

## PRIVY COUNCIL.

RAM KANAI SINGH DEB DARPASHAHA

v.

MATHEWSON.

P.C.<sup>3</sup>  
1915Jan. 19, 20, 21 ;  
Feb. 9.

## [ON APPEAL FROM THE HIGH COURT AT FORT WILLIAM IN BENGAL.]

*Patni Lease—Chota Nagpur Encumbered Estates Act (Beng. VI of 1876 as amended by Act V of 1884) s. 17—Rules under s. 19 of Act, Rule 16—Patni lease executed by Deputy Commissioner as manager of Barabhum Estate under the Act—Sanction of Commissioner—Objection that patni lease had not been submitted to Commissioner after he had sanctioned all the details—Sanction granted for lease to a firm and lease given to a Limited Company—Stipulation for payment of Bonus—Payment after time fixed.*

The grant of a patni lease under the Chota Nagpur Encumbered Estates Act (Bengal Act VI of 1876 as amended by Act V of 1884) s. 17 and rule 16 of the rules made under the Act, necessitate the sanction of the Commissioner. In a suit to have a patni lease, executed by the Deputy Commissioner as the manager under the Act of the Barabhum Estate on behalf of the proprietor, the father of the plaintiff (appellant) declared void and inoperative as not having received a valid sanction :—

*Held*, that where it has been affirmatively established that a transaction itself in all its essential particulars has obtained the sanction of the Commissioner, and then it becomes requisite that the transaction be carried into effect by the preparation of an appropriate deed, an objection merely on the ground that the document ultimately prepared has not been submitted for sanction, cannot be sustained. In administrative and departmental action it must necessarily be the case that formal details may have to be entered upon in order to carry into effect, and put into legal shape the arrangement to which the sanction was given.

Where such a sanction was given for a patni lease to be granted to "Robert Watson and Co.," a firm of individual men, and the actual lease was executed in favour of "Robert Watson and Co., Limited," the firm having been converted into a Limited Company :—

° *Present* : LORD SHAW, SIR GEORGE FARWELL, SIR JOHN EDGE, AND MR. AMEER ALI.

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*Held*, on the facts of the case, that when the negotiators in the course of the correspondence mentioned "Robert Watson and Co.," they did in fact mean and were perfectly understood to mean "Robert Watson and Co., Limited," the fact of the incorporation of the Limited concern being well known, and that therefore the misdescription did not, under the ordinary principle applicable to such matters, affect the validity of the sanction or of the patni lease. In this view it was unnecessary to decide as to the effect in law of the difference in the "*persona*" of the two descriptions.

*Held*, also, that the sanction of the Commissioner in this case was not merely a sanction of a proposal to grant a patni. The proposal had been made; it had been accepted; a contract was accordingly completed on the subject, and it was that contract so completed that was sanctioned.

The patni lease stipulated for the payment of a *salami* or bonus, and the letter granting the sanction contained the clause, "provided the amount be paid before the end of March 1890. Some delay occurred owing to an exchange of views being necessary as to the actual wording of the draft patni, but the lease was finally settled by both parties, and the *salami* was paid on 25th June 1890 :—

*Held*, that the lease would not afterwards have been open to a challenge to be made by the Deputy Commissioner himself, or for the Commissioner's sanction to be withdrawn; and *a fortiori* there was no ground for sustaining such a challenge when put forward long afterwards on behalf of the debtor's successor by whom the suit was brought.

APPEAL No. 62 of 1913 from a judgment and decree (28th April 1910) of the High Court at Calcutta, which affirmed a judgment and decree (25th November 1907) of the Subordinate Judge of Manbhum, dismissing the suit.

The plaintiff was the appellant to His Majesty in Council.

The only question for determination on this appeal was as to whether a patni lease, dated 29th June 1890, granted by the manager of the Barabhum Encumbered Estate appointed under Bengal Act VI of 1876 was *ultra vires* and invalid.

