

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of The  
Port Canning Land Investment Reclamation  
and Dock Company Limited v. Smith from  
the High Court of Judicature at Fort  
William in Bengal ; delivered 6th February  
1874.*

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Present :

SIR JAMES W. COLVILLE.  
SIR MONTAGUE E. SMITH.  
SIR ROBERT P. COLLIER.  
SIR LAWRENCE PEEL.

THIS is an Appeal from a Judgment of the High Court of Judicature at Fort William in Bengal. It arises in an action brought by a Land Company, called the Port Canning Land Investment Reclamation and Dock Company, against the Defendant, the chairman and representative of the Municipal Commissioners of the town of Canning. The action is brought upon some debentures of the Municipality which were given to the Land Company, and the claim in the action is for two years interest, the interest being payable by half-yearly payments, from the 1st of January 1867 to the end of December 1868. The Plaintiffs have undoubtedly a perfect *prima facie* case upon the debentures for that interest. The defence set up on the part of the Municipality is, that there was an agreement come to between the Land Company and the Municipality by which it was agreed that the debentures should be exchanged for land at the time when the debentures matured, which was

a period of five years after their date, and that meanwhile, the exchange being alleged on the part of the Municipality to have been completely contracted for, a quit-rent should be paid for the land equivalent to the interest which was accruing upon the debentures — the intention of the parties being, that the interest should be extinguished by that agreement to pay the quit-rent.

The question in the Appeal is, whether a complete and perfect agreement was come to between the parties to that effect. The case has been ably argued on both sides, with the result, which very often follows in a case properly argued, of reducing the point to be decided to a very narrow issue. The whole depends upon the correspondence; and the question is, whether the agreement relied on by the Defendants is established by some of the letters of that correspondence.

The Company was formed, as appears by their prospectus, which has been referred to, for the purpose of obtaining land in Port Canning. The Municipality appear to have considerable land in that town, and were desirous of making it a place of trade. They raised money by issuing debentures, but they gave the holders of those debentures the election to exchange them for land. That right of election is found in a notice which was issued by the Municipal Commissioners when they invited tenders for the loans upon these debentures. The 5th article of that notification is this:—“Deben-  
 “ture holders are to be entitled to convert  
 “their debentures, to the extent of one half of  
 “the entire loan raised into leasehold titles to  
 “lands in the town, within a period of two years  
 “from the issues of the debentures, at the rate of  
 “Rs. 600 of loan for one beegah of ground. Such  
 “privilege of conversion to be given to debenture

“ holders in order of the dates on which applica-  
“ tions for such conversion are received by the  
“ Commissioners. The leasehold title so conferred  
“ to be for sixty years on a rental of Rs. 30 per  
“ beegah per annum.” Then a further option  
is given: “ Such leaseholders to be further  
“ allowed to convert their leasehold into free-  
“ hold tenures by a cash payment at the rate  
“ of Rs. 600 per beegah, provided such privilege  
“ be claimed within four years from 1st January  
“ next.”

The Plaintiffs, the Land Company, agreed to subscribe  $2\frac{1}{2}$  lacs of rupees and 200 rupees. That subscription was evidently made by them with the intention of exchanging the debentures they would obtain for land; for by a letter of the 13th March 1865, written before the debentures were issued, the Company declared their desire to take land in lieu of them to the full amount of the loan.

Very soon after the debentures were issued, a correspondence commenced between the Company and the Municipal Commissioners, with the object of effecting the conversion. The letters on both sides are unbusinesslike. Letters are written and left without an answer, and then a fresh departure is made without reference to preceding letters. That correspondence, in the way in which it has taken place, no doubt imposes some difficulty upon those who have to construe it; but, as I have already said, after the matter has been threshed out it really appears that the point is a very simple one. The first letter relating to the conversion, after the issue of the debentures, is on the 5th January 1866. It is a communication from the Commissioners to the Company, and is a spur to the Company to exercise their option, if they mean to do it, of taking land. It is this: “Dear Sirs, Mr.

