

(1920) 03 PAT CK 0017

In the Patna High Court

Maharaja Pratap Udainath Sahi Deo

APPELLANT

Vs

Ganesh Narain Sahi and Others

RESPONDENT

Date of Decision : 29-03-1920

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Evidence Act, 1872 — Section 63

Citation : AIR 1921 Patna 218 : 70 Ind. Cas. 232

Hon'ble Judges : Dawson Miller, C.J.;Jwala Prasad, J

Bench : Division Bench

Judgement

Dawson Miller, C.J.—The appellant, who is the plaintiff in the suit, is the Maharaja of Chota Nagpur. The respondent, Ganesh Narain Sahi, who is the principal defendant, is the son of the late Raja Raghubir Sahi of Barwe who died on the 26th January 1914 shortly before the suit was instituted. The, other (defendants were originally the son and grandson of Ganesh Narain Sahi and a lessee of certain mineral rights in Pargana Barwe granted by the late Raja Raghubir Sahi in December 1913. The grandson has died since the suit was instituted. Ganesh Narain alone of the defendants entered appearance and filed a written statement. The others have taken no active part in the proceedings and it will be convenient to refer to Ganesh Narain as the respondent.

2. The suit was instituted by the appellant on the 2nd April 1914 claiming that he, as Maharaja of Chota Nagpur, was entitled to resume Pargana Barwe on the death of the Raja Raghubir Sahi who, he alleges, was only a tenant for life of that estate. The plaint also asked for a decree for possession of the whole Pargana. It further claimed mesne profits from the date of the death of the late Raja Raghubir Sahi but this part of the claim has been withdrawn. The respondent contends that his father held an estate of inheritance and that he, as the next heir, is entitled to succeed to the estate on the death of his father.

3. The case presented by the appellant is that Pargana Barwe is an under-tenure of the Chota Nagput Raj; that it was a jagir tenure granted on condition of

service subject to a fixed yearly rental; that, originally, it was held under the Chota Nagpur Raj as putra putradik tenure, that is, an estate descendible to the heirs male of the body of the original grantee, that in the year 1851 on the death of Harnath Sahi Deo, the then Raja of Barwe, without male issue, the line of the original grantee became extinct and that the then Maharaja Jagannath Sahi Deo, the appellant's father, was entitled to resume. He, however, eventually recognized Haranath's half brother Lachmi Nath Sahi Deo, about whose legitimacy there was some doubt, and appointed him Rajah, but on the latter's death without issue in February 1853 the estate was resumed and some two or three years later, namely, in November 1855, Lal Sahi Deo, grandfather of the respondent and a distant collateral relation of Harnath, was given a life-interest in Pargana Barwe, less six villages, at an enhanced rent by the Maharaja who granted a patia to and took a kabuliyat from the grantee; that on Lai Sahi's death in 1860 his son Raghubir Sahi, father of the respondent, was permitted to remain in possession as a life-tenant and on his death in 1914 the respondent acquired no interest by inheritance or otherwise in the Barwe estate which the appellant now claims to be entitled to resume.

4. The respondent's case is that the entire Pargana Barwe is an impartible hereditary estate belonging to his ancestors from time immemorial; that it was originally a part of Surguja, a tributary estate of Chota Nagpur, but in the year 1799 the revenue previously payable to Government was made payable to the Maharaja of Chota Nagpur since when it has been customary for each successive Raja of Barwe to receive from the Maharaja of Chota Nagpur his title and khilat on payment of nazrana and to have his name, registered in the sherishta of the Chota Nagpur Raj; that his grandfather, Lal Sahi Deo, succeeded as heir to the Barwe estate and not by any fresh grant from the Maharaja of Chota Nagpur. The kabuliyat alleged to have been executed by Lai Sahi Deo in 1855 is challenged as a spurious document, and the execution of the patta said to have been granted to him, a copy of which was produced by the appellant, is denied. Alternatively, the respondent claims that even if the documents mentioned are genuine and the grant of a life-estate to Lai Sahi Deo be proved, nevertheless, as he and Raghubir, have been in uninterrupted possession of the entire estate in assertion of their own right for over 50 years he has acquired an indefeasible title by adverse possession.

5. A further plea in bar was raised by the appellant based upon a judgment of the Judicial Commissioner of Chota Nagpur, dated the 13th July 1911, and a judgment of the Assistant Commissioner of Lohardaga, dated the 4th May 1859, which it is claimed operates as res judicata whereby the respondent is estopped from denying that Raghubir Sahi was a tenant for life or from asserting that the estate was an impartible, hereditary estate of his family and not liable to resumption.

6. The case was originally tried before the Subordinate Judge of Ranchi when, the following issues (omitting those not now material) were framed:

(2) Whether the judgment of the Judicial Commissioner, dated the 13th July 1911, and, of the Subordinate Judge, dated the 1st December 1913 operated as res judicata in this suit? Are the defendants estopped from re-opening the matter in this suit?.

(3) Whether Raja Raghubir Sahi was a tenant for life of the disputed property? Is the estate appertaining to Bar we Raj liable to resumption by the Maharaja of Chota Nagpur?

(4) Whether defendants have acquired a title to Barwe Raj estate by adverse possession? Can the plaintiff recover possession thereof?

(5) Whether Barwe Raj formed a separate and impartible estate and was heritable by the members of the Raj family?

7. Whether the revenue payable to the Government in respect of the Barwe Raj estate was made payable to the Maharaja of Chota Nagpur in 1799 as allegedly the defendants?

8. The learned Judge by his judgment, dated the 26th May 1917, found all issues in favour of the respondent and dismissed the suit. From that decision the present appeal is brought.

9. Before dealing with the issues it is desirable to say something about the early history of the Chota Nagpur Raj and the Barwe tenure as far as may be gathered from the evidence adduced at the trial. Sir W. Hunter, in Volume XVI, page 362 of his Statistical Account of Bengal, adopts in a slight-condensed form a special report made by Mr. G.K. Webster, Manager under the Court of Wards of the Chota Nagpur estate, dated the 8th April 1875, from which it appears that, with the exception of a few villages belonging to the Ramgarh estate, the only estate in Chota Nagpur paying revenue direct to Government is that of the Maharaja. This part of the country was first reduced by the Muhammadans in 1585 when the Raja, as he was then styled, of Chota Nagpur submitted to the Moghul Emperor and became a tributary (malguzar) of the Imperial Government. Chota Nagpur was ceded to the British in 1765, but the first Settlement with the Raja was not made until 1771 when Major Carnac granted a lease to Raja Dripnath Sahi for three years at a revenue of Rs. 6,000 and nazrana Rs. 6,000 which figures in later leases were altered to Rs. 10,000 revenue and Rs. 5,001 nazrana. At first the Chota Nagpur Raj appears to have been considered as a tributary estate and not governed by the Regulations or subject to sale for arrears of revenue. After the introduction of the abkari or excise dues in 1823 the Regulations began to be put in force and the estate may now be regarded as permanently settled. The report then deals with the tenures held by Rajas dependent on the Chota Nagpur estate and states that Barwe and five other tenures, now known as the Panch Parganas, were not original creations of the Maharaja of Chota Nagpur but were gained by conquest and brought under the power of that Raj Barwe is stated to have been originally subject to Surguja and finally brought under, the power of Chota Nagpur in 1799 after the advent of British rule, although at some earlier

period the descendants of the original Raja had, for a time at least, transferred their allegiance to Chota Nagpur. All these estates, including Barwe, are stated to be held under what are called bhandowa ftattas, and on failure of heirs male of the original holder they escheat to the Chota Nagpur estate. Tori and Rahi have already so fallen in. It is further stated that the present possessors (in 1875) of Bundu and Tamar and Barwe are not legitimate descendants of the men who were in possession at the time of the Permanent Settlement, so that now these tenures may be considered as creations of Chota Nagpur.