The plaintiff was the son and successor of Raja Brojokishore Singh Deb Darpaashaha of Barabhum in the district of Manbhum, who on 27th February 1883 borrowed Rs. 60,000 from Messrs. Robert Watson and

Co. on a mortgage of his Barabhum Estate, and on the same day executed an ijara lease in their favour of the entire estate (except a small portion specified in the lease) for a term of 21 years at a rental of Rs. 20,000 (afterwards reduced to Rs. 19,000) per annum. The lease contained a condition that if during the term the Company should desire to take a patni or permanent lease of such portions of 84½ villages included in the properties leased, as were treated as ghatwali lands, the Rajah would grant such patni at a rental of Rs. 4,500 per annum on payment of a *salami* of Rs. 30,000.

On 8th March 1885, Messrs. Robert Watson and Co. having expressed a desire to have a patni lease as above it was granted to them by the Raja. The lease contained provisions (*inter alia*) vesting in the patnidars all rights over minerals (subject to the rights of a Mr. Kenny which were specially provided for) and timber in and on the lands demised.

On 6th March 1889, the Raja's estate, which was then heavily encumbered, was at his request taken under the protection of Government in accordance with the provisions of the Chota Nagpur Encumbered Estates Act (Bengal Act VI of 1876).

On 26th May 1890, the firm of Messrs. Robert Watson and Co. was converted into a Limited Liability Company, a formal conveyance being executed to effect that object. Both the Raja and the Deputy Commissioner (the manager of the Raja's estate under the Act) had notice of this conversion.

Difficulty was experienced in making arrangements for the liquidation of the Raja's debts, and various proposals made by the Raja for the purpose were from time to time considered and rejected; but on 25th October 1889, the Deputy Commissioner proposed to the Commissioner that in order to pay the debts a

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patni lease should be given to Messrs. Watson and Co. of the remaining portions (the lands not ghatwali) of the 84½ villages at their then rental in consideration of a *salami* of Rs. 38,496. Though approved by the Commissioner, Messrs. Watson and Co. declined it on the ground that the terms were too onerous. They subsequently offered, however, to take the proposed patni lease if the *salami* was reduced to Rs. 30,000, and the Deputy Commissioner, on 6th February 1890, reported this offer to the Commissioner and recommended its acceptance.

In a letter of 20th February 1890, the Commissioner sanctioned the grant of a patni lease in the following terms:—" I have no desire to drive a hard bargain with Messrs. Watson and Co., and accordingly sanction the proposal to grant them a patni lease of the 84½ villages excluded from the present patni, on payment of a premium of Rs. 30,000, provided the amount be paid before the end of March 1890."

Negotiations took place as to the form of the lease, and the draft had to be altered and corrected more than once before it was finally settled; and on 13th May 1890, the Deputy Commissioner reported to the Commissioner (in reference to a scheme he proposed for the settlement of the debts of the estate) that the *salami* had not been paid, but that the draft as altered and corrected had been sent to Messrs. Watson and Co. for their approval. The Commissioner approved the scheme, and the draft was thereupon finally settled by both parties, and on 25th June 1890 Messrs. Watson and Co. paid the *salami*, Rs. 30,000, to the manager.

On 29th June 1890, the Deputy Commissioner in pursuance of the Commissioner's sanction granted the patni lease now in suit to Messrs. Watson and Co., Limited. The rent reserved was Rs. 3,069-3-10, but except for this the provisions of the lease were

substantially the same as those contained in the former patni granted by the Raja himself.

On 28th June 1890, however, the Raja presented a petition to the Deputy Commissioner objecting to any such arrangement being entered into mainly on the grounds that the *salami* was insufficient, and that some of the villages included in the grant were held by *khorphoshdars* of his family. The first objection was overruled by the Deputy Commissioner as manager, and the second was settled by Messrs. Watson and Co. undertaking not to resume or enhance the quit-rent or cesses of the *khorphosh* villages so long as the estate remained under Act VI of 1876.

The Raja appealed to the Commissioner who, after going thoroughly into the whole matter, confirmed the grant, and an appeal to the Board of Revenue was dismissed, the Board of Revenue confirming the Commissioner's decision.

