Privy Council Appeal No. 89 *of* 1927.
Patna Appeal No. 24 *of* 1926.

Surendra Nath Karan Deo - - - - - *Appellant*

v.

Kumar Kamakhya Narain Singh - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 29TH NOVEMBER, 1929.

Present at the Hearing:
VISCOUNT SUMNER.
LORD THANKERTON.
SIR JOHN WALLIS.
SIR LANCELOT SANDERSON.

[*Delivered by* SIR JOHN WALLIS.]

This suit was instituted in 1919 by the Court of Wards on behalf of the plaintiff, the Rajah of Ramgarh, who was then a minor against the first defendant the Rajah of Barsote, who was also a minor and others claiming under him for a declaration that his tenure "ordinarily known as the Barsote Lat" is not a *shamilat* or *shikmi taluk* of the Ramgarh estate nor is it non-resumable as recorded in the *khewat* forming part of the record of rights prepared by the Settlement Officer under the provisions of the Chota Nagpore Tenancy Act 1908, and for a further declaration that it is an ordinary *jagir* under the Ramgarh Raj and is resumable on failure of the direct male line of Raja Pirthi Karan, an ancestor of the first defendant, who, according to the plaint was the original grantee.

The record of rights was drawn up in 1914, and it was open to the plaintiff under section 87 of the Act to file a suit before a Revenue Officer within three months to rectify the entry in the *khewat*. This not having been done, the entry stands and cannot be altered by the Civil Court, and under section 84 (3) it is to be "evidence of the matter referred to in such entry and is to be presumed to be correct until it has been proved by evidence to be incorrect."

It seems desirable to set out at once the case which the plaintiff came into Court to prove as set out in paragraphs 5 to 8 of the plaint.

> " It was customary with the proprietors of the Ramgarh estate to grant lands and villages in Jagir to their retainers and well-wishers on condition of rendering various services or for maintaining them sometimes paying small rent for them and sometimes paying no rent. These grants originally used to be simply tenancies at will or at most life-grants being resumable on the death of the grantee. Eventually they became heritable, being resumable on the failure of the direct male line of the grantee and also on other contingencies.
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> *Sanads* and *Amalnamas* used to be issued to the parties concerned and *Kabuliyats* used to be taken from the grantees or from the subsequent holders.
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> " Lat Barsote originally consisted of villages, the names of which are given in schedule " B " annexed hereto and within the ambits of these villages new villages have sprung up and come into existence and the said Barsote Lat now consists of villages mentioned in schedule " A."
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> The said Barsote Lat was given in *Jagir* by a remote ancestor of the plaintiff to Pirthi Karan, who assumed the title of Raja, and who was a remote ancestor of the defendant No. 1, but the Sanad under which the grant was made is not forthcoming and the earliest document that is in existence is the *Jamabandi* paper of the year 1813, *Sambat* showing *Debo* to be a rent-paying tenure. The subsequent *Jamabandis* also show the same.
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> " Jaimangal Karan Deo, who also assumed the title of Raja, was an ancestor of defendant No. 1 and holder of Lat Barsote. The said Raja Jaimangal Karan Deo executed a *kabuliyat* in favour of Maharaja Sidh Nath Singh, an ancestor of the plaintiff in 1870, *Sambat,* in respect of Lat Barsote agreeing to pay an annual rent of Rs. 281–8–6 *sicca* which comes to Rs. 300–4–9. The genealogical table mentioned in schedules C and D respectively show the connection of the said Raja Pirthi Karan with the defendant No. 1 and that of Maharaja Pareshnath Singh with the plaintiff."

It is also alleged in the plaint that the entry in the *khewat* throws a cloud on the title of the plaintiff and hence the necessity of the present suit ; and it may readily be understood that apart from the possibly remote contingency of a failure of male heirs on the part of the first defendant's family it is in the plaintiff's interest to establish if he can that the Barsote estate is a portion of the Ramgarh estate granted in *jagir* to the defendant's ancestor.

