Udhad be called 'Jama' or 'Vero' makes in my opinion no material difference for the purposes of my present enquiry. Mr. Wádya said "Udhad-Vero would never mean sovereignty." (p. 44 of pleadings). Similarly Udhad-Jama would not necessarily imply sovereignty. As Major Ferris pointed out, Dhrangadhra takes to this day Jama in Narichana, Pedda, and Katada which belong to Sayla, Lakhtar, and Wadhwan respectively. It should, however, be clearly understood in this connection that while the levy of a fixed Jama or Vero under certain circumstances does not denote sovereignty, there are other circumstances under which it is perfectly compatible with it. Indeed it was part of Mr. Wadya's argument that a sovereign State in Kathiawar could not vary the amount of Jama it levied on Bhayáti

and Mulgiras villages. This, like many other points upon which there has been some bold generalization in the pleadings, is one upon which I should feel considerable doubt in offering an opinion until a much larger collection of data than have yet been got together in this or any other case of a like nature in Kathiawar, was before me for examination and analysis. My own experience has embraced many score of cases in Mahi Kantha, Reva Kantha and Baroda in which, unless I am mistaken, the sovereign Jama has always been regarded as liable to fluctuation. Possibly the Jama was not being taken from Bhayats but it was a sovereign levy and the payers, if not Bhayats, must have closely resembled in status, the Kathiawar Mulgirasia. The tendency of later years has, no doubt, been to fix all Jamas: but this has not in any way deprived the levy of its original character; which is what Mr. Wadya, I expect, wished to contend for on behalf of Dhrangadhra. In Kathiawar, however, I see no satisfactory grounds upon which to rest any appreciable distinction, for this purpose, between a fixed Jama and a fixed Vero. The terms seem to me to have been very loosely used and to have been treated as interchangeable. Primarily Vero probably stood higher in the scale of proofs of sovereignty than Jama: though, as I have already said, it is idle to attempt anything like scientific analysis and classification upon such materials as are yet available.

169. Dhrangadhra's Jama of 16 Rupees a year, requires little comment. Since Walker's time, it has been regularly paid and it has been called Jama. But Jama does not necessarily imply sovereignty: consequently for the purposes of this enquiry, there would be nothing more to be said but for the evidence prior to Walker's settlement which has been strenuously pressed upon the Court's notice. From D20 and D21 it appears that the Jama formerly payable to Dhrangadhra had been Rs. 201: that in 1849 Samvat (1793 A. D.) owing to hard times in the village the entire Jama was remitted for five years: and that in St. 1862 (A. D. 1806) (one or two years before Walker's settlement) the Jama was permanently reduced from 201 Rs. to 20 Rupees a year, because certain Rahtors of Vejalpur had fought for Dhrangadhra and been killed at Wadhwan. Mr. Pandit objected to these documents at the time they were put in: and said very little or nothing about them in his pleadings, probably believing from some remarks which fell from the bench that not much weight would be attached to any evidence before Walker's

settlement. Assuming that the exhibits are genuine, I do not see that they materially affect the question now under consideration. They might have some value in another connexion, proving the feudal relations existing between the Rahtors of Vejalpur and Dhrangadhra: but as for the Udhad-Jama, Dhrangadhra's case gains nothing by admitting that it had formerly been 201 Rs. instead of 16 Rs. It is not the amount of such a levy that is important: but its nature and the conditions under which it came into being.

170. Next of Morvi's Vero or Jama. The exhibits commence with M24 of the year Samvat 1809 (A. D. 1753); though there are certain other ancient connected papers (M18, 19, 20, 21, 22, 23 and 143) which have been criticized in dealing with particular aspects of the subject. Here (M24) we find 600 Koris credited for Ganim Vero on Vejalpur. I should not dwell on this and the following papers (M24-30) had not Mr. Wadya devoted so much time to treating the subject of Morvi's levy from first to last as a whole, in his endeavour to prove that whatever it was, it was *not* Santi-Vero, nor Jama: and consequently *was* in all probability Pal. All this evidence relates to a period long anterior to Walker's settlement. Up to M30 we find 600 Koris debited to the Gamat Khata and credited to the Bahargamda Khata. And the argument is that "it is neither Santi-Vero nor Jama; then it must be Pal." (p. 40 of pleadings). Well, the books, if they are worth anything, say that the levy was 'Ganim Vero' (up to M28) and then it is simply 'Vero'. Mr. Wadya's conclusion appears to me upon such information as is at present available a mere *non sequitur*. Throughout this part of the pleadings will be found a constant reiteration of the proposition that there is not a single Girasia village in which the Vero due from the village is debited to the Gamat Khata: it is invariably debited to the Girasia. And again "Jama was never debited to the Gamat: it is the grantee or the Mulgirasia who pays the Jama. Here the Vero is debited to the Gamat invariably." (p. 44) and the inference is, I suppose, that the levy is consequently Pal. The sole authority, with which I am acquainted for this proposition, is Popat Hirachand (witness 5). At p. 1 of his printed deposition he says "Q. Can you show in this Bahargamda Vero Khata, any village which is mentioned as a Girasia's village, and the Girasia's Vero is entered as debited to the Gamat account? A. No I cannot." On p. 2. He says "Q. Can you from this account show me any case in which when the Vero is due from the owner of the village, it is mentioned as debited

to the Gamat Khata? A. Yes, Kerála, Pipli, Timbdi, Vejalpur, Sesávadar, Naranka, Sokda, Sanála." The whole of this witness' deposition appears to me very confused and unintelligible. At one place (p. 6), he says "In the Ávro for 1891 the receipts from the Bhayat are all entered as Vero, although in the same book for 1880 they are entered as Jama." This illustrates what I have had occasion to remark more than once already that there was no very accurate distinction drawn between Vero and Jama: nor, inferably, was there any generally prevalent idea in those times of divergent connotations inhering in those terms which might be capable of sustaining claims to particular rights based upon the use of one in preference to the other. In re-examination the witness had to say, (p. 8) "With this exception, *i. e.*, 'Motákhijadi,' I cannot find an instance in the books of 1864 where the Girásiás name being mentioned, the Vero of the Giras village is debited to the Gámát account." To this argument of Dhrángadhra, Morvi replied that if there was anything in it it told more strongly against, Dhrángadhra than against Morvi since in exhibits D137-142 the Dhrángadhra Jama is debited with only one exception to the Gámáyat Kháta: and Mr. Wádya rejoined that that was simply untrue and the Court could see for itself (p. p. 84 and 147 pleadings). Well, an examination of the papers shows that with the exception of D140 they are headed 'Vejalpur ni Jame Khatun': and the exception is 'Vejalpur na Rahtors ni Jame na Khatun.' This may not be quite the samething as debiting the Jama to the Gamayat Khata: though I confess the distinction in which Mr. Wadya sees so much significance, appears to me rather shadowy. I am not at all prepared to go the length of saying that because Vero or Jama is debited to the Gamat Khata (between which and the village itself, lies the subtle distinction just noticed) instead of to the grantees or Mulgirasias personally, it must, therefore, be Pal instead of Jama or Vero, as the case may be. Nor does any reason suggest itself to me why such a conclusion should be drawn from the premisses. It might be said that the village paid Pal as a corporate measure for self protection whereas Jama was taken by the sovereign from the landlord direct; and had nothing to do with the villagers. But in the absence, of all evidence, I cannot say with any confidence that the Girasia or Mulgirasia would not ordinarily be the person to make an agreement for the payment of Pal just as much as for the payment of Jama: or conversely that

the village might not as reasonably be held chargeable with its Jama and Vero as with its Pal. I attach, under known circumstances, very little, importance to this point.

171. On the other hand, I think, it is important to note the popular confusion which seems to have existed between Vero and Jama in the first place: and in the next (since Dhrangadhra itself has taken us so far back) that in 1753 Morvi was levying what it at any rate called Ganim Vero, and from that time forward continued levying Vero until in Samvat 1872 the name was changed to Jama. It was argued for Morvi that the term Vero implied sovereignty. It is derived from 'Varad' a contribution: and the contribution was taken originally for the payment of tribute to the Marathas or others. Ganim Vero is peculiarly a Maratha term: and was probably the original name by which this levy was known. In the glossary prepared by the Rajasthanik Court and accepted as a local authority, Ganim is given as meaning Marathas, or enemies. If I understand the passage rightly, Mr. Peile in his note upon the history of Mangrol (p. 4) describes the Ganim Vero as the tribute payable by Mangrol through Junagad to Baroda. The obligation of collecting and making good the Ganim Vero, upon this hypothesis, would imply, I suppose, a corresponding right to collect as sovereign the Santi-Vero. And according to the lax usage of the times, it is easy to understand that in 1753 'Ganim Vero' and 'Santhi Vero' may have been used as between sovereign and subject in Kathiawar, pretty nearly synonymously.

172. Without going too minutely into the evidence before Walker's settlement it may be as well to note Dhrangadhra's conclusions from it. These are (I) that from the beginning the Morvi levy was an Udhad Vero (II) in Samvat 1857 (1801) it was changed into Vero. And that was the year of the Mulkgiri expedition: in which, according to Dhrangadhra, Morvi and Malia went on a freebooting raid. Assuming for a moment that those conclusions are absolutely correct and warranted by the evidence they do not materially impair the strength of Morvi's position. Because it is a settled principle of local policy to look not at the character of the inception of any possessory status: but at the character it had at the time the British Government guaranteed their Talukás to the Chiefs in 1808. So that it would be quite immaterial to prove that in Samvat 1850, say, Morvi's hold over

Vejalpur was limited to the levy of Pal, if it be conceded that in Samvat 1864 the nature of that hold had been definitely converted into the right with its derivative consequences, of levying Vero. We are not now in any way concerned to enquire how, assuming that in the XVIIIth century Vejalpur belonged to Dhrangadhra, it came to be transferred by the beginning of the XIXth to the State of Morvi: provided that, as a fact, we find that it had been so transferred. And in assisting us to the determination of such a finding of fact the circumstance which is virtually admitted that since 1857 Samvat (1801 A. D.). Morvi had been rightly or wrongly levying Vero on Vejalpur, is a factor of material importance. At the same time Dhrangadhra may claim that its evidence of a similar nature (D137-142) should be considered and weighed by the same standard. The value of all this evidence, however, before Walker's settlement is, or ought, in my opinion, to be strictly limited to the subsidiary quality of throwing any light upon the phenomena found to be presented at and after the settlement. The evidence is valuable or valueless just as it does or does not help us to understand certain conditions which without it might appear to be anomalous and irreconcilable with any recognized theory of Giras tenure. Whether in fact any theories of Giras tenure were sharply defined and respectfully adhered to in the anarchy of the XVIIIth century may very well be doubted. But however wide the temporary departures there would probably be found a general tendency over a long period of years to revert to certain types consonant with local tradition and approved by long experience. Thus while there may have been a transition epoch during which Dhrangadhra and Morvi were both exercising some rights of sovereignty side by side in Vejalpur, while for all practical purposes the village was independent and autonomous, it could hardly happen otherwise than that as time went on, the rule of one or other of the rival powers would tend to supplant and extinguish that of the other: or that the village should succeed in shaking off allegiance to both and establishing its position as a separate sovereign Taluka. But at the time of Walker's settlement, Vejalpur was not recognized as a separate Taluka: consequently we must look to find it in something like defined political subordination to one or other of the large States on whose borders it lies. What do we find? That at that time it was paying a fixed Jama of 16 Rupees to Dhrangadhra, a tax which it has paid without any alter-

ation from that day to this: while at the same time it was paying a Vero of 350 Koris to Morvi, which Vero rightly or wrongly has been enhanced since the establishment of the Agency to 1,045 Koris. These being the conflicting phenomena it is well to glance back into the past to discover, if possible, what were their antecedents. And that retrospect, if the evidence be worth anything, gives us this much information that Dhrangadhra had been levying 201 Rupees Jama (evidently an Udhad Jama, as it never seems to have been enhanced) from Samvat 1821 (A. D. 1765) while Morvi had been levying a Ganim Vero since 1809 Samvat (1753 A. D.).

173. Now as between the relative claims of Ganim Vero and Jama to be distinctive marks of over lordship in the XVIIIth century, I am very much inclined upon the information at present available to give the preference to Ganim Vero. We know for certain that a fixed Jama is *not* a distinctive mark of sovereignty though it is not incompatible with it: whereas the balance of authority as well as the historical explanation of the term Ganim Vero would seem to point to the conclusion that it was a distinctive mark of sovereignty. Of course, it may be argued as it has been *ad nauseam* that these are Morvi's own entries and that they could call their levies what they pleased: make bogus credits and pretend to have received payments which were never really even asked for, and so on. But in dealing with books so ancient, it seems idle to pretend that even in those times Morvi was manufacturing evidence in its favour by calling Pal, Ganim Vero; more especially when we reflect that it had never in all human probability entered into the head of a single living human being that any special rights or prerogatives would be mainly determined more than a century later by the peculiar connotation now attaching to the terms. The only alternative ground upon which that line of criticism can rest is an imputation that the books are all forgeries specially prepared for this case: but Mr. Wadya repeatedly disclaimed all intention of making any such imputation.