Messrs. Watson and Co. and their successors thereafter remained in possession of the properties in suit as patnidars; and on 15th April 1896 they conveyed all their rights therein to H. Mathewson the first respondent, and on 25th June 1906 the first respondent conveyed the same to the second respondent, the Midnapur Zamindari Co., Limited.

The Raja died on 22nd July 1900, and was succeeded by Raja Ram Kanai Singh Deb Darpashaha, the first appellant, who on 14th August 1906 (the Barabhum Estate having been released from the operations of Bengal Act VI of 1876 on 1st October 1905) instituted the suit which gave rise to the present appeal, claiming a declaration that the patni lease of 29th June 1890 was void and inoperative on the ground so far as this appeal was concerned, that it had not been validly sanctioned by the Commissioner.

The defence, so far as material, was that the patni

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lease had been duly sanctioned and was valid ; that the payment of the *salami* was not a condition precedent to the grant of the lease ; and that, if it were, that condition had been waived by subsequent agreement, and the conduct of the parties.

The Subordinate Judge found that it appeared from the correspondence that the patni lease was in every way in accordance with the sanction of the Commissioner ; that Messrs. Robert Watson and Co. and Messrs. Robert Watson and Co., Limited, were in fact the same persons ; that as regards the time for payment of the *salami* stipulation was not of the essence of the contract, and that if it were it was waived, for it was clear that the Commissioner knew when the scheme was confirmed that the money had not been paid, and that he refused to set aside the patni in the Raja's appeal with full knowledge of the facts ; and that both the Commissioner and the Deputy Commissioner were well acquainted with the nature of a patni and did not believe or understand it to be a mere perpetuation of the *ijara* lease. In the result he held the patni lease was valid and binding, and further holding that the suit was barred by limitation, dismissed it with costs.

An appeal to the High Court from that decision was heard by WOODROFFE and RICHARDSON JJ. who after holding that the suit was not barred by limitation as decided by the Subordinate Judge, further decided that the sanction given by the Commissioner was sufficient to cover the patni granted by the Deputy Commissioner ; that it was not established that the terms of the patni were unusual in character ; that it must be assumed that the patni sanctioned by the Commissioner was not to be merely a perpetuation of the *ijara* lease ; that even assuming that the payment of the *salami* in terms of the Commissioner's sanction constituted a condition precedent, it was waived by

the Commissioner; that no ground had been made out for saying that the sanction granted was invalid or that the patni lease was void or inoperative; and that it was within the powers conferred by Bengal Act VI of 1876 and the rules made under it. The appeal was accordingly dismissed with costs.

After this appeal was filed, the estate of the appellant was again brought under the Chota Nagpur Encumbered Estates Act, and by an order of this Board dated 5th March 1914, Mr. S. R. Hignell, Deputy Commissioner of Maubhum and manager under the Act, was added as an appellant.

On this appeal,

*Upjohn K.C.* and *A. M. Dunne*, for the appellents, contended that at the date of the execution of the patni lease in suit there was no valid sanction for it; and at that date the Deputy Commissioner had no right or authority to execute the lease, and was not justified in doing so in the face of the Raja's objections. Sanction of the Commissioner was necessary under the Chota Nagpur Encumbered Estates Act (Bengal Act VI of 1876, as amended by Act V of 1884) section 17, and rule 16 of the rules made under section 19 of the Act. The sanction should have been given only when the document which contained the terms of the patni lease was ready for execution. [*De Gruyther K.C.* referred to *Gulab Singh v. Gokuldas* (1): the document need not be submitted to the Commissioner, and the sanction may be implied.] That was a decision on the construction of a different Act (The Central Provinces Government Wards Act (XVII of 1885) section 18, the wording of which distinguished it from the present case. In that case the sanction was required of a permanent official, the Head of the

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(1) (1913) L. L. R. 40 Calc. 784; L. R. 40 I. A. 117.

