

(1924) 06 PAT CK 0017
In the Patna High Court

Rudra Das Chakravarti

APPELLANT

Vs

Kamakhya Narayan Singh

RESPONDENT

Date of Decision : 10-06-1924

Acts Referred:

Central Provinces Court of Wards Act, 1899 — Section 18
Chota Nagpur Encumbered Estates Act, 1876 — Section 17
Court of Wards Act — Section 70

Citation : AIR 1925 Patna 259

Hon'ble Judges : Kulwant Sahay, J;Jwala Prasad, J

Bench : Full Bench

Judgement

Kulwant Sahay, J.—The facts leading to the present suit are not seriously in dispute and may be shortly stated The minor defendant is the proprietor of the Ramgarh estate, in the district of Hazaribagh, which is under the management of the Court of Wards. In the year 1916, one Mr. D.W.O. McGregor was the manager of the Ramgarh estate under the Court of Wards. The original plaintiff, Kalachand Chakravarti, was a proprietor of coal lands and was anxious to take a mining lease of coal lands in the Ramgarh estate. On the 19th December, 1916, he filed a petition before the said manager, where he stated that he was desirous of carrying on coal business in the district of Hazaribagh under the Ramgarh estate, and that in contemplation of the same, he had already applied to the Deputy Commissioner for the necessary certificate of approval, permitting him to take settlement of mines in the Province. He prayed that certain villages (seven in number) set out in the petition, which were outside the area granted to the Ramgarh Bokharo Company and to Bird and Company, may be settled with him on such terms and conditions as might be convenient, both to the estate and to the petitioner. He expressed his readiness to deposit the requisite amount of salami for granting the prospecting license which would ultimately go towards part payment of the full salami money at the time of actual settlement, and he asked for information as regards the amount of money which it was necessary for him to deposit for the grant of the prospecting license, and also the date

within which such deposit was to be made. Kalachand was apparently informed that he would have to deposit a sum of Rs. 2,000 as a preliminary deposit, and it appears from the chalan that a sum of Rs. 2,000 was actually deposited on the 22nd December, 1916, and the manager's acknowledgment of receipt dated the 22nd December, 1916, also shows the fact of the deposit on that date. On the 19th January, 1917, Babu Bhudeb Chandra Sarkar, as pleader for Kalachand Chakravarti, made a formal application on a printed form, to the manager, for the grant of the prospecting license, giving the names of six villages, all in thana Nawadih, some of which were different from those contained in the previous application of the 19th December, 1916; and it was stated that this petition might be deemed as supplementary to the petition filed on the 19th December. Later on, on the 22nd January, 1917, a fresh application was made by Kalachand for grant of prospecting license for coal over ten villages in thana Nawadih and eight villages in thana Gumia making a total of eighteen villages comprising an area of 7,85007 acres. It was stated that this application which was also on a printed form, might be treated as in continuation of the first application, dated the 19th December, 1916. It appears that no action was taken upon the three applications made by Kalachand, or in any event, no intimation was given to Kalachand of what steps were being taken on those applications, and consequently on the 2nd February, 1917. Bhudeb Chandra Sarkar, Kalachand's pleader, presented another application before the manager, wherein the manager was asked to take up the matter at once and to fix the salami which Kalachand had to pay. It was pointed out, that having regard to the state of the market, it was desirable that the matter should be expeditiously finished, both for the benefit of the estate as well as for the applicant. It appears from a note in the margin of this petition of the 2nd February, 1917, that a reply was ordered to be given to the effect that the matter was under consideration and that until all points had been considered and settled, no definite reply on any question in connection with the application could be given. After certain further correspondence, to which it is not necessary to refer in detail, we come to a petition filed by Kalachand on the 27th February which is not on the record, but the reply thereto, dated the 3rd of March, 1917, is on the record and in this the manager stated that he was unable to follow the intention as expressed in the said petition of the 27th February and he stated, that in the event of either a lease or license being granted, the salami or rental will have to be paid in advance. It is important to bear in mind this condition of payment in advance insisted upon by the manager, as the plaintiff" subsequently wanted to vary this term as will appear from subsequent correspondence, and his argument is that under the contract the whole sum was not payable in advance. Further negotiations appear to have been carried on between the manager and Kalachand and we find that on the 21st of March, 1917, a letter was sent by Kalachand to the manager wherein he expressed his willingness to pay, in advance, the prospecting rent according to the rates settled by Messrs, Anderson and Wright or Bird and Company in respects of similar leases granted by the estate to them, or in accordance with the rates laid down in para. 30(ii) of the

Mining Rules framed by the Government; and on the 5th of April, 1917, we find a letter sent by the manager to Babu Bhudeb Chandra. Sarkar in which a reference is made to the application, dated the 22nd January, 1917, referred to above, wherein the manager states that as the result of the various conversations regarding the rental, etc., he was willing to fix a rental of Re. 1-8-0 per bigha subject to the confirmation of higher authorities, as rent for a prospecting license of the villages applied for, with the exception of one village, Doojha contained in the petition of 22nd January, 1917, for which another village was to be substituted. Kalachand apparently agreed to the rental proposed by the manager and on the 14th April, 1917, he wrote a letter wherein, after expressing his thanks for reducing the rental to Re. 1-8-0-per bigha, he asked for a copy of the terms of indenture for a prospecting lease at an early date so that he might be in a position to consider the terms, and he also wanted to know the date by which he should deposit the rental. The next document that we have got on the record in point of time, is a note sent by the manager to the Deputy Commissioner, dated the 5th May, 1917, wherein he informed the Deputy Commissioner about the application of Kalachand Chakravarti for the prospecting licence and the terms as settled between him and Kalachand. In this note he gave a list of the villages for which application had been made by Kalachand for the prospecting license and it consisted of eight villages in thana Nawadih and six villages in thana Gumia, comprising a total area of 12,619 64 acres or 37,85392 standard bighas. The rent fixed for this area, as stated in this note, was Rs. 1-8-0 per standard bigha for two years for which the license was proposed to be given. The manager stated in this note that Kalachand Chakravarti had come over for the purpose of the prospecting license only and wanted to know definitely whether his offer was to be accepted or not. The question which the manager referred for decision to the Deputy Commissioner was as regards the term of the draft lease. It appears that a draft lease to be executed in the event of the licensee agreeing to take lease of any lands after prospecting is usually attached to a prospecting license, and the manager could not come to any conclusion as regards the period for which the lease was to be granted, in case the licensee desired to take the lease, and as the draft lease had to be annexed to the prospecting license, the period of the lease had to be stated in such draft and the manager stated in para. 6 of his note:

the only point at variance between Babu Kalachand Chakravarti and myself is in connection with the term of the draft lease of lands that may be taken in lease during the period of license that is generally attached to the prospecting license.

2. Reference was made in para. 7 of the note to other draft leases attached to prospecting licenses given to other persons, especially to the Bokhara Ramgarh Company, wherein the term was for 999 years. The manager stated that Kalachand Chakravarti wanted the period to be entered in the draft lease to be for 30 years with option of renewal for successive periods of 30 years up to 990 years, and he asked the Deputy Commissioner to settle this point. On this note we find an original note by the Deputy Commissioner to the effect that he

thought 30 years with an option of another 30 years was ample; but that he should not recommend any proposal of the kind until the question as regards the "red line" was definitely settled. The "red line" referred to in his marginal note is the line within which licenses or leases had already been granted to other persons in the Ramgarh estate, and the Deputy Commissioner wanted definitely to know as to whether the area proposed to be taken by Kalachand was outside the area granted to those licensees. The manager sent a reply to this marginal note to the effect that the villages asked for by Kalachand did not touch the "red line" and that the Ramgarh Bokharo Company, to whom the previous license had been granted, had accepted the proposal that the field as far as they were concerned, should be within and include villages touched by the "red line." Then he referred to certain circumstances in order to come to a conclusion as regards the period for which the lease should be granted, and asked the Deputy Commissioner's opinion on the point. To this note the Deputy Commissioner gave reply to the following effect:

Manager, if you are satisfied as to the status of Babu Kalachand Chakravarti, I think definite proposals should be submitted for the Board's sanction.