174. In this connexion and lest the topic might escape me at the end of the judgment where it would come more appropriately, I may say what I have to say about D20, 21, while it is fresh in my mind. It will be found that one of Dhrangadhra's general conclusions is that Vejalpur was granted to its present holders in prehistoric (local) times by Dhrángadhra: and that although the Lekh is lost the close political connexion maintained between

the grantees and the parent State right up to the time of Walker's settlement, is evidenced by the facts disclosed in D20, 21. It is a truism of course that originally Girás grants implied performance upon occasion by the grantees of feudal service to the grantor. And the fact that the grantees can be shown to have consistently performed such service has, no doubt, always been taken to be relevant and important evidence of the terms upon which the Girás holding was acquired, and of the connexion between the grantees and any Gádi claiming reversion. Here the facts as stated by Dhrángadhra and which, I expect, are substantially true, are that far back in the XVIIIth century, a Rahtor lady married the Ráj Sáheb of Dhrángadhra: and that the present Ráhtors of Vejalpur are descendants of some of her kinsmen or retinue who accompanied her to her new home. That they were granted Vejalpur in Girás (or perhaps founded it themselves under the auspices of Dhrángadhra) and that on more than one occasion they testified their feudal devotion to the Dhrángadhra Gádi by taking the field for the Ráj Sáheb in some of his local wars. So late as 1806 A. D. it appears that there was a fight between Dhrángadhra and Wadhwán, and that certain Ráhtors of Vejalpur fought for Dhrángadhra. One was killed and in recognition of their loyalty and devotion the Ráj Sáheb remitted 181 Rs of the annual Dhrángadhra Jama. *primâ facie* such a set of facts does indubitably warrant the inference drawn from them by the learned counsel for Dhrangadhra. But as has just appeared there are other facts equally indubitable which give rise to contrary inferences and the Court is face to face with one of the many apparently inexplicable contradictions which have to be disposed of, more or less conjecturally, in deciding this case. For if in fact the Rahtors had been paying Ganim Vero to Morvi since 1753 A. D. it is obvious that this according to our modern ideas creates a stronger inference towards their political subordination to Morvi than any which can arise towards their political, and contemporaneous, subordination to Dhrangadra from the fact that they joined the Dhrangadhra forces in a fight against Wadhwán in 1806. The latter incident can, I think, be readily explained by reference to the traditional alliance existing between the Rahtor clan and the Dhrángadhra Ráj; an alliance of which the Ráhtors settled in Vejalpur would naturally approve. Vejalpur was a small frontier village: very nearly autonomous, I expect, in those days for all practical every day purposes. We know that very much later, the

Dhrángadhra State claimed from the Agency that the Vejalpur Ráhtors were an independent community; and what was advanced more or less as a tentative theoretical position in the later days of the Agency, was probably very much like a fact in the troublous times preceding the Kathiawar settlement. And it is easy to conceive that a warlike people like the Ráhtors, would cheerfully range themselves in an interstatal foray under the Ráj Sáheb's banner. Further assuming that the Dhrángadhra State had no further existing connection of a tangible nature with Vejalpur at the time, than the annual Udhad Jama; it is natural that the recompense awarded by Dhrángadhra to its Ráhtor allies, should have taken precisely the form it did. And it is at least no violent presumption that the almost complete severance of this last bond between Vejalpur and Dhrángadhra just before Walker's settlement should have contributed to the confirmation at that time of Morvi's actual sovereignty over the village: a sovereignty *de facto* to which it would appear that the Ráhtors had long since tacitly submitted. Viewed in this light the theoretical contradiction disappears and the growth and recognition of Morvi's sovereignty gain, at least, a plausible corroboration.

175. Exhibits M18, 19, 20, 21, 22 about which a good deal was said require a brief notice. The first of these papers is dated A. D. 1761 and is described in the printed notes as a deed of assurance passed by Morvi to the mortgagees of the village of Vejalpur. It fixes the rate of Vero at 5 Rs. a Prája for 4 years: for the fifth year at 10½ Koris: and Jama at Koris 125. It was only referred to once in the pleadings where Mr. Wadya argued that though it showed Vejalpur was waste at the time, exhibits M24—30 aim at proving that Morvi was levying 600 Koris annually. Without going into elaborate details of calculation which appear to me unnecessary it cannot be said with any certainty that the stipulations contained in this document were carried out. But the criticism is of little value. These documents are not intended to prove that in 1761 A. D. and following years, any particular sum was actually recovered from Vejalpur, so much as that Morvi at that time was in a certain definite relation as sovereign to the village, with any other relation than which the terms of the document are wholly inconsistent. Generally, I may say that I attach very little importance to the laboured arguments which have been addressed to proving that some of these papers so far as results go, are inconsistent with others: and that

some at least must have remained mere dead letters. That does not appear to me to be the point. Admitting that there are many and grave inconsistencies which it is now quite impossible to explain; the cardinal fact remains that so long as the genuineness of the papers is beyond reasonable question (a point expressly admitted) they do give rise to certain almost irresistible presumptions in favour of the conclusion that at the time they were made, Morvi had by some means acquired sovereign rights over Vejalpur. And this expression of opinion will explain why I pass over unnoticed a good deal of highly ingenious criticism, the result of indefatigable labour and research, which nevertheless seems to me practically irrelevant. M19 and M20 are similar documents, giving rise to similar inferences. The former is dated Samvat 1818 (A D. 1762) and remits all Darbár dues on Vejalpur for four years, after which they are to be taken at 5¼ Koris per Prája and then at 10½ Koris per Prája. The latter is dated Samvat 1824 (1768) and states that as the village had been deserted owing to the heavy tribute, it would be limited to 200 Koris; the words Vero and Jama are used. All that was said about these significant papers was that they remained dead letters: no payments were made under them: and they merely evidence a surreptitious attempt on the part of the Thákor Sáheb of Morvi to get hold of Vejalpur. Looking to the dates that argument seems to me absurd. M21 calls for no special comment, it was only once mentioned in the pleadings. It is dated Samvat 1822 (1766) and fixes Jama and Vero for three years at 250 Koris, after which it is to depend on the population of the village. I am unable to understand the criticism bestowed on this document (*vide* p. 41 of the pleadings). My notes are probably incorrect but according to them Mr. Wádya is made to say that M21 shows that the Ráhtors were entitled to recover the Sánti Vero: and he goes on to ask why, if this was a Girás village, Santi-Vero and if a Khalsa village, why Jama? I do not think there is any question of Vejalpur being a Khalsa village: nor do I find anything in the document inconsistent with Morvi's case. Again Mr. Wadya seems to have argued in the same breath that payments were made under this bond upto Samvat 1841, or nearly twenty years; and that its stipulations were never enforced. It struck me at the time and it strikes me more forcibly on going over the record that Dhrángadhra's cue in dealing with Morvi's levies was to confuse and complicate the subject

as much as possible, in order that the plain facts that a Vero or Jama levy was not only taken but enhanced (rightly or wrongly matters very little) by Morvi between 1808 and 1868 might, if ingenuity could bring that result about, be obscured. As to M21 itself I need only say that it is not very material whatever construction be put upon it.

176. M22 is on the contrary a document about which there was necessarily a good deal to be said. It is a Lekh passed by the Morvi Darbár to the Ráhtors in 1872 (1816) or eight years after the settlement fixing the 'Jama' at 300 Koris. This bond shows that the village had been depopulated by the famine. Great stress was laid by counsel for Dhrangadhra on the phrase 'Biju kasui tut valgarshun nahin' viz, the Thákor would not make any other forcible levy above the 300 Koris Jama fixed in the bond. It was argued that such language clearly denoted that the character of the levy was Pál. It could not be, said Dhrangadhra, a Santi-Vero. Contrariwise counsel for Morvi argued that after the famine Morvi was in an extremely impecunious condition. It is to be noted that the amounts recovered in Samvat 1870, 1871, 1872 are much smaller than the amounts recovered in the years preceding the famine. But in spite of the falling off in its revenue (p. 194 *Gazetteer*) Morvi had to pay its Government tribute as usual. It could not, therefore, afford to remit any portion of its available revenues. (p. p. 169 209, Jacob's report) M22, it was said, was the inevitable result of these proportionately high exactions: and it conclusively proves the complete subordination of Vejalpur to Morvi at the time. The argument that because the Vero was then fixed at 300 Koris, the levy was an Udhad is untenable in face of Mr. Peile's decision in the Sarwania case. It was there held that it was unreasonable to expect a Chief to go and collect his Vero from each tenant individually: and that it was probable that a fixed sum to be paid annually would be settled. It may be noted that this is the second modification of the Vejalpur Vero since the settlement. The first was in 1866 Samvat (1810 A. D.). In that year three years' arrears, as pointed out by Mr. Wádya, were taken in lump, 1050 Koris. Here the old levy of 350 Koris seems to have been changed into 300 Koris Jama. In face of all the other evidence on the point, I cannot hold that the mere insertion of the words "Bijun kasuin tut valgárshun nahin" is enough to support the conclusion that up to and after Walker's settlement the Morvi levy had been

nothing but Pál. It is never once in all the numerous documents bearing upon the point, called Pal: not even in those ancient accounts written at a time when in my opinion there would have been no assignable reason for mis-describing the tax. In the document in question the tax is called Jama and had it really been Pál, the Girásiás who ought to have known the difference between Jama and Pál, might have been expected to raise some protest. Nor do I attach very much importance to the point which has been so eagerly debated whether the substance of the Lekh gives rise to a reasonable inference that the Vero was Udhad. Morvi's case does not rest solely upon its Jama or Vero evidence; so long as that evidence is not incompatible with sovereignty evidenced in otherways, it will do well enough. But Morvi is as interested in disproving as Dhrangadhra is in proving that the so called Vero was Pál. Since while an Udhad Vero though not conclusive proof of sovereignty is not incompatible with it, Pál, I think is. So far I see not the slightest reason for holding that a levy uniformly called Ghanim Vero, Vero, and Juma from 1753 to the present day was in fact Pál. If on the other hand Morvi can prove that it enhanced or decreased the Vero since the settlement, that would be additional evidence, no doubt, in favour of the conclusion that it was really sovereign; a conclusion, be it remembered, which Morvi seeks to establish by a mass of other evidence as well. M143, 144, 145, are three ancient mortgages about which I do not propose to say much. They relate to the years Samvat 1812-1813, (A. D. 1756-1757) and it cannot be too often repeated that it is quite immaterial in this enquiry to ascertain who may have owned Vejalpar at that time. Such as they are the bonds are in favour of Morvi. It must be obvious that even though it were demonstrable that a village had belonged to a certain State in 1750, there is plenty of room for the conclusion that it may have passed into the possession of another State by 1808. The Dhrangadhra argument is that if the available evidence leaves any doubt on the mind of the Court as to which of two claimant States really owned a village at the settlement, the Nilakha case is a precedent for the doctrine that we must go behind the settlement and as far back as need be, till we can satisfy ourselves of an actual definite possession amounting to sovereignty: even if we have to go as far back as the original grant. Now although I am willing to look at proofs antecedent to the settlement, for the purpose of clearing up ambiguities and throwing additional light on the actual state of affairs exist-

ing in 1864 Samvat (1808 A. D.) I hold that if as the result of an enquiry made duly exhaustive and complete, it is found impossible to say that either State was in possession at the time of the settlement, the logical course to be taken is to declare the village autonomous: and not as ruled in the Nilakha case (by no means a final authority) to hand over the village to the original grantor. According to our settled policy we have nothing to do with grants or purchases or conquests or mortgages before 1808; an actual possession in that year, however obtained, is all we need look to and if we cannot find one, it appears to me, plain that the enquiry there logically ends. No one is better up in the generally accepted principles governing this branch of our policy than Mr. Wadya. And it is a curious illustration of the confusion that may be occasioned by the heat of advocacy to find him arguing of these three mortgages that "they do not prove that Morvi conquered Vejalpur: the most they show is that the connexion between Morvi and Vejalpur such as it was originated in money dealings." But there are, I have no doubt, hundreds of instances where a State has been permanently guaranteed in possession of a village: such possession at the time the guarantee was given, resting upon a common mortgage. Nor do I perceive much greater point in the contention that "in the earliest times Morvi's levy was Udhad Vero. It was changed into Vero in Samvat 1857 (A. D. 1801), the year of the Mulkgiri expedition." In the first place the documents show that in the earliest times it was 'Ghanim Vero' not 'Udhad Vero'. In the second place even were it 'Udhad Vero' in the earliest times, it would be quite immaterial in face of the admission that in Samvat 1857 (A. D. 1801) seven years before the settlement, it was changed into 'Vero'. This contention rests upon a plea that the Court must look to the morality of Morvi's conduct: and decide not what was, but what ought to have been done. For all I can say now, Morvi may have been very wrong to change the nature of its levy in 1801 A. D. (if in fact it did); but I have no concern with that. There is the admitted fact that the levy *was* Vero in 1808 at the time of the guarantee and as Vero it must have been guaranteed.

177. I do not propose to follow the elaborate criticism which was directed against Morvi's evidence on this point in detail. To weigh and analyze it would occupy pages; and the results in my opinion would not by any means adequately repay the labour expended in obtaining them. For whether

certain entries correspond or conflict with others: whether cross references tend to show that some documents may not have been carried into effect: whether enhancements were due to arrears getting lumped together; and then passed off as the annual tax; these and similar questions appear to me comparatively unimportant. We know that in Samvat 1880, the Vero was enhanced; and whether it was done by a trick or not the fact remains. Nor is it very easy to understand how such an imposition could have been passed off upon the Rahtors who must have known very well what they had been in the habit of paying for nearly a century. We also know that ever since Walker's settlement this levy has been called Jama or Vero, and once Sánti-Vero. These are broad facts which survive all the elaborate attacks made upon the papers. And they are the only facts which appear to me to have any value. We also know that during the same period Dhrangadhra has been levying Jama at 16 Rupees a year without variation. Devoji and Haloji the two Rahtors who were examined commenced (as was natural) by saying both these levies were Pal: and ended by admitting they were both Jama. There is also the significant circumstance proved by M82 relating to the year 1810 A. D. It shows that *Malia* was taking a Pal on Vejalpur exceeding Dhrangadhra's Jama in amount by 12 Rupees; and that Morvi stopped Malia taking this Pal and appropriated it to its own use. Now Malia was a traditionary foe of Morvi: and it is alleged that it was at that time on friendly terms with Dhrangadhra, an allegation which was not denied. Consequently it is a fair inference that had Dhrangadhra been the sovereign of Vejalpur it would not have allowed Morvi to deal with Malia's Pal in this manner. Dhrangadhra says that Malia and Morvi made a joint expedition in 1857 Samvat (1801 A. D.): and that this was, I suppose, one of the numerous instances of thieves falling out among themselves. But I see no necessary connexion between the years 1857 and 1866. Comparing then the rigidity and insignificance of Dhrangadhra's levy with the flexibility and amount of Morvi's, and giving due effect to all the considerations which have either been fully discussed, or generally indicated in the foregoing paras on this evidence, I have no hesitation in deciding that Morvi's evidence on this subject is very much weightier and more to the point than Dhrangadhra's.

178. I come next to the circular orders. The Lower Court said "the next group of evidence is that showing the issue to Vejalpur in common

with other State villages, of circulars and orders, administrative, Police, Judicial and miscellaneous."

"These can of themselves, of course, prove nothing as it was competent in either State to assert its sovereignty over a village by including it in the issue of circular orders. It will, however, be interesting to note the periods at which these circulars &c. were issued, as an index to the length of time the village of Vejalpur has been treated as belonging to the State. M331 to 361 from A. D. 1839 to 1868 are a series of orders, requisitions for statistics, promulgation of injunctions of the Agency &c. that were circulated to the Morvi villages including Vejalpur.

