

APPELLATE CIVIL.

Before Edgley J.

SUNDARPUR TEA ESTATE

v.

INDIAN TEA LICENSING COMMITTEE.*

1939

April 17, 18, 20.

Tea Control—*Crop basis, Method of calculation of*—“Fixed for any year after investigation”—*Result of investigation, if continues during subsequent years—Hardship allowance, when to be added—Indian Tea Control Act (XXIV of 1933), s. 20(1)—Indian Tea Control Act (VIII of 1938), ss. 7(2), 14(2); Sch.*

The initial crop basis figure to be determined in calculating the crop basis under cl. (1) of the schedule to the Indian Tea Control Act, 1938, will be either the crop basis for 1937-38 or the highest crop basis figure fixed after investigation for any of the years during which the Indian Tea Control Act, 1933, was in force, whichever be higher, plus in either case any hardship allowance which may have been granted to the tea estate for the year to which the higher figure relates.

The words “fixed for any year after investigation” in cl. (1) of the schedule mean not mere acceptance without any detailed examination of the statements furnished by a tea estate in support of an application for an export quota but careful scrutiny by the Committee of the statements so furnished for the purpose of fixing the crop basis, e.g., after calling for additional information under s. 20(1) of Act XXIV of 1933 or after directing an inspection. Whether or not an investigation had been held would be a question of fact to be determined, in the light of the circumstances of each case.

Where the crop basis figure fixed for one year after investigation had been adopted by the Committee as the basis of their calculation for subsequent years, the crop basis of those years would be considered as fixed after investigation.

APPEAL from the order of the Indian Tea Licensing Committee.

This was an appeal under s. 7 (2) of the Indian Tea Control Act, 1938, against the order of the Indian Tea Licensing Committee under which the Committee fixed the crop basis of the appellant tea estate to be 50,236 lbs.

*Appeal from Original Order, No. 17 of 1939, against the order of the Indian Tea Licensing Committee, dated Oct. 14, 1938.

Under the Indian Tea Control Act, 1933, the Indian Tea Licensing Committee, after a local inspection, directed by them, fixed the crop basis of the appellent tea estate for the year 1933-34 at 21,530 lbs. In the year 1934-35, the appellent was granted a special hardship allowance of 9,000 lbs. in addition to the crop basis for that year of 22,930 lbs. In the following two years the crop basis figure remained at 22,930 lbs. and applications for hardship allowances were refused. The crop basis figure for 1937-38 was increased to 26,330 lbs.

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Radhabinode Pal and *Holiram Deka* for the appellent. The Committee have proceeded on a wrong basis. They have based their calculation for the year 1938-39 on the crop basis figure for 1937-38, which was 26,330 lbs. instead of the highest crop basis figure, whether of 1937-38 or of any preceding year, plus any hardship allowance which may have ever been granted; on this calculation the figure should be 26,330 plus 9,000 lbs., total 35,330 lbs. Alternatively the crop basis figure for the year 1938-39 must be equal to the crop basis figure for 1937-38 or of any preceding year including any hardship allowance that may have been granted for that year, whichever is higher; calculated on this basis the figure should be 22,930 plus 9,000, total 31,930 lbs. The crop basis figure for 1933-34 which was fixed after investigation was adopted by the Committee as the basis of calculation for subsequent years, hence the figures for those subsequent years were fixed after investigation.

S. M. Bose, Standing Counsel, *Clough* and *Fanindra Mohon Sanyal* for the respondents. The correct method of calculation is that the crop basis figure for 1938-39 must equal either the crop basis figure for 1937-38 or the highest available crop basis figure for any preceding year, whichever be higher, and to such higher figure should be added the hardship allowance granted for the year to which the higher figure relates. Hardship allowances do not

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form part of the crop basis under the Act of 1933 : Rule 1(2) framed under that Act. Hardship allowance was only granted to enable the tea estate to get a higher export quota. Hardship allowance granted for a year was operative for that year only. Hardship allowance should be added to the highest crop basis figure for any year previous to 1937-38, provided that allowance was allowed in that particular year. The Committee fixed the crop basis after investigation in 1933-34, so the highest crop basis figure fixed after investigation was 21,530 lbs.; the figures for subsequent years were not ascertained after investigation.