3. In accordance with this note of the Deputy Commissioner, the manager sent an official letter to him, dated the 18th May, 1917, wherein he set out the terms arrived at between Kalachand and himself; namely (1) that a prospecting license over the villages in question be granted for a period of two years, and (2) the prospecting rental for the two years period of the license to be Rs. 1-8-0 per standard bigha approximately Rs. 56,787. In paragraph 2 of this letter, the manager stated that along with the prospecting license it was customary to attach a draft form of lease to be executed for any area the licensee wished to take a coal mining lease of, during the period of his prospecting license, in this instance the draft lease would follow the lines sanctioned in Bokharo Ramgarh and Karanpura, with one exception which has to be decided, viz., the period of the lease. Then he referred to the fact that in the Bokharo Ramgarh and Karanpura leases the period was for 999 years. In the case of Karma tend, negotiation for a lease of 600 bighas was going on in which the term of the draft lease was 30 years with the option of renewal for a further 30 years, and he asked the Deputy Commissioner to settle the period of the lease. 16 will be noticed that the terms of the proposed prospecting license agreed to between the manager and Kalachand had been settled and were not dependent upon the terms of the license granted to the Bokharo Ramgarh Company and the terms of the proposed draft lease only were to be on the lines sanctioned in the Bokharo Ramgarh and Karanpura leases. The Deputy Commissioner forwarded this letter of the manager to the Commissioner of Chota Nagpur with his letter, dated the 26th May, 1917. He recommended the proposal for acceptance and he stated that the only question on which he was doubtful was the period for which the draft lease should be drawn up and he asked the Commissioner to obtain the orders of the Board of Revenue on this point, viz., the period of the lease. The Commissioner of Chota Nagpur sent a letter to the Secretary to the Board of

Revenue, dated the 10th June, 1917, wherein it was stated that the terms arrived at between the manager and the applicant, Kalachand, as regards the prospecting license were that the license for the villages in question be granted for a period of two years and that the rent payable during the prospecting period should be Rs. 1-8-0 per standard bigha. A reference is then made to the usual practice to submit along with the prospecting license a draft form of lease to be executed hereafter, in case the licensee wishes to take the mining lease of any portion of the area to be covered by the proposed prospecting license. Reference is also made to the previous licenses and the Commissioner states in paragraph 3 of his letter that the only question on which a doubt was felt was as regards the period for which the draft lease should be drawn up. In paragraph 4 of his letter, the learned Commissioner states as follows:

As far as I can judge I see no objection to the grant of the prospecting license on the terms proposed.

4. He therefore, apparently, accepted the terms settled by the manager on the question of the prospecting license; but as regards the mining lease, he referred to the Board for opinion as to the period for which the lease should be granted, his own recommendation being that the lease should be for 99 years. The Secretary to the Board of Revenue sent a reply to this letter to the Commissioner on the 16th July, 1917, wherein he stated that the Hon^{ble} Member of the Board considered that in the present case it would be sufficient if a lease is granted for 60 years which was equal to the maximum term allowed by Government for an original lease and its renewal. A copy of this letter was forwarded by the Commissioner to the Deputy Commissioner with his memo dated the 30th July, 1917, with a request for a draft prospecting license and a draft agreement for mining lease being sent to him. On receipt of this memo, with a copy of the letter of the Secretary to the Board of Revenue, the manager wrote a letter to Kalachand Chakravarti on the 10th August, 1917, informing him that the Board of Revenue had fixed the period of the lease, a draft of which would be appended to the proposed license, to be for 60 years. In this letter, the manager stated that the whole proposal was submitted to the Board of Revenue for sanction and that the Board had fixed the period of the lease to be 60 years. Nothing however, seems to have been done for sometime after the receipt of this letter by Kalachand, but on the 14th September, 1917, we have got a telegram sent by Kalachand to the manager informing him that he could be coming to Hazaribagh on Friday. This telegram was apparently sent in reply to the manager's letter asking him to come and do the needful. On the 22nd September another telegram was sent by Kalachand to the manager informing him that he would start as soon as the cholera epidemic subsided and settle everything with him. The cholera epidemic referred to in the telegram was an epidemic then prevailing in Hazaribagh as we find from the evidence in the case. Further correspondence appears to have passed between the parties and Kalachand apparently failed to see the manager and to settle the matter, and on the 11th October, 1917, the manager sent a letter to Kalachand requesting him to come before the 18th idem

failing which he was informed that other applications would be considered. It appears that Kalachand appeared before the manager on the 14th or 15th October, 1917, and submitted before him a letter, dated the 14th October, 1917, wherein he asked the manager to give him the terms of the prospecting, license and of the mining lease as he stated that he was willing to take a lease at once for 350 bighas in Chandrapura, and 250 bighas in Rattier. In paragraph 3 of this letter, Kalachand stated that the period of the mining lease was insufficient: he apparently referred to the period of 60 years fixed by the Board of Revenue and he prayed that the manager might be pleased to recommend for the extension of the period to 99 years or in case of the period being 60 years, option of renewal might be allowed to him, and in conclusion, he prayed that early steps might be taken to expedite the matter. In this letter we find a note of the manager, wherein it is stated, that Kalachand was prepared to accept the Board's decision as regards the period of the lease but begged that the matter might be reconsidered and the term suggested by the manager and the Commissioner, namely, 99 years, might be granted. There is another note of the manager on the same letter which shows that the original counterpart of the prospecting license granted by the estate to the Ramgarh Bokharo Company was sent to Kalachand and he and his pleader read the same and that Kalachand came to the manager and saw him on the 15th and told him that he was satisfied with the terms of the lease and license, but wanted 8 days time to show them to his partners and that within the next 10 days, he would come and definitely settle the matter. It appears that the period of 8 days and 10 days referred to in the note of the manager expired and Kalachand did not turn up. On the 1st November, 1917, however, Kalachand sent a telegram to the manager to the following effect:

My son suffering seriously, coming soon.

5. This telegram was sent on the 1st November and it appears from the evidence that the son died on the 5th November. At this time Mr. McGregor, who was the manager of the Ramgarh estate and with whom the negotiations had been going on so far, retired from service and Mr. Walter, the present manager, was appointed in his place. There was, however, a gap between the retirement of Mr. McGregor and the taking over charge by Mr. Walter, and on the 2nd November, 1917, we find that one Babu Jainarain was acting as manager and the telegram appears to have been received when Babu Jainarain was so acting. We find a note on this telegram, over the signature of Jainarain, to the effect:

Head clerk, put up on 10th November, 1917, if he does not come meanwhile.

6. Then, on the 10th November, 1917, we find a note on this telegram signed by Mr. Walter which runs thus:

Applicant has not appeared. He is ordered to file a petition at once according to the Board's terms, as it appears that this has not been done. A week's time from the receipt of this order be given.

7. In accordance with this note of Mr. Walter, a formal letter was sent to Kalachand on the 10th November, 1917, telling him that on going through the file it was found that he had not till then definitely agreed to the terms offered by the Board and this must be done within one week from the receipt of the letter if Kalachand wished to take settlement of the villages. On receipt of this letter. Kalachand appeared before the manager on the 19th November, 1917, and accordingly we find a note by Mr. Walter on this letter to the effect that Kalachand appeared before him with his pleader and asked for time to consider his verbal proposal to take up a portion only of the area. The manager disallowed this proposal, but granted him time till the 21st November to definitely state what he intended doing. This, as I have said, took place on the 19th. November and on the 20th November a letter was written by Kalachand to the manager which has been marked as Exhibit 13 and which is of very great importance in the present case. This letter runs as follows:

Sir,

With reference to your letter No. 1042, Registered, A.D., dated the 10th November, 1917, I beg to state that I accept the terms and area approved by the Board of Revenue, Therefore, I pray that draft deed and agreement of the coal area applied for-might be prepared by the estate, a copy of which should be given to me in order that I may be able to have it examined by the attorneys and pleaders.

With reference to the period of mining lease your predecessor in office assured me that he would write to the Board of Revenue for kindly giving me an option of renewal for another sixty years to which effect he has left a note in consideration of the fact that it will take a long time to develop the mines by bringing machinery, etc., for the period of sixty years without the option, of renewal is insufficient for the purpose. So I pray that your honour may be pleased to send a recommendation of another sixty years. An early reply is solicited.

8. The words "and area" in the first, paragraph of this letter, after the words. "I accept the terms," are written in red ink above the line and it is stated on behalf of the plaintiff-appellant that these words were added subsequently at the express desire of the manager in order to make the correspondence complete and legal. It is further stated that the manager was not satisfied with this letter and he made Kalachand write a note at the end of this letter which runs thus:

In order to make the above statement perfectly clear I beg to state that I accept the terms, approved by the Board and also the area of 12,61964 acres mentioned in the manager's memo, dated the 5th May, 1917.

9. This postscript is also in red ink. There can be no doubt that this was added to the letter at the suggestion of the manager. At the end of this letter Mr. Walter wrote the following order:

Office to draw up a provisional draft prospecting license and mining lease and to

supply the same to applicant.

10. The word "provisional" in this order is written above the line and appears to be in a different pen and it has been suggested by the learned Counsel for the appellant that this word has been subsequently inserted for the purposes of the present suit. The case of the appellant is, that the contract was complete on this date, namely, the 20th November, 1917, when Kalachand accepted the terms sanctioned by the Board of Revenue and specific performance is sought of this contract. On behalf of the defendant it is argued that the contract was not complete on this date as further negotiations went on between the parties and the terms were subsequently altered. This leads us to examine the further steps taken by the parties in the matter of this contract.