"Dhrangadhra's first proclamation is in 1864-65. D65, in the matter of an order to change weights and measures and procure them from Dhrángadhra. A reference to M2 will show that Morvi did not come to know of this until 1868 and then denounced the action of Dhrángadhra to the Agency in very strong terms." (p. 15) Very great exception was taken by counsel for Dhrángadhra to this summary method of disposing of all this part of the case. It was very confidently asserted that Dhrángadhrá's evidence on the point was a hundred times stronger than Morvi's. Let us then see how the matter really stands. Morvi's evidence begins with M331. This is a Morvi Yád dated Samvat 1895 (A. D. 1839) to Mr. Erskine, Political Agent, stating that certain statistics of water supply had been called for in connection with a water famine, and that they were therewith submitted. The return includes Vejalpur. Now it will be observed that this document was frequently alluded to in the pleadings: but the sum and substance of what was said about it, was on the part of Dhrángadhra that it in common with a lot of similar papers proved that the Ráhtors for a period of 20 years resisted Morvi's pretensions to sovereignty and for the most part successfully: that though the return included Vejalpur the number of wells was not stated and that it included other villages *e. g.* Kotháriá admittedly under Vánkáner; and Mánávu and Kájarda admittedly under Mália, which could not have been subject to Morvi. Consequently it proved nothing. On the part of Morvi, that its early date precluded any suspicion that it had been fraudulently fabricated and that so far from bearing out Dhrángadhra's first argument the fact that Vejalpur statistics were supplied conclusively

proved, not resistance, but compliance. I think the document is good evidence as far as it goes for Morvi. As for Kothária, Mánávu, and Kájarda, Morvi probably had some substantial interest in the two former at the time, or thought it had. Of course the fact that any villages, which are subsequently found not to have been under Morvi, are included in the return, subtracts from the conclusive force of the inference that would otherwise arise from the exhibit. But that, I think, is the most that can be said against it.

179. M332 is a Mohosal order dated Samvat 1904 (A. D. 1848) sent to the Vejalpur Girásiás by Morvi for not giving information about opium, and refusing to entertain the Darbár official who had been sent to collect it. The order ends by saying "when you give all the information required by the Darbár about opium, the Mohosal will be removed." Dhrángadhra said that had the Ráhtors been subordinates of Morvi they ought to have been purchasing opium since 1820 (Ballantyne's Treaty) from the Morvi warehouse. But this exhibit shows that they had not been doing so: and that on being remonstrated with, they had treated the Morvi official with contumely. To understand Morvi's reply, it is necessary to read 333 and 334 with 332. The former is a Barkhást Chithi raising the Mohosal. The latter is a circular order dated 1920 Samvat (1864 A. D.) to all Morvi villages including Vejalpur and stating that the Political Agent in an order animadverts on the small amount of opium sold as representing the local consumption, and infers that the Ráhtors and others do not purchase from the licensed vendors. They are therefore ordered to come in and give information and a reference is made to an order at p. 404 of the *Agency Gazette*. Morvi argues that these orders including M332 were not sent to Vejalpur alone but were circular orders sent to all the Morvi subordinates. The connexion which may be supposed to exist between M332 and M334 inspite of the interval of 16 years, lends some colour to that argument. But taking M332 alone, I cannot go the length of saying that it bears on the face of it evidence that it was sent at the instance of the Agency. It probably was: but the document itself contains nothing to prove it. It is admitted that as the record stands M332 and M334 were not carried out: but it is claimed by Morvi that of all the circular orders these are the only ones of which so much can be said. At the same time attention is called to Keatinge's Notification at p. 407 Volume II of the Local Directory.

This is dated 23rd July 1863 and from it it appears that there was a great deal of opium smuggling going on in the province: and that in the front of the offending States, stood Halvad Dhrángadhra. Now Dhrángadhrá's argument is that while the Rahtors would have nothing to do with Morvi opium, they were purchasing their supplies from Dhrángadhra. And this argument is supported by D45. D45 consits of 3 books from St. 1880-86 (A. D. 1824-30); St. 1909-21 (A. D. 1853-65); St. 1922-25 (A. D. 1866-69). I may at once say that these books have little real bearing on the topic now under discussion. Mr. Wadya seems to have thought that they proved that the Ráhtors while disobeying Morvi's circular orders obeyed Dhrangadhra's. But where *are* Dhrangadhra's orders? Assuming for a moment that these books are genuine, they seem to prove very little. The first book is an account (Betha-khata) of goods including opium supplied to the Ràhtors by one Kalo Wahalo. But we do not know who Kalo Wahalo was, nor anything about him except that he lived at Halvad. He may have been a Dhrángadhra Ijárdar or he may have been a smuggler. The second book is said to have been burnt, and the exhibit is a copy. There is a gap of 23 years between these two books so that it is rather straining language to say, as Mr. Wádya said, that D45 proves that the Ráhtors purchased their opium regularly from the Dhrángadhra Ijardar. In the mean time Morvi was mohosalling them for keeping back information about their opium purchases.

180. Two years after M334 there is the third book and here opium is said to have been entered under the term 'Janas' = 'a thing' the object being, as Mr. Pandit contended and I think rightly contended, to conceal the nature of the article in the event of any enquiry being made. This may throw some light on the nature of the burnt book; and it may also be taken in connexion with Keatinge's Notification to serve to explain why while Morvi knew nothing of it, the Rahtors were buying opium from Kalo Wahalo. Dhrangadhra was in Colonel Keatinge's opinion the emporium of smuggled opium. Vejalpur was a small frontier village conveniently close to Halwad: and it is antecedently probable that in those days of very imperfectly organized customs and excise departments, the Ráhtors of Vejalpur would have preferred smuggled Halvad, to legitimate Morvi opium. But our present point is not so much where they actually purchased their opium as what authoritative orders

were issued to them on the subject. It is evident that in Samvat 1920 at any rate, the Agency were asking Morvi for information and that Morvi as a matter of course included Vejalpur in the circular addressed to all its villages. It is also to be noted that the second or burnt book covers a period Samvat 1909-1921 (A. D. 1853-1865) during which as Mr. Pandit had fair grounds for saying "our (*i. e.* Morvi) sovereignty was openly exercised; was unquestioned by the world: and was acquiesced in by Dhrángadhra" (p. 93). If in fact that was the state of affairs, it is not very surprising, while it is suggestive, to find that a book purporting to contain the record of honest opium dealings between Vejalpur and Dhrángadhra, has disappeared. In meeting Morvi's arguments, Dhrángadhra finally said "They argued that there was a great deal of smuggled opium in Dhrángadhra and consequently the Girásiás purchased there. But if they say that Morvi permitted no opium smuggling how came Morvi to allow Vejalpur to deal in smuggled opium if Vejalpur was under its control ?. Given the facts, would it not be inferable that Vejalpur was under Dhrángadhra: or at least that Morvi exercised no effective control over it ?. They made a point of the word "Janas," but that only occurs in one of the three books. In the other two the word used is opium. The two books in which the word opium is used, are of earlier date than the book in which the word Janas is used." (p. 123). The simplest answer to that is that in all probability the Morvi control in matters of smuggling on the frontier was not at that period by any means effective. But no inference can fairly be drawn from that against Morvi's abstract right to exercise an effective control had it been able to do so: nor against the genuineness and probative value of the exhibits M332 M333 M334. The real point of importance is that in pursuance of a general scheme of fiscal policy, Morvi was issuing orders to Vejalpur and punishing the infraction of those orders as early as 1904 Samvat (1848 A. D.)

181. Now with reference to all this kind of evidence Dhrángadhra frequently insisted that it was important to ascertain not only whether Morvi's orders were sent, but whether also they were obeyed. It is true that there is no evidence to show that M332 and M334 were obeyed: but M333 shows that disobedience was punished: which, for our present purpose, is much the same thing. This was the contention of Morvi. Whether our orders were obeyed or not, said Mr. Pandit, is comparatively unimportant:

what is important is that we had authority to and did impose a Mohosal. That is in my opinion a correct view of the method in which this evidence should be appreciated. It would be otherwise perhaps, were there any real grounds for suspecting that all these exhibits were fabrications for the substantiation of Morvi's present case. But there are none: nor has any serious attempt been made to advance such a proposition, much less to establish it.

182. M335 is a Morvi circular order sent to all Bháyáts and Girásiás in 1907 (1851): forwarding a Jáhirnáma directed against cotton frauds. Vejalpur is included among the Morvi villages. Dhrángadhra did not mention this paper in the pleadings.

183. M336. M118. The first of these is a circular order asking for information about Mulgirásiás &c. addressed by Morvi to subordinate villages including Vejalpur, dated 1907 Samvat (1851 A D.). M118 is the Patrak submitted by Morvi to the Agency: in which it is stated that Mulgirasias had been called upon to send in certain statistics: but that the required information had not been received from some villages including Vejalpur. This is two months after M336. Dhrangadhra's argument is that this shows how Morvi was trying to assert its sovereignty over Vejalpur; and the successful manner in which such attempts were resisted by the Rahtors. Morvi replies that a reference to M118 will show that a great many other villages as well as Vejalpur failed to comply with M336: and that it would be just as sensible to argue from that that none of them were subject to Morvi as that Vejalpur in particular was not. But the others are admittedly subject to Morvi: therefore the Dhrangadhra argument breaks down. To which Dhrangadhra replies that that would be all very well if this were an isolated case: but it must be regarded as one in a series of efforts to resist Morvi's encroachment; and must be interpreted consistently with its historical context. I think the Dhrangadhra argument very far fetched. The point of importance is that in collecting information for the Agency, Morvi, as a matter of course, called upon Vejalpur as a Morvi village supply statistics with all the other Morvi villages. The mere fact that the Vejalpur Rahtors, like a great many other Morvi Bhayat, either through indolence or contumacy, failed to comply with the order, is practically irrelevant. The evidence tells strongly in favour of Morvi.

184. M337, 338, 339, 340,. These papers relate to a circular issued by Morvi to its villages including Vejalpur in 1909 Samvat (1853 A. D.) calling for information about vagrant tribes. It appears that the information was not sent: and consequently a Mohosal was imposed. As to Dhrangadhras reiterated argument that all these cases illustrate the systematic resistance offered by the Rahtors to Morvi's attempts to assert its authority, it may, I think, be safely assumed that the Rahtors non-compliance with these general circular orders, was attributable rather to the apathy or passive obstinacy which commonly characterizes the class, than to any deliberate purpose of repudiating their allegiance to Morvi. Vejalpur was a small out of the way place: the collection of the required information involved taking some trouble and the exercise of some diligence: possibly even the expenditure of a few Koris. The results aimed at could only appear to Girasias to be folly; and it is quite consistent with all my experience of local character that under such circumstances, the Rahtors would naturally have taken no notice of the circular hoping that the Sarkar would forget the subject: and that a needless waste of time and trouble might thus be spared. Such conduct, I need perhaps scarcely add, would not necessarily or even probably imply the faintest conception of any settled design to repudiate Morvi's and acknowledge Dhrangadhra's sovereignty. It suits Dhrangadhra now to put that interpretation upon the Rahtor's conduct: but I have no doubt that it is a very strained interpretation, and one which but for the pressing exigencies of a difficult argument, would scarcely occur seriously to any person acquainted with local customs and habits. The evidence appears to me good enough, and to tell very strongly in favour of Morvi.

185. M341 342 343 344. The first is an order dated Samvat 1912 (A.D 1856) directing submission of census returns as required by the Agency. No particular comments were made on this document. The second and third relate to orders issued by the Morvi Darbar to the Vejalpur Rahtors in Samvat 1915 (A. D. 1859) directing their immediate attendance; and a Mohosal imposed in default: the fourth is a Barkhást order of the Mohosal, on the Rahtors obeying M342. Dhrángadhra again argues that these papers prove if anything that the Rahtors persistently disobeyed Morvi. The evidence of their submission is said to be quite insufficient: whereas there is no question about their resistance. There can be no doubt that the Rahtors were obstinate

and disobedient. Morvi itself constantly styles them so. But that is very little to the purpose. It does not follow in the least that because a Girasia or subordinate may decline to obey orders which are distasteful when he thinks he can do so with impunity, therefore the real relations subsisting between him and his superiors must undergo some essential change. Nor is mere disobedience necessarily evidence that such relations as Morvi claims to have existed at this time between it and Vejalpur did not in fact exist. Such coduct is quite consistent with political subordination: and it is to be observed that Morvi never abated its authority: but pursued the recalcitrant Rahtors with Mohosals on every occasion until they were brought to a proper understanding of their duty. In this connexion, too, the curious mental attitude of almost all Rajputs towards superior authority when it takes the form of a positive and unpalatable order, ought to be taken into account. It is or used to be a point of honour to stand out for some time at least against orders the authority and sanction of which were admitted and quite beyond question. A Chief's dignity would have suffered if he had complied with any such order before accepting a Mohosal lasting several days; perhaps much longer. And the same spirit is, of course, to be found actuating Girasias: especially when as in the case of Vejalpur, the Girasias are of a different clan from that of their sovereign. I do not speak here positively: but I imagine that the Rahtors would hold their heads a great deal higher in Rajasthan than the Jadejas; and it is easy, therefore, to understand the clannish pride which would actuate them to resist after the fashion of their Chiefs, positive orders emanating from the Morvi Darbar: until honour had been satisfied by enduring a Mohosal as long as the dignity of the subject or their pecuniary resources seemed to justify.

186. M345, D76. The first of these papers is a Yad dated Samvat 1916 (A. D. 1860) addressed by Morvi to Mr. Forbes, Political Agent, asking for passes for arms on behalf of Vejalpur Rathors accompanying a marriage party going to Varsoda: and a Shero sanctioning the request. D76 is a Dhrangadhra book containing register of passes for arms to be carried into British territory, A. D. 1867. Entry No. 62 refers to Vejalpur. Curiously enough the Parwanah here authorized the carrying of arms to Varsoda. Now D76 was very severely criticized by Mr. Pandit: it was called a mockery of evidence: and the most positive assertions were made

that it was a pure fabrication, a piece of evidence absolutely created by Dhrangadhra to counter-weigh M345. It is unfortunate that such sweeping statements should have been made on imperfect information or incorrect instructions. Since as a matter of fact there can be no doubt that the Dhrangadhra Parwanahs D76 are perfectly genuine. The States received a certain number of forms for the purpose which they were authorized to fill in for their subjects. (D171). This is a letter No. 1082 of 3rd August 1864 from the Jhalavad Prant Office to the Raj Saheb of Dhrangadhra referring to the practice and limiting the Darbar's right in this respect to the issue of 5 Parwanahs only for use in the Zillahs. Now it is plain enough that the Parwanahs issued (D76) were issued on these forms and are consequently genuine: I mean genuine so far as the paper on which they are written is concerned. But there still remains the question whether they were genuine in a wider sense: viz., whether they were issued *bonâ fide* in the exercise of a recognized authority: and not by way of a mere bogus transaction to create evidence. In answering that question it is important to note first that these Parwanahs were issued in the year 1866 or only just before the cause of action arose: secondly, that they were issued for use in Varsoda, the same village as that mentioned in M345, which is to say the least a curious coincidence; thirdly, that Varsoda is, I believe, under the Mahi Kantha and consequently according to the terms of D171, Dhrangadhra could not issue any such Parwanahs without a reference to the Agency. The letter is explicit enough: Dhrangadhra might give 5 passes for use in the Ahmedabad Zillah: but if they were to cover arms in any other Zillah or territory the Political Agent's sanction must be obtained. And this explains, perhaps, why M345 was necessary. Morvi presumably enjoyed the same privileges as Dhrangadhra: but as the Vejalpur marriage party was going to Varsoda in the Mahi Kantha, Morvi had to apply to the Agency for passes. It did so as a matter of course and the application was sanctioned. Dhrangadhra on the other hand at a time when there may be reasonable suspicions that it was anxious to create evidence of its sovereignty over Vejalpur, gives four passes to Vejalpur people to carry arms to Varsoda direct. Evidently there might have been a difficulty, had it at that time ventured to address the Agency on behalf of Vejalpur: especially in face of Morvi's action six years earlier. So that it is easily comprehensible why it should have chosen to issue the passes direct. Even

though it might have had no legitimate connexion whatever with Vejalpur, I do not see how anyone could have known of its action in this matter or how Morvi could have interfered to repel this invasion of its rights. Whereas it is very pertinent to enquire on the other hand why, if Vejalpur acknowledged Dhrangadhra as its sovereign and repudiated Morvi's authority, as constantly asserted by Dhrangadhra, the Vejalpur people should in 1860 have applied to Morvi to get them these passes and not to Dhrangadhra? Duly weighing all these considerations, and recognizing the admitted genuineness of M345, it is impossible to escape the conclusion that it is very good evidence for Morvi and that its value is in no way impaired by the suspicious transaction evidenced in D76. The production of the latter certainly gives some colour to Morvi's allegation that about this time Dhrangadhra was carrying out a scheme for creating evidence in favour of its sovereignty over Vejalpur.