The case presented in the written statements is that the allegations in the plaint are a travesty of the facts. The first defendant's estate was never known as the " Barsote Lat " but as the " Barsote Raj " and had descended in his family for more than fifty generations. It was not granted by a remote ancestor of the plaintiff to Pirthi Karan. It was never held as a *jagir* under the Ramgarh Raj, but " for convenience of realization Government dues payable for the Barsote estate were paid through the proprietor of the Ramgarh estate like other similar *shamilat taluks* in the district from about the Permanent Settlement," that is from about 1793.

The Additional Subordinate Judge of Hazaribagh dismissed the plaintiff's suit, but his judgment was reversed on appeal by the High Court at Patna which gave the plaintiff a decree. As

will be seen the judgments of the learned Judges Dawson, Miller C.J., and Mullick J., are not based on direct evidence as to the grant of a *jagir*, but on inferences and presumptions which have to be carefully examined.

In the first place it seems desirable to state that the defendant's estate has never been ordinarily known as the Barsote Lat nor have the defendant and his predecessors ever been known as the holders of a *jagir* in the Ramgarh estate. They have always been known and addressed in official correspondence as Rajahs or *Zemindars* (that is to say proprietors) of the *Pergana* of Barsote, and their estate has been referred to as their *zemindari* or property, which is in entire accordance with the statement in the record of rights, that it is a *shamilat taluk*, that is to say an estate distinct from the Ramgarh estate though included at the Decennial Settlement of 1790, made permanent in 1793, in the *zemindari* of the Rajah of Ramgarh with whom the settlement was effected. The term *shikmi taluk* has the same meaning, the word *shikmi*, or belly, being applied to taluks which were once independent but are now inside another estate.

It will in their Lordships opinion throw much light upon the case to trace in the next place how the present dispute would appear to have arisen. Both these estates are situated in Chota Nagpore, which in the 18th century was a wild and thinly populated hill country to the south west of Berar and was under the government of the Nawab of Bengal, until it came under British rule in consequence of the grant of the *diwani* in 1765. After a rebellion in 1831 it was placed in charge of an officer, styled the Agent to the Governor General for the South Western Province; and on the 22nd November, 1839, the Agent called upon the *zemindars* to procure a return for all the *elakadars* or holders of tenures under them, and themselves to submit a consolidated return. The return submitted by the *elakadars* was to show "the amount of land revenue of each *mauza* (village) paid by the *zemindars* to Government, and the *jama* thereof realized from the tenants through the *elakadars*, with a description as to how, or under what conditions and since what date, the land *jagirdari*, *ghatwari* or *zemindari*, as the case may be, has been in possession of the *elakadars*." This shows that the *elakadars* in the *zemindari* might be either *jagirdars*, holders of Ghatwal tenures or *zemindars*, that is to say, proprietors; and emphasises the importance of the fact already mentioned that the defendant's predecessors were always known as Rajahs or *Zemindars* of the Pergana of Barsote.

There was delay in the submission of these returns and their Lordships observe that a letter written by the Rajah of Ramgarh, Ex. 39 of the 14th June 1842, excusing the delay, contains the following sentence:—"Some *jagirdars* and the Rajas of Barsote, Isutkhori and Barmaria, etc., have not submitted the statement in spite of demands made on them." This makes a

clear distinction between the *jagirdars* in the *zemindari* and these Rajas, though they are all included in the appended list (Ex. 39 (*a*)) headed " List of defaulting *jagirdars*."

What next followed is of great importance in their Lordships' opinion for a due understanding of the case. There is evidence that the defendant's predecessors had always objected to being included in the Ramgarh *zemindari*, and the Rajah appears to have thought that this was a good opportunity of asserting his independence and claiming to pay revenue direct to Government. Accordingly, on the 29th July, 1843, he presented in person the return called for together with a *patta* or copy of a *patta* bearing date the 5th August 1776, and both documents were then signed by Major J. Simpson, the Assistant, who was then in charge of the Hazaribagh district. The *patta* has been exhibited by the defendants as Ex. U in this case, and has assumed more importance in the arguments before their Lordships than in the Courts below, as will be seen later. The return gives the required particulars of the names and collections of 133 villages, some of them described as uninhabited, meaning deserted by the inhabitants, as was too often the case in those days. Their Lordships see no reason to doubt that this was a genuine return of the villages which had been in the Rajah's possession.