11. It will be remembered that the terms agreed to between the parties as regards the prospecting license were complete in themselves and were not dependent upon the terms granted by the defendant's estate to the Ramgarh Bokharo Company. It was only the draft lease which was to be in terms of the draft annexed to the prospecting license of the Ramgarh Bokharo Company, the only difference being that the period for which the lease was to be granted was under orders of the Board fixed to be 60 years instead of 999 as fixed in the draft lease of the Ramgarh Bokharo Company. From the correspondence set out above, it is clear, that as regards the terms of the license the manager, the Deputy Commissioner and Commissioner were all agreed; the terms were those set out in paragraphs 1 and 2 of the manager's letter of the 18th May, 1917. When the matter went before the Board of Revenue the only point considered by the Board was as regards the period of the lease and the Board decided that the lease should be for a period of 60 years. Therefore the terms so far agreed between the parties, namely, Kalachand on one side and the Court of Wards on the other, were that a prospecting license should be granted for a period of two years in respect of the fourteen villages set out in the manager's note, dated the 5th May, 1917, to the Deputy Commissioner which forms an annexure to the latter, Exhibit 32, the area comprised in those fourteen villages being approximately, 37,85892 bighas and the rental fixed for the said period of two years being at the rate of Rs. 1-8-0 per bigha which approximately comes to Rs. 56,707 and that a draft lease in terms of the lease to the Ramgarh Bokharo Company, was to be annexed to the license, the only difference being that the period of the lease was to be for 60 years. The further steps taken after the 20th November, 1917, were as follows: On the 21st December, 1917, the manager sent a letter (Exhibit H) to Babu Kalipado Sarkar, pleader for Kalachand Chakravarti. With this letter he sent two drafts of the prospecting license and mining lease for approval; they are Exhibits 22 and 23 in the case but have not been printed in the paper-book. In paragraph 2 of this letter the manager wrote as follows:

Please note that the above draft is sent to you in anticipation of sanction of the higher authorities and is subject to any correction or alteration which they may

make.

12. He further stated that to facilitate matters, Kalachand Chakravarti should be wired to come to Hazaribagh and complete the business by the 24th idem and to consider the matter as urgent. The draft that was sent to Kalipado Sarkar, along with the letter Exhibit 14, was not in accordance with the lease of the Ramgarh Bokharo Company. What happened after the receipt of this letter by Babu Kalipado is narrated by him in his deposition in this case. He states in his examination-in chief as follows:

On the day following 21st December, 1917, on which date I got this letter (Exhibit 14) I saw Mr. Walter, and perhaps Bhudeb was with me (Bhudeb is Babu Bhudeb Chandra Sarkar, the junior pleader, who was acting with Babu Kalipado Sarkar and is plaintiff's witness No. 1 in the present case. I had with me a petition at the time to be submitted to Mr. Walter, which I have produced, being required by summons from here to do so produces the petition, dated the 22nd December, 1917). Mr. Walter returned the petition to me assuring me that he was getting the drafts prepared in accordance with the terms approved by the Board and he assured me of this after seeing the orders shown by me. Mr. Walter did not object about the drafts being prepared on terms similar to those of the Bokharo Ramgarh and Karanpura lease) with one exception as to the period of the lease. In returning the petition he said that it was unnecessary to file as the drafts would be prepared as desired.

13. So, from the evidence of Babu Kali pado Sarkar, it appears that on receipt of the draft, which was not in accordance with what had been agreed to between the parties, Babu Kalipado saw Mr. Walter on the 22nd December and pointed out to him that the draft was not in accordance with the agreement come to between the parties. Ha had with him a petition ready to be filed before the manager, but the manager returned it saying that he would have a fresh draft prepared and that it was not necessary to file the petition. That petition has however, been produced by Babu Kalipado Sarkar in the present case and is marked as Exhibit 30. Five days later, on the 27th December, 1917, Mr. Walter sent fresh drafts of the license and the lease to Babu Kalipado Sarkar with a covering letter which is marked Exhibit 14(a) and run thus:

In continuation of our conversation on 22nd instant at which (sic) brought to my notice Mr. Mcgrogor's letter the Deputy Commissioner, No. 423, dated the 18th May, 1917, that draft deed of the prospecting and mining agreements should follow the lines of the Bokharo and Ramgarh terms. I have the honour to forward the draft deeds embodying the proposed terms and request that that may be scrutinised by you and returned to me at an early date.

14. It may be mentioned here that the original of this document (Exhibit 14-a) is not found on the records of this appeal; it has been mislaid somewhere The learned Counsel on both sides agreed that Exhibit 14(a) was the letter seat by Mr. Walter on the 27tn December, 1917, and Mr. Pugh, who appeared for the

defendant, produced a copy of that letter which with the consent of both sides, was placed on the record as Exhibit 14(a) in the case. The draft leases sent along with the letter, Exhibit 14(a), are Exhibits P and P-I. From this letter, Exhibit 15(a), it appears that Mr. Walter was under the impression that the deed of prospecting license was also to be on the lines of the deed granted to the Bokharo and Ramgarh Company. This appears to be a wrong impression formed by him on looking into the previous correspondence. However, it appears that Babu Kalipado Sarkar was not at Hazaribagh when this letter (Exhibit 14-a) was sent and he had been to Calcutta on account of the X'mas holidays. On his return to Hazaribagh, he wrote a letter to the manager on the 31st December, 1917 (Exhibit 15), in which he stated that on his return to Hazaribagh, he has gone through the drafts received in his absence and he found that certain modifications were to be made and certain omissions to be inserted, and he annexed there to his notes pointing out the modifications and the omissions referred to in the letter. One of the modifications suggested by him was that out of Rs. 57,261-12 0 representing the rent at the rate of Re. 1-80 per standard bigha for the period of two years for which the prospecting license was to be granted, a sum of Rs. 15,000 only ought to be paid forthwith at the time of the registration and the balance to be paid six weeks after the date of registration failing which the sum of Rs 15,000 should not be repaid to the licensee but should remain and be the sole property, of the manager. In the draft, Exhibit P(1), sent by the manager it was provided that the whole amount of Rs. 57,261-12-0 was to be paid immediately on the execution of the license. The modification proposed by Babu Kalipado Sarkar was on the basis of the license granted to the Ramgarh Bokharo Company, wherein it was provided that out of Rs. 1,00,000 salami agreed to between the parties, Rs. 25,000, or one fourth thereof was to be paid at the time of the execution of the license and the balance of Rs. 75,000 was to be paid six weeks thereafter, within which period of six weeks the title deeds and other documents had to be examined by the solicitors of the Company. Another provision suggested was that there ought to be a provision for extension of the prospecting term as contained in the license of the Ramgarh Bokharo Company; such a provision had not been made in the draft, Exhibit P. There were other modifications proposed which were in conformity with these two main modifications suggested by Babu Kalipado Sarkar. It will be remembered that the agreement between the parties as regards the terms of the prospecting license had been definitely settled and the terms were set out in the manager's letter to the Deputy Commissioner (Exhibit 32) and these terms were approved by the Commissioner. There was no reference to the Ramgarh Bokharo license in so far as the prospecting license to Kalachand was concerned. The terms of the prospecting license had been settled between the parties and these terms were that the prospecting license was to be granted for a period of two years, and the prospecting license was to be for a rental of Rs. 56,787 and in the letter of the manager, dated the 3rd March, 1917 (Exhibit D), it was clearly stated that in the event of either a lease or a license, the salami or rental would have to be paid in advance, and from the whole of the

correspondence that passed between the parties, it is to my mind evident that the parties agreed that the whole of the rental of Rs. 57,261-12-0 was to be paid in advance and not by instalments of Rs. 15,000 and Rs. 42,000 as suggested by Babu Kalipado Sarkar on the footing of the license of the Ramgarh Bokharo Company. This was therefore a new term proposed by Babu Kalipado Sarkar on behalf of Kalachand. Naturally the manager did not accede to these terms and he at once sent a reply, dated the 3rd January, 1918 (Exhibit 16), to Babu Kalipado Sarkar wherein he stated that he was unable to accede to his proposals to treat the points raised by him on exactly the same footing as the Bokharo and Ramgarh lease and he further impressed upon him the desirability that the matter ought to be settled immediately. It appears, that on receipt of this letter, there was a conference on the 3rd of January in which Mr. Walter the manager, Kalachand Chakravarti, Kalipado Sarkar and Bhudeb Chandra Sarkar were present and in that conference certain terms were agreed to between the parties which are set out in the manager's note, dated the 3rd January, 1918, (Exhibit N). The terms settled in this conference were that Rs. 15,000 was to be paid in before the 7th January and the balance of Rs. 42,261-12-0 to be paid on the date of registration, which was to be completed within six weeks from the 7th January, failing which, Babu Kalachand Chakravarti agreed to forfeit to the estate the sum of Rs 15,000 including the sum of Rs. 2,000 which he had already deposited as security. As regards the duration of the license, it was agreed that the prospecting license was to be granted for a term of two years from the date of registration, with an option to extend for one year more, on payment of the rent, annas 12 per standard bigha in advance. As regards the mining lease it was agreed that at the time of registration of the prospecting license, Babu Kalachand Chakravarti was to take a mining lease of 600 bighas of coal land and he further agreed to take a minimum area of 600 bighas during the period of the prospecting license. These terms appear to have been modified at a second conference held on the 6th January, 1918, and the terms agreed to in this conference are set out in the manager's note of that date (Exhibit O). These terms were-;

(1) Rs. 15,000 to be paid on the 16th January, 1918, and the balance Rs. 42,261-12-0 to be paid, on the date of registration which was to be completed not later than two months after the 16th January, 1918, that is to say, a clear two months were to be granted, failing which Babu Kalachand Chakravarti agreed to forfeit to the estate the sum of Rs. 15,000 including the sum of Rs. 2,000 which he had already deposited as security;

(2) as regards the duration of the license, it was agreed that the prospecting license was to be granted for a term of two years from the date of registration, with an option to extend for one year more, on payment of the rent at annas 12 per standard bigha in advance; and

(3) as regards the mining lease it was agreed that one month after the date of registration of the prospecting license (sic) Kalachand Chakravarti was to take a

mining case of 600 bighas of coal land without raising any objection whatsoever and pay salami for the same on the date of registration of the mining lease, failing which he agreed to pay damages (sic) the estate to the extent of Rs. 15,000 for the (sic) of the contract and further agreed to (sic) a minimum area of 600 bighas from the period of the prospecting license. This note is signed by Kalachand Chakravarti and Bhudeb Chandra Sarkar.