187. M346, M347 are further papers connected with M345. They require no special comment.

188. M348, M349 show that in Samvat 1917 (A. D. 1866) Morvi issued a circular order forbidding export of coin, &c., and that the Vejalpur Rahtors promised to comply with the order. Dhrangadhra has nothing to say about this.

189. M350 and D65. The first of these is a Morvi circular issued in obedience to Agency orders (Vol. ii Kathiawar Directory p. 404), directing that the currency be changed from Koris to Rupees. The circular was sent to Vejalpur in Samvat 1920 (A. D. 1864). The second is a similar circular on the same subject purporting to have been issued by Dhrangadhra to Vejalpur a few days before M350. Now it is very singular that although D65 is a copy, it professes to be signed by Thakar Lala Madhavji for the Rahtors, "as though" said Mr. Pandit "the book had been sent round". Morvi alleges that it was in 1920 that Dhrangadhra conceived the idea of fabricating evidence of sovereignty over Vejalpur. The depositions of Devoji and Haloji prove that this Dhrangadhra proclamation never reached Vejalpur: there is nothing to show that it had any result. It is also noteworthy that this is the first Dhrangadhra circular in which the Vejalpur Rahtors are mentioned. Both Haloji and Devoji admit that the currency was

changed by order of Morvi. M351 shows that Morvi took steps to enforce M350: and that the Rahtors promised compliance. Now there is no doubt about the genuineness of M350: while the foregoing considerations raise a very natural suspicion of the genuineness of D65. Compared with regard to their probative value, there can be no doubt that here again Morvi's evidence is incontestably superior.

190. M353—356 all relate to M352 which has already been sufficiently discussed (*q. v. a.* para. 162) M357 gives extracts from Infanticide returns for Morvi, including Vejalpur from Samvat 1898-1924 (A. D. 1842-68) Dhrángadhra argued that though there were Jádejás living in Vejalpur as early as Samvat 1884 (A. D. 1828), Morvi made no Infanticide returns till 1842 A. D. But at p. 113 of the Gazetteer it is said that "it was somewhere between 1831-35 that Mr. Willoughby established the Infanticide Department." Kasioji, a Vejalpur Jadeja, disappeared in Samvat 1910 (A. D. 1854) and he re-appears in Samvat 1920 (A. D. 1864). In Samvat 1919 (A. D. 1863) Dhrangadhra began entering his name in its returns as a Vejalpur Jadeja. Now Kasioji's father Muluji and his brother Habhuji continued to reside in Vejalpur and their names are entered in the Morvi returns from Samvat 1905. Kasioji, it appears, went to live at Halvad and this may account for Dhrangadhra's action in entering Vejalpur among its other villages in the Infanticide returns. The Dhrangadhra case on this point is that there were no Jadejas in Vejalpur up to the time when Kasioji returned (Circ. St. 1918 A. D. 1862): and consequently that it was natural enough that Dhrangadhra should not have included the village in its returns before Samvat 1919 (A. D. 1863). "It was quite immaterial" said Mr. Wadya "what the Karkuns may have known or thought they may have known. The real question is, did Dhrangadhra know before 1862 that there were any Jadejas in Vejalpur? M357 supports our contention that up to that year the Jadejas who had formerly been living in Vejalpur had resided in Halvad. And from first to last there is only the one family of Jadejas in Vejalpur." Lastly it was said that M357 shows that there were gaps in the returns: that there were very few Jádejás in Vejalpur: and that they were probably moving about from place to place. Also that naturally a Jadeja State would have taken a livelier interest in making these returns than a Jhála Ráj. These concluding arguments are all weak. I do not

regard the evidence of the Infanticide returns as being of the first importance: neither do I go so far as to say that it is valueless. On the contrary such as it is, I think it has its appropriate value in the general connexion: and that it is certainly all in favour of Morvi. It is significant that not a single Dhrángadhra Infanticide return has been put in, so that the Court might judge how it came about that Dhrángadhra only awoke so late to the fact of the existence of Jádejás in one of its villages. It is true that at the hearing of the appeal Mr. Wádya professed himself quite willing that those returns should be produced and put in: but looking to the length of time the case has already lasted and to the endless nature of the proceedings, if once that kind of thing were allowed, I can only say that it was Dhrángadhra's duty to put the returns in at the proper time if they expected to gain anything by them: and that not having done so, Mr. Pandit was quite justified in using the omission, as he did, to be the basis of adverse inferences.

191. M358. This is a circular order addressed by Morvi to all its villages including Vejalpur on the subject of reporting civil and criminal disputes, dated 1924 Samvat (1868 A. D.) an outcome probably of Keatinge's jurisdiction scheme. The points Dhrángadhra made about this document were that from its contents it appeared that as usual the Ráhtors had not appointed a Mukhi as they were ordered to do: and that for the first time they were here called Jiwáidárs. This was just a year before the commencement of the present dispute. On the other hand it was argued that the omission of any evidence that a Mohosal had been imposed, taken in connexion with what all other exhibits show was the invariable Morvi custom in such matters, gives rise to the strongest inference that the order was obeyed. It was also pointed out that styling the Ráhtors Jiwáidars here must have been a mere clerical error: inasmuch as the Girasias of Shapur are also called Jiwaidars. Yet they are admittedly Mulgirasias and have a Hak Patrak from the Rajasthanik Court. (The Hak Patrak was subsequently produced and put in). In another connexion, it is noteworthy that this circular was signed on behalf of the Ráhtors by Thakar Lála Madhavji, the same man who is said to have signed D65. It follows that this man could not have been acting straightforwardly: and there is some ground for the insinuation that he was acting in collusion with the Dhrangadhra authorities when he signed the very suspicious D65 (*q. v. a.*). No suspicion

whatever attaches to M358. Nor do I quite comprehend what is sought to be founded on the argument that Morvi has here intentionally miscalled the Ráhtors Jiwaidars. It is part of the Morvi case that they are Mulgirasias. Of course it might be contended, as it has in the case of some Dhrangadhra exhibits, that had they noticed the appellation 'Jiwaidars', they would have refused to have anything to do with the circular. But it is evident that as in the case of Shapur the heading here had no real significance. Nor does it very much matter whether the paper proves that the Ráhtors obeyed the order or not. I see no reason, however, for supposing that they did not. The evidence is good for Morvi.

192. M359 is a Morvi circular order of 1868 A. D. levying ponies in obedience to a Government requisition for the Abyssinian war. It appears that Vejalpur supplied 3. Dhrangadhra says that there is no evidence to show that Vejalpur did furnish the 3 ponies. Well, naturally the ponies would go to Government direct; and it is not likely that Morvi would have kept any record of the receipt of them. At any rate it was a Morvi Thanadar who was commissioned to make the levy in Vejalpur.

193. M360. This is an order from the Morvi Rájasthanik Daftar to the Thanadar, dated 1924 Samvat (1868 A. D.), telling him to warn the Girasias of Vejalpur not to permit cultivators of Sara under Sayla to settle in the village. There is a Tumar showing that this was in obedience to an Agency order: that the Ráhtors said that there were now no Sara cultivators in the village: that there had been some in the year preceding: and that none would be permitted to come in future. Mr. Wadya said the paper was significant as illustrating the insubordination of the Rahtors in 1868: Mr. Pandit on the contrary thought it marked their complete submission. Of course the language of the correspondence does indicate the opinion Morvi entertained of the contumacy and obstinate refractoriness of the Rahtors: but it does not follow that they were not coerced and that in this way the Morvi authority and their political subordination were not adequately maintained.

194. Now all that Dhrángadhra really has to say against all these evidences of Morvi's supremacy and direct control over Vejalpur, is that for the most part the various cases evince considerable reluctance on the part of the Ráhtors to obey orders. In support of this argument a mass

of other documents was cited; documents which properly relate to other topics and which have been or will be duly noted in their appropriate connexion. As for the argument itself, I have, I think, already sufficiently discussed it and shown why in my judgment it is not so important as Dhrángadhra appeared to think.

195. M329, M330.—The first is a circular order dated 1907 Samvat (1851 A. D.) ordering Sowárs to come and accompany the Queen mother. The second consists of entries from the Darbár Kothár store books from 1907-20 St. (1851-64 A. D.) showing supplies given to Ráhtors when they visited Morvi. Neither of the papers is very important. The learned counsel for Dhrángadhra mentioned them once: the learned counsel for Morvi not at all. M330 shows that in 13 years the Ráhtors went to and were entertained in Morvi 9 times. "One would have thought" said Mr. Wádya "that they would have gone at least once annually to pay their Pal." Well it does not much matter what one might have thought: nor, as I have shown, is there any ground for calling the Morvi levy Pál. Lastly even if the Ráhtors had gone annually to pay their Jama, those visits may have been distinguished from these, which appear to have been complimentary. Any way the point is not of much consequence.

196. It will be remembered that in approaching this division of the case, Mr. Wádya took great exception to the manner in which Major Ferris had disposed of it, and permitted himself to say (probably carried away by forensic zeal) that the Dhrángadhra evidence bearing on the subject was "a hundred times stronger than Morvi's." A statement of that sort naturally challenges rather close examination; and it is therefore perhaps more interesting than really important to examine this Dhrángadhra evidence and see how far it warrants Mr. Wádya's bold description. The first is D21 which has already been dealt with. It has nothing to do with circular orders. D46 is a certified copy of census returns sent into the Agency by Dhrángadhra in 1855. No. 73 relates to Vejalpur. This is compared with M341 and the argument is that Dhrángadhra got and supplied, the information which Morvi was unable to get and had to mohosal for. This document has to be criticized with D34, D35. The former is a certified copy of a census return dated 2nd January 1844 taken from the Agency records, in which Vejalpur is shown (No. 87) as a Jiwái village. It gives the

number of houses as 20 and the number of Sàntis as 12 and the population as 76; and amount of Udhad from the Jiwáidár 20 Rs. Now compare with this D18 which is a report from the Morvi Japtidar, two years earlier 1843 A. D. to the Political Agent. It was put in to show that in the opinion of the Japtidar, Dhrángadhra was the original grantor. For any such purpose the document would, of course, be valueless: nor is the point itself, even if proved, of any great importance. But it shows that in that year there were 34 houses in Vejalpur; 60 Sántis: and population 103. It is hard to account for the extraordinary deminution shown in D34 if the latter is a genuine document as D18 certainly is. Further in D34 all sorts of villages are entered which certainly did not belong to Dhrangadhra, *e. g.*, Jhihjhri and Achiana of Bajana: Dudhrej, an independent village under the Agency; also Latuda of Wadhwan; Pedhra of Bajana: and Narichana, Ámardi, and Khanderi, all of Sayla. These inaccuracies deprive the return of most of its value: and certainly afford some foundation for the imputation cast by Mr. Pandit on the honesty of the compiler. So also we find in D46, Ámbardi, Sorambhda, Doya and Rouki which are not Dhrangadhra villages. If then so many villages which do not belong to Dhrangadhra are entered in these returns, it follows that they cannot be conclusive evidence of the fact that any village contained in them did really belong to Dhrangadhra. D35 to which similar objections were taken has already been fully dealt with. D47—50 are a group of papers relating to an undertaking passed by the Rahtors to Dhrangadhra; Fael and Hazir Zamin bonds: Date 1911 Samvat (1855 A. D.). Now of course if D47 were genuine it would be very good evidence for Dhrangadhra. But was it genuine? I think I cannot do better than quote in extenso what Mr. Pandit said about this exhibit premising that in my judgment his criticism was both acute and sound. "D47 purports to show every variety of jurisdictional right in Dhrangadhra: rights which to the knowledge of the Agency and in the eyes of the world, Morvi had been openly exercising over Vejalpur. Now the first question which suggests itself is, what was the occasion of getting a security bond relating to so many and such general matters in that year? What led to its being executed?

"Now we have already shown that since A. D. 1851 Dhrangadhra has continually acquiesced in Morvi's sovereignty over Vejalpur, *primâ facie* then

this is a most improbable document. It directly conflicts with Agency documents both before and after.

"If Clause I were true it was Dhrangadhra to whom all criminal cases should have been referred. But we find from M205-327 that every thing which according to Clause I, though Ráhtors agreed to do to Dhrangadhra, they in fact did to Morvi. The second part of Clause I is intended to meet our M325-327.

"Here again the Rahtors agree not to encroach on others' boundaries of D38, 39.

"M362, 363 show that the Rahtors complained to us when a Dhrangadhra subject fired on them: and that was in 1851.

"With reference to the Valtar Clause, of M209-220, 274-281, 283-301, 304-309, 315-324. It was notorious that whenever a theft had been traced to Vejalpur, the Agency had compelled Morvi to pay Valtar: and it was to meet that notorious set of facts that the Clause was inserted.

"Clause III is entirely irreconcilable with Dhrangadhra's known acquiescence in Morvi's sovereign rights (M245, 246).

"Clause IV how does this square with the notorious fact that we settled the disputes of the Rahtors *inter se*? And this too after the document.

"And in all disputes with other Talukas including Dhrangadhra itself, it was Morvi who represented Vejalpur (M381, 382). The clause about disputes for women is intended to meet our M208-240, 245-254, 260-265. Of these 208-250 are all Agency papers.

"Clause V is remarkable. It is distinctly opposed to M380-382. There Dhrangadhra complained against us because we had brought back certain carts to Vejalpur and there levied dues on them. Dhrangadhra complained and we met the complaint with a most uncompromising denial: but Dhrangadhra never dared to carry the matter further or to assert at that time that it possessed any sovereignty in Vejalpur.

"Clause VI, in which the Ráhtors engage to inform the Darbár of all murders and suicides, is intended to meet our evidence about Sawá's and Kasli's suicides. (M247-251, M225-237).