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Central Provinces Government who would not be expected to go into details. In the present case it was the manager of the Encumbered Estates Act who had to obtain the sanction of the Commissioner. Reference was made to Act XVII of 1885, sections 1, 4, 17, 18, 25, and 30; Bengal Act VI of 1876, section 17; and the Manual of Wards' Attached and Encumbered Estates (Ed. 1897 Calcutta), Part III, "Encumbered Estates," pages 200, 202. Here also the Commissioner had only sanctioned the grant of the patni believing it to be a perpetuation of the ijara lease on the same terms, and on the condition that the *salami* should be paid by a certain date, whereas the patni granted included rights, especially in reference to *thorposh* or maintenance grants, and the *salami* was not in fact paid until after the date fixed in the Commissioner's letter of sanction. The Deputy Commissioner, it was submitted, had no power to waive the breach of what was a condition precedent attaching to the Commissioner's sanction; nor to revive a sanction which had lapsed. Again the patni lease as sanctioned was to a number of individuals, namely, Messrs. Robert Watson and Co.;" whereas the patni lease as granted was a lease to a Limited Company, namely, "Messrs. Robert Watson and Co.," Limited, which was far from being the same thing, being in fact a very important alteration in the grant, and one which made the sanction invalid. It did not authorise the grant to a Limited Company; and this change was never brought to the notice of the Commissioner. The Limited Company was incorporated in 1887, but did not take the conveyance of the property until May 1890. The question of the identity of the patnidars was very material, since they would be liable for the due payment of the rent, and for the performance of the contract, even if assigned. The Commissioner ought to have the terms of the patni



lease to be sanctioned or an abstract of them before him. All that he sanctioned was the proposal for the grant of a patni lease to be prepared and settled later. It was submitted, therefore, that the sanction of the Commissioner and the patni lease executed by the Deputy Commissioner were invalid, void, and inoperative.

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*De Gruyther, K.C.*, and *Sir W. Garth*, for the respondents, contended that for the reasons given in their judgments both the Courts in India had rightly decided that all the objections made to the validity of the sanction, and to the binding effect of the patni lease were unsustainable both in law and in fact. There was no question of the conversion of the ijara to a patni. All the terms of the patni lease were known to all the parties concerned, including the Commissioner, and he was well acquainted with all the details connected with the transaction. The respondents relied on the case of *Gulab Singh v. Gokul Das* (1). Time was not a condition precedent to obtaining the sanction. That Messrs. Robert Watson and Co. had been converted into a Limited Company was a well known fact. They had put in a petition in May 1889 which was stated to be that of "Messrs. Robert Watson and Co., Limited." To call them "Messrs. Watson and Co.," was not really a misdescription, as it was understood by all concerned, that it referred to Messrs. Robert Watson and Co., Limited. The interests of the *khorphoshdars* were not endangered in any way by the grant of the patni lease.

Counsel was stopped by the Court, and

*Upjohn, K.C.*, called on to reply, referred to rule 16 of the rules under Bengal Act VI of 1876, the true construction of which he contended was that the

(1) (1913) I. L. R. 40 Calc. 784 ; L. R. 40 I. A. 117.

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sanction should be given when the lease requiring sanction was complete.

The judgment of their Lordships was delivered by LORD SHAW. This is an appeal from a judgment and decree of the High Court of Bengal, dated the 28th April 1910, affirming a judgment and decree of the Subordinate Judge of Manbhum, dated the 25th November 1907, dismissing the suit with costs. The main object of the suit was to obtain a declaration of the nullity of a putni lease, dated the 29th June 1890. The other demands in the plaint were consequential upon such a declaration of nullity being obtained. The only question argued in the appeal was whether the putni lease was *ultra vires* and invalid.