In the column headed " Remarks " the Rajah stated that these *mauzas* had been in his ancestor's proprietary possession for more than 52 generations and that the plaintiff's ancestor, Dalel Singh (who died in 1724), had deprived his ancestor of the Pergana of Rampur and of some villages in the Pergana of Barsote and alleged that in 1776 Mr. Grant Heatley, when he came to make a settlement, finding that the villages in his possession formed part of the old *zemindari* of the family, allowed them to remain under Government collection, and granted his ancestor a *patta* signed by Maharajah Paras Nath Singh, the ancestor of the plaintiff, at a fixed rent of Rs. 151. He stated that he had wrongfully been made to pay the revenue to the Rajah of Ramgarh and relied on the fact that the villages which had remained in his possession had not been entered in the *sarsikan* accounts of the Ramgarh estate to show that the settlement of these villages had not been made with the Ramgarh *zemindar*. The observations concluded with a petition that the Government revenue entered in the *patta* granted by Mr. Heatley, viz., Rs. 151 might be received by the Government.

This return no doubt ignores the fact that the Barsote estate had been included in the permanent settlement made with the Rajah of Ramgarh and that the defendant's ancestors had been paying the annual 282–8–4 since 1813 as proved, and presumably since 1790 also ; but the statement that Barsote villages, 34 in number, which are now shown in the Ramgarh accounts as forming part of the Ramgarh estate, and the Pergana of Rampur once belonged to Barsote is confirmed by Ex. W.W., a register

relating to the Pergana of Ramgarh. 1760–1790, produced from the Collectorate. which shows that, long after 1724, these villages continued to be registered in the name of the defendant's ancestor.

Ex. A. a statement of gross produce and *sadar jama* of villages in Raj Ramgarh, according to *sarsikan* for 1793–4, contains entries relating to these 34 villages only in the Pergana of Barsote, and says nothing about the defendant's 112 or more villages. As regards these earlier *sarsikan* accounts to which the Rajah appealed, it is fairly clear that, if his villages were included in the Ramgarh *zemindari* otherwise than as a *shamilat taluk*, they should have appeared in these accounts. The other side were quite alive to this difficulty in the way of their contention that the defendant's estate was only a Ramgarh *jagir*, and to get over it, entered the defendant's estate in their 1843 return as one *mauza* or village, making up with 33 other villages mentioned, the 34 villages owned by Ramgarh in the Pergana of Barsote. It was entered as held by the defendant's predecessor as a *jagir* at a permanent rent of Rs. 281-8–9, and described as consisting of one *mauza* or village bearing the name of Lot Debang, and as having an approximate area of 60,000 (*bighas* or acres) and yielding an annual *jama* to the *elakadar* of Rs. 2,000. Obviously, as the Subordinate Judge has pointed out, there never could have been one *mauza* or village of this size, including the defendant's 112 or more villages. This, however, is the unsubstantial foundation on which the plaintiff's case rests.

In the later 1859 return the *jagir* is *entered* as Lot Debo instead of Lot Debang; in the plaint in the present suit it is stated quite untruly that the defendant's estate was ordinarily known as the Barsote Lat, and it is so described in the appellate decree.

It will be convenient at once to call attention to the worthless character of the earlier evidence adduced in support of this description. The village of Debo was one of the 34 villages included in the Ramgarh accounts of 1793–4 (Ex. A), with a gross produce of Rs. 3.2 and a *sadar jama* of Rs. 5. Ex. 21 to 21 (*b*), described as *jamabandi awarya* of Barsote for 1756, 1761 and 1778, show a Barsote village Debo, as held by the defendant's ancestor Pirthi Karan Raja. ("Previous *patta* Rs. 3, Present *patta* Rs. 2," "Amount" Rs. 40 in Ex. 21 (*a*) and Rs. 50 in Ex. 21 (*b*)). These entries presumably refer to the village of Debo, which was one of the 34 Barsote villages which, since the beginning of the 18th century, had been incorporated in the Ramgarh estate, and have nothing to do with the 112 villages forming the defendant's estate which are the subject of this suit.