Pal, in reply.

Cur. adv. vult.

EDGLEY J. This appeal is directed against the order of the Indian Tea Licensing Committee, dated October 14, 1938, under which the Committee determined the crop basis of the Sundarpur Tea Estate in Assam to be 50,236 lbs.

The appellant maintains that the Indian Tea Licensing Committee have proceeded upon a wrong basis of calculation and that on a proper calculation the crop basis for his garden should have been fixed at 55,836 lbs. at least. The appeal has been preferred to this Court under the provisions of s. 7(2) of the Indian Tea Control Act (VIII of 1938). It is one of the first of its kind, as the former Indian Tea Control Act of 1933, which expired on March 31, 1938, contained no provision whereby an appeal was allowed to this Court.

One of the most important functions of the Indian Tea Licensing Committee under the Act is to determine the crop basis of the tea estates to which the Act relates, as it is with reference to the crop basis that the export quota of a tea estate has to be

calculated. The material section of the Act is s. 14(2), which provides:—

The export quota of a tea estate, that is, the total quantity of tea which may be exported by the owner of the tea estate during the financial year, shall be an amount bearing to the crop basis of the estate as determined by the Committee in accordance with the principles set forth in the schedule the same proportion as the Indian export allotment for the financial year in question bears to the total crop basis of all tea estates in India for that year.

The schedule to which reference is made in s. 14(2) of the Act is in the following terms:—

Crop basis mentioned in s. 14(2) of the Act will include the following:—

(1) The Crop Basis of a tea estate for each financial year shall on and from April 1, 1938, be the crop basis which was ascertained for such tea estate for the financial year 1937-38, or the highest figure, fixed for any year after investigation by the Committee, whichever be higher, in accordance with the rules under the Indian Tea Control Act, 1933, with the addition of allowances for special hardship determined under rules 4 and 5 framed under s. 23 of the Indian Tea Control Act, 1933.

(2) Allowances for Young areas, *i.e.*, tea planted from January 1, 1929, onwards to be added automatically in accordance with scales that may be fixed for different localities in the prescribed manner.

(3) Allowances for low producing areas as may be determined in the prescribed manner.

The rules for the purpose of regulating the manner in which the export quotas of tea estates should be determined and, incidentally, for determining the crop basis of a tea estate under the Act of 1933 are contained in notification No. 106T-(4)/33 (D), dated November 15, 1933. Under rule 1 (2) of these rules, the crop basis of a tea estate is defined as—

The maximum production of a tea estate in any one of the years 1929, 1930, 1931 and 1932 with the addition of an allowance for young clearings on the scale set forth in the first schedule.

The first schedule prescribes certain allowances in pounds per acre for young clearings according to the years in which such clearings had been planted.

On the basis of the abovementioned rules, the crop basis allotments made to the Sundarpur Tea Estate

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	1933-34	... 21,530
	1934-35	... 22,930
	1935-36	... 22,930
	1936-37	... 22,930
	1937-38	... 26,330

It may be noted that the crop basis for 1933-34 was fixed for that year after a local investigation directed by the Indian Tea Licensing Committee. It appears from a letter, dated November 3, 1933, addressed by the Licensing Committee to the Assam Branch of the Indian Tea Association, that the crop basis for the estate had originally been fixed at 8,330 lbs. after making an allowance in favour of the estate for young clearings with an area of ten acres only. The proprietor maintained, however, that thirty acres of young tea had been planted by him in 1928 and fourteen acres had been planted in 1929. He, therefore, claimed that, according to the table contained in the first schedule to the rules published under the notification of November 15, 1933, he was entitled to a crop basis of 21,530 lbs. The Committee then arranged that the Sundarpur Tea Estate should be inspected on their behalf by certain disinterested planters, who, on December 14, 1933, reported in favour of the contention raised by the proprietor of the estate. In other words, they found that thirty acres of young tea had been planted in 1928 and fourteen acres in 1929. Accordingly, on December 21, 1933, the proprietor was informed by the Indian Tea Licensing Committee that his crop basis for the year 1933-34 had been fixed at 21,530 lbs.