15. From the above, it is clear that the original contract entered into by and between the parties, namely, Mr. McGregor on behalf of the defendant and Kalachand Chakravarti, and sanctioned by the Commissioner was not adhered to. Several new terms were proposed and agreed to between Kalachand and Mr. Walter. These terms were very material terms and were not mere minor details to be settled at the time of the preparation of the draft. It was clearly agreed to between the parties before the sanction of the Commissioner and the Board of Revenue had been obtained that the entire amount of the rental for the prospecting licence at the rate Re. 1-8-0 per bigha was to be paid in advance. The payment of this sum had nothing to do with the terms upon which the license had been granted to the Ramgarh Bokharo Company and yet the proposal was made by and on behalf of Kalachand Chakravarti, to introduce a new term as regards payment, namely, a quarter of the sum to be paid in advance and three-quarters thereof to be paid two months after the registration of the license. The manager had under the law no authority to alter the terms without the sanction of the Court of Wards, which, in the present case, was never obtained. Then as regards the duration of the license, the term agreed to was that it was for two years only and the new term of an option to extend the period of the prospecting license for one year more on payment of fresh rent was again a very material point which had to be sanctioned by the Court of Wards and which could not be agreed to under the law by the manager. Furthermore, the agreement to take the mining lease of 600 bighas of coal and to pay the salami for the same within one month after the date of the registration of the prospecting license was also a new term which had not been sanctioned by the Board of Revenue. These terms, as sets out in the note (Exhibit 0), showed clearly that the original contract which was settled between the parties and approved of by the Court of Wards and which Mr. Chakravarti on behalf of the appellant contends was complete on the 20th November, 1917, as evidenced by Exhibit 13 was not adhered to and fresh terms were proposed on both sides. It seems clear that neither party treated the agreement as evidenced by the letter (Exhibit 13) to be a completed contract, and each party thought that he was at liberty to introduce new terms and that the negotiation was considered to be still open and it was never the intention of the parties to treat the matter as a settled contract.

16. What happened after this is of still more importance. After this conference of the 6th January, 1918, the manager sent fresh drafts of the license and the lease to Kalachand Chakravarti with a covering letter (Exhibit 17), dated the 10th January, 1918. These drafts are Exhibits 18 and 18(a). The manager was very careful in his letter (Exhibit 17) to say:

Please note that these drafts are provisional and subject to the approval of the higher authorities.

17. What happened after the 10th January is thus stated by Bhudeb Chandra Sarkar (plaintiff's witness No. 1):

10th of January was a Thursday. On that date, in the afternoon, the mining clerk of the estate had been to Kalachand, who was then staying in a house at Hazaribagh, with two drafts, and the latter did not take the drafts as the time was then inauspicious. On the next day the drafts were again taken over to Kalipadu Babu's place and Kalachand came over and I was also present and the drafts were read over and it was found that the blank against mauzas at page 2 had been filled in by the insertion of the names of the two mauzas, Ghaitari and Rangamati. So the drafts were returned. Then I got correct draft. Exhibits 18 and 18(a), on 19th January, 1918 and I approved of them. At the same time I got two duplicates of the drafts and I sent them, the same day, to Kalachand at Bagdigi and subsequently, I learnt that he received them on 22nd January, 1918.

18. These drafts bear the endorsement of approval signed by Bhudeb Chandra Sarkar and Kalipado Sarkar on the 19th January, 1918. It will be noticed that in the note, Exhibit O, dated the 6th January, 1918, it was stated that the sum of Rs. 15,000 was to be paid on the 16th January, 1918, i.e., a period of nine days was granted to Kalachand to pay the sum of Rs. 15,000. The nine days, however, expired but the money was not deposited. It is contended on behalf of the plaintiffs that the nine days ought to be reckoned from the date of approval by the defendant or his legal advisers which was the 19th January, 1918. Assuming this to be so, the nine days expired on the 28th January, 1918, but no payment was made even up till then, and consequently on the 28th January, 1918, the manager sent a note to the Deputy Commissioner which has been marked as Exhibit S whereunto he attached the note, dated the 6th January, 1918, and it was stated that Babu Kalachand Chakravarti had agreed to pay Rs. 15,000 on the 16th January and Rs. 42,261-12 0 on the date of registration of the prospecting license, that on account of certain reasons set out therein the draft license and lease could not be sent until the 10th January on which date Kalachand refused to take delivery on certain objection as regards the area to be mentioned in the provisional draft which necessitated a further change in the draft and thus delayed the matter for a further period of eight days and that the draft was finally made over to Kalachand on the 19th January. He stated that the time allowed was nine days from the date the draft was finally accepted, that the time had expired and that Kalachand Chakravarti had not paid the sum of Rs. 15,000 as agreed to by him. The manager referred to the fact that for the last fourteen months the matter was being protracted and other applicants were being prevented from coming in. He stated that the estate had incurred loss by reason of this delay, that every chance had been given to Kalachand Chakravarti, and the manager was not prepared to give any more time. He therefore recommended that the application of Kalachand, for the license and lease, be

cancelled. Babu Kalipado Sarkar who was acting as Kalachand's pleader in this matter states that he came to know of this report of Mr. Walter to the Deputy Commissioner on the 29th January, 1918. On that date he was called by the Deputy Commissioner (Mr. Berthoud) in his chambers who told him about Mr. Walter's report, that thereupon Kalipado Babu asked that time might be given to him, so that he might inform his client and the Deputy Commissioner accordingly gave him time till the 1st February, 1918. On that very date i.e., 29th January, 1918, Kalachand was informed by wire about this report and the grant of time by the Deputy Commissioner. Kalipado Sarkar says that on the 31st January, 1918, he sent Bhudeb Babu to Kalachand's place at Bagdigi to bring Rs. 15,000 and on the 1st February, 1918, he saw the Deputy Commissioner again and as up to that time he had received no intimation, either from Bhudeb or from Kalachand, he asked for a day's further postponement and the Deputy Commissioner was pleased to grant it. It appears that on receipt of this information, Kalachand despatched a sum of Rs. 9,000 direct to the Deputy Commissioner in Government currency notes by means of five registered insured covers and on the 1st February he sent a telegram to the Deputy Commissioner which is marked as Exhibit 19, intimating the despatch of the sum of Rs. 9,000 by insured post and stating that Rs. 2,000, had already been deposited and that the balance would follow immediately. Babu Kalipado Sarkar states that he received a telegram from Bhudeb on the evening of the 1st or the morning of the 2nd February, 1918. On the 2nd February he saw Mr. Berthoud And told him that Rs. 9,000 had already been sent to him by registered insured post and that Bhudeb was coming with the balance of Rs. 6,000 and he requested him to take it. He says that he had made arrangements with certain bankers of Hazaribagh to raise the money and that the and the banker were waiting with the money in the outer verandah of the Deputy Commissioner's chambers. The Deputy Commissioner, however, refused to accept the sum of Rs. 6,000 from Kalipado Babu. The Deputy Commissioner also told him that he would refuse the insured covers as they did not contain the full amount of Rs. 15,000 and as they were addressed to him instead of to the manager. On the 2nd of February, the Deputy Commissioner passed the following order, a copy of which is marked Exhibit Q:

The time within which Babu Kalachand Chakravarti was to deposit Rs. 15,000 has expired several days ago and the money has not been paid. He has given endless trouble to the estate and I do not think he will be a satisfactory lessee. The money will now not be accepted. Manager is at liberty to make other proposals.

19. On the 4th February, however, a petition appears to have been filed, on behalf of Kalachand, through Babu Bhudeb Sarkar before the Deputy Commissioner stating that Rs. 9,000 had already been remitted in five insured registered covers and that he had brought Rs. 6,000 in cash on that date and he prayed for leave to deposit the amount. This application was rejected by Mr. Benthoud with the following order:

I have received no money so far and the term for deposit has long expired. I

decline to accept any money now.

20. It appears that the insured covers were received after this order was passed by the Deputy Commissioner who refused to take them. Against this order of the Deputy Commissioner, Kalachand went up before the Commissioner of the Division who after calling for a report from the Deputy Commissioner, ultimately rejected the application under letter dated the 8th March, 1918 (Exhibit D), to the Deputy Commissioner of Hazaribagh, Kalachand preferred an appeal before the Board of Revenue and the Board also rejected his application by a resolution, dated the 15th June, 1918 (Exhibit U), which has led to the institution of the present suit.