On the other hand, the entries in Ex. 21 (*c*) and 21 (*d*) for 1781 and 1785 may relate to the suit villages. 21 (*c*) shows Raja Pirthi Karan as liable to pay monthly Rs. 21.1; that is, Rs. 240.12 annually and 21 (*d*) Rs. 261. The entry in Ex. 21 (*c*)

appears under the heading *Jagirdari*, and the entry under 21 (*d*) does not. This is all the evidence of the early accounts prior to the Permanent Settlement, and it does not support the case that the defendant's predecessors held a *jagir* known as Lat Debang or Lat Debo under the Ramgarh Rajah. Moreover, such entries would be of little or no weight unless it appeared that the defendant's predecessors were aware of the way in which the Ramgarh accounts were kept.

It really comes to this, that in 1843 there was a dispute between the two Rajahs, one endeavouring to go behind the terms of the Permanent Settlement and establish his complete independence of the Ramgarh *zemindari* and to reduce the rent payable by him to Rs. 151, and the other seeking, possibly as counter-move, to establish that, far from being independent, Barsote was only held as a *jagir* known as Lat Debang or Debo in his own Pergana of Barsote. In their Lordships' opinion, the plaintiff has failed to prove that there ever was a *jagir* known as Lat Debo.

To resume the narrative of events, the dispute as to the rate of fixed rent came to a head in 1858 when Ramgarh sued Barsote for arrears. In his plaint, as appears from the judgment of the Deputy Commissioner, he made the not very relevant allegation that *mauzas* of Pergana Barsote constituting (or forming part of) the *zemindari* of his ancestors, were given to the plaintiff's ancestors as a *mashruti jagir* on payment of rent, and alleged that he had been realising rent at the rate of Rs. 281–8–3. The defendant, on the other hand, denied that there was any *mashruti jagir*, and pleaded that the villages of the Pergana Barsote were in possession of his ancestors from before the time of British rule, and further alleged that on coming to make a settlement of Ramgarh Mr. Leslie granted a *patta* signed by himself and by Rajah Paras Nath Singh, the ancestor of the plaintiff, fixing the annual rent at Rs. 151 *sicca*, and that the defendant refused to accept rent at that rate. This was a repetition on both sides of the case set up in 1843.

Before the suit came on for hearing the Government in 1859 called upon the Ramgarh *zemindari* to make a return of title-holders in his *zemindari* for the purpose of the warrant of precedence stating the origin of the title. The Ramgarh *zemindar* gravely returned that the title of Raja had been conferred on the ancestor of the Barsote Raja by his own ancestor Dalel Singh when his brother married into the Barsote family. He did not fail to add that Barsote was his own *jagirdar*. This choice of Dalel Singh as the alleged fountain of honour was not a very happy one, as it was Dalel Singh, as has been seen, who wrested from the then Rajah of Barsote 34 villages of the Pergana of Barsote and another *pergana* as well.

The Deputy Commissioner of Hazaribagh, who was the same Major Simpson who had received and affixed his signature to the return and *patta* presented by the Barsote Raja in 1843, gave judgment in the rent suit in June 1861, and the case went on

appeal to the Judicial Commissioner and on special or second appeal to the High Court at Calcutta.