10. In the account of Surguja in the Statistical Account of Bengal (Volume XVII, page 222,) it is stated that "In the year 1792 the attention of the British Government was directed to Surguja in consequence of Raja Ajit Singh having seized Barwe, a hill-locked Pargana on the western frontier of Chutia Nagpur proper. The Berar Raja interfered without effect; and on the death of Ajit Singh his third brother Lal Sanrani Singh, murdered Ajit Singh's widow, usurped the Chieftainship, and not only retained possession of Barwe, but aided a rebellion in Palamau against the British Government. This led to an expedition into Surguja under Colonel Jones, by order of the Marquis Wellesley, then Governor-General. Barwe was restored to the Maharaja of Chutia Nagpur; and a treaty was concluded between, the British and Nagpur Governments which provided for the administration of the affairs of Surguja during the minority of Balbhadra Singh, the son of Ajit Singh, under the management of his uncle, Lal Jagannath Singh. The treaty, however, proved inoperative."

11. From this it would appear that at sometime before 1792 Barwe had been subject to Chota Nagpur and this would also appear to be the case from certain letters (Exhibits N, N. 1, N. 2, and N. 5) written between the years 1792 and 1796 on behalf of the Raja of Surguja to the British Agent and to the Raja of Barwe complaining that payment of the rent of Barwe had been withheld for some years previously at the instance of the Raja of Chota Nagpur and asking that Barwe should be restored, as it appertained to Surguja. The truth probably is that the inhabitants of Pargana Barwe and the adjoining country were wild and turbulent tribes whose chiefs only rendered tribute to their overlord when compelled by the strong hand to do so and transferred their allegiance as the political exigencies of the times dictated and in order to secure protection from their neighbours. What the incidents of the tenure may have been before the year 1799, there is little or nothing to show. The appellant contends that the only authentic and reliable history of the Barwe estate begins from that year when it is agreed the Maharaja of Chota Nagpur was recognised or established by the British authorities as the overlord of Barwe which, became a dependant of the Chota Nagpur Raj. There is no grant of that date in existence from which the nature of the tenure can be determined, but this is not surprising, as most of the documents in the archives of the Raj were lost or destroyed during the Mutiny. The name of the Raja of Barwe in the year 1799 is Deo Sahi. This is admitted by both parties. It must be remembered that the respondent's case is that it is an impartible hereditary estate, belonging to his family from the time of Tipan Sahi

Deo who lived long before 1799, paying no rent -to a superior landlord but revenue to Government, at present through the Chota Nagpur Raj, the events of 1799 merely having had the effect of substituting Chota Nagpur for Surguja as the medium through which the Government revenue was paid, and that his grandfather, Lal Sahi, was entitled after Lachminath to succeed as heir to the estate being descended in the direct line of Tipan Sahi Deo. The following genealogical table extracted from a more detailed document used in evidence by the respondent, to which attention will be called hereafter, shows the relationship between the parties according to the respondent's case:

(1) TIPAN SAHI DEO | ----- | | (2) Sodher Sahi Deo (4) Sagar Sahi Deo | | (3) Sunder Sahi Deo. (5) Sanker Sahi Deo | -----| | ----- | | (6) Bhim Sahi Deo Keshar Sahi Deo | | (7) Deo Sahi (1799) Chandan Sahi Deo | | ----- Chema Sahi Deo | | (8)Kamalnath (9) Sobhan (12) Lal Sahi Deo Sahi Deo. Sahi Deo | | | |----- -----| (13) Raghubir | | Ganesh Narain (10) Hara (11) Lachminath (Respondent.) Nath Deo Sahi Deo.

12. The figures in brackets represent the order of succession of the Raja according to the respondent.

13. The burden of proof is, admittedly, on the respondent to establish his contention as to the nature and incidents of the estate, first, because the Barwe estate is undoubtedly within the appellant's Zemindari and, secondly, because the Record of Rights finally published in 1909, as amended by the decision of the Judicial Commissioner of Chota Nagpur, dated the 13th July 1911, shows the tenure of Raghubir Sahi, the respondent's father, to be a life grant resumable by the appellant upon Raghubir's decease. By way of discharging this burden the respondent, apart from traversing the allegations in the plaint, contents himself in his written statement with the assertion that the tenure is and always was an impartible hereditary estate and, therefore, not resumable and that Lal Sahi succeeded as heir to an estate of that, nature, no fresh grant having been made to him. He does not plead in the alternative that if it was originally a putra putradik jagir, as alleged by the appellant, he was nevertheless entitled to succeed as a direct descendant from the original grantee, assuming the original grantee to have been an ancestor, of the respondent. It would appear, therefore, on the pleadings that if the respondent should fail in establishing that the tenure was originally an impartible hereditary estate it is not open to him to set up the alternative case. I had some doubt during the argument whether the alternative contention is now open. On the view taken by the learned Judge the question did not arise, although he expressed the opinion that Lal Sahi could succeed as a descendant of the original grantee even if the estate were a putra putradik tenure.

14. This view was based presumably on the assumption that the grant was originally made to some common ancestor of Haranath Sahi and the respondent, as the respondent was admittedly not a descendant of Deo Sahi, the holder in

1799. As the question is one of law and does not depend upon further evidence, and as the case has been argued before us from every point of view, I think it is permissible and desirable that we should consider it. The issues also as framed require that the point should be considered. If the first part of the third issue be answered in the negative on the ground that Raghubir succeeded to a putra putradik tenure it would follow that the answer to the second part of that issue would be that the estate is not liable to resumption immediately but only on failure of male heirs. It would be a somewhat startling result if the appellant were entitled to succeed, although it turned out that the estate was not a life-tenure as recorded in the Record of Rights. I think the proper course would be in such a case to refuse the declaration claimed which, in our discretion, we are entitled to do. It will be necessary, therefore, to consider the right of the respondent to succeed in the event of our finding that the estate was a putra putradik tenure originally, although he does not assert a putra putradik right.

15. The learned Subordinate Judge, who found that Barwe was a permanent heritable tenure and a dependent taluk of the Chota Nagpur Raj was much impressed by the fact that, according to the report of Mr. Webster already referred to, it was in early times subject to Surguja. He further relied on a passage in the Bihar and Orissa Gazetteer (Ranchi) to the effect that not being in origin a creation of the Chota Nagpur Chief it differed from other tenures in the district in that it is not resumable on the failure of male heirs. This view, however, is somewhat discounted by the passage referred to in Mr. Webster's report and quoted by Sir W. Hunter that the present holders are "not the legitimate descendants of the original jagirdars, an assertion which, so far as Barwe is concerned is probably based upon the events which took place between the death of Harnath Sahi Deo in 1851 and the grant to Lal Sahi in 1855, which will be referred to later. In dealing with the nature of the tenure the learned Judge bases his conclusions upon certain expressions used in official correspondence by executive Officers from which he draws the inference that the tenure was by them regarded as permanent and hereditary but these are, in my opinion, either fortuitous expressions used without any necessity to consider the matter or were opinions expressed without adequate enquiry or sound advice. In some, the use of the word "Zemindar" and similar expressions in referring to the holder of the Barwe estate is regarded as evidence of the estate being something greater than a putra putradik tenure. In others, such as the report of Mr. Cuthbert, the Magistrate of Ramgarh, to the Secretary in the Judicial Department, in the year 1827, more definite opinions are expressed Mr. Cuthbert says, speaking of what he calls the subordinate Parganas, "The Raja of Chota Nagpur has no rights in these Parganas saving the revenue payable to him and these Rajas may be considered in the light of talukdars." He further states that the revenue payable by the Raja of Barwe was then Rs. 1,462 which is considerably more than the amount alleged by the respondent's father to have been paid before 1799 viz., Rs. 302-8-0 and less than that paid since 1855 when the Settlement was made with Lal Sahi, a fact which is hardly consistent with a

permanent heritable taluk. From Cuthbert's report it is obvious that his sources of information were meagre and it does not appear upon what foundation his opinion is based. It is clear, however, that in making his report he had before him the document Exhibit N-4, dated 1827, which is headed "ghatwals holding jagirs on conditions of service," amongst which appears Barwe with the name of Sobhan Sahi, the Raja of that date, and the amount of rent payable to the Maharaja of Chota Nagpur, namely, Rs. 1,462-8-0. In the final Survey and Settlement Report 1902-1910 for this district Mr. Reid, the Settlement Officer, states at page no. paragraph 252: "The term jagir invariably connotes resumability, that is, the tenure lapses to the parent estate in default of legitimate male heirs of the original grantee. This is also true of nearly all the important tenures which exist in the district. This condition is not always definitely stated in the deeds under which the jagirdar holds, but if the tenure was originally a jagir grant from the Maharaja's estate the custom is none-the-less certain." He then points out that before the Permanent Settlement the Maharaja in some cases attempted to resume these tenures at will and that by the patta granted to Raja Dripnath Sahi by Government at the time of the Settlement the power to resume existing grants without the consent of Government was expressly taken away and that the Maharaja had not since that time claimed to resume them except on failure of male heirs. At the end of the next paragraph he points out that a few recent decisions of the Civil and Revenue Courts tend to foster the idea that primogeniture is not the Customary Law and that these decisions are based upon an imperfect appreciation of local usage which is not always easy to prove to the satisfaction of the Courts, however certain and ancient it may be, and points out the evils that will result if this tendency continues.