21. Now, the first point raised in this appeal is whether there was a concluded contract so as to be binding upon the defendant and of which specific performance can be decreed by the Court. It has been contended by the learned Counsel for the appellant, that the contract was concluded on the 20th November, 1917, by the acceptance of the terms sanctioned by the Court of Wards as evidenced by the letter, Exhibit 13, and that this concluded contract is capable of being specifically enforced. Had the matter rested there, there would have been a good deal of force in this contention. The learned Subordinate Judge has, however, found that even on the 20th November, 1917, there was no concluded contract. He refers to the correspondence which passed between the Manager, the Deputy Commissioner and the Board of Revenue, and has come to the conclusion that the only point settled by the Court of Wards, without whose sanction no lease could have been executed by the manager, was the period of the lease to be entered in the draft lease to be attached to the prospecting license. The correspondence, (sic) but in detail above, does lend a good deal of support to this conclusion. It had been stated by the Commissioner in this letter to the Secretary to the Board of Revenue that the only point upon which the opinion of the Board was sought was (sic) period of the draft lease. No doubt, other terms, as regards the prospecting license and as regards the draft lease being on lines of the Bokhara and Ramgarh lease were also set out in the letter, but then at the end of the letter the Commissioner distinctly wrote that on receipt of the Board's order a draft prospecting license and a draft agreement for a mining lease would be submitted to the Board (vide Commissioner's letter, dated the 10th June, 1917, Exhibit 8). Again the Secretary to the Board of Revenue in his reply, dated the 16th July, 1917, (Exhibit 9), refers to the Commissioner's letter of the 10th June, 1917

in which you ask for the Board's orders as to the period for which lease may be promised to Babu Kalachand Chakravarti in the draft lease to be annexed to the prospecting license for which he has applied for coal over certain villages appertaining to the Ramgarh Wards Estate.

22. This quotation from the letter of the Secretary clearly shows that the only matter which the Board of Revenue did consider was the period for which the lease was to be promised and nothing else. No reference is made in this letter to

the terms of the prospecting license and there is nothing in this letter from which it can be said that the other terms of the proposed contract were considered by the Board. The fact that the final sanction of the contract was not to be made until the draft prospecting license and draft mining lease were submitted to the Commissioner is clear from the memo of the Commissioner, dated the 30th July, 1917, forwarding copy of the Board's letter to the Deputy Commissioner, in which a request is made to send a draft prospecting license and a draft agreement for the mining lease. Stress has been laid by the learned Counsel for the appellant on the manager's letter, dated the 10th August, 1917, to Kalachand Chakravarti wherein the manager states that the Board of Revenue had sanctioned the period of the lease to be for 60 years and he says that this period had been fixed by the Board of Revenue

to whom the whole proposal was submitted for sanction.

23. It is argued that this letter clearly shows that it was not only the period of the lease but the whole proposal including the terms of the prospecting license and the other terms as regards the mining lease which had been submitted to the Board and sanctioned by it. It has further been contended that as a matter of fact the Commissioner, who was under the law authorized to sanction the grant of leases, had approved of all the terms and the only term upon which he was in doubt was the period of the lease and he wanted the opinion of the Board of Revenue upon that point only; and it was not necessary that the sanction of the Board of Revenue should be obtained as regards the other terms. But the whole tenor of the correspondence goes clearly to show that the Court of Wards authorities had no desire to conclude the contract without the final sanction of the Board of Revenue and that the draft license and lease had to be submitted to the Board for sanction. The power given to the Commissioner under Rule 15 of the rules framed by the Court of Wards u/s 70 of the Court of Wards Act, to sanction leases is a power which may or may not be exercised by him. He may, if he chooses, sanction the grant of a license and lease without reference to the Board; but if he does not choose to exercise that power, there is nothing in law to compel him to do so, and from the whole tenor of the correspondence in the case it seems to be clear that the Commissioner had no intention to exercise that power and he wanted to refer the matter to the Board for final sanction on all the points involved in the contract. That this was the practice in the case of previous licenses and leases is evident from the fact that in the case of grant of leases of coal mines and mica mines, the sanction of the Board of Revenue had been invariably obtained. In the letter (Exhibit 10) the manager was no doubt under the impression that the whole proposal had been submitted before the Board of Revenue for sanction and assuming that the manager's view was correct, it is necessary to see whether the sanction given is sufficient to entitle the plaintiff to a specific performance of the alleged contract. As I have said, had the matter rested as evidenced by the letter of the 20th November, 1917, (Exhibit 13), "there would have been a great deal of force in the contention of the appellant but the subsequent events go clearly to show that neither party understood that

the contract was completed on that data. It is clear from the subsequent correspondence set out in detail above that each party thought that the negotiation was still open and that new matters, which had never been before the Board of Revenue or the Commissioner, could be introduced. When the draft lease and license were sent to the legal advisers of Kalachand and to Kalachand himself, they came forward with three very material points which were never before the Court of Wards authorities. Those points related to material terms to be settled between the parties. They were: first, as regards the payment of the rent or fee for the prospecting license for two years in advance. As I have said above, it was insisted upon by the manager that the whole of the prospecting fee should be paid in advance and this was accepted by Kalachand, but after the 20th November, 1917, and after the receipt of the draft license, Kalachand and his legal advisers came forward with the objection that only a quarter of the prospecting fee ought to be paid in advance and the remaining three quarters could be paid sometime after the execution of the license. The second term was as regards the duration of the license. It had been distinctly settled between the parties that the license was to be for two years, but a new proposal was brought forward in the conference of the 6th January, 1918, that the license should be for two years, with an option to extend for one year more. The third term was as regards the option to take a mining lease and a proposal was brought forward that one month after the date of registration of the prospecting license, Kalachand had to take a lease of 600 bighas of coal land and pay the salami for the same on the date of the registration of the mining lease and he further agreed to take a minimum area of 600 bighas during the period of the prospecting license. That these were material terms varying the original terms as settled between the parties there can be no doubt and, in fact, it is admitted by Babu Kalipado Sarkar, plaintiff's legal adviser in charge of this matter, that these terms were "major terms." Whether the terms are major or minor does not very much vary the situation. Why has to be seen is whether any term had to be settled yet and was not settled on the 20th November, 1917. If any term had to be settled, it cannot be said that there was a concluded contract on that date. As I have said, Babu Kalipado Sarkar admits that other terms had to be settled, from which it follows that the matter was still subject to negotiation and to settlement.

24. Reliance has been placed by the learned Counsel for the appellant upon the case of *Gulab Singh v. Gokhul Das* (1913) 40 Cal. 784 as an authority for the proposition that it was not necessary that the draft licence and lease to be executed by the manager should be submitted to the Court of Wards authorities for their sanction, nor that the sanction should be to the precise terms of the license and lease. The judgment in that case, however, has no application to the facts of the present case. What happened there was, that the Deputy Commissioner of Hoshangabad in the Central Provinces had assumed charge, as a Court of Wards of the estate of a joint Hindu family governed by the Mitakshara school of Hindu Law. As such Court of Wards, the Deputy Commissioner made a

proposal to the Commissioner to raise a loan for the liquidation of the debts due from the estate. One of the proposals was to borrow from the plaintiff in that suit a sum sufficient to liquidate the then indebtedness of the family on the security of a mortgage of the ancestral property. The proposal was sanctioned by the Commissioner in his letter, dated the 28th January, 1891. The mortgage in suit in that case was executed by the Deputy Commissioner for a sum of Rs. 1,20,000 hypothecating to the plaintiff-mortgagee the right, title and interest of the joint family in the property. The mortgage money was to be repaid with interest by annual instalments extending over more than twenty years it appears, during the two years 1892 and 1893, the Court of Wards paid to the mortgagees Rs. 16,000 only and since then no other instalments had been paid. The Court of Wards found it impossible to pay the balance of the mortgage or any other instalments or interest, and on the 10th December, 1901, the plaintiff called upon the Court of Wards either to put them in possession of the mortgaged property or to pay the sums due under the mortgage according to the stipulations contained in the bond. On the 13th March, 1903, the Deputy Commissioner of Hoshangabad, who was the Court of Wards, gave the plaintiff notice that the relinquishment of the management of the estate by the Court of Wards had been sanctioned and offered to make over to them the mortgaged portion of the estate in full satisfaction of the claims with all outstanding rental arrears and debts, except the cultivating rights in sir land which were to be reserved for the maintenance of the wards. The offer which was, however, not in compliance with the terms of the contract, was declined by the plaintiff and the Court of Wards relinquished the superintendence of the estate without payment to the mortgagees. Thereupon the suit was brought by the mortgagees to enforce the mortgage. One of the objections taken in defence in that case was that the mortgage was void because the previous sanction to it of the Chief Commissioner had not been obtained as required by Section 18 of the Central Provinces Court of Wards Act (Act XVII of 1885). Their Lordships of the Judicial Committee on a consideration of the facts of that case and especially the letter, dated the 28th January, 1891, referred to above, were of opinion that it must be inferred from that letter that the Chief Commissioner had given his sanction to the proposal that the Court of Wards should mortgage the property of the family in order to raise a sum sufficient for liquidation of the indebtedness. Their Lordships observed, that it was not in their opinion necessary, u/s 18 of Act XVII of 1885 that the actual mortgage to be made by the Court of Wards should be submitted to the Chief Commissioner for his sanction, nor was it necessary that the Court of Wards should have his sanction to the precise terms of the mortgage. The sanction, which was to be inferred from the letter of the 28th January, 1891, empowered the Court of Wards to mortgage the property u/s 18 of Act XVII of 1885. In accordance with this sanction, a mortgage had actually been executed and a sum of Rs. 1,20,000 had actually been advanced by the plaintiff and applied towards the discharge of the indebtedness of the family. In the present case the circumstances are such that no inference can be drawn that the terms of the proposed license and lease were finally sanctioned by the Court of Wards. No doubt, if the main details had

been settled and sanctioned by the Court of Wards, the mere drawing up of a formal deed would not render the contract void for want of submission of the draft deed before execution; but in the present case we find that very material terms never obtained the sanction of the Court of Wards.