“ Kilburn having applied to have certain lots  
 “ out of the following numbers assigned to him  
 “ on freehold title in exchange for debentures,  
 “ viz., Nos.” — naming several numbers,—  
 “ I shall feel obliged by your intimating what  
 “ lots amongst these numbers your directors  
 “ desire to select and retain for the Company, so  
 “ as to enable me to inform Mr. Kilburn what  
 “ lots will be available to him for redemp-  
 “ tion.” It seems no answer was given, but  
 there was some intermediate correspondence  
 respecting an alteration in the debentures,  
 which it is immaterial to consider. The next  
 letter is again from the Commissioners to the  
 Company, of the date of the 18th September  
 1866. “ Gentlemen, I am directed by the chair-  
 “ man to request that you will give your im-  
 “ mediate attention to the following:—On the  
 “ 13th March 1865 the Port Canning Company  
 “ through you applied distinctly to have lots  
 “ assigned to them in lieu of the debentures  
 “ which are to be given for the amount sub-  
 “ scribed by them to the loans. You applied  
 “ specifically for lots,”—naming them,—“ and  
 “ asked for other land in lots adjacent to the  
 “ proposed new dock, and such other lots near  
 “ to the railway, or in other desirable situations,  
 “ to such an extent as may be the equivalent  
 “ of said amount of loan.” “ This is a distinct  
 “ and formal intimation that the Port Canning  
 “ Company avail themselves of the privilege  
 “ allowed to debenture holders by Article V. of  
 “ the published conditions of the loan.” The  
 Commissioners thus directly intimate to the Com-  
 pany the construction they put upon their letter,  
 viz., that they had elected to take land to the full  
 value of their debentures. The letter goes on:—  
 “ No formal letter was sent to the Canning Com-  
 “ pany on receipt of their application, placing  
 “ the specified lots at their disposal; but on the

“ 5th of January 1866, the Secretary to the  
“ Municipal Commissioners wrote to the Secre-  
“ taries of the Canning Company, requesting  
“ that they would intimate what lots they  
“ required among certain numbers specified in  
“ the letter, as Mr. Kilburn, another debenture  
“ holder, had applied for lots, and the Commis-  
“ sioners could not tell Mr. Kilburn which of  
“ the lots were available until the Canning Com-  
“ pany had made their selection. No reply was  
“ received from the Canning Company to this  
“ request, but in April 1866 the Secretary to  
“ Commissioners addressed Mr. W. C. Stewart,  
“ acting on behalf of the Canning Company, on  
“ the subject. To this letter also no reply was  
“ returned.” Then they refer to another letter  
having been written—“The lots applied for by  
“ Port Canning Company in commutation of  
“ their debentures have always been considered  
“ as transferred and held at the disposal of the  
“ Port Canning Company; and it now only  
“ remains for the leases to be completed and  
“ debentures to be sent into this office to the  
“ value of Rs. 2,04,928, being the amount of the  
“ loan which these lots represent under the 5th  
“ article of the published conditions of the loan.”  
Then the letter goes on to urge the comple-  
tion of the exchange—“I am further directed  
“ to request that your Company will, without  
“ further delay, select such other available lots  
“ as may be required to make up the redemp-  
“ tion of the entire sum subscribed by them to  
“ the loan, and to give notice that the Commis-  
“ sioners repudiate any liability to pay interest  
“ on the amount subscribed by the Canning  
“ Company, or to repay the loan, except in the  
“ shape of grants of land, as applied for by the  
“ Company in their letter of the 13th March  
“ 1865.” There is thus a most distinct inti-  
mation on the part of the Municipal Com-

missioners that they hold and treat the Port Canning Company as having applied for an exchange of the whole of their debentures for land; that the Company have only selected lots which amount to a part of the whole amount of their debentures; that they require the Company to select the other lots, and send in their debentures, and expressly give notice that from that time they do not consider themselves liable to pay interest.

Then come the two important letters, which cannot be fully understood without referring to this previous correspondence. The letter of the 20th of December 1866 is from Mr. Schiller, who represents the Land Company, to the Commissioners:—“Sir, with reference to “the debentures held by the Canning Company “which I agreed to exchange for land,”—thus in answer to the letter the effect of which I have given, which refers to an agreement, this letter also refers to the exchange as a thing agreed on,—“with reference to the debentures held by the “Canning Company which I agreed to exchange “for land, I now beg to propose that such exchange be deferred till their due date.” That proposal, as Mr. Benjamin says, is an application for an indulgence. The Commissioners were pressing for an immediate exchange and that interest should stop, and this is a counter-proposition:—‘I know I have agreed to that, ‘but, if you will consent, I wish to have the ‘exchange postponed until the debentures be ‘come due.’ And then comes this proposal of what the Company will do, so that the Commissioners shall be under no loss, and shall not be liable to the interest in the meantime:—“This will involve the payment of interest “by the Municipality to the Port Canning “Company;”—of course this would be so; for the debentures being still extant interest