The facts are briefly these. The first appellant, the plaintiff, is the son and successor of the late Raja Broja Kishore Singh Deb Darpashaha, the owner of the Barabhum estate. In 1883 the Raja borrowed Rs. 60,000 from Messrs. Robert Watson and Company on a mortgage of his estate, and on 27th February of that year he executed an ijara lease in their favour. This lease contained a condition that if the Company should desire to take a putni lease of such portions of 84½ villages as were treated in the ijara as ghatwali lands, the Raja would grant such a putni on certain terms. On 8th March 1885 this putni was granted. Four years thereafter, viz., on 6th March 1889, the affairs of the Raja being deeply embarrassed his estate was placed under the protection of Government by virtue of the Chota Nagpur Encumbered Estates Act, 1876.

There were apparently considerable difficulties in arranging for the liquidation of the debts. After negotiations it was agreed that the remaining portions excluded from Messrs. Watson and Company's former putni lease should be demised to these creditors for a

sum of Rs. 30,000. Their Lordships have considered the documents and have no hesitation whatsoever in accepting the view that the true, and, in fact, only meaning of the transaction was that expressed in the Commissioner of Chota Nagpur's letter of the 20th February 1890, in which he sanctioned "the proposal to grant them a putni lease of the 84½ villages excluded from the present putni."

The elements of the transaction being thus settled and the amount of the premium arranged, what remained to be done was to have the actual deed drawn up and executed. This was done. It has been argued before the Board that the putni lease which was sanctioned was to be a lease containing the terms of the ijara lease. The Board cannot assent. These two contracts are essentially different in character, the latter being of a temporary character, containing provisions and reservations suitable to a lease for a short duration. Their Lordships have no hesitation in accepting the judgment of the High Court which is thus expressed on this point:—

"The fact that the Raja had granted a previous putni lease was known to the Commissioner, and was, in fact, referred to in his sanction. It is reasonable to assume that the Commissioner understood its character when he was asked to sanction a similar putni. It would have been inconvenient that the subsequent putni should be on any different terms from the first, because, as pointed out in the course of the correspondence, the proposed new putni was in respect of villages which were scattered about in the area covered by the earlier putni, and the object of the second putni was to round up the Estate. I do not think, therefore, that this ground has been made out."

Apart from the point just dealt with, the putni lease actually granted is now challenged. The grounds of challenge may be compendiously and conveniently stated as follows:—

(i) It is said that the sanction was, upon a sound construction of the letter of 20th February 1890,

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merely a sanction of a proposal to grant a putni. Their Lordships think the objection to be trivial. This proposal had been made, it had been accepted, a contract was accordingly completed on the subject, and it was that contract so completed that was sanctioned.

(ii) It was said that the sanction contained the clause "provided that the amount be paid before the end of March 1890." In the course of carrying out the bargain some delay, not very great, occurred. There was an exchange of views as to the actual wording of the draft putni, but the document was finally settled by both parties, and on the 25th June 1890 Messrs. Watson and Company paid the *salami* of Rs. 30,000 to the official manager of the estate, viz., the Deputy Commissioner. This being done, it does not appear to their Lordships that it would have been open thereafter for a challenge to be made, even by the Deputy Commissioner himself, or for the Commissioner's sanction to have been withdrawn. *A fortiori* there appears no ground for sustaining such a challenge when put forward after a considerable lapse of years on behalf of the successor of the debtor.

(iii) The last objection is of a twofold character. It is urged that the sanction of the Commissioner, being a statutory requisite in virtue of the Chota Nagpur Encumbered Estates Act of 1876, of the rules thereunder, and of the Act of the Governor-General No. V of 1884, such sanction was not given to the final and actual putni lease itself. This depends upon a construction, especially, of Rule 16, which is in the following terms:—

"The powers to lease under section 17 of the Act shall be subject to the following provision:—No lease shall be given for any term exceeding three years without the sanction of the Deputy Commissioner, or exceeding four years without the sanction of the Commissioner."