25. Reliance has further been placed by the learned Counsel for the appellant upon the case of *Ram Kanai Singh Deb Darpashaha v. Mathewson* AIR 1915 P.C. 27. That was a suit for a declaration that a patni lease granted by the manager under the Chota Nagpur Encumbered Estates Act (VI of 1876) was ultra vires and void for want of sanction of the Commissioner as required by Section 17 of the Act. It was established by the evidence in that case that all the essential particulars had been sanctioned by the Commissioner and their Lordships observed that the main elements of the transaction being settled and the amount of the premium arranged what remained to be done was to have the actual deed drawn up and executed; "and that their Lordships were of opinion" that when it is affirmatively established that a transaction itself, in all its essential particulars, has obtained the sanction of the Commissioner, and when it is requisite that the transaction be carried into effect by the preparation of the appropriate deeds, a challenge merely on the ground that the document ultimately prepared had not been submitted for sanction, cannot be sustained. In administrative and departmental action it must necessarily be the case that formal details may have to be entered upon in order to carry into practical effect, and put into legal shape, the arrangement to which sanction was admitted." In the present case the evidence adduced shows that the essential details of the contract had not been sanctioned. No doubt the terms of the prospecting license had to all intents and purposes and in all its essential particulars been sanctioned by the Commissioner; but had he not even sanctioned all the essential points as regards the draft lease and he expressly stated in his letter that the draft license had to be submitted to him and by him to the Board of Revenue for sanction. Where by a written agreement the defendant agreed with the plaintiff to take the lease of a house for a certain term at a certain rent "subject to the preparation and approval of a formal contract" and no other contract was ever entered into between the parties, it was held by Sir George Jessel, M.R., that there was no final agreement of which specific performance could be enforced against the defendant [*Winn v. Bull* (1877) 7 Ch. D. 29]. The principles underlying cases of this class were thus laid down by the Master of the Rolls: "I take it the principle is clear. If in the case of a proposed sale or lease of an estate, two persons agree to all the terms and say, "We will have the terms put into form," then all the terms being put into writing and agreed to, there is a contract."

26. "If two persons agree in writing that up to a certain point the terms shall be the terms of the contract, but that the minor terms shall be submitted to a solicitor, and shall be such as are approved of by him, then there is no contract, because all the terms have not been settled." In the present case there can be no doubt on a reference to the correspondence that the intention of the parties was that the contract would not be a concluded contract until the draft license

and lease had been submitted before the Commissioner and the Board of Revenue and sanctioned by them.

27. In this view of the case, I agree with the learned Subordinate Judge that there was no concluded contract in the present case which is capable of specific performance. This finding is sufficient for the disposal of the appeal, but a number of other points have also been raised and it is desirable that I should express my opinion upon these points also.

28. It has been argued that the sanction of the Commissioner to the terms submitted to him by the manager was a sufficient sanction as provided by the law and that the want of formal sanction by the Board of Revenue did not render the contract void. No doubt, Rule 15 of the rules framed by the Court of Wards u/s 70 of the Court of Wards Act gives power to the Commissioner to Sanction leases and for the purpose of ranting leases by the Court of Wards on behalf of the estate under its superintendence a sanction so granted by the Commissioner would makes the contract valid. But the evidence produced in the present case shows that in this particular estate all leases were sanctioned by the Board of Revenue before execution. Although the Commissioner had the power to grant the sanction there was nothing in law to prevent him from refusing to exercise that power. It has been admitted by the witnesses examined on behalf of the plaintiffs that it has been the invariable practice in this estate to obtain the sanction of the Board of Revenue, and if the Commissioner, although possessing the power to grant the sanction, refused to do so and insisted on sanction being obtained from the Board of Revenue there can be no valid contract without such sanction of the Board of Revenue. I agree with the learned Subordinate Judge, that in the present case the alleged contract was void for want of sanction of the Board of Revenue.

29. It has next been contended that having regard to the circumstances of the case it must be held that there was an implied sanction by the Board of Revenue to all the terms forming the contract and stress has been laid upon the fact that the manager in his letter to Kalachand had stated that the whole proposal had been submitted to the Board of Revenue. The opinion of the manager seems clearly to be erroneous. There can be no doubt that the only matter referred to the Board of Revenue by the Commissioner was the question as regards the period for which the proposed lease was to be executed in case the licensee desired to take a lease after prospecting the lands. It has been very vehemently argued that the Board could not sanction the period of the lease, without being appraised of all the other terms of the proposed contract. No doubt the other terms of the proposed contract were set out in the letter of the Commissioner to the Board of Revenue, and in sanctioning the period of 60 years, the Board had before it the other terms proposed by the parties. But the letter of the Secretary to the Board of Revenue to the Commissioner clearly shows that the only point referred to the Board was the consideration of the period of the lease; and having regard to the fact that in the same letter in which the Commissioner set

out the terms and asked for the opinion of the Board as regards the period of the lease, he had also stated that on receipt of the Board's order a draft prospecting license and a draft agreement for a mining lease would be submitted, the only reasonable conclusion that can be drawn is that the Board did not apply its mind to all the terms of the proposed contract. It has been argued by the learned Counsel for the appellant that the object of submitting the draft to the Board was only for the purpose of keeping it on the record in the Board, but I am unable to understand why, if the intention was that the deed of license and lease should be submitted to the Board only as a formal matter to be placed on the record, a copy of the finally executed license and lease was not thought fit to be submitted to the Board instead of the draft license and the lease. The fact that the draft of the two documents was intended to be submitted and not the copies of the deeds finally executed by the manager, goes clearly to show that the intention of the parties was that the final deed would not be executed until the drafts had been submitted to the Board and had received their sanction. I agree with the learned Subordinate Judge that there was not even an implied sanction by the Board of Revenue in the present case.

30. It has next been argued that there was a concluded contract on the 20th of November, 1917, and that the subsequent terms settled in the conference on the 3rd and the 6th of January, 1918, were forced upon the plaintiffs by Mr. Walter and may be left out of consideration altogether, and the concluded contract as evidenced by the letter of the 20th November, 1917, should be specifically enforced. I have already held that there was no concluded contract on the 20th November, 1917; both parties thought that the matter was still open to negotiation. In fact more material terms had according to the plaintiff to be settled, and upon the evidence on the record the learned Subordinate Judge was fully justified in his conclusion that there was no concluded contract on the 20th November, 1917, which could be specifically enforced.

31. Assuming, for the sake of argument, that the contract evidenced by the letter of the 20th of November, 1917, was a concluded contract, it is contended by Mr. Pugh for the defendant that the contract was bad on account of uncertainty. There was nothing in the contract to show from what time the license or the lease was to commence. The date of commencement of the lease is a material term in a contract for a grant of a lease, and if this does not appear in the contract either by; express terms or by inference the contract is incomplete (vide Fry on Specific Performance, 6th edition, Section 378). No date was fixed in the original proposal as submitted by the manager to the Commissioner on the 18th May, 1917, and we do not find any trace of any date for commencement of the license or the lease having been fixed in any of the documents until we come to the note of the conference held on the 3rd of January, 1918, when it is for the first time stated that the prospecting license was to commence from the date of the registration thereof. The appellant, however, does not rely upon this settlement in the conference of the 3rd of January, 1918; his case is that the contract was concluded on the 20th

November, 1917, and it is the specific performance of this contract which is sought to be enforced. But up to the 20th November, 1917, we find absolutely no trace anywhere of the date of the commencement of the lease having been fixed. There is no date for commencement of the lease to be found in the note of the manager to the Deputy Commissioner, dated the 5th May, 1917, nor in the letter of the manager to the Deputy Commissioner, dated the 18th May, 1917, nor in the Board's sanction conveyed in the letter of the Secretary to the Board of Revenue to the Commissioner, dated the 16th July, 1917, nor even in the letter, dated the 20th November, 1917, (Exhibit 13), which is the sheet anchor of the plaintiff's case. I am therefore of opinion that the contract of the 20th of November is incapable of specific performance for want of a date of commencement of the lease. Then up to the 20th November, 1917, we find that the area of which the lease was to be taken had not also been fixed; it was for the first time fixed in the conference held on the 6th of January, 1918. Therefore, these two material defects in the alleged contract of the 20th of November, 1917, render the said contract incapable of specific performance.