would be payable upon them ;—“ but the latter  
 “ is prepared to declare now the lots they  
 “ will receive in exchange for debentures, and  
 “ to pay a quit-rent thereon equivalent to the  
 “ interest payable on their debentures. The  
 “ Municipality will thus lose nothing, and the  
 “ arrangement will be a convenience to the  
 “ Canning Company.” They really say this:  
 If you will for our convenience postpone the  
 exchange of the debentures for land till the  
 debentures become due, you shall be no loser ;  
 we shall not receive the interest, for we agree to  
 pay you a rent which will be equivalent to it,  
 and therefore one will extinguish the other.  
 That is a distinct proposition. The fair mean-  
 ing and substance of the whole letter is, we  
 have agreed to take lots to the full amount  
 of the debentures ; and if you will consent to  
 the exchange being postponed until the de-  
 bentures become due, we will not call upon you  
 for the payment of interest in the meantime,  
 and we are now willing to make the selection.  
 But the selection lay with the Company ; it might  
 be for their interest to make it then, or it might  
 be more for their interest to make it at a future  
 time. The answer comes on the 14th of March  
 1867 from the Commissioners :—“ Dear Sirs, with  
 “ reference to the letter from Mr. Schiller, dated  
 “ the 20th of December 1866, copy of which is  
 “ on the other side, I am instructed by the  
 “ Chairman of the Municipal Commissioners  
 “ of Canning to state that they agree to the  
 “ proposal contained in that letter.” That  
 proposal I have already interpreted, and there  
 is a distinct acceptance of it. Then they add,  
 “ and to request that you will at once declare  
 “ the lots which your Company will receive  
 “ in commutation of the debentures taken by  
 “ your Company, so that the Commissioners  
 “ may know exactly the lots which they are

“ bound to hold for the Company.” The agreement was perfect,—that there should be an exchange, that the time of exchange should be postponed till the debentures became due, no interest being payable in the meantime, and the Company being at liberty to select the lots they desired to take. Their Lordships think that the latter part of the letter as to the selection of the lots is not a part of the contract requiring further affirmance to bring the parties to a complete agreement, but relates to the execution of that which they had agreed upon. The two following letters, which it was Mr. Cowie’s object to make a part of the agreement, (his contention being that it was not perfected by the previous ones,) appear to their Lordships to be only an attempt to carry it into execution. There is a selection of lots on the part of the Port Canning Company, and an intimation from the Municipal Commissioners that the Company had made a selection which was not in accordance with the contract. The letters are the letter of the 2nd April and the answer of the 22nd of August. They really amount to this:—The letter of the Land Company professing to carry out the agreement says — “ We have selected these lots, “ which are the lots we are willing to take “ in pursuance of the agreement of exchange “ for the debentures, and which we think are “ about the amount of the debentures.” The Commissioners’ answer is, “ Well, we have no “ objection to your having those lots, but we are “ bound to tell you that you cannot have them “ for the debentures you now hold, because their “ value is half a lac more than the amount of “ those debentures, but we have no objection, if “ you will return debentures and pay quit rent “ upon the value of the additional lots, that they “ shall go to you.” That proposal has never been



accepted; but the non-acceptance of that proposal, and its being left in an imperfect state, both parties being at liberty to refuse, the one to take, and the other to give in exchange the further quantity of land, cannot affect the previous agreement to exchange the debentures then held by the Company for lots equivalent in value to their full amount. That agreement was already made, and in their Lordships' view all that remained to be settled was the execution of it by the selection of the lots in accordance with the contract. The case is in this view extremely simple. It is an agreement to exchange, where on the one side the thing to be exchanged is already defined and specified, and where that which is to be taken in exchange is to some extent indefinite and requires a further act to ascertain it. Suppose A and B had agreed to make an exchange of this sort; A agrees to give to B six cows, specific cows, in exchange for six horses which he is at liberty to select out of the stock then upon B's farm, the selection to be made at a future time; that is a perfect agreement for the exchange, and all that remains is that A should select the horses on B's farm. There might be a dispute whether the horses that were upon the farm at the time of the agreement had not been removed, and others substituted; they might differ as to the horses which were intended to be taken in exchange; but that would not affect the agreement, but would be a question of the mode of performance of it.

A question was raised, whether the letters did not form an agreement which should have been registered under the Indian Registration Act; but their Lordships think that the High Court was perfectly right in holding that the letters did not require registration. They do not amount to a lease or an agreement for a lease, but are evidence of a contract of a special

character, not coming within any of the definitions found in the Registration Act.

On the whole, therefore, their Lordships think that the judgment of the High Court, which reversed the judgment of Mr. Justice Phear, is correct; and they will humbly advise Her Majesty to affirm the decree of the High Court, and to dismiss this Appeal, with costs.