It will be convenient to deal here with the contention raised both here and below, and upheld by the learned Chief Justice, that these judgments make the issue as to the question of *jagir res judicata* in favour of the plaintiff. With reference to the *patta*, the Deputy Commissioner observed : " It appears that the *patta* dated the 5th Bhado Bali Sambat, 1833, signed by the Collector of Ramgarh on the 5th August, 1776, which has been filed by the defendant, relates to the period prior to the decennial settlement, and that there is no mention in the *Istamrari mokurrari* that the same *jama* would stand for ever." The Deputy Commissioner then dealt with the receipts filed for the defendant, some for part payments and none showing an acceptance of Rs. 151 in full satisfaction and he passed a decree for arrears at a rent of Rs. 300–4–9 as claimed in the plaint. On appeal the Judicial Commissioner observed that the defendant had filed a copy of the *patta* but that it did not bear the signature of anyone and that it related to a period prior to the decennial settlement and that there was no evidence that the same *jama* was allowed to stand at the decennial settlement. In the result he dismissed the appeal. The case then came on special (or second) appeal before a Bench of the Calcutta High Court who delivered the following judgment. " The plaintiff proved that he had realized rents at the rate claimed down to the year 1900 S. That threw the onus on the defendant of showing that he was liable for a less amount only. The defendant for that purpose put in the copy of a *patta* and receipts which the judges assigned satisfactory reasons for rejecting as not genuine. The appeal is therefore dismissed with costs."

As regards the question of *res judicata* the final judgment of the High Court does not deal in any way with the question whether the defendant's tenure was a *jagir* nor does the judgment of the Deputy Commissioner at the trial. On appeal the Judicial Commissioner no doubt referred at the beginning of his judgment to the suit land as the defendant's *jagir*, but he also stated that the only point at issue was as to the rate of rent, and the High Court dealt with the case in the same way. In these circumstances it appears to their Lordships that there was no final decision within the meaning of section 11 of the Code of Civil Procedure of the issue whether the defendant's estate was a *jagir*, if indeed it can be said to have arisen in the case.

Their Lordships will now resume the narrative of events which led up to the litigation. There were subsequent rent suits in which the question of the *jagir* tenure was left open. In 1876 the Commissioner of Chota Nagpur made a report to the Government of Bengal on the land tenures of Hazaribagh (Ex. M.) which contains the following passage :—

" Samilat or Shikmi Talooks. In paragraph 5 I have mentioned that Pargana Chai was composed of five petty Rajas. The Rajas were semi-

independent, only paying tribute to Raja Lal Khan, and when merged into Ramgura continuing to pay tribute to the Ramgurh Raja. When the country was taken by the English and its settlement was being made, these Rajas endeavoured to get settlements made with them direct, but their efforts and through (?) they were maintained each in her *raj*, they were directed to pay their tribute and was then failed converted into a fixed rental of Ramgurh. The Raja of Rampoor Jagodih Paroria, and Itkhori accepted these terms, and have been made Shikmi Talookdars. The Raja of Pitij, who was a resident of Gaya, refused to agree and made over his Talook to the Raja of Kendi into whose estate this Talook has merged, and the title has been lost. Similarly, the Raja of Barsote succeeded in saving his estate from being merged into that of Ramgurh, and the estate was made Shamilat Talook as also was Pargana Koderma ; but the circumstances relating to this last, its severance from the Ramgurh Estate, etc., are related in a separate chapter. There is a lenged (?) that there were two more such Sikhmi Talook, viz. (*s*) Tilaiya and Gola, but they have long been extinct and have merged into the Ramgurh estate.

There are obvious misprints in this printed copy, but it appears to mean that, in the Commissioner's opinion, what happened was that when the country was taken by the British and its settlement was being made, which would be about 1776, the date of the *patta* (Ex. U.), Barsote and two other small Rajahs were ordered to pay their tribute or land-revenue to Ramgarh, and that this made them *shamilat taluks*. That is in effect the case presented to their Lordships by the appellant, with this addition, that before the date of the permanent settlement the amount of the tribute or land revenue payable by Barsote was raised from 151 to 282 sicca-rupees, or Rs. 300–4–9 in the Company's coin, which is now the amount of the fixed rent payable by Barsote to Ramgarh.

The preparation of the record of rights under the Act of 1908 and the entry which gave rise to the present suit have already been mentioned, but it appears desirable at this stage to set out the Settlement Officer's reasons for making the disputed entry as contained in his order of the 1st February, 1914.