"The clause about Peshkashi is, of course, intended to show that the Udhad, which Dhrangadhra had been taking, had some connection with Peshkashi. We know that when the Morvi Taluka was attached, Vejalpur was included in the attachment: and it is also an incontrovertible fact that Dhrangadhra never attached Vejalpur. There is no evidence that Dhrangadhra ever attached any part of the village or any property in it.

"Clause VIII is intended to meet our M331-361.

"This document proves Dhrangadhra's knowledge of the various ways in which Morvi had been exercising jurisdiction and its consciousness of the need of producing some sort of counterbalancing evidence. If it is a true document, how can we account for Dhrángadhra's own complaint in M331 ?. How is it to be reconciled with M245, 246, which are only five years later, and where we find Dhrangadhra acquiescing in the surrender of Vejalpur offenders to Morvi for punishment !. And again with Dhrangadhra's acceptance of the Tribheto settled by Morvi—M377, 379. Lastly, how is it to be reconciled with D38, 39.?.

"And in spite of this piece of evidence Dhrangadhra did not dare to ask Haloji or Devoji a single question about the exercise of jurisdiction in Vejalpur. Devoji admits that up to the placing of the Thanah, it was Morvi who had exercised jurisdiction. D49, 50, were clearly got up to keep D47 in countenance." (p p. 102, 103, 104, of the printed pleadings). In explanation of the foregoing, I may add that D38, 39 relate to a complaint which Morvi had made to the Political Agent in 1851 A. D. about encroachments upon Vejalpur lands by the villagers of Surwadar under Dhrangadhra. These documents are Dhrangadhra's replies and it is certainly significant if we are to believe D47, that Dhrangadhra should not at once have asserted its own sovereign authority over Vejalpur: but should have been satisfied with vaguely suggesting that Morvi was not the sovereign of Vejalpur, but that the Rahtors were an independent community. This language contrasts very strikingly with Morvi's reply (M369) in which they say that Dhrangadhra's insinuation that Vejalpur is a Gám of its Jamabandi is "altogether false, since over that village Dhrangadhra has no authority whatever. That village is a village of the Morvi Jamabandi, as was notorious throughout the country side. Yet Dhrangadhra seems to feel no shame in making such

lying assertions &c." Now it was in the year preceding this that Morvi was held responsible for Veth carts for the regiments passing through Vejalpur: and it is hard to believe that Dhrangadhra was not aware of the fact. Yet when in the next year Dhrangadhra feebly challenged Morvi's sovereignty over Vejalpur (D38, 39) Morvi replied in the most uncompromising terms, adopting a tone which, had not the truth been on its side, was not only most offensively insulting but could not certainly have been allowed to pass unnoticed by Dhrangadhra. It can hardly be pretended that the Dhrangadhra Vakil was kept in ignorance of M369: and it is inconceivable that had Dhrangadhra not been aware that protest was under the circumstances useless, no protest of any kind should have been made. In the same connexion and for the sake of clearness, I may just notice D40, 41, 42, 43. These relate to a dispute between the Surwadar and the Vejalpur people. Here Dhrangadhra interferes as though it were the sovereign of Vejalpur as well as Surwadar. But this tone is difficult to reconcile with that which characterizes D38, 39. The former are certainly genuine: the others are necessarily suspicious. Coming as they do just 6 months after D38, 39, it is not a very strained inference that Dhrangadhra, disgusted with M369 determined it possible to make a little evidence in support of a position which at the time it was so rudely challenged, they found themselves unable to support. In D43 the Ráhtors are made to style themselves 'Jiwadars': certainly a most suspicious circumstance. Enough has, I think, been said to show why I feel some doubts about the evidentiary value of D47 as well as of D34, 38-43.

197. D61-66. D61 is an order to the Ráhtors dated 1863 A. D. directing them to accompany a marriage party. This is not a circular order: but an order specially addressed to the Rahtors. The Rahtors would not, of course, admit that they held the village on service tenure: and it is antecedently improbable that they would quietly have submitted to any such order (apparently the first of its kind since our time) so late as 1863 A. D. Devoji in his deposition says that they held their village in Giras and never had to do service for it. D 2 is an account of expenses of marriage party going to Palitana. It proves nothing. D63 another order addressed to Rahtor Agraji in 1863 on the subject of a disputed sale of a horse by a Vejalpur Koli to Sha Bhudar of Dhrangadhra. This is not a circular order; and as Mr. Pandit said there were in the same year cases going on in the Agency (M

232, 211, 294, 224, 297, e t. c.), "conclusively proving our open exercise of jurisdiction." In its present connexion D63 is not of much value. D64 is another order in the same year, 1863, addressed to the Rahtors by the Raj Saheb telling them not to quarrel among themselves. But compare M193-204 covering a period from 1894 Samvat to 1917 Samvat (1838 A. D. 1861 A. D.) and showing that Morvi was openly engaged in settling such disputes and did settle them. See also Devoji's evidence to the same effect. It is therefore difficult to imagine any reason for the existence of D64. Nothing could prevent a State issuing such general orders: but if they are to be of any value in an enquiry of this sort, all the surrounding circumstances must be duly considered. And it is certainly odd that all these orders began to emanate from the Dhrangadhra Darbar in or about the years 1863-1864. D65 has already been commented on in connexion with M351.

198. D66. This seems to be a circular order; about the only one that really is, in this batch. It is dated Samvat 1919 (A. D. 1863) and refers to tracking offenders, &c. Vejalpur is included in the list of villages to which the circular is said to have been sent. Mr. Wadya said nothing about it, beyond drawing the Court's attention to its existence: Mr. Pandit only observed that though there were plenty of blank pages in the book from which D65 comes, D66 is in another book. Such as it is, it is a piece of evidence for Dhrangadhra which must be weighed against Morvi's evidence of a similar character. It is plain that by 1863 at any rate the two States could not *both* have been really and as a matter of right issuing such circular orders to the same village. The only possible conclusion is that if the orders were really sent, they were sent by one State or the other with the sinister object of procuring evidence of sovereignty. And I have to say from all the evidence on the point, whether it seems more probable that Morvi's circulars or Dhrangadhra's are obnoxious to that imputation. I think there can be no reasonable doubt when we come to the end of Dhrangadhra's so called circular orders and find in what years most of them were issued as well as the vague character of most of them and the obvious impossibility of preventing a State making such records for itself: that that question must be answered in Morvi's favour. For although no doubt Dhrángadhra would wish to argue that Morvi's proofs on this point are open to the same criticism, I cannot myself think that they are. For one reason they date back to a period long antecedent to this quarrel: for

another they are usually genuine beyond question or criticism and often issued in obedience to Agency orders. I now proceed with Dhrángadhra's proofs on the subject. D67 is another circular order dated 1919 Samvat (1863 A. D.) altering the date on which its Jama is to be paid. This is obviously of no importance. Dhrangadhra admittedly has a small Jama in Vejalpur and it might change the date of its collection at pleasure. Narichana, for instance, is included in the same circular. D68 is a proclamation issued by Dhrángadhra in 1920 Samvat (1864 A. D.) abolishing the Chilo tax (transit duties on grain) for five years. M381 is Dhrángadhra's own Yad dated 8 years earlier than D68 addressed to Colonel Lang, and saying that Chilo *had never been levied in Vejalpur:* complaining that Morvi was levying it on the Vejalpur road. Then the enclosure to D68 shows that the circular was only to be sent to villages in which Chilo *had been levied.* Where then is the reason for including Vejalpur in a proclamation remitting the Chilo levy: considering that no Chilo had been levied in Vejalpur? The only possible explanation is that the tax had been imposed between 1912 Samvat and 1920 Samvat, but one would under the suspicious circumstances like to have some evidence of that. D69 is not a circular order at all. It may have something to do with another branch of the subject but none at all with this. D70 is a circular order sent by Dhrángadhra to all villages under Halvad including Vejalpur on the subject of serious crimes: dated 1864. It is to late in point of time to be of much value and so counsel evidently thought, since Mr. Wadya only referred to it once and Mr. Pandit not at all. D76, 77 are the Parwánáhs which have been already fully dealt with. D78 is an order sent to Halvad Wahiwatdar in 1923 Samvat (1867 A. D.) to issue notification to all villages subordinate to him including Vejalpur to prevent armed Pardesis from Thar Párker, &c., coming into the territory without Parwánáhs. All that is to be said about this is that it is so late in time that not much stress was laid upon it by either side. Now this is the evidence which Mr. Wadya thought was 100 times stronger than Morvi's. My analysis has, I think, sufficiently disposed of that rhetorical hyperbole. It seems to me that so far from being stronger than Morvi's evidence at all, it is immeasureably weaker; and that on this topic again the balance markedly inclines in Morvi's favour.

199. Next of Morvi's Lágá evidence. A Lágá is a religious endowment; and Morvi seeks to prove that some of these endowments were assessed upon Vejalpur in common with its other villages: Dhràngadhra has no similar evidence. The Lower Court says "The grant of Lágás or perquisites to certain persons, on the produce of villages including Vejalpur is evidence peculiar to Morvi, the details of which will be found in M106 to M114 dated 1831. These go to show that religious and other grants were made to individuals by Morvi and portions of the revenues of certain villages including Vejalpur were hypothecated. These appear to be authentic. Nothing short of sovereignty would warrant a State in making grants in Inám and Dharmádá from the revenues of villages, and the early date (A. D. 1831) nullifies any presumption of preparation for the purposes of this suit." (p. 15). Now I do not think it necessary to go into all the papers bearing on this point in detail, because there was very little to be said against them by Dhrangadhra and so far as Morvi is concerned, they speak for themselves. They appear as exhibits M106-114. M106 is a Lekh to Pandya Pitamber by the Morvi State granting him a Laga of $\frac{1}{4}$ Sahi in the Khalas of all Morvi villages including Vejalpur, dated Samvat 1887 (A. D. 1836). M107, 108 relate to the payment of the Vejalpur contribution. There was the usual kind of criticism directed against these papers on behalf of Dhrangadhra: but in this connexion it was rather more than usually feeble. It was said that the corroborative evidence did not satisfactorily prove the payment of the Laga. About its *assessment*, there was, of course, nothing at all to be said. And that taken in connexion with the early date is the point of real importance. Even had the Rahtors wholly evaded payment, the evidence of M106 would still have been very good for Morvi. But it is quite evident that in this and the other cases they accepted the imposition and did contribute: though whether they did so with exact punctuality, I do not think it at all necessary to enquire. To meet that difficulty Dhrángadhra argued that the payments such as they were, ought really to be ascribed to the Rahtors' acceptance of the religious authority of the Maharaj: and not to any admission of Morvi's supremacy. That upon the face of it is a desparate and hopeless argument. For if so where was the need of any Lekh from the Morvi Darbár ? It was also argued (though the argument was shown to be based on a misconception and subsequently withdrawn) that

Lakharia, a village not belonging to Morvi at all, was included in M106. This was a copyist's mistake: and the record was duly corrected. M109 is a Lekh passed by the Morvi Darbár to Maharaj Shri Vrajeshji of Jámnagar in 1905 (1849). It was a grant of a religious nature made in perpetuity and assessed upon Morvi villages. Vejalpur had to contribute 5 Koris. M110 is to show the payment. M111, 112 grants of a similar character to Bards are less important M113 is a Lekh given to an old Morvi Chobdar and his son, allowing them ½ Rupee per village for long service. Vejalpur is assessed to the grant. M114 is unimportant. Now this evidence, such as it is, is peculiar to Morvi. And I think it is very good evidence of Morvi's sovereignty as far as it goes. "A grant of the description contained in M106" said Mr. Pandit "implies complete sovereignty. No power but the sovereign could have conferred a general grant of that kind." (p. 64). And that proposition is, I think, substantially true. It is also to be observed, against Dhrángadhra's argument that the payments were spontaneously made out of religious feeling, that on occasion they had to be enforced by a Morvi Mohosal (M159). The most that Dhrángadhra in conclusion had to say against this branch of Morvi's evidence, was that (*a*) the proof of payment was unsatisfactory (*b*) that in the year preceding the dispute there were 3 Laga grants: while in all the preceding 60 years or so, there were only two. But though the latter argument may tell against the three later and unimportant grants, it leaves the evidentiary value of the earlier two quite unimpaired. This part of the case is clearly and strongly in favour of Morvi.

200. Civil and criminal jurisdiction. There are a great number of these cases; in some of which the Agency is said to have recognized Morvi's authority; in others the authority is said to have been exercised spontaneously: and in one or two it is contended that Dhrángadhra itself acquiesced directly or by implication in Morvi's assumption of jurisdiction. It is not my intention to deal with every one of these cases in detail: any such attempt would intolerably lengthen an already long judgment. Besides, specimen cases will serve all practical purposes, as well as an analysis of every one important or trivial. The first case is generally called the Mália debt case. Both Morvi and Dhrángadhra claim to have exercised jurisdiction in it. The Morvi exhibits are M165-191 and the Dhrángadhra exhibits are D28-30.