32. It has next been contended by Mr. Pugh that the contract sought to be enforced is a contract to execute another contract between the parties for the prospecting license and is in effect a mere contract to execute the final lease, and reliance has been placed on *Von Hatz Feldt Wildenburg v. Alexander* (1912) 1 Ch. 284 which has been referred to in *Seth Hukumchand v. Raja Ram Bahadur Singh* (1919) 4 Pat. L.J. 580. There is some force in this contention. The prospecting license is merely ancillary to the mining lease and a draft of the lease is invariably annexed to the license. In effect, the license is merely a contract to execute the lease, if and when the licensee requires it to be executed. If this is so, then the contract sought to be enforced, viz., to grant the license, is not a contract which is enforceable in law, because the law does not recognize a contract to enter into a contract.

33. The next point, for consideration is whether time was of the essence of the contract and if so, was this term complied with. The defendant's plea on this point is contained in paragraph 9 of the written statement, where it is stated that the payment of Rs. 15,000 within the time was an essential part of the contract, that the estate was suffering daily loss as it could not entertain or dispose of other applications, and that the plaintiff having failed to make the deposit within the promised time, he is not entitled to the specific performance of the agreement. In paragraph 13 of the plaint, the plaintiff states that on the 6th of January, 1918, the plaintiff and his pleader having interviewed the manager, the memo of the 3rd of January was superseded by a memo of the 6th of January in which, among other matters, it was stated that Rs. 15,000 was to be paid on the 16th January, 1918, and the balance to be paid on the date of registration which was to be completed within two months, and within one month from the date of registration of the license, plaintiff was to take a mining lease of 600 bighas of coal lands on payment of salami, and also a minimum area of 600 bighas during the prospecting period, and it was understood that the draft with modified details

would be submitted to the plaintiff and approved by him at least nine days before the payment. In paragraph 14, it is stated that as the modified draft was given to the plaintiff's pleader, on the 19th January, 1918, and approved by him on that date, no money could be deposited on the 16th January, 1918. There is, therefore, an admission by the plaintiff that the contract was to be completed within nine days of the approval, of the draft and the draft having been approved by the plaintiff's pleader on the 19th January, 1918, nine days from that date, i.e., 28th January, 1918, would be the time within which the Rs. 15,000 was to be paid; but the plaintiff asserts in paragraph 15 of the plaint that he did not receive the draft or any information thereof until the 22nd of January, 1918, and he wants the time to be computed from the 22nd of January, 1918, which would take us to the 31st of January, 1918. It is contended on behalf of the defendant that the nine days time should be calculated from the 19th January, 1918, and the same having expired on the 28th of January and no payment having been made, there was a breach of contract and specific performance of it cannot be enforced. The learned Subordinate Judge has held that time was of the essence of the contract and Kalachand did make default in complying with the time-limit imposed for the performance of the contract. Now, on examining the correspondence and the evidence on the record, it is quite clear that there was no limit as regards time fixed between the parties up to the 20th of November, 1917. The time-limit insisted upon by the defendant was that imposed, for the first time, in the conference held on the 3rd and then on the 6th of January, 1918. It will be remembered that the plaintiff carefully avoids the terms settled on those two dates. His case is that the contract was complete on the 20th November. As regards the terms fixed on the 3rd and 6th of January, 1918, the plaintiff's case is that they were forced upon him by the manager. Be that as it may, it is nobody's case that they ever received the sanction of the Court of Wards, and as the manager had no authority to conclude the contract embodying those terms without such sanction, those terms cannot be treated as part of the contract. It is, therefore, clear that in the contract set up by the plaintiff there was no time-limit fixed at any time and therefore, there is no impediment in the way of the plaintiff obtaining specific performance of the contract alleged to have been completed on the 20th of November, 1917, on the ground of any default as regards the time-limit. The suit, therefore, cannot be defeated on this ground. The learned Subordinate Judge has, however, considered in detail the terms fixed on the 3rd and the 6th of January, 1918, and has come to the conclusion that the time-limit of nine days was an essential term in the contract and that no money having been paid in accordance with that term within the time limited by the contract there was a default which would disentitle the plaintiff, from getting specific performance. As I have said, it is not necessary to consider in the present case whether the time-limit fixed on the 3rd and 6th of January was an essential term in the contract. But, even assuming that the contract, to be enforced, is that concluded on the 6th of January and in that contract nine days time was an essential part of the contract, I am not inclined to hold that the default made by the plaintiff would disentitle him to relief in the present case.

Having regard to the circumstances of the case, to the long period for which the negotiations had been going on, to the fact that the plaintiff was not to blame for the delay up to the 20th of November, 1917, and to the fact that the final draft was approved by his pleader on the 19th January, 1918, and that the plaintiff himself did not receive intimation thereof until the 22nd of January, and that when information was given to his pleader that the manager had reported to the Deputy Commissioner to cancel the negotiations on the ground that no payment had been made within the time fixed on the 6th of January, 1918, and the pleader approached the Deputy Commissioner for extension of time, the "Deputy Commissioner had extended it up to the 2nd of February, 1918, and that the money was actually tendered on the 4th of February, 1918, I am inclined to hold that there is nothing in the circumstances of the present case which would make it inequitable to modify the said term and to grant specific performance. Having regard to all the circumstances of the present case I am of opinion that the delay of a few days in making the payment will not, in the present case, disentitle the plaintiff to specific relief simply on the ground that time was of the essence of the contract and that the term as regards the time-limit had not been complied with. I therefore hold, that if the plaintiff had been entitled to specific performance of the contract, his failure to pay the money until the 4th of February, 1918, would not disentitle him to a decree for specific performance.

34. The next point for consideration is whether the Court of Wards or the manager was competent in law to enter into an agreement to grant a prospecting license and mining lease. It has been contended on behalf of the defendant that no power is given by the Statute to the Court of Wards to enter into agreements to grant leases: the power conferred by the Statute is simply to grant leases and not to enter into an agreement to grant leases and therefore the Court of Wards had no power under the law to enter into an executory contract to grant a lease, and that even if a contract had been entered into in the present case, by the Court of Wards, such a contract, was void as being beyond the powers of the Court of Wards and that no claim for specific performance can be based on the foot of such an agreement. The learned Subordinate Judge has given effect to this contention of the defendant. He has relied on general principles as regards powers conferred by Statutes and has referred to the case of *Seth Hukum Chand v. Raja Ram Bahadur Singh* (1919) 4 Pat. L.J. 580 where it has been held that the power to grant lease given to the manager by Section 17 of the Chota Nagpur Encumbered Estates Act (1876) does not, apart from Section 18(b) enacted in 1909, include the power to enter into an executory contract to grant a lease. He has also referred to *Farwell on Powers*, pages 394 and 395 (3rd edition), and has held that the Court of Wards is a creature of Statute and it can only have such powers as are expressly or impliedly vested in it by the Act to which it owes its existence. As regards the general proposition of law that where power is conferred upon any individual or any statutory body by an act of legislature, such power must be confined strictly to that conferred by the Statute there can be no doubt; but on a careful consideration of the various provisions of

the Court of Wards Act, I am unable to hold that the Court of Wards had no power to enter into an executory contract. Section 14 gives the Court general powers to do all things requisite for the proper care and management of the property which the Court may take or retain charge of under the Act. It gives him all the powers which the proprietor of any such property, if not disqualified, might do for its care and management. Section 15 provides for the exercise of those general powers either by the Court itself, or through other officers or other persons to whom it may delegate these powers. Section 18 gives the Court a clear authority to sanction the giving of leases of farms and the power to direct the doing of all such other acts as it may judge to be most for the benefit of the property and the advantage of the ward. Now, entering into contracts is one of the powers which a proprietor of immovable property unquestionably possesses. If all the powers possessed by the proprietor are conferred upon the Court, I fail to understand why the power to enter into a contract in relation to that property should be considered to have been withheld by the legislature from the Court of Wards. If such power be considered to have been withheld, circumstances may arise when the power to grant leases will become absolutely nugatory. Indeed, the case under consideration furnishes an illustration in point. It is clear from the evidence in this case, that leases of coal lands are always preceded by a license for prospecting and search for coal: it would be impossible to grant a mining lease for the purpose of raising coal without, in the first instance, giving a license to prospect and search of coal. It has been the invariable practice in this estate to grant prospecting licenses to search for coal and to annex to such license a draft of the mining lease to be executed on behalf of the estate in case the licensee wishes to take a mining lease. All such prospecting licenses with draft leases attached thereto are in the nature of contracts to grant a lease, and if it be held that power to enter into a contract is not given by the Statute to the Court of Wards, it must necessarily be held that no lease for mining purposes can be granted by the Court of Wards in the present case. No doubt the Court of Wards is a creature of the Statute and its powers must be limited to those conferred by the Statute, but the powers so conferred by the Statute must be reasonably construed so as to make those powers available to the Court and be such as to enable the Court to effectively manage the estate under its charge. Upon a consideration of the various provisions of the Court of Wards Act, I am clearly of opinion that the power to enter into an agreement to grant leases has been conferred by the Statute upon the Court of Wards. No doubt, it is not always essential to the proper exercise of a power to grant a lease that the lessor should also have the power to enter into a contract to lease but no hard and fast rule can be laid down so as to be applicable to every case which may come up for consideration by the Court. The judgment of a Division Bench of this Court in *Seth Hukum Chand v. Raja Ram Bahadur Singh* (1919) 4 Pat. L.J. 580 proceeded on the construction of the provisions of the Chota Nagpur Encumbered Estates Act, the provisions where of are not in all respects similar to those contained in the Court of Wards Act. Section 17 of the Encumbered Estates Act does not contain general terms giving general powers as those contained in Sections 14,