16. Two other documents were strongly relied on by the Subordinate Judge. In one, Exhibit 8, Mr. Streitfield, Deputy Commissioner of Lohardaga, in a letter to the Commissioner of Chota Nagpur, enclosing a petition of Raghubir to have his estate managed under the Chota Nagpur Encumbered Estates Act in the year 1897, refers to Barwe as a permanent tenure under the Maharaja of Chota Nagpur. There is nothing to indicate that Mr. Strietfield's opinion was based upon any evidence which is not available at present for our consideration. Indeed, it is highly improbable that he had the advantage which we now possess of considering the matter in the light of a mass of evidence extending over a number of years and I am unable to, attach much weight to the expression used by him in view of other and more important evidence in the case. The other document (Exhibit J-2) is a plaint in Rent Suit No. 119 of 1866-67 in which the Maharaja of Chota Nagpur sued Raghubir for rent of Barwe for the years 1921-22 Sambat (1864-5 A.D). In it the defendant is stated to be in possession of Pargana Barwe as jagirdar on condition of service by payment of an annual rental of Rs. 1,702-8-0. It then proceeds: "The defendant ought to have deposited into the Government Treasury Rs. 3,405 as per (illegible) of the plaintiff on account of rent of 1921-1922 Sambat" But as only part had been deposited the plaintiff had

had to pay the balance out of his own pocket. The illegible words in the original; which the translator apparently could not decipher are "Par bahari" which indicate that by some arrangement between the parties the defendant had been authorised by the plaintiff to pay his rent direct into the Government Treasury instead of to the plaintiff which would relieve the plaintiff pro tanto of his obligation to pay the Government Revenue assessed upon him. The learned Judge thought that this was strong evidence that the Raja of Barwe paid revenue to Government and was, therefore, a dependant talukdar. I can see nothing in this document which necessarily points to such a conclusion. The inference sought to be drawn seems inconsistent with the description of the estate as a jagir in the earlier part of the claim, and the arrangement that the rent of Barwe and possibly, that of other tenures also should be paid direct to the Government Tahsildar is not, I think, matter from which, in the circumstances, any inference adverse to the appellant's case should necessarily be drawn. So far as the use of the words "rent," "revenue" is concerned, I find throughout the documentary evidence in this case that they are frequently Used as synonymous even by those from, whom one would expect more careful diction. When we turn, however, to the judicial decisions beginning with that of 1857 dealing with the nature of the Barwe estate I find that the final decisions are unanimous in declaring that it was a putra putradik tenure resumable by the Maharaja" on failure of lineal male descendants of the original grantee and that after the death of Hara Nath and Lachminath the interest of their successors, Lal Sahi and Raghubir, was a life-interest only. It will be necessary to deal with these cases presently, but, if any further evidence be required to show what the nature of the tenure has been since 1799, that is supplied by Raghubir Sahi himself whose evidence, given in 1913 in a previous suit, was put in and relied upon by the respondent. He says in re-examination, "when Barwe Pargana was under Surguja it was an absolute estate (Swadhin) but since it was incorporated into Chota Nagpur Raj in the time of Raja Deo Sahi it became putra putradik according to the custom prevalent in Chota Nagpur Raj," He also admits in cross-examination that since Deo Sahi's time the Raj as of Barwe had always paid rent to the Maharaja of Chota Nagpur. Apart from this bald statement that it was an absolute estate under Surguja and the other class of evidence I have above referred to, there is nothing to show what the nature of the estate was before 1799. The admission, however, that since its incorporation with Chota Nagpur the estate has become putra putradik according to the custom there prevalent is most significant. It clearly recognises that, even admitting the nature of the estate was different before 1799, a new estate was then created in favour of Deo Sahi with new incidents and with a greatly enhanced rent. If then a new tenure was created in 1799 after conquest it follows that Deo Sahi was the original grantee. The respondent is admittedly not a descendant of Deo Sahi. He claims to trace his connection through Sankar Sahi, the alleged grandfather of Deo. If the estate was, as would now appear to be admitted, a putra putradik tenure originating with Deo Sahi it is clear that Deo Sahi's line became extinct on the death of Hara Nath in 1851 or at latest on the death of his half brother Lachminath in. 1853, assuming him to have been

legitimate, and the Maharaja was then entitled to resume.

17. In this connection it is important to point out that until the year 1912 when the respondent unsuccessfully sued, for a declaration that Barwe was an impartible hereditary estate of his family there is nothing to show that the respondent or his ancestors ever claimed to hold it as such, it is true that in a petition made on behalf of Raghubir for substitution of his name in place of that of his father in the appellant's sherishta in the year 1892 it is described as "Zemindar of Pargana Barwe," but this is a term which he might well use without intending to assert absolute ownership. In fact. Raghubir's own evidence is that he instructed his karpardaz, who made the petition on his behalf, to mention therein his putra putradik right but the tatter failed to do so. On the other hand, there are documents in which Raghubir himself describes his interests as that of a jagirdar. In the Road-Cess Returns for the year 1882 made on his behalf Barwe is described as given in jagir by the Maharaja of Chota Nagpur. In 1889 and again in 1895 the same description appears, the estate being then in charge of a manager under the Encumbered Estates Act. In the extract from the jamabandi papers (Exhibit D) in 1893 there also appears the words "jagirdari" which would seem to indicate the nature of the tenure. It is also the fact that through out the dispute in the Survey and Settlement operations beginning with the order of Mr. Sifton on the 18th June 1908 and terminating with 13th July 1911 an appeal from whose decision was dismissed by the High Court at Calcutta on the ground that no appeal lay, the contention of Raghubir Sahi was, not that he held an absolute estate, but only a putra putradik jagir, the appellant; on the other hand, contending that the estate had been resumed in the time of Dal Sahi and a new grant for a life-interest given to him, so that his son Raghubir was either a tenant-at-will or at most a life tenant. There is, further, no evidence to indicate that at any time since the Permanent Settlement was an assessment of "revenue made by Government on the holders" of Barwe as might be expected had they been regarded as proprietors of the land (see Regulation VIII of 1793, Sections 4 and 5). In my opinion it is clearly proved that from the year 1799 until 1855 the Barwe estate was a putra putradik jagir resumable by the Maharaja on failure of male heirs of the original holders and the respondent's contention that it was an absolute estate of inheritance has no reliable evidence to support it. We know that in 1799 Deo Sahi was the Raja of Barwe but what the incidents of the tenure were before that date or who were the holders there is no evidence from which any definite conclusion can be arrived at.

