

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Ruttonji Edulji Shet v. The Collector of Tanna and the Conservator of Forests, from the High Court of Judicature at Bombay; delivered on the 10th July, 1867.

Present:

LORD CAIRNS.

SIR JAMES WILLIAM COLVILLE.

SIR EDWARD VAUGHAN WILLIAMS.

SIR RICHARD TORIN KINDERSLEY.

SIR LAWRENCE PEEL.

IN this case a plaint was filed in the Konkum District Court by the Appellant, and the complaint which he made was founded on a lease which was granted to him by the Acting Collector of the district of Tanna, on the 31st of December, 1845, of the village of Mouze Ghautkopur. The complaint was that contrary to the terms of that lease the Defendant did not allow the Appellant to fell un-assessed trees in the village, or to apply them to his own use; that is, to carry off the trees from the ground on which they grow, and to dispose of them to the use of the Appellant; that claim being on the face of it founded upon the lease which had been granted to the Appellant.

The evidence with regard to this timber is to be found in the testimony of Ruhimoo Kasum at page 17 of the record. That witness thus describes the timber:—"I know Ruttonjee Eduljee, the Plaintiff
" in this case. Three or four years ago I entered
" into a contract with him to cut all the teak, black-
" wood, and kheir trees, small and great, in the fo-
" rests of Ghatkopur for Rs. 4900. It was agreed
" that I should cut the trees at my own costs. I
" accordingly cut a portion of the trees, but was
" prevented from doing so by the Government autho-
" rities, and the trees cut down were attached, and
" therefore I could not remove the trees. I paid
" Ruttonjee Eduljee Rs. 1225 on account of the con-

“tract, but as the wood was not made over to me
 “Ruttunjee Sett paid me Rs. 1950, including ex-
 “penses, etc.” In answer to the Defendant’s ques-
 “tions he says, “Some of the trees for which I had
 “made a contract were timber trees, and some were
 “fit for firewood, and had I carried out the contract
 “I should have cut down all the teak, blackwood,
 “and kheir trees, great and small. Some of the
 “trees would only have been fit for firewood, other
 “jungle trees fit for firewood would have remained
 “in the forests of Ghatkopur. I took the said con-
 “tract at a public sale, and there was a written
 “agreement for the same. I have not brought it
 “with me. The auction was held in the village of
 “Ghatkopur.”

Lower down, in answer to the Court’s questions,
 he says, “If I had cut the trees according to the
 “contract, wood to the value of Rs. 1000 or Rs. 2000
 “would have been left in the jungle. Before I was
 “prevented by the authorities from removing the
 “wood, I sold about Rs. 300 worth of wood to the
 “neighbouring villagers, and the said sum was ac-
 “counted for.”

Another witness of the Appellant, Manockjee
 Rustomjee, at page 11, adds this, “There are jungle
 “Gharaks at Ghatkopur, which are on the tops of
 “the hills, and on the banks of ravines. If the
 “jungle were not cleared, rice would not grow, but
 “other grains might grow there ; but it is not the
 “custom here to raise other grains ; but grass would
 “grow on the said land. When the Plaintiff got
 “the village, in A.D. 1845, Government had no right
 “to the jungles in the Talooka Salsette, nor did
 “Government interfere. I have no knowledge
 “whatever regarding the other villages of Govern-
 “ment. The Plaintiff did not fell the trees on the
 “jungle Gharak with the intention of bringing the
 “land into cultivation.”

The claim, therefore, is not to cut certain trees for
 the purpose of clearance or cultivation ; not to cut
 certain trees for the purpose of repairs or con-
 sumption on the ground of which the Appellant is
 lessee, but to sell to a timber merchant the whole
 of the trees, large and small, upon the land, to
 be cut and carried away by him for his own pur-
 poses.

It will be convenient now to observe the position

of the Appellant under the lease upon which he grounds his claim.

The petition for that lease is printed at page 14 of the Record, and is in these terms:— “ That your
 “ petitioner is desirous of farming the village of
 “ Ghatkopur, on the island of Salsette, and prays
 “ that your Honourable Board will be pleased to
 “ lease it to him on the same terms as villages have
 “ been granted to different individuals in Salsette.
 “ In submitting this application to your Honourable
 “ Board’s favourable consideration, your petitioner
 “ begs to state that he is aware there is in the vil-
 “ lage in question little or no waste land, whereby
 “ he could at present much benefit himself, but he
 “ is desirous of obtaining it to give effect to a spe-
 “ culation which he has had for a long time under
 “ consideration, viz. the recovering a large tract of
 “ swamp land, for the purpose of converting it into
 “ salt batty fields and salt pans. Your petitioner
 “ wishes to lay out capital on the work contem-
 “ plated, which, when finished, he feels assured,
 “ while it will benefit himself, will much improve
 “ the village, benefit the Ryotts, and increase the
 “ revenue which Government derives from it.”