15 and 18. of the Court of Wards Act, and indeed the fact that the legislature thought it necessary to amend the Chota Nagpur Encumbered Estates Act by inserting therein a new section (Section 18(b)) in the year 1909 giving specific power to the manager to enter into agreements, goes to show that no such power was conferred upon the manager before the enactment of 1909. The case of Seth Hukum Chand v. Raja Ram Bahadur Singh (1919) 4 Pat. L.J. 580 is, therefore, not of much assistance in the present case. It has been Contended by Mr. Chakravarti for the appellant that the view expressed by this Court in Seth Hukum Chand v. Raja Ram Bahadur Singh (1919) 4 Pat. L.J. 580 has not been approved by the Privy Council in the appeal against the judgment of this Court in that case, Hukum Chand v. Ram Bahadur Singh AIR 1924 P.C. 156. No doubt their Lordships of the Judicial Committee did not refer to this point in their decision and they disposed of the appeal on other points; but that does not show that the decision of this Court, upon the construction of Section 17 of the Chota Nagpur Encumbered Estates Act, was either disapproved of or dissented from. However, as I have said, that decision does not affect the decision of the present case which rests on the construction of a different Statute, the provisions whereof are not at all similar to those contained in the Chota Nagpur Encumbered Estates Act. I am, therefore, of opinion that the Court of Wards and the manager, with the sanction of the Court of Wards, had power to enter into the agreement to grant the lease.

35. It has next been contended by the respondent that the term of the prospecting license, as settled in the contract set up by the plaintiff, has already expired and that the Court will not decree specific performance of a contract the period whereof has already expired. In this connection all that is necessary to say is that in the contract set up by the plaintiff no period for the commencement of the license or the lease had been fixed and therefore it cannot be said that the term has expired. It has been contended by Mr. Chakravarti that what has to be seen is whether, on the date when the action was commenced and the plaint was filed, the term had expired or not. Assuming that the term of the license was two years from 20th November, 1917, it is clear that in the present case the period of two years had not expired on the date the present suit was commenced, but at the time the judgment was delivered by the Subordinate Judge and now that the judgment is being delivered by this Court, the term has expired. The learned Subordinate Judge holds that as a general rule the Court will not grant specific performance of an expired contract. The learned Counsel for the appellant relies upon the case of Gilbey v. Cossey (1913) 106 LT. 607. That case, however, is distinguishable from the facts of the present case. The facts of that case were that the plaintiff agreed to let the defendant a cottage and farm for the term of seven years from 29th September, 1904, but no lease was ever executed. The defendant entered into possession under the agreement in 1907 and thereafter, with the plaintiff's consent assigned his interests in the agreement and the premises. In June, 1911, the defendant was in arrear with the rent and before the expiration of the term, the plaintiff commenced an action in the High Court to

recover the amount due. This action was heard in October, 1911, i.e., after the expiration of the term when the learned Judge gave judgment for the plaintiff. The defendant appealed against the decree and it was contended on his behalf that the agreement under which the defendant was in occupation of the premises was not a lease but only an agreement for one, and that being so, the plaintiff could only succeed if specific performance of that agreement could have been granted at the time when the action was heard, and that being so, no specific performance would have been granted and that consequently the plaintiff was not entitled to maintain an action for rent due under it. The Court held that there was not a good demise of the premises on account of a formal defect by reason of the fact that it was not under seal: it was simply an agreement under the hands of the parties but it was capable of being turned into a good demise by reason of the doctrine of equity by which a right would be founded upon it to get an order for the specific performance of the agreement, that is to say that the parties should execute it and then it would be a good lease for seven years. Darling, J., referred to the contention of the learned Counsel for the appellant that it was impossible that specific performance of the agreement could be ordered by the Court after the expiration of the agreement itself, and observed as follows: "Speaking frankly, I have no doubt that the Court of Chancery would not have granted specific performance in the present case, but I think that the basis upon which the specific performance would be granted has been altered in later times." Then His Lordship observes: "At one time it was said in the Court of Chancery that there could not be a decree for specific performance of an agreement from year to year upon the ground that it was inconceivable that a case could be heard within a twelve-month. That idea, however, has now been given up and the Court would make such an order before a tenancy of this kind would have expired." In the case before His Lordship this term had expired on the date of judgment and therefore he proceeded to consider as to what should be the proper form of the decree and the principle upon which that decree should be based. His Lordship referred to the doctrine laid down in *Walsh v. Lonsdale* (1882) 21 Ch. D. 9 where Sir George Jessel, M.R., said: "There is only one Court and the equity rules prevail in it. The tenant holds under an agreement for a lease. He holds, therefore, under the terms of equity, as if a lease had been granted." Relying on this doctrine His Lordship observed: "If the landlord is to be regarded here as if the lease had been granted, it is perfectly plain that he must have the same rights as if it had been, and we must look at this case as if a lease had been actually granted." His Lordship then proceeded to consider that if the lease was to be considered as actually granted, at what date it was to be put, and he held that it must be taken to have been granted at the date of the agreement for the lease. If that was so, then clearly the plaintiff was entitled to the rent. The decree made in the case was for rent and not for specific performance of the contract. Their Lordships had to do some violence to the principle that no specific performance could be decreed of an expired contract, and they had to invoke the doctrine of *Walsh v. Lonsdale* (1882) 21 Ch. D. 9, and to treat the agreement as a concluded contract and to decree the arrears of rent.

Had the action been one for specific performance and not one for recovery of rent of the land of which the defendant had already been in occupation, I am not sure that the Court would have decreed specific performance of the agreement. I agree with the learned Subordinate Judge that no specific performance of the contract of the prospecting license could be decreed in the present case as the two years period fixed thereby had already expired.

36. The next point for consideration is whether, under the peculiar circumstances of the present case, the Court will decree specific performance. Having regard to the fact that it is in the discretion of the Court to do so, the learned Subordinate Judge has come to the conclusion that it would not be exercising a sound discretion to allow the defendant specific performance of the contract. It is not necessary to discuss the point in detail. Had the other points been found in favour of the plaintiff, I would not have hesitated to decree specific performance on this ground. The minor plaintiff is represented, in this action, by his uncle who is also a plaintiff in his own right and it must be presumed that he knows his own interest better than the Court is in a position to judge of it. If he thinks that it would be beneficial for him as well for the minor plaintiff to enforce specific performance, I would not stand in his way on mere possibilities and hold that it would not be proper to allow him to enter into a speculative adventure.

37. The next point for consideration is whether the alleged contract can be specifically enforced against the defendant No. 1 who is also an infant. The learned Subordinate Judge has found that no specific performance can be decreed against the infant. Here also I am unable to agree with him. The infant defendant here is represented by the Court of Wards, and the Court of Wards has, under the Statute all the powers and all the liabilities which can be exercised or incurred by the disqualified proprietor had he been in a position to enter into the agreement. I would not therefore refuse specific performance on the ground that the defendant, is an infant.

38. As regards the points raised by the Issues Nos. 11, 18 and 22, it is not necessary to enter into any discussion thereof. The learned Subordinate Judge has decided these issues in favour of the plaintiff and I agree with him in his decision.

39. As regards the contention of the defendant that the Court will not compel the manager of the Ramgarh estate to execute a lease in favour of the plaintiff when the Board of Revenue has refused to sanction it, and the Board has not been made a party to the suit, I am of opinion that there is no substance therein. All suits against the Court of Wards must be brought against the manager who represents the Court of Wards, and the fact that the Board of Revenue had on appeal by the plaintiff refused to order the manager to execute the lease, will not prevent the Court from decreeing specific performance if it was otherwise satisfied that specific performance should be decreed.

40. The only other point which need be considered is as regards the deposit of

Rs. 2,000 made by Kalachand on the 22nd December, 1916, as a preliminary security in anticipation of the sanction. This was a deposit without any prejudice and I see no reason why the plaintiff should not be entitled to a refund of this deposit. Mr. Pugh, who appears for the defendant respondent, frankly admits that he has no objection to a decree being made for a refund of this sum of money. Having regard to the fact that the money is lying in the hands of the manager under the Court of Wards since December 1916, I am of opinion that the plaintiff is entitled to a reasonable interest upon this sum.

41. The result is that I would vary the decree of the Court below in so far that I would make a decree in favour of the plaintiff entitling him to a refund of Rs. 2,000 from the defendant with interest thereon at 12 per cent, per annum from the 22nd December, 1916, up to date of realization. In other respects, the decree of the Court below is affirmed and the appeal is dismissed with costs.

Jwala Prasad, J.

42. I agree.