18. In any case, the respondent has, in my opinion, failed to give any satisfactory proof that he is a legitimate descendant of Tipan Sahi or that Tipan Sahi was ever a Raja of Barwe. The evidence of this is based mainly upon a genealogical table tendered in evidence by the respondent (Exhibit K). It bears no date. It is not the original document. It is not even a copy of the original but is said to be a certified copy of an English translation of an original Hindi document which translation was annexed to the plaint in a previous suit (No. 26 of 1912) brought by Raghubir Sahi and the respondent against the appellants

before the Subordinate Judge of Ranch claiming a declaration that Pargana Barwa was hereditary impartible estate. It was in that suit that the evidence of Raghbir Sahi already referred to was given and used in the present suit. The genealogy is sought to be proved by the evidence of Bikaw Lal, the respondent's karpardaz in the present suit. His evidence is to the effect that he first saw the original which was shown to him by Raghbir Sahi some 17 or 18 years ago, which would be about the year 1900, his evidence having been given in 1917. It was subsequently taken to Calcutta at the beginning of 1912 and transcribed into English for the purpose of being used in the Suit No. 26 of 1912 and the translation after, being typed was then filed with the plaint in Ranchi. The original was not filed. It was given to the witness Bikaw Lal to be filed and he handed it over to his Pleader Narendra Babu after that suit was instituted, but for some reason not explained it was not filed, although Narendra Babu had, according to the witness, advised that it should be riled after the issues were settled in that suit which was in May 1912. No receipt was taken for it from Narendra Babu. In October or November 1912 Narendra died and no trace of the document has since been found although search was made. It is urged that it is unusual for an important original document of this sort to be handed over to the Pleader without a receipt. On this point I can form no opinion, but it is at least remarkable that the Pleader should have failed to file it when on his advice it was handed over to him for that very purpose. It is still more remarkable that it should have completely disappeared from that, moment leaving no trace behind, nor could the witness Bikaw Lal recollect any other specific document that was handed over to his Pleader at that time although he says others were then given Ito him. He further says that he did not inform the Raja Raghbir Sahi that the document was missing when its loss was discovered nor did he report it to his son, the respondent. The witness could not read English and could not say whether the copy produced was a correct copy of the original genealogy. He further says the English copy was not shown to Raja Raghbir Sahi. He describes how the English translation was made. I give his own words. In examination-in-chief he says "From a genealogical table this English" genealogical table was prepared. I used to read the genealogy and the manager" (i.e., Manmotho Nath Babu) 11 the Raja"s manager) "read English genealogy. This is the genealogy (Exhibit K) filed in the previous suit (objected to); This genealogy was typed in Calcutta Exhibit K was not in fact the document that was filed in the previous suit but what; purported to be a copy of it. In cross-examination he says; "Enayetul Karim", (a Pleader in Calcutta) "wrote in English the genealogy and I dictated to him from the genealogy in Hindi. M Perhaps, at that time the genealogy was there. Don't know by whom Enayetul Karim got the English genealogy typed. We after wards compared the typed genealogy with the Hindi genealogy. Manmotho Babu react the typed English genealogy and I. reads the Hindi genealogy." Neither Manmotho Babu nor Enayetul Karim was called. Further the document exhibited by the respondent in the present suit (Exhibit K) does not correspond in all particulars with Exhibit 15 filed by the appellant, although both, are supposed to be copies of the typed document filed in Suit No. 26, of 1912. There are several

discrepancies. Exhibit 15 was obtained and exhibited during the hearing on behalf of the appellant and both documents are supposed to be copies of that filed in Suit No. 26 of, 1912. Exhibit K would appear to show Deo Sahi to be the brother of Bhopal, Kama Nath and Sobhan, whereas in Exhibit 15 Kamal Nath and Sobhan Nath are shown as sons of Deo Sahi. In Exhibit K Arjan Sahi is shown as the father of Murat Sahi whilst in Exhibit 15 he is shown as his brother. Again, in Exhibit K Bhikan Sahi has a son Damar Sahi with a line of four other generations ending with Bhupnath Sahi descended from Damar, whereas in Exhibit 15 not only are these persons shown as descended from Bhikan but exactly the same names appear also as descendants of Arjan. In other parts of these two documents there are other discrepancies. For example, in Exhibit K Gulab Sahi has two sons, Thakur Harukh Sahi and Hira Sahi, whereas in Exhibit 15 his only son is Thakur Harukh Sahi whilst Hira is shown as the son of Gulab's brother. It is clear that these two documents are either not copied from the same original, or if they are, they are so carelessly copied that it is impossible to place much reliance upon them. It may perhaps be hypercritical to point out that, although the witness Bikaw Lal says we compared the typed copy with the original, he nowhere says that it agreed. Possibly he meant to imply this. But in any case he could not read English, and, as he alone was called to prove the correctness of the copy, I think the proof on this fails to satisfy the requirements of Section 63 of the Evidence Act.

19. It is contended, however, that the Subordinate Judge relied rather on the verbal evidence than on the genealogical table in arriving at his conclusion that the respondent was a lineal descendant of Tipan Sahi Deo. This depends mainly upon the value of the evidence of Raghubir Sahi and the respondent, although the latter's evidence adds little or nothing, as he deposes of this matter to what he was told by his father. Raghubir says that he heard from his father that Keshar Sahi was the brother of Bhim but adds later that it was from the kursinama (family tree) that he knew who were the members of his family. He further says he has no recollection about the genealogy prior to Bhim Sahi but explains this in re-examination a few days later by saying he meant he did not know the names of the brothers and other gotias of the Rajas before Bhim's time but he knew who the Rajas were and adds that Bhim's father was Sagar Sahi and Sagar's father was Tipan Sahi. This unfortunately does not agree with the evidence of the genealogy in Exhibit K, and it has this importance that it ignores Sankar Sahi who is the father of Bhim and the son of Sagar in the genealogy and the respondent's line is traced from Sankar. I have the greatest difficulty in accepting this witness's evidence as proof that he was, a legitimate descendant of Sankar Sahi. He may have been doing his best to be accurate but his knowledge was obviously defective and unreliable. He appears to have been under the impression that the document filed in the suit in which he was giving evidence was an original document written in Hindi. On being shown the document actually filed and written in English he still persisted in saying that it was the identical paper which he had given to Bikaw Lal to be filed and followed

this up by saying that the same paper had been made over to his father by the Ranis of Haranath and had been filed in two previous suits, one in 1857 and the other in 1910. This is manifestly inaccurate. The document only came into existence in 1912. It is also proved by reference to the records in the two suits mentioned that no kursinama, either ail original or a copy, was filed by anybody in either of them and this also appears from Bikaw Lal's evidence. Raghubir Sahi further states that the object of keeping up the kursinama was to show the names of the successive Rajas and nothing else and that the names of legitimate members only and not the illegitimate were entered. If this is so it is manifest that the document relied on in the present case is not an accurate copy of the original if such ever existed. The copy now relied on shows at least two cases of illegitimate sons and in one case his defendants are also entered for four generations. I think that, having regard to what has already been stated, it would be very unsafe to place any reliance upon the evidence of this witness on this part of the case and I am unable to accept it. I take this course with more confidence in that the learned Judge who found that the genealogy was proved had not the advantage of seeing the witness but only had his written evidence before him and had no more opportunity than this Court of weighing its effect. The evidence of the respondent carries the case no further, as he only deposes to what his father told him. Thakur Bhanpratap Sahi also speaks to the genealogy of the family from what his father told him five years earlier and from having seen the Hindi genealogy on one occasion. The information he obtained from his father was post litem motam, as this dispute had been going on since at latest the date of the Survey and was in fact raised in the time of Lal Sahi. This witness gave his evidence in 1917, His father, he says, died some four years earlier, which would be 1913. The original Hindi genealogy was said to have been handed over to the Pleader Narendra early in 1912, and nothing was heard of it since then. The respondent, however, said he had a Hindi copy of it, although when or by whom this copy was made does not appear. What the witness Bhanpratap Sahi saw was presumably the copy, if anything. He certainly does not prove that it was the original and I must hold that his evidence is of no value on the matters he deposes to. This question of genealogy was argued at some length before us and I have, therefore, thought fit to deal with it, but if the view already expressed that the original grantee must be taken to be Deo Sahi be accepted the question is not material, as the respondent is admittedly not a descendant of Deo Sahi