The following year, in accordance with the provisions of rules 4 and 5 of the rules under s. 23 of Act XXIV of 1933 and with the sanction of the Governor-General in Council, the proprietor was

granted a special hardship allowance of 9,000 lbs. in addition to his crop basis for that year of 22,930 lbs. In the following two years the crop basis figure remained at 22,930 lbs. and applications by the proprietor for special hardship allowances were refused. As already pointed out, the crop basis figure for 1937-38 was increased to 26,330 lbs., the reason for the increase being that, under the schedule to the rules mentioned above, the estate became entitled in 1937-38 to an additional allowance in respect of seventeen acres of young tea which had been planted in 1934.

The Indian Tea Control Act of 1933 expired on March 31, 1938, and was replaced by a new Act (VIII of 1938) which came into force from April 1, 1938. In order, therefore, to calculate the crop basis for 1938-39, it was necessary for the Indian Tea Licensing Committee to follow the provisions of the new Act and the rules framed thereunder which were published under notification No. 201(3) Tr. (I.E.R.)/38, dated July 16, 1938. It is with reference to this calculation for 1938-39 that the appellant maintains that the Indian Tea Licensing Committee have fallen into error. It is, therefore, necessary to examine the relevant provisions of the present Act in order to ascertain precisely what the Committee are required to do for the purpose of calculating the crop basis for a tea estate after the enactment of the Indian Tea Control Act of 1938.

(1) In view of the provisions of the schedule to Act VIII of 1938, which have already been quoted, it is first necessary to see what was the crop basis which was ascertained for the tea estate for the financial year 1937-38. In the case, with which we are now dealing, it is undisputed that the crop basis for that particular year was 26,330 lbs.

(2) It must then be ascertained whether any higher figure had been fixed for any year after investigation by the Committee. This is necessary, because it is clear, from the provisions of the

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schedule, that the intention of the legislature was that, if the crop basis figure for any of the years during which the old Indian Tea Control Act was in force prior to the financial year 1937-38 exceeded the crop basis figure for the latter year, the tea estate concerned should have the benefit of the higher figure. In this case it so happens that the crop basis figures for all the years before 1937-38 were lower than that for the latter year. It follows, therefore, that in making the calculation for the crop basis for 1938-39, the Indian Tea Licensing Committee were only required to take account of the figure for 1937-38, namely, 26,330 lbs. which is higher than any of the figures for the preceding years.

With reference to this matter some discussion took place during the argument of this appeal as to the precise meaning of the words "fixed for any year "after investigation by the Committee". The learned Standing Counsel contended that, as far as this particular case is concerned, the only year in which it can be said that the crop basis figure was fixed after investigation by the Committee was the financial year of 1933-34, when the crop basis for the Sundarpur Tea Estate was fixed by the Committee as a result of a local investigation the report of which was submitted to them on December 14, 1933. If this contention were correct, the highest crop basis figure fixed after investigation by the Committee would be 21,530 lbs. In my view the interpretation which the learned Standing Counsel seeks to place upon these words is too narrow. The abovementioned figure, namely, 21,530 lbs. was treated by the Indian Tea Licensing Committee as the main basis of their calculations in respect of the crop basis figures for the subsequent years during which the Act of 1933 was in force and, according to my view, the effect of the investigation of 1933 continued during the whole of the period that the Act of 1933 was in operation.

The rules under the Act of 1933 contain no express provision as to the nature of the investigation which