> " After reading the evidence produced I am satisfied that these tenures are not of the same origin as the Jagirs founded by the Padma (Ramgarh) Raja and his predecessors. They have hitherto been regarded and treated as Shikmi or Shamilat Taluks and they probably existed as independent properties before the Ramgarh Raj was established, and I can find nothing in these recent history to change the status of the holders of these *taluks*.
>
> As they were not originated by the Ramgarh Raj, I find them to be not resumable by the *zamindar*. They will be noted in the *khewat* as " not liable to resumption."

The entry in the record of rights being evidence by statute and the onus being on the plaintiff to prove by evidence that it is incorrect, the question is has the plaintiff discharged the onus ? After a careful consideration of the evidence and the arguments submitted by counsel their Lordships agree with the Subordinate Judge that he has entirely failed to do so.

In coming to an opposite conclusion the learned Chief Justice accepted the entries in the plaintiff's accounts which their Lordships have already given reasons for disregarding, and also attached great importance to the *kabuliyat* executed by the defendant's predecessor in 1813 :—

" To

Sri Sidh Nath Singh Bahadur.

I am Raja Jai Mangal Karandeo of Barsot Khas District Ramgarh. I owe Rs. 281–8–6 in Kaldar (milled edge) coin on account of rent of the villages to the landlord for 1869 and so I execute this *kabuliyat* at Kachahri and do declare that I shall pay off the same according to my promise made herein without any objection.

Details of instalments :—

	Rs.	a.	p.		Rs.	a.	p.
Asin	35	0	0	Magh	26	8	0
Katik	35	0	0	Phagun	26	8	0
Aghan	70	4	0	Chait	9	0	0
Pus	70	4	0	Baisakh	9	0	0

Should I default payment of any instalment, I shall pay interest thereon as prescribed by law, and should I fail to pay the rent I shall be deprived of my land. Dated the 1st Asarh Sudi, Sambat, 1870, at Ichak Kachahri.

Baksi Debi Das.

Executed the *kabuliyat*. Raja Sri Jai Mangal Karandeo. By the pen of Kuer Kani Nath Karandeo."

(Signature mark.)

This document the learned Chief Justice regarded as an admission of proprietary rights in the Ramgarh *zemindar*, and he drew the inference that the defendant was a *jagirdar*, that being the highest tenure on the estate. Their Lordships are unable to agree with either of these conclusions. The *kabuliyat* in question had done duty in the previous rent suits, and has been accepted in the Courts below. It contains particulars of the amount of rent due for *fasli* 1869 and details of the instalments. These are matters as to which, then as now, both the Ramgarh *zemindar* and the owner of the Barsote on the one hand, and the tenants cultivating under them on the other, were required annually to exchange *pattas* and *kabuliyats*. The stipulation that overdue instalments should bear interest is quite usual, and it would not be surprising or unprecedented that the landlords should have endeavoured to strengthen their position by inserting an acknowledgment of liability to eviction for non-payment of rent, more especially seeing that, as Mr. de Gruyther has pointed out, while the Government were armed with drastic powers for the recovery of their revenue from the *zemindars*, the *zemindars* and under-proprietors had at this time no summary powers of recovering rent from the cultivating tenants and had only the remedy of a civil suit. This was probably the common form of *patta* and *kabuliyat* in use at this time, and was used in this instance for an agreement as to the payment of arrears for the preceding *fasli*, as it was executed in 1870 in respect of rent which accrued in 1869. Be this as it may, the fact that in one single instance the Ramgarh *zemindar*

succeeded in getting the Barsote Rajah to affix his signature to such a document is, in their Lordships' opinion, altogether insufficient to warrant a finding that the entry in the record of rights as to his proprietary rights has been proved by evidence to be incorrect. Having regard to the rest of the evidence, it seems in the last degree improbable that he would consciously have made any admission adverse to his claim to be the *zemindar* or proprietor of his estate.