20. It now becomes necessary to consider whether the estate was resumed by the Maharaja Jaggannath Sahi Deo on the death of Lachminath in 1853 and a new grant given to the respondent's grandfather, Lal Sahi, in November 1855 or whether, as the respondent contends, no new grant was given but Lai Sahi succeeded in the ordinary course as the next heir to the estate. I have already said that in my opinion the estate was at that time a putra putradik tenure, and if Lal Sahi in fact, succeeded as heir it must be on the hypothesis that whatever his legitimate claims may have been he was recognised by the Maharaja as the next

lineal heir of the original grantee, and, if this is so, it is too late now for the appellant to re-open that question. The appellant's contention, however, is that the line of the original grantee terminated with Lachminath and that a new grant was subsequently given to Lal Sahi of a life-estate only. In order to determine this question it is necessary to consider the events which happened at that period. In the year 1851, when Raja Haranath Sahi died without male issue, his half brother Lachminath Sahi would undoubtedly be the next heir if his parentage as the legitimate son of Haranath's father Sobhan Sahi could be established. The two widows of Haranath contested his legitimacy and claimed that they, as the widows of the last male-holder were entitled, to a life-estate. If Lachminath was not the legitimate heir and the succession terminated, then, the Maharaja was undoubtedly entitled to resume which would defeat the claims of the widows who at most would be entitled only to maintenance. Lachminath petitioned the Executive Authorities to be recognized as heir but his petition was disallowed on the 20th August 1852. Subsequently, however, the widows of Haranath for reasons which do not appear changed their attitude and acknowledged his legitimacy and in October 1852 (Kartik 1909 Sambat) the Maharaja Jagannath Sahi Deo agreed to acknowledge Lachminath on condition that the Ranies should show the bona fides of their changed attitude by consenting to dine with him, a test which appeared to have satisfied the Maharaja. Lachminath was accordingly recognized as Raja of Barwe and invested with the tilak and khillat, the Ranis being awarded maintenance. He, however, did not live long to enjoy his new dignity. He died childless in February 1853 (Falgun 1909 Sambat) when the question of resumption again became prominent. Lal Sahi appears to have put forward a claim to succeed as next heir to the estate but nothing definite was done until the 16th November 1855 (Kartik 1912 Sambat) when, according to the appellant, a new grant was made to Lal Sahi of a life-interest in Pargna Barwe less six villages, which were retained by the Maharaja and the rental was increased to Rs. 1,702-8-0. The patta under which the grant was made and which would presumably be in the possession of the respondent was not produced, but what purports to be a copy of it contained in the patta book of the Maharaja of that date was tendered in evidence. A kabuliyat said to have been executed by Lal Sahi was also produced and put in evidence on behalf of the appellant. Further an ekrarnama dated the 17th November 1855 purporting to have been executed by Lal Sahi, in which he renounced any right to the six villages, was produced and tendered in evidence on behalf of the appellant. If these documents are genuine there can be no doubt that Lal Sahi took a life grant of Parganna Barwe at that date. Copies of some pattas dated the 14th December 1855 are also contained in the same patta book, and if they are genuine they show that leases were granted by the Maharaja of these villages to different tenants. There was evidence to show that Lal Sahi in fact obtained possession of the Barwe estate on the 16th November 1855. It is claimed, however, by the respondent that he was in possession earlier, in fact from the date of Lachminath's death. There are no documents to show who collected the rents of the villages appertaining to the Barwe estate during what may be called

the period of interregnum between the date of Lachminath's death in February 1853 and the alleged grant to Lal Sahi in 1855. In February 1856 the two Ranis, widows of Haranath, who appear to have been thoroughly dissatisfied with the appointment of Lal Sahi, having petitioned the Government agent, succeeded with his assistance in dispossessing Lal Sahi, and on the 1st June 1857 a suit was instituted before Captain Davies, the Senior Assistant Commissioner of Lohardaga, in which the Maharaja Jaggannath Sahi Deo of Chota Nagpur and the Raja Lal Sahi of Barwe were the plaintiffs and the two widows of Raja Haranath and others were defendants. The plaintiffs claimed to recover possession of Barwe from the Ranis. The proceedings in that suit afford very important evidence as to the Maharaja's right to resume the estate upon the death of Lachminath as well as of the attitude taken by Lal Sahi at the time with regard; to the claim of the Maharaja to resume. It appears from the judgment of Captain Davies that the joint claim put forward on behalf of both the Maharaja and Lal Sahi alleged that Pargana Barwe was comprised within the Zemindari of the plaintiff No. 1 (the Maharaja), whose ancestors gave it in jagir with the title of Raja subject to a yearly fixed rent to the ancestors of Raja Haranath Sahi who died without heir male on the 12th Poos 1908 Sambat and that the plaintiff No. 1 according to custom intended to resume the estate when Lachminath applied to the Authorities to be recognized as heir and was opposed by the plaintiff No. 1. It then describes how Lachminath's legitimacy was questioned and how he was finally recognized as Raja and how after his death the plaintiff No. 2, Raja Sahi Deo, claimed the Raj and in Kartic 1912 Sambat obtained the tilak, khillat and possession of Pargana Barwe and was afterwards in Magh 1913 Sambat dispossessed. The defence of the Ranis, inter alia, denied that Pargana Barwe was received in jagir from an ancestor of the plaintiff No. 1 or that it lay within his Zemindari and alleged that it lay within Pargana Surguja and was granted by Raja Partap Narain of Surguja to one Supoo Deo, a remote ancestor of their late husband, subject to an annual payment. They further denied, as appears from the Rubkar or decree, that it was a service tenure at all and contended that, as their husband; died without issue, the estate would on their death belong to Government. They further contended that neither Lachminath nor Lal Sahi had any right of inheritance, as they were both illegitimate. The main issue in the suit was "whether owing to Raja Haranath Sahi Deo dying without male issue the plaintiff No. 1 was entitled to resume the property in dispute and whether the plaintiffs Nos. 1 and 2 are entitled to recover possession".

21. On this point the Assistant Commissioner decided that the legitimacy or otherwise of Lachminath and Lal Sahi need not be determined, as it was admitted by the Rani that Haranath died without male heirs and the question was whether in these circumstances the Maharaja had a right to resume the Pargana, because if he had he could grant it to whom he pleased, legitimate or otherwise. He then came to the conclusion that on the evidence of both sides Barwe was a jagir of the Chota Nagpur Raj resumable on the death of the Raja without heirs male and that the assertion. that it formed part of Surguja was not supported by

tangible or trustworthy evidence and that at most the documents produced merely showed that there had been some dispute on this point before the Company's rule. And as Haranath Sahi had left no male heir who could succeed to his interest the estate lapsed to the Maharaja. He, therefore, gave the plaintiffs a decree for possession. It was the case of both plaintiffs and not denied by the defendants that Haranath died without heirs male. It was also the case of both plaintiffs that the Maharaja was entitled to resume on the death of Lachminath in 1853 and that he had invested Lal Sahi as Rajaund given him possession in 1855 [Kartik 1912 Sambat.] It is quite clear from the record in that case that both the Maharaja and Lal Sahi were agreed as to the former's right to resume in the circumstances which had arisen and this right could only arise if the line of the original grantee had become extinct. Had Lal Sahi at that time been insisting upon his right to succeed as an heir it is inconceivable that he would have consented to join in a claim which put on record a title depending in its origin on the good will of the Maharaja. It is contended, however, that contemporaneous documents show that Lal Sahi was claiming as heir and not under a fresh grant from the Maharaja. When he was dispossessed in favour of the Ranis by an order of the Assistant Commissioner on the 15th December 1856 which gave rise to the suit just referred to, a petition Exhibit L-1) was presented by him protesting against the order and setting out the nature of his claim. The date of this petition does not appear but it was presumably sometime between the 15th December 1856 and the 1st June 1857 when the suit was instituted. In this document he states that being the next-of-kin he got into possession of the Pargana as Raja and that he had been in possession for four years. Whatever his pretensions may have been to succeed as heir to the estate at that time, and; I will assume that he may have endeavoured to set up a title by succession, it is clear that when he came to close quarters with the Maharaja and in conjunction with him filed a suit to recover possession from the Ranis, he put forward no such claim. He admits the Maharaja's right to resume at that time and relies upon it as establishing, the latter's right to invest him. There is not a word in the plaint to show that he was the heir or that he was related to the last holder Lachminath or his brother Haranath. On the contrary, it appears from the judgment that the allegation in the plaint was that Haranath died without heirs male, a term which includes more than male issue. It is also significant that both in the judgment and in the robkar Lal Sahi's possession of the estate is said to date not from Lachminath's death in 1852 but from November 1855 (Kartik 1912 Sambat) which synchronises with the date of the kabuliyat and the copy fatta relied on by the appellant. It is impossible to my mind to come to any other conclusion than that Lal Sahi was well aware that he could not hope to succeed by asserting a title by inheritance. Could he have done so it would have been Unnecessary to join the Maharaja as a plaintiff in the suit. Nor do we find when the question arose regarding Lachminath's legitimacy three years earlier that Lal Sahi did anything to assert his claim. It is not a violent assumption to suppose that he would have done so had he been conscious of any hope of success, but he allowed the doubtful, claim of Lachminath to be recognized without protest.