should have been undertaken by the Committee for the purpose of determining the export quota of a garden or for fixing the crop basis. The use of the term "investigation" in connection with the ascertainment of the crop basis of an estate suggests the necessity of careful scrutiny by the Committee of the statements furnished by an estate in support of its application for an export quota. Whether or not an investigation had been held would be a question of fact to be determined as it arose in the light of the circumstances of each case. Mere acceptance, without any detailed examination, of the original statements submitted by an estate in support of its application for a quota under rule 3 of the rules under s. 23 of the Act of 1933 would not ordinarily connote the idea of "investigation". If, however, the accuracy of these statements had been questioned by the Committee and the estate had been required to supply further information under sub-s. (1) of s. 20 of the Act; or if the Committee had directed an inspection of the estate for the purpose of verifying the original statements and, as a result of the further information thus obtained, if the Committee had fixed the crop basis for the estate it might in such cases be reasonably held that the crop basis had been fixed after investigation by the Committee. In the case, with which we are now dealing, the facts certainly show that there had been an investigation in 1933 and as the results of this investigation had been adopted by the Committee as the basis of their calculations for the subsequent years during which the Act of 1933 was in force, it is reasonable to hold the crop basis of the estate for the financial years 1933-34 onwards was fixed after investigation by the Committee. It, therefore, follows that, as the Committee never had occasion to fix a higher crop basis figure for the estate than 26,330 lbs., this is the highest figure available to the appellant as an initial basis for the calculation of the crop basis figure for 1938-39.

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(3) It must then be seen whether the crop basis figure for any of the years previous to 1937-38 had been fixed in accordance with the rules under the Indian Tea Control Act of 1933. This is not a point of importance in connection with the case with which we are now dealing. The correctness of the crop basis figure for 1933-34, namely, 21,530 lbs., is not disputed and it appears that the figures for the three subsequent years, namely, 22,930 lbs. were fixed automatically in accordance with the provisions of the Tea Control Rules under s. 23 of the former Act and the schedule annexed thereto.

(4) It must then be ascertained whether the tea estate is entitled to any addition of an allowance for special hardship determined under rules 4 and 5 framed under s. 23 of the Indian Tea Control Act, 1933. It is with regard to this point that the main dispute between the parties arises in connection with the present appeal.

It is argued by the learned advocate for the appellant that, as a hardship allowance of 9,000 lbs. was made in favour of the Sundarpur Tea Estate for the year 1934-35, this figure should be added to the crop basis figure for that year, *viz.*, 22,930 lbs., which was fixed in accordance with the rules under the Indian Tea Control Act, and that the resultant total, namely, 31,930 lbs. should be treated as the crop basis figure for 1934-35. If this contention were correct the appellant would be entitled to the benefit of a higher figure than 26,330 lbs. upon which the Committee have based their calculations for 1938-39.

It is further contended, on behalf of the appellant, that, as a hardship allowance had once been allowed, the addition of that allowance may be made to any of the crop basis figures calculated for any of the years during which the Act of 1933 was in force and, in this view of the case, it might even be added to the crop basis figure for 1937-38, namely, 26,330 lbs. I am unable to accept these contentions which have been urged on behalf of the appellant.

From what has been stated above it appears that the dispute is with regard to the method which should be followed in calculating the initial crop basis figure for 1938-39, which has to be ascertained according to the principles contained in cl. (1) of the schedule to the new Act.

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The appellant contends that the initial crop basis figure for 1938-39 equals the highest available crop basis figure, whether for 1937-38 or for any preceding year plus any hardship allowance which had ever been granted irrespective of the year in which it may have been granted, *i.e.*, on the facts of the present case his calculation is as follows:—

26,330 highest available figure.
 9,000 hardship allowance for 1934-35.

Total 35,330

Alternatively the appellant maintains that the initial crop basis figure for 1938-39 equals the highest available crop basis figure, whether for 1937-38 or any preceding year, including any hardship allowance that may have been granted for the year to which the highest available figure relates. On this calculation the highest available figure reached by including the hardship allowance would be—

22,930 figure for 1934-35.
 9,000 hardship allowance for 1934-35.

Total 31,930

The contention of the Tea Licensing Committee, on the other hand, is that the initial crop basis figure for 1938-39 must equal—either the crop basis figure for 1937-38 or the highest available crop basis figure for any preceding year, *whichever be higher* and they maintain that *to the figure found to be higher* should be added any hardship allowance granted for the year to which the higher figure relates.

1939 <i>Sundarpur Tea Estate</i> v. <i>Indian Tea Licensing Committee.</i> <hr style="width: 50px; margin-left: 0;"/> <i>Edgley J.</i>	Thus their calculation would be as follows :— Figure for 1937-38 ... 26,330 Highest figure for any preceding year ... 22,930 Higher figure available for the addition of the hardship allow- ance ... 26,330
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but no such allowance was granted in 1937-38, therefore 26,330 must be taken as the initial crop basis figure for 1938-39.

