

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Maharaja Manindra Chandra Nandi v. The Secretary of State for India in Council, from the High Court of Judicature at Fort William in Bengal; delivered the 14th December 1910.

PRESENT AT THE HEARING :

LORD MACNAGHTEN.

LORD MERSEY.

LORD ROBSON.

SIR ARTHUR WILSON.

MR. AMEER ALI.

[DELIVERED BY MR. AMEER ALI.]

The Plaintiff is the owner of considerable landed property in Bengal, part of which he has leased to various parties for the working of coal mines. Besides the rent for the surface land he receives, under the designation of royalty, a percentage on the coal raised by the lessees or mine-owners. He has been assessed for "cess" under the provisions of Bengal Act IX. of 1880, in respect of the royalty received or receivable by him from the coal-mines on his estate. This Act provides for the levy of "cess" on all immovable property situate in the Province for the construction of roads and other means of communication, and it gives to the "Collector" defined in the Act, the power of making the assessment. For the purposes of the Act, mines, &c., are included in the definition of immovable property,

and it is declared that, in the case of lands, the "cess" should be assessed on their "annual value," and in the case of mines, &c., on "the annual net profits" from such property. The mode of ascertaining "the annual value of lands" and the "annual net profits" from mines, &c., are specifically laid down. The Plaintiff contends that the royalty he receives from the coal-mines cannot, upon a proper construction of the Act, be included in the term "annual net profits" and that, therefore, the assessment is illegal.

He accordingly brought a suit in the Court of the Subordinate Judge of Burdwan to obtain a declaration to that effect. This Judge dismissed the action on the 22nd February 1905, and his decision was affirmed by the High Court of Calcutta in two elaborate judgments in which many subsidiary matters have been discussed at considerable length. From the Decree of dismissal by the High Court, the Plaintiff has preferred this Appeal to His Majesty in Council.

In their Lordships' opinion the only point for determination in this case turns on the meaning to be attached to the words "annual net profits" in Sections 6 and 72 of the Act. Section 6, so far as it is material for the purposes of this decision, is in these terms:—

"The road cess and the public works cess shall be assessed on the annual value of lands and on the annual net profits from mines, quarries, tramways, railways, and other immovable property, ascertained respectively as in this Act prescribed."

Chapter V., which begins with Section 72, lays down the procedure for valuation, assessment and levy of cesses on mines, &c.

Section 72 is in these terms:—

"On the commencement of this Act in any district, and thereafter before the close of each year, the collector of the district shall cause a notice to be served upon the owner, chief agent, manager, or occupier of every mine, quarry, tramway, railway, and other immovable property not in-

“ cluded within the provisions of Chapter II., and not being
“ one of the tramways or railways mentioned in Section 8,
“ such notice shall be in the form in Schedule (E) contained,
“ and shall require such owner, chief agent, manager, or
“ occupier to lodge in the office of such collector within two
“ months a return of the net annual profits of such property,
“ calculated on the average of the annual net profits thereof
“ for the last three years for which accounts have been made
“ up.”

It is contended on behalf of the Plaintiff that the term “net annual profits” used in this section means “the net annual profits” of the person actually working the mine, and who or whose agent or manager has to make the return; and that it does not include royalty paid to the proprietor of the land, which stands in the same category as the ordinary expenses and outgoings connected with its working such as boring, haulage, &c. In their Lordships’ judgment this contention has no substance. Schedule (E) is referred to as indicating the meaning of the words “net annual profits,” but it goes no further than the section itself. It is to be observed that both in Section 6 and Section 72 the “net annual profits” have reference to the property and not to the individual.

The inference is clear that the return required under the section is not with regard to the mine owner’s profits but has reference to the general net profits of the property. The obligation to make the return is laid on the person most cognisant of the circumstances under which the mine is worked and of the profits derived from it. But that does not alter, in their Lordships’ view, the character of the royalty received by the proprietor for his share of the profits of the mine. This conclusion is enforced by an examination of the provisions of Sections 76, 80, and 81. Section 76, which provides for the valuation of property assessable under Chapter V. where the annual net profits

cannot be ascertained by the officer making the assessment, speaks again of the property itself, and declares that in such eventuality " he [that is " the Collector] may by such ways or means as to " him shall seem expedient, ascertain and determine the value of such property, and shall thereupon determine six per centum on such value to " be the annual net profits thereon." The language of the section leaves little room for doubt that the annual net profits are to be taken as a whole. Section 80 provides for service on the person making the return under Section 72 of a notice " showing the amount of road cess " and public works cess payable in respect of " such property." This again clearly shows that although the cess is assessed on the basis of the net annual profits, it is paid in respect of the property, and not in respect of any part of the profits.

Section 81 deals with cases where the " occupier of such property " is different from the " owner," and provides the mode by which, in case he pays more than his share of the cess, he might recover such excess. In this section the word " owner " appears to be used in the sense of proprietor. It is clear, however, that the liability for the cess lies on both " occupier " and " owner " in the case of mines, &c., as in the case of land it lies on holders of estates or tenures and ryots, the policy of the Act evidently being that all persons, who benefit by the maintenance and construction of " roads and other " means of communication " or " works of public " utility " out of these cesses, should bear the liability of paying the same.

On the whole their Lordships are of opinion that the conclusion at which the Lower Courts have arrived is correct, that the royalty receivable by the Plaintiff is part of the net annual profits

of the mine and that he has been properly assessed with cess thereon. This Appeal consequently fails.

It has been found by the Courts in India that the Plaintiff has not been prejudiced by any irregularity on the part of the Collector in the mode of assessment; their Lordships do not feel called upon to express any opinion on the question of the procedure he should have adopted.

The Appeal must, in their Lordships' judgment, be dismissed with costs, and they will humbly advise His Majesty accordingly.

In the Privy Council.

**MAHARAJA MANINDRA CHANDRAJ
NANDI**

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**THE SECRETARY OF STATE FOR
INDIA IN COUNCIL.**

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