The fact that there are no rent receipts, collection papers, or other documents to show who received the rents, of the villages in the Pargana between the beginning of 1853 and the end of 1855 affords no ground for drawing an inference adverse to either party. They, ought to be in the custody of the party who was in possession during that time. Both sides claimed to have been in possession but neither of them can produce them. The probabilities are that these as well as many other documents disappeared at the time of the Mutiny. If, however, the kabuliyat produced by the appellant is a genuine document it clearly proves that Lal Sahi took a life-estate of Barwe from the Maharaja by a new grant in 1855. The patta under which this grant was made is not forthcoming. It would in the natural course of events be in the possession of the respondents' family and he does not produce it. On the contrary, he denies the grant and contends that the kabuliyat as well as the ekrarnama of the 17th November 1855 executed by Lal Sahi are forgeries. Secondary evidence of the patta was given by the appellant by production from the proper custody of the copy patta book kept by the Maharaja's agents. This contains a number of pattas granted by the Maharaja at that period and amongst others one which purports to be a copy of the patta in question as well as others purporting to be grants by the Maharaja of the six reserved villages in favour of various tenants. It is contention of the respondent that these documents are either forgeries, or merely colourable and never intended to be acted upon. That this book was in existence in the year 1869 cannot be disputed, as it contains the proved signature of Captain Money, at that time Deputy Commissioner of Lohardaga. The Maharaja Jagannath Sahi Deo died in that year leaving his infant son the appellant, as his heir and Captain Money had to take over the estate on behalf of the Court of Wards pending the appointment of a manager. Captain Money has made certain notes in the book in his own writing, one of which was to the effect that "from here it would appear that a new hand had lately written up the book". That appeared under patta 199 dated 1920 Sambat (1863 A.D.), that is, long after the date of the pattas in question, but the learned Judge inferred from this that Captain Money thought the book had been tampered with and that it was, therefore, unreliable. I do not think that any such inference necessarily follows from Captain Money's note and even if such an inference is legitimate it affords no ground for supposing that the earlier pattas were not genuine copies. The kabuliyat, which is written on stamped paper the stamps being revenue stamps of the East India Company, is dated the 22nd Kartic 1912 Sambat which corresponds to the 16th November 1855. The patta is dated the 7th Kartic Sudi 1912 Sambat which is the same date. In the printed book before us the word "Badi" in the patta is a mistake for "Sudi," There is another mistake in this exhibit as printed in the paper-book the word "excepted" should be inserted after the words "altogether six mamas." The kabuliyat, although in substance the same as the patta, is not mutatis mutandis an exact counter-part of the latter. The language differs in some respects but they both clearly indicate a grant of a life-estate. The translation of the patta reads in the material portion: "The said Raja, so long as he shall remain alive, will enjoy Pargana Barwe in terms of this

patta" The kabuliyat reads: "On my death you will have the power to take direct possession of the said Pargana and to settle it." They both provide for the payment of an annual rent of Company s Rs. 1,702-8-0 including rekamat. They both show a jagir grant on condition of service, namely, keeping watch at the Maharaja's khirki arid they both provide for resumption in default of rendering service or paying the rent. The kabuliyat was produced from, the proper custody and purports to be executed by Lal Sahi and attested by five witnesses. The Court may, therefore, presume that it was properly executed and attested without proof of these matters. The signatures of three of the witnesses were in fact proved by the son of one and the grandsons of two others. The learned Judge, however, came to the conclusion that neither this nor the other documents mentioned were reliable. The main reasons which induced him to come to this opinion were that the kabuliyat never saw the light until more than a quarter of a century after its date, namely, in 1882, and that it was not produced in the suit instituted against the Ranis in 1857 nor was it referred to in contemporaneous documents. He further relied upon the fact that the six villages which are expressly excluded by the grant were found in the possession of the Barwe Raj and not in the possession of the Maharaja of Chota Nagpur and that, so far as the evidence, went, it showed that the rent of these villages had always been paid to the holder of Barwe and never to the Maharaja. I do not appreciate the necessity for introducing this document into the proceedings in the suit of 1857. There was no dispute between the grantor and the grantee that the latter had been invested as Raja after resumption by the Maharaja and it was not the defendants' case that no grant had been made but merely that the Maharaja had no right to resume the estate. It was therefore, not necessary to prove by documentary evidence a point which was not in dispute. Nor is it to my mind at all surprising to find that the Maharaja Jagannath failed to collect the rents of those six villages or even that he allowed the tenants to go on paying rent to Raja of Barwe as they had done previously. He was a man of weak intellect who allowed his estate to become seriously embarrassed and took no trouble over its management. It appears from the report of Captain Money, dated the 16th July 1869, (Exhibit 14) made shortly after the Maharaja's death when the estate was taken over by the Court of Wards that he found it in a very confused, and embarrassed state. He says, "the greater part of the rents payable by the jagirdars and others have been allowed to fall into arrears, some being as many as 15 years in arrears, latterly the Zemindar seems not to have troubled himself as to how collections were made or whether made at all and to have lived entirely on the rakumut collections borrowing money even to pay the small amount of Government Revenue due by him."

22. The mental state of the late Maharaja was the subject of a civil suit decided in the Gaya Court in 1868 and afterwards in appeal by the High Court. It was held that he was sufficiently sane to be left in charge of his own affairs There can, however, be no doubt that he has for many years been sufficiently imbecile to allow his estate to be grossly mismanaged, if it can be said to have been

managed at all.

23. This estate remained under the management of the Court of Wards from that date until 1887 when it was restored to the appellant on attaining his majority. There is nothing to show that the manager was aware of this kabuliyat until the year 1882 when it was sent together with the ekrarnama executed by Lal Sahi relating to the sir villages to the Encumbered Estates Office which then had charge of the Barwe estate with a request that the Settlement of these six villages at a fair and equitable rent might be made if direct possession was impracticable, and there is an endorsement on the kabuliyat showing that it was received by the Encumbered Estates Office from the Court of Wards with a letter in English on the 22nd February 1882.

24. Nothing appears to have been done by way of giving effect to this request. It may well be that the Court of Wards did not consider it worth while to embark on litigation to obtain possession of those villages which had for so long been out of the Maharaja's possession. The kabuliyat was presumably returned to the manager under the Court of Wards of the Chota Nagpur Raj and it is not again heard until sometime in 1903 or 1904 when Mr. Peppe, the present Maharaja's manager, found it in a safe in his office with some other papers not relating to the Barwe estate and it was subsequently filed as evidence in the Settlement operations in 1907.