In my view, the last method of calculation is the correct one. In the first place the argument on behalf of the appellant is based on the assumption that a special hardship allowance formed part of the crop basis under the Act of 1933 in respect of the year for which it was granted. I shall presently show that this was not the intention of the legislature. On the other hand, it was clearly intended that these allowances should be excluded from the crop basis under the rules under s. 23 of the Act of 1933 and should only be granted for the purpose of increasing the export quota of a garden provided a separate application for such special treatment was made in respect of each year for which such special treatment was claimed.

The argument further assumes that a hardship allowance once granted would operate under the Act of 1933 to increase the crop basis for a year subsequent to that in which it was granted. This is also fallacious. Under the Act of 1933 the grant of a hardship allowance in no circumstances had any effect on the crop basis which had to be calculated strictly in accordance with the rules of 1933. The effect of the grant of a hardship allowance was merely operative for the year for which it was granted. It did not necessarily follow that, because such an allowance had been granted under rules 4 and 5 for one year, similar allowances would be made for subsequent years. In fact, we find, that in the present case hardship allowances were refused for each year after the financial year of 1934-35. It follows,

therefore, that the concluding words in clause 1 of the schedule to the new Act can only permit hardship allowances to be added to the highest crop basis figure for any year in which such allowances for special hardship have actually been granted.

The argument is also based upon a construction of clause 1 of the schedule which, in my view, is not warranted by the language which has been used by the legislature.

Under the Act of 1933, it is clear that the expression "crop basis of the estate" had a somewhat more restricted meaning than it has under the new Act of 1938. The expression is defined in the rules under the Act of 1933 as meaning "The maximum production of a tea estate in any one of the years '1929, 1930, 1931 and 1932 with addition of an allowance for young clearings on the scale set forth 'in the first schedule". Thus the crop basis of the estate clearly did not include hardship allowances which might be granted with the permission of the Governor-General in Council in accordance with the procedure prescribed in rules 4 and 5. The main object of the application of the rules was to regulate the manner in which the export quotas of tea estates should be determined. Under rule 4, the Committee were empowered in cases of special hardship and with the permission of the Governor-General in Council "to modify the application of the foregoing rules", *i.e.*, rules 1 to 3. In other words, they might, in cases of special hardship, allot to a tea estate an export quota in excess of the proportion prescribed by rule 2. The method which appears to have been normally followed in order to effect this purpose was to allot to the tea estate concerned a hardship allowance of a specified number of pounds over and above the crop basis figure, and then to calculate the export quota figure on the basis of the crop basis figure plus the hardship allowance. Although the Committee were in this way authorised to modify the *application* of rules 1 to 3

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they were not permitted to modify the rules themselves. It follows, therefore, that it would not have been open to them to include hardship allowances in the crop basis of a tea estate and thereby modify the definition of "crop basis of a tea estate" which is contained in rule 1(2). The intention clearly was that these hardship allowances should be entirely distinct from the crop basis and should be allowed in exceptional circumstances for the purpose of enabling a tea estate to obtain an export quota larger than that to which it would be entitled under the ordinary application of the rules.

The position has, however, been modified in this respect under the provisions of the Act of 1938. Under s. 14(2) of the new Act, the crop basis of the estate must be determined by the Committee in accordance with the principles set forth in the schedule. This schedule has already been quoted *in extenso* and it is clear from its terms that provision is now made in certain circumstances for the inclusion in the crop basis of special hardship allowances which had been determined under rules 4 and 5 framed under s. 23 of the Indian Tea Control Act, 1933. In order, therefore, to ascertain the precise extent to which the proprietor of a tea estate is entitled to benefit by the inclusion of these hardship allowances, it is necessary to construe carefully cl. (1) of the schedule with special reference to the meaning of the concluding words, *viz.*, "with the addition of "allowances for special hardship determined under "rules 4 and 5 framed under s. 23 of the Indian Tea "Control Act, 1933".

