Privy Council Appeal No. 132 *of* 1917.

Bengal Appeal No. 51 *of* 1916.

Raja Durga Prashad Singh, since deceased (now represented by Siva Prashad Singh) - *Appellant.*

v.

The Tata Iron and Steel Company (Limited) - *Respondents.*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM, IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 26TH JULY, 1918.

Present at the Hearing:

LORD BUCKMASTER.
LORD DUNEDIN.
LORD WRENBURY.

[*Delivered by* LORD BUCKMASTER.]

The appellant is the heir and legal representative of Raja Sri Sri Durga Prashad Singh, the plaintiff in the suit out of which this appeal has arisen. The proceedings were instituted to recover from the respondents the sum of rupees 26,237 : 12 : 0, being the alleged arrears of royalties due under two mining leases granted by the Raja to the respondents, and dated respectively the 4th March, 1908, and the 29th September, 1908. The defence to the claim was that the leases had been duly determined by notice, and it is this question and this alone which arises for consideration upon the present appeal, the High Court of Judicature in Bengal having, in reversal of the judgment of the Subordinate Judge, dismissed the action.

So far as the points to be determined are concerned, the leases may be regarded as identical, the variation in date, in the royalties payable and the period allowed before payment begins being the only differences between the two; as will appear in the course of this judgment, these differences are immaterial to the present dispute. Both leases appear to have been in the vernacular, and the obscurity of their terms is faithfully reflected in the translation.

The lease of the 4th March, 1908, is the one accepted by their Lordships for the purpose of examining the clauses that bear upon the dispute. By it a grant was made by the Raja to the respondent company of coal, land, and mining rights in certain mouzahs belonging to the ancestral zamindari of the Raja of Gurgunnah Jheria for a term of 999 years. By clause 1 certain royalties were fixed for each ton of coal, and by clause 2 it was provided that the royalties mentioned should be payable quarterly, "*i.e.*, in four kists of Baisakh, Sraban, Kartick, and Magh."

By clause 3 a certain minimum royalty was provided, which after the second year obliged the lessee to pay "an annual minimum royalty" of 13,904 rupees per annum until the expiration of the term, with a provision that if the royalties paid under the earlier clause were found on taking the accounts at the end of each year to be less than the minimum royalty, the lessee should be bound to make up the loss, and pay the sum of 13,904 rupees in full within the two months of the following year. The words in which this provision is couched are important, and they are as follows :—

"If on taking accounts at the end of each year it be found that the royalty paid by you for the said lands for that particular year is less than the said minimum royalty, then you shall be bound to make up the said loss and pay the said sum of 13,904 rupees 0 annas 0 gundahs in full within the two months of the following year."

By clause 6 power was given to the lessees to take the necessary surface land for the purpose of carrying on the colliery business at certain fixed rents per bigha, and this rent was to become due at the end of each Bengali year. There were consequently three distinct payments to be made :—

1. The royalties payable per ton of coal to be paid quarterly.
2. The annual minimum royalty to be paid within two months after the expiration of the year satisfied *pro tanto* by the royalties payable under 1, the accounts being taken at the end of the year and payment made within two months of the following year.
3. The surface rent due at the end of each Bengali year.

By clause 9 a right was given to the lessee to surrender the term, and it is in the alleged exercise of the rights so conferred that the respondent contends that the leases have been determined. The words of the clause are, therefore, important, and they are as follows :—

"That, if you so wish, you shall be entitled to surrender all or any of the mouzahs hereby leased out to you by giving me six months' written notice, which you shall be competent to give me by a registered letter and paying the minimum royalty for the said six months, *i.e.*, a half of the annual minimum royalty. But I shall not accept any surrender for a portion of any of the mouzahs, neither shall you be entitled to surrender so long as any rent or royalty remains unpaid.

Instead of relinquishing all the mouzahs settled, you will be able to relinquish any one or more of those mouzahs by giving six months' notice in writing in the above manner. If you surrender any one or more mouzahs in this way, you shall be bound to pay the whole of the minimum royalty for all the mouzahs leased out as fixed in paragraph 3 of the Deed for the remaining mouzahs, *i.e.*, you shall not be entitled to get a proportionate reduction in the minimum royalty of 13,904 rupees fixed as above for surrendering one or more than one mouzah in the above way."