25. If the kabuliyat was a forgery it may safely be assumed that the copy of the patta contained in the book which we know was in existence in 1869 was also a spurious document concocted to afford corroborative evidence of the kabuliyat. It is not suggested that this forgery took place during the time when the Maharaja's estate was under management of the Court of Wards from 1869 onwards. This limits the time when these documents were forged to the period between the years 1855 and 1869. The pattas were entered in the book practically in the order of their date and extend over a number of years. Unless the whole book is a forgery, which is not suggested, it may be assumed that the copy of the patta in question was entered in the book at or about the date assigned to it and the kabuliyat came into existence about the same time. The suggestion that the Maharaja, who was on Lal Sahi's own admission in 1855 entitled to resume Pargana Barwe, should grant him at that time a putra putradik interest in the estate and immediately sit down and prepare an elaborate series of forgeries to prove that it was a life grant only is so grotesque that it hardly requires refutation. If the Maharaja could resume, and this was not disputed, he could, do what he liked with his own and there was no conceivable object in forging documents to prove that he had done that which he was then entitled to do. The learned Judge thought that the patta book was a spurious document and was added to as there was necessity for it. I fail to appreciate how at the time of the alleged forgery the necessity which is the basis of his conclusion had arisen. The learned Judge also says speaking of the pattas of the six villages that the object of the Maharaja was to snatch away these six villages from Lal Sahi. If

that was his object he seems to have failed originally to take advantage of his fraud, for we do not find that he ever attempted, to collect the rents, but through his mismanagement and indifference the previous state of affairs was apparently allowed to continue. Again in 1860 when Lal Sahi died his son Raghubir was allowed to remain in possession, although it was not until 1893 that the latter obtained the substitution of his name in place of that of his father. This fact is also relied on by the respondent to support his case that the kabuliyat was a forgery. It is said that no attempt was made to resume on Lal Sahi's death. I cannot help thinking, however, that the omission points rather to the genuineness of the document. If it was a forgery the occasion for which it was devised had arisen. Lal Sahi was out of the way and could no longer dispute his signature. The witnesses or at least the three, of whose history we have any evidence, were alive in 1860 to prove the execution of the document if it were denied. Why should the Maharaja wait any longer to reap the fruits of his elaborate plot. The fact that Raghubir was quietly allowed to take possession on his father's death in 1860 seems much more consistent with the conduct one might expect from a careless and incompetent manager which we know the Maharaja to have been than with that of a cunning knave who had forged documents to meet the occasion which then presented itself. Another matter relied on by the Subordinate Judge was the fact that in 1893 the wasilbaki papers, although they show the same annual rental as that stipulated in the kabuliyat, show that it was payable in different instalments from those provided in the kabuliyat I can see nothing suspicious in this circumstance. The kabuliyat instalments are payable in eight different months and vary from Rs. 105 to Rs 359-80. The wasilbaki instalments are payable in six different months and are practically equal payments during each of these six months. This change might easily have been arranged for the sake of convenience and symmetry in the payment of the rent." It is a much more significant fact that after 1855 we find the rent payable was Rs. 1,702-8-0 whereas previously it had been 1,462-8-0 sicca rupees. This would be equal to between 1,550 and 1,560 Company's rupees. It is true the kabuliyat rent is stated to be made up of Rs. 1,560 rent and Rs. 142-8-0 rakumat, but the fact remains that the sum thus arrived at was thereafter always treated as rent and claimed as such and the change is not accounted for on any other hypothesis than a new grant in 1855. Another reason which influenced the learned Judge in rejecting the kabuliyat was the fact that the witnesses were all residents of Palkote where the Maharaja lived and nobody from Barwe witnessed it. This in itself is not so surprising as to create suspicion when one remembers that the document was executed at Palkote when the Raja went there to be invested the only direct evidence that the document was not genuine was the fact that Raghubir Sahi denied the signature of his father Lal Sahi. Had the learned Judge accepted this witness's evidence after an opportunity of observing his demeanour in the witness-box I should have felt great hesitation in rejecting his finding but such was not the case. I have already pointed out several respects in which Raghubir's evidence was quite unreliable. It is also impossible from this witness's evidence to say how old he was when his

father died and whether he was really in a position to know his father's signature well enough to swear to a forgery He first says he was born in 1892 Samabat i.e., 1835 A.D He would, therefore, be 25 in 1860 when his father died. When cross-examined he says he was 18, 19 or 20 when his father died and shortly afterwards says he was 25 or 26 when he went with his father to Palkote five years earlier. He then repeats that he was 18 or 19 when his father died and that he must have been 13 or 14 when his father was invested Raja at Palkote, and says he spoke by guess in saying that he was 24 or 25 at the time of his father's tilak and that his horoscope on which, he relied for his age was lost in the Mutiny. The whole thing reads very much as if he had come prepared with a story that he was born in 1835 which he supported by a long lost horoscope and that he was about 20 when his father was given the raigi tilak and 25 when he died, but his cross-examination seems to show that he had no clear recollection of the matter. Had this witness really been in a position to dispute his father's signature to the kabuliyat it is matter of some surprise that he did not come forward during the Settlement proceedings to do so when the document was put in evidence and relied on by the present appellant. Two such opportunities presented themselves. In 1908 during the Settlement operations when the dispute was whether, the estate held by Raghubir was a life-interest of a putra putradik jagir the kabuliyat was in evidence. Mr. Sifton the Settlement Officer, decided that, as Raghubir had stepped into his father's shoes without objection by the superior landlord, he must be taken to have a putra putradik interest nevertheless he accepted the kabuliyat as genuine and said: "No grounds have been put forward to throw doubt upon the genuineness of Lai Sahi's kabuliyat and the right of resumption could have been exercised upon the death of Lal Sahi, Again in 1910, when the appellant brought a suit u/s 87 of the Ghoti Nagour Tenancy Act to have the entry recorded by Mr. Sifton in the khewat corrected the document was again in evidence but it appears from the judgment of the Assistant Settlement Officer that he considered it unnecessary to discuss the genuineness of the kabuliyat, as the defendant (Raghubir Sahi) did not seriously attack its genuineness nor advance any argument or evidence to disprove it. It was Only after the appellants' suit to have the Record of Rights corrected had succeeded on appeal that Raghubir came forward to dispute the genuineness of the documents which had hitherto been allowed to pass unchallenged. In my opinion his bare denial that the signature was not genuine cannot be accepted in view of the many other considerations which point to the contrary conclusion and I would reject it as untrustworthy.

26. Some reliance was placed upon a petition of the Maharaja dated the 29th July 1889 (Exhibit E-2) in which he says there was an old usage of granting jagirs under plain nagsant pattas without taking kabuliyats and hence many forged pattas had come into existence. This may well have been the usage with respect to the grants of villages to the jagirdars of which there were many, but there is nothing to show that it applied to the large estates of the dependent Rajas which in the nature of the things could not frequently be the subject of a

fresh grant. The occasion was, moreover, a special one and kabuliyats were certainly not unknown at that date. If there was a settled custom of Exacting no kabuliyats from any of the Maharaja's tenants it is highly improbable that such a document would be forged. This document (Exhibit F-2) was also relied upon to support the contention that the descendants even of life jagirdars succeeded to an interest in the estate, but the English rendering was stated by the learned Vakil for the appellant to be misleading, and it would certainly appear that a life grant without words of inheritance conveyancing an interest to the grantee's heirs is a contradiction in terms. After seeing the original I think the first Clause of this document contemplates resumption in two separate cases (1) the death of a life jagirdar and (2) the death of the heirs of a putra putradik jagirdar. It was further contended that the kabuliyat was not admissible in evidence as it was not adequately stamped. If this be so, the defect could be cured by payment of the deficit and the penalty of ten times that amount. I do not think, however, that it is shown that the stamp is inadequate. Article 29 of Regulation X of 1829 was relied on for this purpose, but I do not find any provision in that Regulation for the stamp-duty applicable to a kabuliyat of a grant for life and in the absence of any Regulation dealing with the case I am unable to hold that any penalty can be exacted.