It is clear that the initial figure to be determined in calculating the crop basis under the new Act must be: (1) the crop basis ascertained for 1937-38, or (2) the highest figure (*i.e.*, the highest crop basis figure) fixed for any year after investigation by the Committee—whichever be higher.

The latter part of the clause, however, contemplates the addition of hardship allowances. The

question therefore naturally arises as to whether these allowances may be added only to the second alternative figure mentioned above or to either of these figures.

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I have already discussed the nature of these hardship allowances with reference to the provisions of the rules under s. 23 of the Act of 1933 and it seems to me anomalous to suppose that the legislature could have intended to give the proprietor of a tea estate the benefit of any hardship allowance which he may have been granted for a year previous to 1937-38, and to deprive him of this benefit if it so happened that he had been granted such an allowance for 1937-38. I think, therefore, that the intention was to provide that, in calculating the crop basis under the new Act, any hardship allowance, which might have been granted either in 1937-38 or in the year for which the alternative highest figure had been fixed, should be added to the crop basis figure for 1937-38 or alternatively to the highest figure fixed for any previous year provided, of course, that a hardship allowance had actually been allotted to the estate in that particular year. In other words, in my opinion, the concluding words of cl. (1) must be taken to govern the whole of the clause and not merely the second alternative mentioned in the clause.

If follows, therefore, that the initial crop basis figure to be determined under cl. (1) will be either the crop basis for 1937-38 or the highest crop basis figure fixed for any preceding year, whichever be higher, plus, in either case, any hardship allowance which may have been allotted to the tea estate in the year in question. It is, however, material to observe that the words "whichever be higher" only govern that portion of the clause whereby it is to be determined whether or not the crop basis for 1937-38 is higher than the corresponding figure for any preceding year or *vice versa*.

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The intention is I think that the addition of the hardship allowance should be made to the figure which is found to be higher and *after* this figure has been ascertained.

In the case with which we are dealing the highest crop basis figure during the whole of the period that the Act of 1933 was in operation was 26,330 lbs., *viz.*, the figure for 1937-38. That must therefore be taken to be the figure to which it would have been permissible to add a hardship allowance if such allowance had been allotted in that year. No such allowance was, however, made in 1937-38 and it therefore follows that the appellant is not entitled to any relief. In my opinion, he would only have been entitled to succeed if he had been able to show that the crop basis figure for his estate for any year before 1937-38 exceeded 26,330 lbs. He would then have been entitled to add to the maximum crop basis figure any special hardship allowance which might have been made to him for the year to which the maximum figure related. As it is, the highest crop basis figure for any year prior to 1937-38 was only 22,930 lbs. The initial figure to be included in the crop basis under cl. (1) of the schedule must, therefore, be taken to be 26,330 lbs. This has been done. The appellant is not entitled to the addition of any hardship allowance for 1937-38 and, in my opinion, the crop basis for the Sundarpur Tea Estate has been correctly calculated by the Indian Tea Licensing Committee.

No question arises with regard to the allowances which may be made under cls. (2) and (3) of the schedule. Such allowances as are admissible appear to have been correctly made and, in my view, the figure of 50,236 lbs. has been rightly calculated as the crop basis for 1938-39 for the Sundarpur Tea Estate.

The appeal must, therefore, be dismissed with costs. Had it not been for the fact that both parties agreed to treat the documents printed in the paper

book as evidence, it would have been necessary to examine witnesses and to hear this case to all intents and purposes as an original suit. In that event, I would probably have directed that the costs should be taxed according to the scale for suits on the Original Side of this Court. As it is, there have been two hearings for this matter excluding the day fixed for delivering judgment. In view of the circumstances of the case, I direct that the appellant do pay the respondents, *i.e.*, the Indian Tea Licensing Committee, a lump sum of Rs. 650 as costs plus an additional sum of Rs. 34-8. The latter sum represents the costs incurred by the respondents in connection with the preparation of the paper book. A decree based upon this judgment should now be drawn up and such decree will be executed as a decree made on the Original Side of this Court.

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Appeal dismissed.

A. C. S.