M165 is a letter written in Samvat 1882 (A. D. 1826) by the Ráhtors to Morvi stating that Mália had mohosalled them for the non-payment of a debt and invoking Morvi's mediation; adding "you are our Lord and master. You should come to our assistance." It was rather feebly objected to this letter which certainly contains a clear admission of Morvi's supremacy over Vejalpur, that it was not signed by the Ráhtors. The signing of such communications was not, however, in those days by any means an invariable practice; and the literal genuineness of the letter is not disputed. Then Dhrángadhra said that the Ráhtors subsequently stated on oath before the Agency that they had been put up to making these complaints by Morvi. To which the answer was that the occurrence to which these admissions related, happened in Samvat 1910 (A. D. 1854): well, if that is Morvi's case, rejoined Mr. Wadya, and these papers really relate to disconnected complaints, M165 must be discarded as waste paper since it appears to have had no consequences. I have already intimated my opinion of that kind of argument: and in this special connexion, I may add that there appears to me to be some force in Morvi's claim that an inference arises out of the fact that no steps were taken for seven years in favour of the conclusion that the matter must there and then have been disposed of adequately for the time at least. M166, 167 are two letters of similar import to M165, dated 1889 and 1893 respectively. The Ráhtors complain of the pressure Mália is putting upon them and say that they can not even pay Morvi's Jama and unless something is done to help them, they will be obliged to desert the village. Mr. Pandit's theory is that these are separate complaints: but whether they are or not is not of any great consequence. Even assuming that Morvi owing to carelessness or apathy took no heed of the complaint, it is the fact that such a complaint couched in such terms was made at all which is now important. Morvi seems to have bestirred itself on the receipt of M167, for in M168 we find a Yad addressed in the same year 1893 Samvat (1837 A. D.) by Morvi to the Mália Japtidar insisting for reasons given on the removal of the Mohosal. Morvi rightly calls attention to the language of M168. It is noteworthy that so early as 1837 A. D. Morvi did not hesitate to address an Agency Japtidar on the subject in terms of such peremptory assurance. M169 is a Yád addressed by Morvi to Captain Barr, Assistant Political Agent, in 1904 Samvat (1848 A. D.) on the same subject, complaining of the imposition of a Mohosal by Mália on the Morvi village

of Vejalpur. On this the Assistant Political Agent wrote a Shero directing Mália to remove the Mohosal as they had no right to impose it. Later in 1910 Samvat (1854 A. D.) there is another Yád from Morvi on the same subject addressed to the Political Agent Captain Black; complaining that in spite of former orders, Mália persisted in imposing its Mohosal. The order on this was that both Mália and Morvi were to furnish security bonds of 100 Rs. for the truth of their asserted rights. M171 is Mália's reply saying that Vejalpur had been mortgaged to them: that the Ráhtors would pay their debts but for Morvi's unauthorized interference. The Assistant Political Agent refused to interfere with Morvi's action in the matter but called upon them for an explanation about 50 Koris said to have been forcibly levied. In Mália's Yád, they ask the Assistant Political Agent to prevent Morvi from interfering with them in the collection of their Upaj, as provided in the bond. M172 is a further Yad from Malia in 1915 Samvat (1859 A. D.) to Captain Leathes asking that in future Morvi might be ordered not to prevent the Rahtors from paying their instalments. The order on this was that if the Rahtors were willing to pay, Morvi should not prevent them doing so. And that was the end of the matter. Dhrangadhra had a good deal to say about the gaps between these various exhibits: about M169 being a mere concoction; and that the outcome of the whole matter was that Morvi's allegations were found to be false and it was told to interfere no further in the matter. Like a great many other cases, it was urged that the whole genesis and progress of this dispute is traceable to the traditional hostility existing between Morvi and Malia. On the other hand it was pointed out *inter alia* that M170 had no direct connexion with M169: that it contained a significant letter from the Rahtors themselves from which it appears that the matter complained of occurred in the Thakor's absence: but that instead of going to Dhrangadhra with their grievance the Rahtors waited till the Thakor returned. Even at that time the Agency clearly felt some doubt as to the right of a State to mohosal recalcitrant foreign debtor: and in some connexions that consideration may have weight in estimating the value of Mohosal evidence in proof of a claim to sovereignty. It was also argued that upon whatever grounds Dhrangadhra chose to think M169 a mere concoction, it could not evidently have been concocted for the purposes of this case: while as to the general argument based upon the traditional hostility existing between Morvi and Malia, that might tell at

least as strongly in favour of, as against Morvi. For it is patent from all these papers that Malia never attempted to dispute the fact of Morvi's sovereignty: they only complained of the manner in which that sovereignty was being exercised. Lastly that looking to the period over which this dispute extended, it must be presumed that the Dhrangadhra authorities were perfectly well aware of its existence: and that their silence amounts to an acquiescence by implication in Morvi's sovereignty over Vejalpur. With the one exception of that addressed to the inferences conceivably arising out of the traditional hostility between Malia and Morvi, I think these arguments are powerful and sound. And with regard to the specified exception I have only to say that I do not attach as much importance to it as the learned counsel for Dhrangadhra evidently did. Whatever acts such an ancient hostility may have prompted against Morvi villages, I cannot conceive it probable that it would have led Malia into a quarrel with Morvi about a Dhrangadhra village. Malia may have been mistaken as to the real sovereignty: but that is quite another position and one which even Dhrangadhra must have felt to be doubtfully tenable. The conclusion of the whole matter as it is presented in these papers, appears to be perfectly plain, that rightly or wrongly both Malia and the Agency regarded Morvi throughout as the sovereign of Vejalpur: and this at a time long anterior to the origin of this dispute. The chances against such a concurrent opinion emanating from two such sources being wholly mistaken appear to me to be very great indeed. On the same subject Dhrangadhra has put in D28, 29, 30. The first of these is a Yad from Malia to Dhrangadhra dated 1892 Samvat (1836 A. D.) stating that the Vejalpur Ráhtors owe them money and invoking Dhrangadhra's assistance in recovering it. The second is a Dhrangadhra order dated the same year and addressed to the Tikkar Thandar, to direct the Rahtors to pay if they owe the money. The third is the Thandar's reply dated the same year stating that the Rahtors have been called: acknowledge the debt: and express their willingness to pay. These papers relate to a year between M166 and M167. "Where Morvi took 22 years to act" said Mr. Wadya "we took 2 days: our authoritative interposition was not resented: and in point of fact the money was paid in consequence. The Court below was consequently wrong in saying that our action had no results." It is obvious, however, that if these papers contain the record of an actual transaction, as alleged by Dhrangadhra, it becomes

impossible to reconcile Malia's attitude here with its attitude as evidenced in the Agency records I have just been noticing. Nor is there any satisfactory explanation forthcoming why if the dispute was thus summarily settled in 1892 it should have been continuing, as it plainly was, up to Samvat 1915. It happened that one Makanji who had been Malia Kamdar from 1913-1924 then became Dhrangadhra Kamdar: and this fact is put forward by Morvi to account for D28-30. I do not attach very much significance to it myself. But comparing the nature and volume of Dhrangadhra's evidence on this matter with the nature and volume of Morvi's, it is impossible to escape the conclusion that the latter enormously preponderates in evidentiary value.

201. M173-M176. These papers are not very important. It appears that Morvi had sent for the Ráhtors in connexion with Mália's complaint: but as they did not come a Mohosal was imposed. M176 is a Yád addressed by Malia to Captain Leathes on the subject of the Shero on M172. Mália objected to that Shero and claimed to be put in possession of Vejalpur, or to have the case forwarded as a political appeal to the Political Agent. Upon this there is a Pránt Shero, dated 12th December 1863, saying that so far as that office was concerned the case was closed and that Mália must go to Morvi for any redress it wanted. M176 in fact appears to be the real conclusion of the dispute contained in M165-172. In consequence of M176 a suit was actually brought in the Morvi Courts: but as this was *post litem motam* the records were deemed inadmissible. To the extent, however, of merely contradicting Dhrangadhra's argument that the matter abruptly ended with M176: and not to prove exercise of jurisdiction, that evidence might, I think, properly have been received. About the fact there is no dispute. M177, 178 show that Mália had recourse to the Morvi Courts to enforce a mortgage debt on Vejalpur, in 1872-1873 A. D. Mália was suing upon two original mortgage bonds of Samvat 1849 (A. D. 1793): in these bonds Morvi's Vero is specially excepted from the revenues mortgaged. Dhrangadhra explains Malia's action in thus suing before the Morvi Courts by saying that the suits were brought after the Agency had forced Dhrangadhra temporarily to abandon Vejalpur, and had recognized Morvi as the *de facto* sovereign. There was a joint administration at the time. That argument is fair enough; at least as against using those two suits to prove Morvi's jurisdiction: but it does not touch the other use to which they are put as illustrating a continuity

in Agency policy right through these Malia disputes up to the commencement of this litigation. The real significance of these cases in their present connexion lies not so much in any particular details as in the general fact which cannot be denied, that throughout these protracted and public proceedings neither Malia, nor the Agency, nor any one else seems to have thought that Dhrangadhra had any interest in the matter.

202. M179-M183. These papers relate to a case which occurred in A. D. 1838. A Girasia of Kanmer called Dungarji had some complaint to make about his share of the Vejalpur produce being withheld. He accordingly addressed the Resident in Cutch who forwarded the papers to Mr. Erskine, Political Agent in Kathiawar. The Political Agent sent them on to Morvi for disposal. This is M179. M180 is Jadeja Dungarji's complaint in which he states that 'Jama' is payable to Morvi. M181 is a second letter addressed by Mr. Erskine to Morvi in continuation of M179: demanding a reply or threatening a Mohosal. M182 is Morvi's reply in which he says that he has sent for the Rahtors: made enquiries: and found that Dungarji's complaint is false. Forwards proceedings and depositions. M183, another letter from the Political Agent to Morvi acknowledging receipt of M182: but ordering Morvi to send its Mukhtyár, the complainant Dungarji and Rahtor Agroji, to the Political Agent. Dhrangadhra said of this case that the reason why the Political Agent referred the case to Morvi was simply that in Dungarji's original complaint he had stated that Morvi took a Jama of 2,200 Jám Sáhi Koris from Vejalpur. Naturally enough then the complaint was sent on to Morvi for redress. With M182 Morvi forwards a deposition by the complainant repudiating his claim and attributing the whole affair to Cutch instigation: and with M183 the case ends abruptly. Morvi's reply is that Mr. Erskine clearly recognized Morvi's right to issue Takids and administer justice in Vejalpur: and that he saddled Morvi with responsibility for Vejalpur. The subsequent papers show that Morvi did hold an enquiry in the course of which it summoned and examined the Rahtors It is also plain from these papers that Dungarji owned a great deal of landed property in Vejalpur and must have known who was the sovereign. About these papers there is no possible question of concoction for the purposes of this case. In examining Dungarji, Morvi asked him why he went to Bhuj to complain and he replied that he got his information in Bhuj and so laid his complaint

there. There is nowhere any denial on any hand of Morvi's sovereignty. It is the Morvi Darbar who is to send Agroji to the Political Agent. As for the Dhrangadhra argument that with M183 the case ended abruptly, Morvi may well ask what conceivable relevance or importance has the *decision* of the dispute in connexion with the point we are here enquiring into? The papers are merely intended to illustrate Morvi's position at the time as recognized overlord of Vejalpur and Dhrangadhra's final rejoinder was that the Political Agent was not satisfied with Morvi's enquiry and asked for the Rahtors version. Where is that version? It was very natural that Morvi should have been called upon because the complaint was made against Morvi, as was to be expected from the traditional hostility between Cutch and Morvi. Morvi was in fact not the tribunal exercising jurisdiction but was itself the defendant.

203. Now after considering those arguments with the papers upon which they are founded, I have no hesitation in saying that Morvi's appear to me to be the sounder. Whether in error or not there is the plain fact which it is useless to deny that the Agency did recognize Morvi's authority over and responsibility for Vejalpur. There is also the equally plain fact that Morvi dealt with the matter as a Chief in those days would ordinarily have dealt with such a matter affecting one of his own villages. Dhrangadhra's arguments in face of the awkward facts which they had to surmount were highly ingenious: but the refinements upon which they depend for their force certainly seem rather sophistical. There is certainly a heavy burden lying on any party to prove such an allegation as Dhrangadhra is constantly forced to make: viz., that the Agency in its repeated and open recognitions of Morvi's authority over Vejalpur was labouring under an error. And the difficulty of discharging that burden is surely heightened by the singular circumstance that during the whole time that error prevailed and was constantly giving rise to open official action, the State most vitally interested in correcting it, sat quietly by and never made the faintest attempt to do so.

204. M184-187. These papers relate to Kana Kayla's case. It is not very important. It appears that Kana Kayla was a Morvi subject, who had mortgaged some land in Vejalpur. There was some dispute over the transaction and he complained to the Morvi Thakor. Then the Thakor

wrote to the Rahtors saying that it was not right to repudiate debts, and that if they did not pay what they owed they would be mohosalled. This was in Samvat 1908 and the next document in the case is thirteen years later showing that Morvi mohosalled the Rahtors. The other papers relate to the recovery of the Mohosal. There was the usual argument about book keeping entries, Dhrangadhra alleging that the Mohosal never had been recovered: Morvi that the books sufficiently proved the recovery. The point hardly appears to me worth the time spent over it. D162 was put in in connexion with this case, and purports to show that this very dispute was actually settled by the mediation of the Dhrangadhra Mahajan. According to Dhrangadhra these exhibits merely show an abortive attempt on the part of Morvi to exercise jurisdiction: no jurisdiction was in fact exercised. Then again if Dhrangadhra had no connexion with Vejalpur, how came the Dhrangadhra Mahajan to mediate in the matter at all ? On the other hand Morvi contends that although the case is not of the first importance, the papers show that Morvi was exercising some sort of authority over Vejalpur at the time. Certainly as far as it goes, I think, that the case is in Morvi's favour. The complaint against the Ráhtors was made, and as far as I can judge, honestly made in the first instance to Morvi. The Morvi Chief took action upon it, according to the ordinary methods then prevailing. And ultimately, it seems, that a Mohosal was imposed. As for the long delay of thirteen years, that might be due to the apathy of the complainant, or perhaps to the fact evidenced in D162 that there was some attempt being made to settle the matter by private arbitrament. It was not an affair in which the State had any direct interest, and naturally if the complainant did not press his suit, nothing further would have been done. I cannot see that the settlement of the dispute by the Dhrangadhra Mahájan, even if in fact it were so settled, has any evidentiary value for Dhrangadhra. There was nothing to prevent Kana Kayla selecting his Panch from any adjacent village, and it was quite natural under the circumstances that he would have had recourse to the influential community represented by the Halvad Mahajan. There must have always been a pretty close trade connexion between Halvad and Vejalpur, quite independently of the political relations of the latter village. There was no Agency interference in the case.

205. M183-189. Here there was a Malia subject of Khákhrechi who had some mortgaged land in Vejalpur. It appears that he had a grievance

in this respect against the Rahtors, in consequence of which Malia addressed the Agency requesting that Morvi might be cautioned not to assist the Vejalpur Girasias in repudiating their debts. The Assistant Political Agent called upon Morvi to reply. Malia's subsequent Yad shows that Morvi had given some sort of explanation. Malia was then called upon to produce the original mortgage-deed and three years later the case seems to have been closed without any very definite result. Now it is to be observed that in this matter Malia asked redress either through Morvi or the Japtidar. The Assistant Political Agent recognized Morvi's responsibility and ignored the Japtidar. According to the Dhrangadhra construction of M188, Malia did not complain that the Rájhtors were obstructing their Patel in the just enjoyment of his mortgaged field, but that Morvi was unauthorizedly interfering in the matter. According to the Morvi construction of the paper, Malia fully recognized Morvi's authority and requested the Agency to move Morvi to bring that authority to bear on the Rahtors. Whichever way it was, it is plain that the Agency held Morvi answerable in the first place; and that is the point of substantial importance. It was also contended for Morvi that inasmuch as this was going on openly in the Agency Office, Dhrangadhra must have been aware of it, and by making no protest of any sort, tacitly admitted Morvi's position and sovereignty. Dhrangadhra on the other hand says that that is a mere inference, for which there is no sufficient ground. Apart from the latter inference, which I think fair, though inconclusive, the evidence is good for Morvi.