Founded on that application, the lease was made on the 31st of December, 1845, and is printed at page 2 of the Record. It begins by stating that the lessee had “ petitioned Government on the
 “ 23rd May, 1843, that if the village of Ghautkopur
 “ Turf Trombay, Talooka Salsette, be allowed to
 “ you in farm in the same manner as villages have
 “ been granted to other farmers in Salsette, that
 “ you would reclaim certain swampy land, and that
 “ you would form salt pans and salt batty fields,
 “ whereby the inhabitants on the one hand, and
 “ the Government on the other, will be much
 “ benefited; your application having been duly
 “ reported upon by the Acting Collector, under
 “ date the 10th August, 1843, Government, in its
 “ Secretary’s letter, dated 4th September following,
 “ No. 2903, intimated its sanction to the aforesaid
 “ village being granted to you in farm; accordingly
 “ it is hereby leased to you from the year 1844–45,
 “ for a period of 99 years, on the revenues of the
 “ year 1842–43 (exclusive of the Abkaree), on the
 “ following conditions.” The objects, therefore, for which the lease was solicited, and the objects

for which the lease was granted, were the reclaiming certain swampy land, and farming salt pans and salt batty fields, together with such incidental advantages as might be obtained from the use of the waste land as it then stood in the village.

It may be convenient to advert here to an argument which was much pressed upon their Lordships, viz. that inasmuch as the application had been for a lease to be made in the same manner as villages had been granted to different individuals in Salsette, therefore, as it was contended, this lease was upon whatever terms it might be found that leases had been made to other farmers in that district.

Their Lordships are of opinion that although the application was general, the response was specific and clear. The answer to the application was that a lease would be granted, but granted on "the following conditions," which are described in the lease itself, and which therefore determine the contract, and the only contract between the parties.

Proceeding with the lease, the first clause describes, as it states, the details of the boundaries, houses, inhabitants, lands, and the Jumabundy of the said village.

It is important to observe that among the details of lands under this head, it is admitted there are no lands upon which the trees in question are growing. The lands described under the first head are the arable or cultivated lands of the village, and certain limited waste land described by admeasurement. It is admitted that they had not growing upon them any of the trees which are now in question. The second section of the lease provides that, "the waste land in the village, including Jugli-gurk, Nala-gurk, and Nowsad, etc., is hereby granted "to you in Mafee" (that is to say, rent free) "for "4 years from 1844-45." It then provides that this waste land was to be brought under tillage, "out of the sweet waste land, one-fourth within "the term of ten years from the date hereof; and "you should in the same manner continue to do so "every ten years from the date hereof; and you "should in the same manner continue to do so "every ten years, so as to bring the whole of it "under tillage within that period," that is, so that

at the expiration of forty years the whole might be under tillage and bring revenue to the Government accordingly.

It is to be observed here again, that it is admitted that the land upon which the timber now in question grows was not included under the second head. The contest, indeed, of the Appellant is that for the land upon which that timber is growing, he is, under no circumstances, to be called upon to pay rent.

The 32nd clause of the lease states, "There are in the aforesaid village about 150 Beegas of swampy land, which might be made available for salt pans; you are therefore, as proposed by you in your petition, to expend whatever sum of money may be considered necessary, and convert the said land into salt pans, within five years from 1844-45," under a certain penalty in the event of failure so to do.

It is admitted again that, with regard to the lands specified under the 32nd head, none of the timber is growing upon that land. We have then, under the 2nd and the 32nd heads of the lease, an enumeration of the whole of the land upon which any operation of farming or reclaiming was to be performed by the lessee. It is for the land specified under those heads, and for that land alone, that any rent or any assessment is to be paid by the lessee; and for the land upon which the timber in question is now growing, no rent has already been paid, or is in any event to be paid.

Then there are a series of provisions especially contained in paragraphs 6, 7, 9, 10, 11, 12, 25, 26, 27, 28, and 29, which provide for the preservation and protection of the possessory and other rights of the Ryots and other persons having pre-existing claims upon land in the village. Among them is an important section, referred to in the argument, the 6th, that provides, "It is clearly to be understood that this lease confers no right which Government does not now possess, and only such portion of the rights of Government as may be herein specifically granted is hereby granted to you."