The company duly entered into possession of the mining property under the said lease, carried on mining operations, and from time to time paid the royalties and rents as agreed. But the undertaking does not appear to have prospered, and the respondents attempted to obtain a reduction of the minimum royalty payable under the lease. In this they failed, and on the 11th May, 1912, they sent to the Raja personally a registered letter of which the relevant parts are as follows :—

"By the terms of the respective leases it is open to us to relinquish the properties by giving you six months' previous notice in writing. Please take note therefore that we hereby wish to relinquish the undermentioned areas held under the leases, and that after the expiry of six months from this date, upon the payment of all royalties due to you, we shall not be responsible for any further minimum royalty rent, &c., and that all our obligations under the two leases would cease and terminate after the expiry of six months from this date."

at the same time according to the evidence of the respondents' manager they went out of possession of the property and informed the Raja of the fact.

The Raja handed the notice to Mr. Smith, who was his general manager, and he in accordance with what he regarded as the usual practice of the estate, requested the respondents to execute a formal deed of surrender. The lessees placed the matter in the hands of Messrs. Morgan and Co., their solicitors, and they, on the 16th September, wrote to Mr. Smith, stating that they held the leases, and asking if he wished them to prepare a deed of relinquishment, or whether he would send the form of document he required. No immediate answer was given to this letter, and on the 30th October, 1912, they wrote again, and to these letters on the 13th November Mr. Smith sent an answer in the following terms :—

"Dear Sirs,

"I must apologise for not having replied to yours of the 3rd September [an obvious mistake for 16th September] and the 30th October earlier.

"I am enclosing the copy of a Relinquishment Deed given us by another tenant. A deed of this sort will, I understand, be quite sufficient for our purpose.

"All dues on the holdings must be tendered along with the instrument for acceptance.

"Yours faithfully,

"A. J. SMITH, *Manager*."

To this Messrs. Morgan replied on the 30th November, 1912, asking for a statement of what Mr. Smith said was due for the royalties. There was certainly no obligation cast on Mr. Smith to comply with this request, but it was an obvious and sensible business proposal, and indeed it seems so to have been regarded by Mr. Smith, who answered on the 1st December saying the matter was receiving attention, and that he would write at an early date. This promise seems to have been overlooked, for nothing transpired between the parties till the 28th April, when Mr. Smith wrote to the respondents saying that the minimum royalty was much in arrear, and asking that it might be liquidated at an early date. On the 3rd May, 1913, Messrs. Morgan and Co. wrote again to Mr. Smith, recalling his promise, and asking him to proceed with the matter. Mr. Smith then wrote on the 5th May, and explained what had happened in the following terms:—

"From the Manager, Jheria Raj Estate, to Messrs. Morgan & Co., Calcutta.

"Dear Sirs, "*May* 5, 1913.

"I am in receipt of yours of the 3rd.

"We addressed a note to Messrs. Tata and Sons on the 28th April asking them to pay the minimum royalty due.

"I put the matter of the account before our legal adviser, and he refused to give any opinion or make up a statement of your dues, as he said you were in as good a position to do so as he was, and he failed to see why he should take the responsibility. Your obvious course was to abide by the terms of the document when relinquishing the properties, and tender the money with the relinquishment deed.

"Yours faithfully,

"A. J. SMITH."

Upon receipt of this Messrs. Morgan immediately made out what they regarded as the account, and sent the statement on the 16th May, with an offer to send a cheque if the account were accepted, and to this Mr. Smith replied, on the 22nd May, stating for the first time that the Raja did not recognise the relinquishment as legal or in accordance with the agreement between the parties. First, because it did not expire with the end of the year, and, secondly, because it was not served after full payment of all dues, and he accordingly claimed the total amount of the royalties due to date.

An attempt was made to settle the dispute that had thus arisen by reference to arbitration, and this having failed, proceedings were instituted by the Raja to recover the rents on the ground that the leases were still on foot.

The argument put forward in Mr. Smith's letter is the main contention advanced by the appellants both before their Lordships and in the Court below.

In order to test the value of these contentions it is necessary to examine closely the terms of the clause under which the notices were given. Dealing first with the question as to whether the notice could be given at all so as to expire

at the expiration of any six months, it is important to observe that, however the clause is construed, the actual provisions of the lease cannot without some modification be made to fit into the circumstances. The clause is open to three constructions. Either the notice must be one terminating with the end of the year; or it may be given at the expiration of a year of the term, so as to terminate half way through another year; or it may be given at any time. Whichever view is adopted the provisions as to calculation and payment of the royalties cannot be made to fit the circumstances arising with the giving of the notice. It could not have been the intention of the parties that the payment of one-half of the minimum rent should be made when the notice was given, as the amount cannot be calculated till a later date, since its payment may be satisfied by current royalties.