206. M190 is a petition dated Samvat 1922 addressed by the son of the mortgagee in the last case, to the Thakor of Morvi, asking his assistance. Dhrangadhra says that nothing was done, and that the paper is quite worthless for evidentiary purposes: that at the most it shows that Morvi failed to exercise jurisdiction. That is, I think, rather feeble argument. From the preceding papers it appears that the complainant was referred to Morvi, and this petition is the natural consequence of that order. As Mr. Pandit observed there is nothing surprising in the fact that Morvi did nothing in the matter. In those days a great many much more important cases were allowed to stand over for long periods. Though this exhibit can scarcely be said to prove the exercise of jurisdiction, it is complementary of the correspondence which had already passed on the subject and illus-

trates the general trend of public opinion. M191 shows that Morvi assisted the Patel of Ghantila to recover a civil debt in Vejalpur. Dhrangadhra objected that there were no proceedings; and that, as the Patel of Ghantila was a Morvi subject, he would, of course, have applied to his Darbar for assistance, and that the evidence is quite worthless. Well, I do not attach very great importance to it; but it is obvious that the point of importance is, not the domicile of the complainant but that of the defendant from whom it appears that the debt was recovered through the Agency of the Morvi Darbar. Nor would it be reasonable to expect regular proceedings before 1863.

207. M193-204. These papers relate to disputes between the Rahtors of Vejalpur about the partition of their shares. The period which they cover extends from Samvat 1895-1917. During the pleadings a good deal of criticism was expended over these papers; but the salient facts which they disclose are simple enough, and I do not think that there is much to be gained by going into all the minutiæ suggested by the learned counsel. The question seems to have been first raised in Samvat 1895 by a petition from Tejoji and Agroji. There is no evidence of what was done thereupon, but 19 years later there was another petition of a similar nature from Haloji, and upon that there were proceedings which resulted in Morvi turning Agroji out of the Mukhiship and conferring it on Abhesang and Pathobhai. During the whole dispute which lasted a long time and in course of which the Rahtors were sent for to Morvi, their depositions taken, and themselves mohosalled, &c., &c., there is no trace of any idea on any one's part that redress ought to be sought for from Dhrangadhra or that Dhrangadhra or any one else than Morvi, had any concern in the matter. The explanation suggested by Dhrangadhra is that all these proceedings were set on foot with one and the same object, namely, the ruining of Agroji who was a Dhrangadhra partisan and recognized as such. He is said to have given a deposition against Morvi, (M172) and thus to have incurred the resentment of that Darbar. That is a point of some intricacy, into which I do not propose to enter. Whatever Morvi's object may have been, a study of these papers leads to the conclusion that it had both the will and the power to interfere effectually at that time in Vejalpur municipal matters. Also that if Dhrángadhra had any such interests as it now claims in the village, it exhibited an altogether unaccountable apathy during the progress of this quarrel. Nor is the explanation suggested, that no recourse

was had to Dhrángadhra because Agroji was Dhrángadhra's recognized Agent, either very adequate, or very intelligible. It is quite evident that this disputed succession to the Mukhiship was a burning village question; and it is equally evident that rightly or wrongly Morvi settled it to the satisfaction of two out of the four candidates, who paid a Nazarana or bribe or whatever you please to call it, upon the matter being settled (M202). Nor is there any thing to suggest that the unsuccessful candidates took any steps to question Morvi's authority or decision. If Vejalpur had been subject to Dhrangadhra and not to Morvi, is it conceivable under the circumstances that Agroji would have quitely submitted to Morvi's order deposing him from the Mukhiship? It amounts almost to a moral certainty that had Dhrángadhra held the position which it now claims and had the Ráhtors of Vejalpur been aware of it, as they could hardly have helped being, Agroji would have appealed to Dhrángadhra against Morvi's high handed and unauthorized interference. But none of the disputants did any thing of the kind, and the inference is necessary, that whatever shadowy claims to sovereignty over the village Dhrángadhra may have been entertaining, the Girásiás of the village itself had no idea of their substantial existence. By way of counterpoise Dhrángadhra points to its exhibit D64. This is a vague order addressed to the Ráhtors in 1919 or two years after Morvi had appointed the Mukhi, and Pathobhai's claims had been settled amicably or otherwise, directing them not to quarrel among themselves. Such an order in a Darbár book is a very poor equivalent for the Morvi evidence which has just been noticed. Here again there is no escape from the conclusion that Morvi is able to make out a much stronger case for itself than Dhrángadhra.

208. Against this evidence Dhrángadhra sets D52, D53. These papers relate to a civil process and a recovery in 1881 A. D. It appears that a Vejalpur man had a claim against a Koiba man and recovered through the Dhrángadhra Court, or the Agency which then did duty for a Civil Court. The Dhrángadhra Darbár received 9 Rupees by way of Court fee. Koiba, is however a Dhrangadhra village, and it is obvious that under those circumstances such a claim even at the present day would have to be brought before the Dhrangadhra authorities. The papers prove nothing in the way of Dhrangadhra jurisdiction over Vejalpur. Then there are D57, 59, 60, 63, 72. The learned counsel for Dhrangadhra had the candour

to admit that these exhibits might not be worth much, but he said that they would be found to be at least as good as M184 which the Lower Court characterized as a typical instance of the manner in which jurisdiction was then exercised and understood. D57 is really the end of a case which began with D54. In 1861 A. D. it seems that there was a theft committed in the vicinity of Halvad by some man of Vejalpur. The Dhrangadhra Darbar ordered the Ráhtors to deliver up the offender to the Darbar Sowars. The prisoner was made over to the Halvad authorities, and ultimately he appears to have been fined 101 Rupees, out of which 45 were paid by way of Valtar to the complainant. This is rather a case falling under the category of criminal jurisdiction than civil jurisdiction. Morvi in criticizing it pointed out certain suspicious features of the book containing the last two exhibits and suggested that the first order was manifestly concocted to suit the other papers. That is not a very profitable line of criticism; as I before remarked no sufficient grounds were shown for supposing that any of the exhibits on either side were deliberate forgeries. Morvi also pointed out, and this was rather more to the purpose, that inasmuch as the theft had been committed close to Halvad it was natural that Dhrangadhra should take cognizance of the matter and dispose of it. Still one would have expected some formal notice to have been taken of Morvi's sovereignty, either in the form of a demand for extradition or some less precise Yád addressed to the Morvi Darbar asking for the surrender of the thief, if Dhrangadhra had then recognized Morvi's sovereignty over, and responsibility for Vejalpur. It must, however, be borne in mind that rules of procedure were not very strictly observed in those days, and that by the year 1861 the present issue between Dhrangadhra and Morvi was beginning to assume something like a tangible shape. At any rate the pretensions of the rivals were probably by that time sufficiently defined to prevent Dhrangadhra expressly admitting Morvi's sole sovereignty over Vejalpur. Like a good many other cases of criminal jurisdiction, this is of a very petty kind, and is susceptible of obvious explanations quite consisting with the absence of all direct sovereignty over the village. But such as it is, it may pair off against one of Morvi's thirty eight cases, to most of which the same remarks apply. D58, 59 are two orders addressed to the Rahtors by the Dhrangadhra Darbar in 1918. The former directs them to deliver up a woman who had been abducted by a Vejalpur Koli; the latter directs the Ráhtors

to pay up a debt they owed to somebody for cotton. Vague and disconnected orders of that sort, which, for all we know, were never sent, and never existed outside the Darbar books, coming, too, so late in time as 1862 can have very little weight. It is only by stretching the common meaning of terms a good deal, that such order can be claimed to be evidence of the exercise of civil jurisdiction. D63 has already been noticed; nor do I think it can have any value for Dhrangadhra in the present connection. D72, dated 1922 is also valueless.

209. I next come to the evidence put in to illustrate the exercise of criminal jurisdiction. M205 is a letter addressed by the Morvi Darbar to Colonel Lang stating that a bard of Vejalpur had gone to Rajpur, and had there got into a quarrel and been killed: that the Rajpur people had come and settled for the killing in the presence of the Morvi Chief, and that the matter was now at an end. This was in 1837 A. D. In the Yád Morvi speaks of Vejalpur as "our village." Mr. Wádya said that the paper was quite worthless for the purpose of proving jurisdiction. A bard, he said, went to another village: got killed; and compensation was paid to his brother. What has that to do with jurisdiction, and how does it show that the Agency countenanced Morvi in the exercise of any such jurisdiction ? The mere fact that Morvi wrote in its own Yád that Vejalpur was one of its villages cannot surely be allowed any weight as evidence of the fact, now, in favour of Morvi. Mr. Pandit on the other hand said that the terms of the Yád clearly presupposed the fact that Morvi had made a complaint on behalf of the family of the murdered man against Rajpur, and that upon the strength of that the compensation had been paid and the matter was reported as settled to the Agency. Mr. Pandit's construction appears to me reasonable. M206, 207 relate to a case in Samvat 1904 in which a Brahmin of Rajkot purchased a bullock from a blacksmith of some Morvi village. Afterwards it appeared that the bullock had been stolen from a Vejalpur Brahmin, and Morvi demanded restitution. In the correspondence between the two States and the Agency, it is plain that the latter clearly recognized Morvi's right to represent Vejalpur. Dhrangadhra says that this was the natural consequence of the wording of the Rajkot Yád. It may have been so, but as I previously had occasion to observe, that explanation involves the assumption that both Rajkot and the Agency were in error in believing that

Morvi owned Vejalpur: and no such assumption can be lightly made. As the case stands it is good enough evidence for Morvi.

210. M208 is a letter from the Prânt Officer to the Morvi Darbár, dated 1907. The Prânt Officer says that a woman "of your village of Vejalpur" was married to a Koli of Khákharechi: that he wounded her, and that she ran away to her father's house. And ordered Morvi to send her to the Huzur at once with the Sowár who brought the Yád. Dhrángadhra says that this, like a good many other cases, was entirely attributable to the traditional hostility existing between Malia and Morvi. It was probably because the Japtidar had said that the woman had gone to Morvi territory that the Prânt Officer addressed Morvi on the subject. But in point of fact the Japtidár says that the woman had gone to her father's house, and that he lived in Vejalpur. The Prânt Officer was not acting on any external suggestion when he said that Vejalpur was a Morvi village: rightly or wrongly that was the official opinion at the time. The argument based upon the traditional hostility between Mália and Morvi, which is so often used, appears to me to have very little force. Dhrangadhra also said that two years prior to this case the Agency had reported to Government that Vejalpur belonged to Dhrángadhra. Dhrángadhra refers to the list of fortified places and the value of that evidence has already been sufficiently discussed.

211. M209-212 relate to a claim made by Mália against Morvi for Valtar in respect to a theft committed by Vejalpur men. After a protracted correspondence the Agency directed Morvi to pay the Valtar. This was done and Malia gave its Rázináma. All that Dhrángadhra has to say about this is that it could not have been expected to know what was going on, and that it really had nothing to do with a claim of that sort brought by Malia against Morvi. Conceded, but that does not alter the fact that as between Malia and Morvi the Agency recognized the responsibility of the latter for acts done by Vejalpur people: and that, according to the precedents, is very good evidence for Morvi. Dhrángadhra is unable to produce a single similar instance.

212. M213-220 relate to a case which went on between 1857-1860 in which Morvi complained that a theft had been committed in its village of Vejalpur by Khákhrechi people, and demanded Valtar from Mália. For the most

part the proceedings went on in the Prant, and ultimately Malia had to pay and Morvi's Razinama was taken. The Rahtors also signed a receipt for the Valtar and said that they had no further grievance in the matter. In the course of the case Morvi had to mohosal the Rahtors to go before the Agency and give evidence. Dhrangadhra made a great point of that, and said that it might at first have been inferred that the Rahtors complained to morvi as their sovereign, and that it was upon that complaint that Morvi took up the case. But a reference to M214 shows that Morvi had to compel the Ráhtors to move in the matter. I do not attach much importance to this argument: the whole proceedings show plainly enough the light in which Morvi's connexion with Vejalpur was viewed at the time by the Agency. There seems to have been something like a regular hearing before the Agency, and it is hardly possible that all this could have gone on without the Dhrangadhra Vakil becoming aware of it. And if that were so, it becomes very difficult to understand why Dhrangadhra took no steps to intervene in the protection of its own interests. Morvi was from the beginning the real complainant, not the Rahtors, and that fact impairs any force that Dhrangadhra's criticism, based upon M214 might otherwise have had.

213. M221-224 relate to another claim for Valtar preferred by Malia against Morvi in the Assistant Political Agent's Court, for injury inflicted on a Malia boy by Vejalpur people. The case was formally dealt with: both States were called upon; and in the result it was held that the offence was not substantiated, and the claim for Valtar was thrown out. The case went on from 1859-1863; witnesses were examined and the whole affair must have been public property, yet we do not find that Dhrángadhra took any steps to impugn Morvi's authority or assert its own.

214. M225-237. This is rather an important case. On the 30th June 1860 the Agency joint Japtidár of Devalia, reported to the Prant the alleged suicide of a woman in Vejalpur under suspicious circumstances, and requested authority to hold an enquiry in the matter. Against this Morvi protested on the ground that Vejalpur was its village and that the Japtidár had no concern with it. The Agency allowed Morvi's contention and ordered the Japtidár not to interfere. Thereupon Morvi proceeded to mohosal the Ráhtors for remissness in reporting the death. Dhrángadhra said that this case was originated by the Japtidár with the object of causing the Agency to

recognize Morvi as the sovereign of Vejalpur. And the only reason why the Agency handed the case over to Morvi was Báláji's statement that Vejalpur was a Morvi village. But in this connexion it is material to consider M246 dated 9th June 1860 or 21 days earlier than this report. From that it appears that certain Kolis of Vejalpur were referred to Morvi for punishment, and that the order was shown to the Morvi and Dhrángadhra Vakils, and signed by both of them. After thus openly acquiescing in Morvi's right to deal as sovereign with Vejalpur, Dhrángadhra could not reasonably expect that any Agency Officer would hesitate to ascribe the same sovereignty to the same Darbár under similar circumstances. I agree with Mr. Pandit that there is absolutely no ground for the imputation which Dhrángadhra has cast upon Báláji in this transaction. So far from having acted collusively with Morvi in this matter, Báláji wished to make the enquiry himself. The case contained in M238-244 is comparatively unimportant.

215. M245, 246. It appears from the Japtidar's report to the Prant that there had been a fight between the Kolis of Vejalpur and Devalia. The latter is a village held jointly between Morvi and Dhrangadhra. By order of the Prant the Vejalpur offenders were handed over to Morvi for punishment, (*ut supra*) and the joint Japtidar was ordered to deal with the Devalia people and report to the Huzur. If there was any dispute about the Devalia people they were to be sent to the Prant. There was a dispute, of the details of which we have no information, and nothing seems to have been done. Then both States were warned and the Shero was shown to, and signed by their accredited agents respectively. Mr. Wadya said that if any details of the disagreement about the Devalia people had been forthcoming, we should have probably found that it was due to Dhrangadhra's dislike to any independent recognition of Morvi's supremacy in Vejalpur. That is, of course, mere guess work; and as the papers stand, they appear to me to warrant the contention which Morvi founds upon them, that so far as Vejalpur was concerned Dhrangadhra acquiesced in the common recognition of Morvi's sovereignty over the village.