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Upon this point their Lordships are of opinion that when it is affirmatively established that a transaction itself in all its essential particulars has obtained the sanction of the Commissioner, and when it is requisite that the transaction be carried into effect by the preparation of the appropriate deeds, a challenge merely on the ground that the document ultimately prepared had not been submitted for sanction cannot be sustained. In administrative and departmental action it must necessarily be the case that formal details may have to be entered upon in order to carry into practical effect, and put into legal shape, the arrangement to which sanction was adhibited. The first head of this objection accordingly fails. And it was further urged that in any view the transaction which was sanctioned was a transaction of a grant of a putni lease to Robert Watson and Company, in other words to a firm of individual men and not to Robert Watson and Company, Limited, *i.e.*, a different and incorporated *persona*. This demands careful consideration. There is this to be said for the objection, that the *persona* in the latter case is different from the *persona* in the former, and that a change in the lessee or putnidar ought to be treated as a change in essentials. It may be added that a putni lease of land, an agreement of an important and wide-reaching character might demand separate consideration, and point to a different conclusion when this essential was altered. Questions might arise, and difficulties suggest themselves with regard to a limited company against whom legal remedies at law might not be the same as in the case of individuals, and public and administrative considerations might come into play operative either in the way of restriction or refusal on account of a change in *persona* in the lessee. In the opinion of their Lordships, it is not necessary to pronounce any judgment upon this point

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in the present case. For their Lordships are of opinion that when the negotiators in the course of correspondence mentioned in their letters Robert Watson and Company, they did in fact mean and were perfectly understood to mean Robert Watson and Company, Limited, the fact of the incorporation of the limited concern being well-known; and, indeed, one of the principal documents of the case is the petition dated 14th May 1889, being the petition of Messrs. Robert Watson and Company, Limited, filing the account of the money due to them. It may be true that the limited concern is a different one from the previous and unincorporated firm, but in the language of the judgment of the High Court :—

“The misdescription does not, under the ordinary principle applicable to such matters, affect the validity of the sanction or the lease. Though there was such a misdescription, it is perfectly clear what was intended by the sanction, and that it was intended that the lease should be given and taken by the persons who are properly described as Messrs. Robert Watson & Co., Limited.”

A point was taken to the effect that the putni transaction could not be held to have been ratified, seeing that it had not specifically taken into account the existence of *chorposhi* or maintenance rights, over the property sold. These could in no view have been affected for the simple reason that the interests of third parties properly secured over the properties, were in no respect prejudiced. And as to the further point that in the event of the discontinuance of these rights a certain reversion would follow to the zemindar, their Lordships are of opinion that this reversionary right not being in fact embraced within the grant, no prejudice to any such right has occurred. The point accordingly fails.

Their Lordships are of opinion that the judgments of the Courts below are correct, and they will humbly

advise His Majesty that the appeal be dismissed with costs.

J. V. W.

*Appeal dismissed.*

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Solicitors for the appellants: *Theodore Bell & Co.*

Solicitors for the respondents: *Burton, Yeates & Hart.*

## APPEAL FROM ORIGINAL CIVIL.

*Before Jenkins C.J., and Woodroffe J.*

KEDAR NATH MITRA

v.

DINABANDHU SAHA.\*

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March 25.

*Cheque, payment by—Effect of such payment—Part-payment—Limitation—Limitation Act (IX of 1908), s. 20—Continuous account.*

If a cheque is delivered to a payee by way of payment and is received as such, it operates as a payment subject to a condition subsequent that if upon due presentation the cheque is not paid, the original debt revives.

Where such a cheque is signed by the debtor and paid in part-payment of the principal of a debt, the cheque being subsequently honoured, the proviso to s. 20 of the Limitation Act has been complied with.

*Mackenzie v. Tiruvengadathan* (1) distinguished.

Where the dealings between two parties give rise to a continuous account the whole forms one cause of action.

*Bonsey v. Wordsworth* (2) followed.

APPEAL by Kedar Nath Mitter, the defendant, against the judgment of Chaudhuri J.

Between the 7th January 1903 and the 28th September 1911, the plaintiffs sold and delivered to the defendant certain quantities of timber at certain rates, the aggregate price amounting to Rs. 9,997-7. Against

\*Appeal from Original Civil No. 42 of 1914, in suit No. 1167 of 1912.

(1) (1886) I. L. R. 9 Mad. 271.

(2) (1856) 18 C. B. 325, 334.