27. The last point taken by the respondent was that the appellant's right to resume is barred by limitation. When Lal Sahi died in 1860 his son Raghubir appears to have taken possession of the estate without any opposition on the part of the Maharaja Jagannath who, as we know, showed no aptitude in the management of his affairs. No attempt was made by Raghubir at that time or until many years after to obtain recognition by investment as Raja by the superior landlord but he remained in possession paying the rent content with the style and title of Tikait and is so described in the documents. In 1869 the Maharaja Jagannath died leaving an infant son, the appellant, as his heir and the estate was administered by the Court of Wards until the latter attained majority in 1887. Barwe was from 1881 to 1895 being, administered by a manager under the Chota Nagpur Encumbered Estates Act. So long as the rent was paid and no adverse title was set up by Lal Sahi's Successor claiming any permanent interest there could seem to have been no particular reason why his possession should be disturbed. Apart from any overt act on the part of Raghubir claiming, a larger interest, I apprehend that the mere acceptance of rent from him by the Maharaja would not constitute him anything more than a mere tenant-at-will. The evidence, however, shows that Raghubir asserted that he had an interest as jagirdar and the Maharaja acquiesced in this claim and himself described Raghubir in the plaint in the rent suit of 1866 as in possession of Pargana Barwe as a jagir on condition of service. Lal Sahi's name was retained in the appellant's sherishta as the elakadar of Barwe until 1893 when Raghubir applied for mutation and on paying nazrana had his name substituted in place of that of his deceased father. The document recording this mutation shows the interest of the holder to be that of a jagirdar, the interest of a jagirdar is ordinarily that of a

life-tenant. The subsequent conduct of the parties, discloses nothing from which it can be inferred that any larger estate was ever claimed by Raghubir until in the course of the Settlement operations in 1908 he claimed a putra putradik interest which was opposed by the appellant. The Settlement Officer decided in Raghubir's favour. Thereupon the appellant in 1910 instituted a suit, u/s 87 of the Chota Nagpur Tenancy Act claiming to have the entry in the Record of Rights corrected and to have Raghubir's name entered as a tenant-at-will or at most a life-tenant. He failed in the Trial Court before the Assistant Settlement Officer but on appeal to the Judicial Commissioner of Chota Nagpur in 1911 the judgment of the Trial Court was set aside and the Record of Rights was ordered to be corrected and Raghubir's tenure to be entered as a life-tenure resumable on his decease. An appeal was preferred by Raghubir to the High Court at Calcutta but was dismissed on the ground that no appeal lay. The same Court rejected a petition in revision to set aside the decision of the Judicial Commissioner who, it was contended, acted without jurisdiction. The Court decided that he had full jurisdiction in the matter. The next step was in 1912 when Raghubir and the respondent brought Suit No. 26 of 1912 before the Subordinate Judge at Ranchi claiming a declaration that Barwe was an hereditary impartible estate belonging to their family from time immemorial. As already pointed out, that was the first occasion upon which such a claim had been asserted. The suit was in effect an attempt to set aside the decision of the Judicial Commissioner and it was dismissed on the ground that it, was barred by Section 258 of the Chota Nagpur Tenancy Act. That decision was affirmed on appeal to the High Court. Raghubir died in January 1914 and the present suit for resumption was instituted in the following April. The learned Vakil for the respondent admits that a jagir means a life-tenancy but contends that in Chota Nagpur the term has a different significance and connotes a putra putradik interest. He relies upon paragraph 25 of Mr. Cuthbert's report of the 21st April 1827 (Exhibit M-5). In speaking of the larger jagir Mr. Cuthbert says they invariably descend from father to son. This may be true as a general rule but it is clear from a memorandum of Captain Oates (Exhibit M-2) enclosed in a letter to the Commissioner of Chota Nagpur in October 1856 for the information of the Legislative Council of Bengal that some of the jagirs were held on life-tenures. Moreover, it appears from the patta book that where a putra putradik interest was conveyed words to that effect were always inserted in the grant. Exhibits G and D-1 are instances. In other instances life-estates were also granted. If the grant of jagir always gave a putra putradik interest it would seem unnecessary that the pattas should contain words indicating a grant of that nature and yet we find both kinds in the book. In *Ram Narayan Singh v. Ram Saran Lal* 50 Ind. Cas. 129 C.L.J. 332 : 36 M.L.J. 344 : 17 A.L.J. 398 : 21 Bom. L.R. 597 : 23 C.W.N. 866 : 46 C. 68 : (1919) M.W.N. 518 : 26 M.L.T. 207 : 46 I.A. 88 which was a Chota Nagpur case, it was clearly stated by Sir John Edge in delivering the judgment of their Lordships that a jagir must be taken prima facie to be an estate for life only, although it may possibly be granted in such terms as to make it hereditary. This was in accordance with the previous ruling in *Gulabdas Jugjivandas v. Collector of Sural* 6 I.A. 54 : 3 B. (sic)

3 Sar. P.C.J. 889 : 2 Ind. Dec. (N.S.) 125 (P.C.). It is also in accordance with the express provisions of Clause XV of Regulation 37 of 1793 which enacts that "jagir"s are to be considered as life-tenures only and with all other life-tenures are to expire with the life of the grantee, unless otherwise expressed in the grant." In my opinion the mere assertion of a jagirdari right acquiesced in by the superior landlord cannot be taken to import a claim, to or an acknowledgment of a larger interest than that of a life-estate, and in the circumstances I hold that there was no adverse possession on the part of the respondent's father which would bar the present claim for resumption.

28. If I am right in the conclusion already arrived at it is not necessary to consider the plea in bar raised by the appellant and. this question can be dealt with shortly. The first case relied on as res judicata is the decision of Captain Davies in 1859. There was no dispute between the plaintiffs in that suit as to the Maharaja's right to resume or the fact that the tenure had come to an end on the death of Lachminath. The principle laid down in *Cottingham v. Shrewsbury* (Earl of)(1843) 3 Hare 627 : 15 L.J.Ch. 441 : 67 E.R. 530 can therefore, have no application. There was no conflict of interest between the co-plaintiffs and the, decision cannot, in my opinion, be held binding as res judicata on their successors see *Ramchandra Narayan v. Narayan Mahadev* 11 B. 216 : 11 Ind. Jur. 301 : 6 Ind. Dec. (N.S.) 142. The fact, however, that Lal Sahi admitted that the estate was resumable by the failure of heirs male in 1855 is strong evidence, of the truth of the fact then admitted, and if it would be shown that the Maharaja had been induced thereby to alter his position I think such conduct would work as an estoppel between the parties and their representatives. If, however, it can be clearly shown that the facts then admitted were not true, I think it must be assumed that the Maharaja in 1855 was aware of the truth and was not prejudiced by the admission, and evidence of the true state of affairs would be admissible. In my opinion, however, the evidence is by no means sufficient to disprove) the truth of the admission that the line of the original grantee then became extinct and that the Maharaja was entitled to resume. The second case relied on by the appellant as res judicata is the decision of Mr. Kingsford, Judicial Commissioner of Chota Nagpur, in 1911 in the suit brought u/s 87 of the Chota Nagpur Tenancy Act already mentioned. Section 258 of that Act provides that no suit shall be Entertained in any Court to vary, modify or set aside, either directly or indirectly, any order or decree of any Deputy Commissioner or Revenue Officer in any suit or proceeding under, inter alia, Section 87; The present suit is not brought for the purpose of setting aside Mr. Kingsford's decree, and although the section, no doubt, had the object of securing to some extent finality for such decrees the section does not say, as it might have done, that no Court shall try any issue already decided by such a decree so to bar a defendant in a suit brought against him from raising the issue. Nor does Section 11 of the Civil Procedure Code, in my opinion, avail the appellant. Mr. Kingsford, although Judicial Commissioner of Chota Nagpur, was acting as a Revenue Officer in hearing the appeal in question and, as such, would not have been competent to

try the present suit within the meaning of that section.

29. If, however, I am right in my decision on the other issues it follows that the appeal must be allowed and the decision of the Subordinate Judge reversed. I would grant the relief asked for in paragraphs (a) and (b) of the plaint and order the respondent to pay the appellant his costs here and in the Court below.

30. With regard to the six villages expressly excluded in the kabuliyat, dated 22nd Kartic 1912 Sambat, I think that the plaintiff has failed to establish his title thereto and the relief granted relates only to the villages claimed in the First Schedule of the plaint other than those six.

Jwala Prasad, J.

31. I agree to the order proposed.