The Chief Justice has also relied on the fact that the defendant's predecessor, after the Permanent Settlement, did not seek for separation as he was entitled to do if his present case is true. Now it is matter of history that the number of *talukdars* entitled to separation was so great that Lord Wellesley's Government found it necessary to pass a Regulation in 1801 limiting the time for making such an application to three months from the date of the Regulation. In their Lordships' opinion the failure of the defendant's predecessor in this backward and remote part of the Presidency to put in an application within the time limited cannot be considered as raising any presumption that he was not entitled to make such an application.

Mullick J., the other learned Judge, came to the conclusion that the plaintiff's predecessor, Mukand Singh, in 1764, conquered the territories of the Barsote Chief and reduced him into a state of complete subjection, that whatever claim to independence he had before that date was finally extinguished, and that thereafter he was allowed to remain in possession of a certain number of villages upon condition of loyal service.

Their Lordships entirely agree with the way in which this contention was dealt with by the Subordinate Judge. When the Company obtained the grant of the *diwani* in 1765 they did not at once begin collecting the revenue through their own officers, but put Mohammad Raza Khan in charge of Bengal and a Raja Shitab Rai in charge of Bihar. In September, 1771, he submitted a report (Ex. V) giving the history of the revenue administration from the time of Akbar, and an account of this particular district from 1719 to 1769, which shows an almost continuous condition of lawless violence in which the aggressive predecessors of the plaintiff waged private war on the surrounding *talukdars*, including the predecessors of the defendant. The letters of Captain Camac, who had been sent to Chota Nagpore to restore order, August, 1771, to November, 1772, show that Mukand Singh, the plaintiff's predecessor, was then in open rebellion and had ordered the *ryots* of Chay and Champey, which districts included Barsote, to cut and carry off their crops to the hills to prevent the Company from realizing their revenue, and that he was burning the villages which refused to obey. Eventually he was put to flight, and Tej Singh was installed in his place by the Company, and, dying shortly afterwards, was succeeded by his son, Paras Nath Singh. Before Tej Singh's installation, the position of the Ramgarh Rajah was simply that of a spoliator,

and, in their Lordships' opinion, there is no presumption or likelihood of any lawful settlement having been made with the predecessors of the defendant reducing them to the position of *jagirdars*. The presumption rather is that the *talukdars* who had been driven out returned and resumed possession of their property when order was restored. In 1776 Mr. Grant Heatley came to Ramgarh to settle the Company's revenue, and it is recorded in the report of the Commissioner to the Government of Bengal on the land tenure of Hazaribagh, already mentioned, that the defendant's predecessor, with certain other Rajas, endeavoured to get a settlement made with them direct, but though they were maintained each in his Raj they were directed to pay their tribute through the then Ramgarh Raja. This is much more likely than that the Barsote Raja should have been reduced to the status of a *jagirdar*. The attempt of the Barsote Raja in 1843 to establish his right to pay revenue direct to Government, which was very possibly the origin of this suit, goes to show that payment to the revenue through the Ramgarh *zemindar* was still regarded as a grievance, which would not have been felt by anyone in the position of a *jagirdar*.

Lastly, Mr. Upjohn, for the respondent, has put forward a new contention and has relied on the plaintiff's document (Ex. U), the *patta* of 1776, already mentioned, as the foundation of his client's title. This document had up to this stage of the case been impugned by his client and had been disregarded by the Courts below as having been rejected by the Courts in the rent suit of 1858. It is now said that it was only the receipts tendered in that suit which were rejected. The document is in Bengali and Hindi, the only material difference being that the words, "a few other *mauzas*," in the translation from the Bengali, are "several other *mauzas*" in the translation from the Hindi. The Bengali version is as follows :—

> "To
>
> Raja Prithi Karan Deo.
>
> "This *patta* is executed in 1183 to the following effect. Mauza Barsot and a few other *mauzas*, appertaining to Tappa Barsot, Pargana Champa, Chakla Ramgarh, which have been in your possession from before, shall continue to be in your direct possession. For the same you shall, according to instalments (fixed), pay a rent of Rs. 151 per annum, at the rate prevailing in the Chakla. You shall as usual be in possession of all the lands that are in your possession from before excepting the Debottar and Brahmottar lands and peacefully cultivate them. You won't have to pay for any loss, (etc. (?)) nor shall you be able to take (the same) from the tenants. Dated the 24th Shraban, 1833.
>
> Ramgarh, 5th August, 1776, *tappa*,
> Barsat, Champa."