216. M247-250; 251, 252. These papers relate to two petty cases, in both of which the Agency recognized Morvi's responsibility for Vejalpur. According to Mr. Wádya in the first case, it was the Japtidar who recognized Morvi's supremacy; in the second it was the Extra Deputy Assistant Mr.

Mukundrai, who informed the Prant that Vejalpur was a Morvi village and upon that information alone the Prant acted. It seems to me comparatively immaterial by which of its ministerial officers the Agency recognized Morvi's position; the recognition was none the less the recognition of the Agency, and it was an official recognition according to the prevalent practice, of a certain well defined status. If, as Mr. Wádya would seem to imply, all these public recognitions of Morvi as sovereign of Vejalpur were due to mistake, is it not, to say the least, a surprising circumstance that there is not a single mistake of the kind in favour of Dhrangadhra?

217. There are in addition papers M252-324 showing the independent exercise by Morvi of criminal jurisdiction, over the village of Vejalpur from Samvat 1896-1925. They relate to thirty separate cases; but since as I remarked in dealing with D54, cases of this nature are for probative purposes of much inferior value to those in which Morvi's authority was recognized by the agency,—I do not propose to analyze that body of evidence. It must have already been made sufficiently clear that upon every point yet dealt with Morvi's case is immeasurably stronger than Dhrangadhra's; and in omitting therefore to add any further weight which might be drawn from an examination of these thirty cases to the already preponderant mass of Morvi evidence, I shall not, I think, be doing that State any injustice, while I shall be able to materially reduce the bulk of a judgment which has already assumed very large proportions. One or two specimen cases selected with reference to the nature of the pleadings founded upon them will occupy as much space as I can afford to this topic, and as I think its intrinsic importance justifies.

218. M267-272. It appears that in 1859 A. D. some Vejalpur Kolis had gone to kill pig in the Devalia Sheem; had got into a fray and had wounded a Brahmin. The Devalia Japtidar reported this to Morvi and Morvi mohosalled the village. Then Abhesang, on behalf of the Girasias, gave a bond for the future good behaviour of the Kolis and the Mohosal was raised. 75 Koris are shown in the State books to have been recovered for damage to the crops and as a fine for wounding the Brahmin. Also 52 Rupees Valtar seem to have been recovered. According to Dhrangadhra the action of the joint Japtidar in reporting solely to Morvi shows that he was acting in collusion with that State, and that this collusion continued

up to 1865. [M352.] I think, enough has already been said about that. As for the case itself, collusion or no collusion, it appears to me well enough as such cases go. The steps which Morvi took to enforce redress are just such as we should expect, with regard to the times and the practice then prevailing. Generally Dhrangadhra said of all these cases that there was a noticeable absence of all procedure. But that is not after all very much to be wondered at. Any approach to regular procedure in those days would have been the exception rather than the rule. But as Mr. Pandit said, the papers in almost every case, if they are genuine, show that definite results were attained; Mohosalai was recovered, Valtar paid, and Morvi's authority was amply vindicated.

219. M297-300. A theft was committed by a Vejalpur Koli in Ghantila. Morvi sent for the thief's father, and mohosalled him to come in and make a settlement. It also appears from M298 that the surety was imprisoned. Whatever we may think of the propriety of these acts, they certainly indicate authority. M302, 303 relate to retaining stolen property. A Vejalpur Koli called Arjan was found in possession of certain property stolen from a Dhrangadhra village called Málaniád. The Morvi Darbar seems to have imprisoned him, and two other Kolis of Vejalpur stood security for him. Dhrangadhra claims to have exercised jurisdiction in this matter two months before Morvi. D69. This is a Dhrangadhra outward order dated Mágsar Vad 13th 1920 Samvat to Koli Arjan of Vejalpur, directing him to restore certain stolen property of which he was believed to be possessed and to refrain from receiving stolen property in the future. Morvi says of this, with some force, that it is only a recommendation, not an order; that there is nothing to show that it was ever enforced, and that the Morvi evidence on the same point shows that Morvi actually fined and imprisoned for this very offence, and that there was therefore no room for the effectual interposition of Dhrangadhra. There is of course this to be said, that the theft was committed in a Dhrángadhra village, and that therefore Dhrángadhra might have gone a little out of its way to secure satisfaction. But the order to which it points in proof of its assertion that it disposed of the case as jurisdictional sovereign, will hardly, I think, support that contention.

220. M321-323. Here the Morvi Foujdar calls upon the Malia Foujdar to give Valtar for a theft committed in the house of Agroji, one of the Vejalpur

Rahtors. In this case it is noticeable that the Rahtors themselves invoked the assistance of Morvi. Mr. Wadya endeavours to account for that by saying that as the delinquent was a Malia subject the Rahtors naturally thought that their best chance of obtaining effectual help was with Morvi, because the ill-will existing between Malia and Morvi was notorious. But really, it is hard to understand why, if the Rahtors were, and knew they were Dhrangadhra subjects, they should have turned to Morvi, instead of to Dhrangadhra for assistance. Mr. Pandit pointed out that there were other cases in which inhabitants of Vejalpur had invoked Morvi's assistance against the aggressions of foreign States, *e. g.*, M205-207-213-220. These cases appear to me sufficiently to indicate the general character of this body of evidence and of the criticism to which it has been subjected. Upon the whole and speaking generally, I may safely say that it tells strongly in Morvi's favour. Before leaving this part of the subject it may be well to note that as well as the Agency, the exhibits which were more elaborately criticized, show that Rajpur, Cutch, Rajkot, Dasada, and Malia, all recognized Morvi's sovereignty over Vejalpur.

221. There are three papars which have been treated by both learned counsel in connexion with the subject of criminal jurisdiction, though they would perhaps more correctly fall under the head of circular orders. These are M325-327. The first, and most important on account of its early date is a recognizance passed by the Rahtors to Morvi in 1835 A. D. engaging not to harbour the Mohwar Bahirvatias. The other two are circular orders dated 1858-1860 addressed to all Morvi villages including Vejalpur, on the subject of apprehending escaped mutineers, from Bengal and Thar-Parkar respectively. Of the first of these Dhrangadhra said that it was not a general order but a special bond against Malia Mianas. It could, he said, be sufficiently accounted for by the Pal relationship existing between Morvi and Vejalpur. Wherever Malia is concerned there is something like a recognition of Morvi's authority, because Vejalpur paid Pál to Morvi for protection against the Mália Miánás. This argument hinges upon the fact that Morvi took Pal and not Jama from Vejalpur, but the Court has already fully dealt with that topic and has held that there are no sufficient grounds for the assertion that Morvi's levy was Pal. Then Dhrangadhra said that they had taken a general Fael Zamin bond (D26) thirteen years before this from Vejalpur. This exhibit is dated 1822

A. D. or two years later than the Deshjhada, (M117). It is very singular that while Dhrangadhra did not even claim Vejalpur in its Deshjhada, it should have taken this Fael Zamin bond only two years later, Mr. Pandit's comments on the exhibit deserve attention. He said, "Well, what was done in pursuance of D26? Is there any evidence that the promises were carried out? On the contrary it is to be observed that the Rahtors did perform to Morvi in later times all that they are said to have promised to Dhrangadhra in this document. It is an isolated paper which could easily have been fabricated. They filed in the same year what purported to be a copy of an admission by a Morvi official which they subsequently withdrew saying that the original was burnt" (p. 92 printed pleadings). I find myself unable, in face of Morvi's overwhelming evidence to the contrary, to believe that any such security bond was actually executed.

222. Dhrangadhra next relies upon its D23 to meet the three Morvi exhibits under notice. It purports to be a letter written by the Rahtors in 1809 A. D. to the Raj Saheb of Dhrangadhra asking that a Thana might be placed in Vejalpur to protect the village against the Mianas. There is a good deal to be said about the genuineness of this paper. It is an ancient document, true; but in judging of the value attaching to that class of evidence there are certain very well known guiding principles to be kept in mind. We have to see whether there is anything in the subseqnent conduct of the parties consisting with the document; or whether from any other later source any corroboration can be found for it. In the first place it is not pretended that any Thana was sent to Vejalpur in compliance with this request. In the second place it is one of Dhrangadhra's constantly reiterated arguments that wherever danger was to be apprehended from Malia the Rahtors naturally would, and in point of fact always did turn to Morvi for help. This is the solitary instance to the contrary. At this time the evidence tends to show that the power of Morvi, if not actually growing, was certainly not on the decline; and that being so, it is hard to assign any reason why the Rahtors should have abandoned their usual policy, a policy having, according to the Dhrangadhra case, its foundation in the nature of the tribute paid by the Rahtors to Morvi, and applied to Dhrangadhra instead of Morvi for protection. It is also perhaps a little singular that a letter of this kind, which led to no result, should have been preserved for so many

years. Mr. Pandit said with considerable truth—"The genuineness or otherwise of such documents may also be tested by the difficulties or facilities for their manufacture. And the further back we go into the past, the more difficult it becomes to offer direct contradiction." In the third place I think that it is fair argument to urge as Morvi did, that D23 was irreconcilable with Dhrángadhrá's known and proved conduct throughout the entire period of 60 years between Walker's settlement and the commencement of the present case.

223. Having now dealt in sufficient detail with Morvi's evidence of civil and criminal jurisdiction, I turn to the evidence which Dhrangadhra has put in upon the same points. D31-33 relate to a complaint made by Malia to the Dhrángadhra Darbár in 1897 about the theft of some clothes by Vejalpur people. Thereupon Dhrangadhra ordered the Rahtors to restore the stolen clothes. Morvi said that Malia knew that it was committed by numerous admissions on the Agency records to an acknowledgment of Morvi's sovereignty; and to avoid coming into conflict with these admissions it was forced to antedate these papers. In support of that argument Morvi instanced M209 which is dated 16 years later than D31. That appears to me to be an unsound argument. Because at a later period Malia in common with the public at large recognized the fact of Morvi's supremacy, it obviously does not follow that at an earlier period it might not have thought that Dhrangadhra was the proper authority to apply to for redress against Vejalpur. But taken in connexion with the immediately preceding Dhrangadhra exhibits, which have been dealt with in the Malia debt case, it may appear singular that just about the time that Malia was quarrelling with Morvi over the recovery of its mortgage debt in Vejalpur, there should be these two isolated appeals to Dhrangadhra. Whether either of them had any definite result is doubtful. Such as the case is, however, and subject to these reservations, Dhrangadhra is entitled to all the benefit it can get out of it. After all we have to weigh one mass of evidence against another; and it is quite possible that in small matters of this sort, in the earlier days, appeals for help may have been occasionally made to both adjoining powerful States where the Rahtors proved refractory. D40-43 have already been fully criticized. So have D51-57. D58 is dated 1862 A. D. and purports to be an

order addressed by Dhrangadhra to the Rahtors of Vejalpur about the abduction of a Siroi woman. Such an order of such a date can carry very little weight. D69 has already been commented on. All these cases preceded the introduction of Keatinge's jurisdiction scheme; after that, said Mr. Wadya, you would expect to find the procedure more regular. Accordingly there is D70 which is a regular civil suit about Valtar in the year 1866 A. D. This exhibit contains several papers, among which are some letters written by Haloji and Agroji about tracking. This case occurred in the same year in which Morvi certainly represented Vejalpur in a boundary settlement. It is not, therefore, very important; and it is just before the present dispute broke out. D83 relates to tracking proceedings in a ciminal case, where Valtar was demanded. This was in 1867. There is nothing to show that the proceedings had any result, and I must own that it strikes me as singular that just about the time this quarrel was coming to a head, Dhrangadhra has all this vague evidence, while twenty years earlier they have none deserving the name. This remark applies also to the similar case contained in D90 dated 1867. And that is all the evidence which Dhrangadhra has to offer on this subject. Comparing it as it stands, and admitting that it is all entirely genuine, with Morvi's evidence, it is quite incontestable that the latter enormously outweighs it, both in quantity and quality.

224. I have now examined all the material evidence adduced on both sides upon the following points, A. Veth; B. Jama; C. circular orders; D. Lágás; E some connected miscellaneous matters; F. civil and criminal jurisdiction; G. statistical returns, &c. And the results of my analysis, keeping carefully in mind the principles elucidated by an elaborate analysis of all available precedents, are in every case to show that Morvi has far better evidence of sovereignty since Walker's settlement, than Dhrangadhra. It is, I think, under these circumstances, unnecessary to lengthen this judgment by examining Dhrangadhra's evidence of an original grant somewhere in the 18th century. Mr. Wadya said that in his opinion the most important portion of the Dhrangadhra evidence consisted of the exhibits D168-170, the Paliyas, or memorial stones put up to Rahtors in Halvad, for fighting and sacrificing their lives in battle. These Paliyas go back to the 17th century, and as I have shown in discussing the precedents it is beyond the scope of this judgment to in-

vestigate the relations which may have existed between the Rahtors and Dhrángadhra in such a remote past. A point was also made of the fact that the Rahtors have an Utaro in Halvad; but the circumstance plainly has no necessary relevance to this enquiry. So too of the allegation that the Shrimali Brahmins of Vejalpur, who are the hereditary priests of the Rahtors have a Giras in Dhrángadhra. For all we know that Giras may have been given them in the 18th century too.

225. I can hardly hope to have noticed every exhibit upon which one or the other party may place some reliance; this judgment has had to be written at odd times, in the intervals of current work; and in dealing with such a voluminous record under those conditions, I am aware that I may have fallen into occasional repetitions on the one hand, while on the other a few points may have escaped me. But I have endeavoured to do full justice to all matters which seem to me material; and to keep in view the principles upon which a case of this kind must be disposed of. Much that has been said about jurisdiction, must necessarily appear to a modern lawyer, irrelevant. But considering the very vague and elastic shapes in which that idea presented itself to the minds of Kathiawar Chiefs fifty years ago, it will, I think, be conceded that such evidence as has been laid before me, and has been criticized and weighed under this head, is the best which a Court could reasonably expect to obtain. As regards the bearing of circular orders, Veth, statistical returns, and religious grants upon the main issue, the case law of the Province, such as it is, will, I think, sufficiently, warrant the methods I have adopted in dealing with those topics, and the weight I have attached to the conclusions which I have drawn from them. I can not but feel in re-perusing this judgment that I have permitted myself considerable latitude in analyzing the precedents, and endeavouring to systematize them, and evolve something like a harmonious body of principles of universal applicability. That part of the subject, although it may not always have a direct bearing upon the issue raised in this case, will, I hope, prove of considerable value indirectly. And looking to the importance attached by the learned counsel on both sides to these precedents, and the constant, often conflicting appeals, made to their authority, I trust that the labour which I have bestowed upon them, will not be deemed to have been thrown away.

226. For the reasons stated in this judgment, I confirm the decree of the Lower Court and reject this appeal.

F. C. O. BEAMAN,
Judicial Assistant.

3rd January 1893.