If, therefore, the first hypothesis is adopted and the notice is given in the middle of a current year, the half cannot be ascertained until the year of the lease has expired, and it is plain that then this cannot be the only payment made. In such an event the whole annual minimum royalty would be payable and not one-half, and either two calculations must be made—the one for the half-year up to the date of the giving of the notice, and the other at its expiration—or the provision as to payment of the half is inappropriate and unnecessary. If, on the other hand, the notice is given at the beginning of the year, the royalties have to be calculated and the minimum rent fixed at a period half-way through the year, and for this, again, the lease makes no provision. There is therefore nothing in the terms of the lease itself to fix the notice as one that must be given at any definite period, and there is consequently no reason why words should be introduced into clause 9 to limit the general application of the important right to surrender which is there conferred. The notices therefore were, in their Lordships' opinion, rightly given.

There remains the consideration as to whether the conditions prescribed as those that must be observed after the notice has been served have been faithfully obeyed. On behalf of the appellant it is contended that they were not, because of the provisions in clause 9 as to payment. These occur in two passages in the clause. The first which provides that it shall be competent to give notice "by a registered letter and paying the minimum royalty for the said six months, *i.e.*, half of the annual minimum royalty"; and the other which stipulates that the lessees shall "not be entitled to surrender so long as any rent or royalty remains unpaid."

The first provision does not give rise to much difficulty, for, as has already been pointed out, at the time when the notice is served, it is impossible to know what the annual minimum royalty may be, and in this part of the clause there is nothing to fix a time within which that payment is to be made. The

words do nothing except create an obligation to pay, and it is the latter part of the clause which provides the date of payment.

The latter provision is more precise. After the notice is given, unless all the prescribed conditions are satisfied at the date when the notice expires, the lease will not be terminated, and the notice will become ineffectual. It is probable that the expression contemplated an actual surrender by handing back the leases with an endorsement, and had they been so surrendered there would, in their Lordships' opinion, have been thrown upon the lessee the difficult duty of calculating the exact amount of all the royalties that would then be due, bringing into account the royalty actually payable per ton of coal and apportioning the amount of the dead rent. But this course was not adopted. The Raja's agent, in pursuit of what he regarded as the practice of the estate and acting well within the general authority that he possessed, requested that the surrender should take place by execution of a deed. When once this course was adopted the payment of the amount was, in their Lordships' opinion transferred to the date when the surrender was executed and delivered. It would make no difference that this date was subsequent to the date for the expiration of the notice, for its operation would take effect from the date when the notice expired whenever it was executed. Payment therefore upon this date was all that was required by the terms of the lease itself. But, apart from this, it was expressly directed by the letter of Mr. Smith of the 13th November. It is said that in all these acts Mr. Smith was acting in excess of his authority, but their Lordships are unable to agree with this contention.

Mr. Smith was the plaintiff's manager, and as his manager he stated in his evidence that all questions in connection with the estate came before him. In his own words he said :—

"I dealt with them, but not finally. The final decision rests with the Raja. After receiving the Raja's decisions I see them through. The Raja does not know much English. Questions of land settlement of coal property come to me for report. The terms of such property are finally settled by the Raja, I carrying out his orders."

Their Lordships think it is plain from these statements that while Mr. Smith had no power finally to fix or to vary the terms upon which the Raja's land is dealt with, yet he had full authority to carry out directions when once the general question had been determined, and when the notice was handed over to him by the Raja as manager this clothed him with full authority to make such arrangements as he thought fit, in the interest of the estate for carrying the notice into effect.

Their Lordships are in agreement with the learned Subordinate Judge that the principle of estoppel does not apply to this case at all, and they think the statement of the High Court that the plaintiff was estopped by conduct is not an appropriate explanation of the true position. The word "estoppel" is not

infrequently used to cover transactions to which it has no proper application. In its essence it means that the party estopped has by conduct or language prevented himself from asserting the true facts on which he would otherwise have been entitled to rely. This is not what has happened in the present dispute. There was nothing to prevent the Raja from asserting the true character of the transaction, but this, for the reason already pointed out, does not entitle him to succeed in his claim.

For these reasons their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.

In the Privy Council.

RAJA DURGA PRASHAD SINGH, SINCE DECEASED (NOW REPRESENTED BY SIVA PRASHAD SINGH)

v.

THE TATA IRON AND STEEL COMPANY (LIMITED).

DELIVERED BY

LORD BUCKMASTER.

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1918.