This Bengali version also bears the signature of Major Simpson, the Personal Assistant to the Agent. The Hindi version, which is torn, does not now bear Major Simpson's signature, but it contains the date 29th July, 1843, in which his signature was affixed. It also contains the signature of Paras Nath Singh, the plaintiff's predecessor.

The Judicial Commissioner, in the rent suit, stated that the *patta* bore no signature, but he appears to have looked only at the Bengali version. In the written statement of 1858 the defendant's ancestor stated that it was signed by the Collector, and Colonel Simpson, then Deputy Commissioner, who tried the case and was in a better position to judge, having seen and signed the document in 1843, states distinctly in his judgment that it was signed by the Collector. In these circumstances, their Lordships cannot say that it was not signed by the Collector, especially as the English date, the 5th August, 1776, suggests that there was an English signature. Colonel Simpson appears to have regarded the *patta* as confirming the title of the defendant's predecessor, and as directing that the *jama* (which was not and could not have been permanently fixed by Mr. Grant Heatley), should be paid to the Ramgarh Rajah, a course which, as has been seen, was adopted with regard to the neighbouring *talukdars*. In these circumstances, their Lordships are unable to accept Mr. Upjohn's contention, as to which, moreover, they have not had the assistance of the Courts below. It would, in their opinion, be most unsafe to treat this document as establishing the proprietary rights of the plaintiff.

On the whole, their Lordships are clearly of opinion that the plaintiff has failed to establish by evidence, as he is bound by statute to do, that these entries are incorrect. On the other hand, not only are these entries themselves, made after inquiry by experienced revenue officers. statutory evidence of great weight, but there are numerous indications that they are correct. It is most improbable that the defendant's predecessors who were undoubtedly originally the proprietors of the whole Pergana of Barsote were ever reduced to the status of *jagirdars* of the Ramgarh estate. They were always treated as the *zemindars* or proprietors of Barsote. As such the defendant's predecessor in 1843 resented having to pay revenue through the Ramgarh Rajah, and by his unwise attempt to escape from this obligation would appear to have provoked the latter to attempt to prove that he was only a *jagirdar*. There is no evidence that up to that time the Barsote estate was ever known as Lot Debang or Lot Debo, or as the "Barsote Lat," and the earlier accounts do not, as already shown, support the case that it was a *jagir*. The *kabuliyats* that, according to the plaint, were usually taken from *jagirdars* on their succession, were never taken from the defendant's predecessors. Lastly, the conclusions of Major Sifton, the Settlement Officer, were largely based on the *jamabandi* statement put in by the plaintiff's predecessor prior to the Decennial Settlement of 1790. Neither side has attempted to obtain production of the original, and consequently no case has been made for the admission of secondary evidence, nor has any secondary evidence been tendered. The Subordinate Judge and one of the learned Judges in the High Court have referred to

statements in paragraphs 65 and 66 of the Settlement Officer's Report on the Survey and Settlement of the Hazaribagh District, which does not appear to have been even exhibited in evidence, and the Subordinate Judge has held that the report may be treated as secondary evidence of the contents of the *jamabandi* statement under Section 63 (5) of the Indian Evidence Act. In their Lordships' opinion the report is not secondary evidence of the contents of the documents referred to in it under clause (5), or under any other section, and they are therefore left to decide the question whether the entries made by the Settlement Officer are incorrect without seeing the evidence on which he chiefly relied.

In the result their Lordships have come to the conclusion from the reasons already stated that the appeal should be allowed and the decree of the Subordinate Judge dismissing the suit restored with costs throughout, and they will humbly advise His Majesty accordingly.

In the Privy Council.

SURENDRA NATH KARAN DEO

v.

KUMAR KAMAKHYA NARAIN SINGH.

DELIVERED BY SIR JOHN WALLIS.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.

1929.