We are in a position, from this statement of the paragraphs of the lease, to understand distinctly the objects for which the lease was granted. The first object was to enable the lessee to culti-

vate the arable land. The second object was to enable him, and to oblige him, to reclaim and bring under tillage certain specified waste lands,—land other than that upon which this timber is growing. The third object was to convert into salt pans 150 beegas of land,—being, again, land other than that upon which the timber in question is growing.

Over and above these three objects, he was to be styled the “farmer” of the village; not that he was to have possession of other parts of the village, or to dispossess those already in occupation,—not that he was to be the cultivator or farmer of other parts in the English sense of the term ‘farmer,’—but, as the 12th section expressly provides, “In respect to the above-named village, you are considered farmer thereof; you are therefore to exercise the authority vested in farmers by Chapter 6 of Regulation XVII. of 1827, or such as may be hereafter vested in them by any new enactment.”

Upon turning to the regulation here referred to, it is apparent that the term ‘farmer’ is used, not as a cultivator of the ground, but as a farmer of the public revenue,—a person, namely, who would stand between the Government and the Ryots as possessors of the ground in the village; he being, as it were, the custodian or ranger, taking charge that the revenue of the Government was collected, and the rights of the Government as against the possessors in the village maintained.

At the time, then, that this lease was made, the whole of the land, and all the rights connected with the land, subject to such claims as third parties might have upon it, belonged to the Government. The trees upon the land were part of the land, and the right to cut down and sell those trees was incident to the proprietorship of the land.

The Appellant, therefore, who complains of an interruption such as is described in his plaint, must ground his title to these trees, and the right to cut them down, either upon this, that it is a necessary incident of the lease by reason of the objects of the lease; or, secondly, under some positive law; or, thirdly, under some custom to be incorporated in the lease; or, fourthly, under the express terms of the lease.

Now, as regards the right to cut timber being necessarily incident to the lease, it plainly is not so. There was no work to be done, and apparently no right to execute any work, upon the land on which this timber grows. Clearance or cultivation of the other land might require the cutting of timber on that other land, but that right does not come into question in the present suit.

As to positive law, none has been cited to justify what has been done by the present Appellant. We were referred to the Regulation of 1808 with regard to the island of Salsette; but, so far as that Regulation is concerned, the whole drift and tenor of it, when it deals with timber at all, is in favour of the preservation of the right, and not of the surrender of the right, in the Government to the timber.

The Appellant, however, relies upon a custom which he says justified the cutting of timber; and evidence of that custom has been adduced.

Their Lordships would entertain very considerable doubt whether any evidence of custom could be allowed to control the express stipulations which they find in the lease of this village; but, turning to the evidence which has been given in support of the alleged custom, their Lordships find that several of the witnesses speaking to that custom admit that the villages upon which they say timber has been cut down by the lessees, were villages leased under written contracts,—contracts which dealt, in some way or other, with the subject of the timber; contracts, therefore, which prevented any general custom flowing out of the rights exercised by those tenants. Their Lordships find that other of the witnesses, when speaking of the timber cut on other villages, expressly state that that timber has been cut, not as of right, but by permission of the Government. And their Lordships find generally, with respect to all the witnesses, or all but one, that they are silent as to any information leading them to judge whether the timber which they say was cut, was cut for the purpose of repairs or other consumption in the villages, or was cut for the purpose of clearance or cultivation, or cut (as the right to cut is here alleged to be) for the purpose of sale or other disposition as property of the tenant.

Their Lordships, therefore, are of opinion that the allegation of custom entirely fails to be supported by evidence.

With regard, lastly, to any express right given by the lease itself, their Lordships can find none; on the contrary, the 6th clause, which has been already referred to, expressly declares that only such portion of the rights of the Government as may be therein specifically granted is thereby granted to the lessee.

The 4th clause, however, was said by implication to confer the right to cut that timber. The words of that clause are these:—"You are prohibited from cutting down or destroying any brab, date, or other trees liable to taxation, without the permission of the Collector."

Their Lordships, however, do not consider that this clause is susceptible of the implication which is derived from it by the Appellant.

In the course of clearing and cultivating the waste land which the Appellant was obliged to clear and to cultivate, it naturally would be requisite to cut down and remove the timber growing upon that waste land, and their Lordships read that permission as simply declaring that if, with reference to that timber which it would thus be necessary to cut down and remove, any of it was "brab, date, or other trees liable to taxation,"—even as to such timber, none should be removed without the express permission of the Collector.

Their Lordships, therefore, are of opinion that the case of the Appellant entirely fails; they concur with the judgments pronounced by the Judge of the District Court, and by the Appellate Court at Bombay; and they will humbly advise Her Majesty that the Appeal should be dismissed with costs.