Karanpura Development Co., Ltd vs Raja Kamakshya Narain Singh on 10 April, 1956

Equivalent citations: 1956 AIR 446, 1956 SCR 325, AIR 1956 SUPREME COURT 446

Author: Natwarlal H. Bhagwati

Bench: Natwarlal H. Bhagwati

PETITIONER:
KARANPURA DEVELOPMENT CO., LTD.

Vs.

RESPONDENT:
RAJA KAMAKSHYA NARAIN SINGH.

DATE OF JUDGMENT:
10/04/1956

BENCH:
AIYYAR, T.L. VENKATARAMA
BENCH:
AIYYAR, T.L. VENKATARAMA
DAS, SUDHI RANJAN
BHAGWATI, NATWARLAL H.

CITATION:
1956 AIR 446 1956 SCR 325

ACT:
Court of Wards-Powers-Transactions by Court of Wards--Court's power to review-Court of Wards acting on behalf of a ward and a guardian acting on behalf of a minor-Difference in the legal position of-Licences extending beyond the period of the minority of the ward-Validity-Sanction-Requirements-Court of Wards Act, 1879 (Bengal Act IX of 1879), s. 18-Guardians and Wards Act, 1890 (VIII of 1890), s. 29(a).

HEADNOTE:
Section 18of the Court of Wards Act, 1879, provides that the Court of Wards "may sanction the giving of leases or farms of the whole or part of any property under its charge, and may direct the mortgage or sale of any part of such

property, and may 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".

In exercise of the power conferred by this section the Court of Wards sanctioned a deed of prospecting license in favour of B, the predecessor in interest of the appellant, and the same was executed on 26-3-1915. Subsequently, on 23-11-1917 the manager of the Court of Wards executed a deed modifying the terms of the deed dated 26-3-1915, by virtue of which the period of license could be extended up to 26-3-1951 under certain conditions. On 10-8-1937 the respondent having become major assumed management of the estate and thereafter repudiated the aforesaid deeds and contested their validity on the grounds, inter alia, (1) that the deed dated 26-3-1915 was not for the benefit of the ward as the clause therein relating to the payment of the cess was less advantageous to him than the corresponding clause in the prospecting license executed by the then proprietor of the estate on 26-11-1907 in respect of another property known as the Bokaro license, and that the Court of Wards executed the deed in question without bestowing any thought to it, (2) that the Court of Wards had no power to enter into the transaction dated 23-11-1917 as it had the effect of preventing the ward from dealing with his estate for over a period of 32 years after he attained majority, (3) that in granting the deed dated 23-11-1917 the Court of Wards considered only the benefit of the grantee and not that of the ward and (4) that the deed was void because no sanction had been given to it by the Court of Wards, as required by s. 18 of the Court of Wards Act, 1879.

Held, (1) that the Court of Wards is not in the same position as a guardian of the properties of a minor. It is a statutory body with powers defined by the Court of Wards Act, 1879. Under s. 18

326

of the Act the Court of Wards is given the power to judge for itself whether a transaction entered into by it on behalf of the ward is for the benefit of the property and the advantage of the ward and its act cannot be impugned in a court of law by the ward on attaining majority unless he shows that it did not act bona fide and in the interests of the ward and that its action amounted to a fraud on the power, or that it did not, in fact, apply its mind to the question whether the act was for the benefit of the property or the advantage of theward, and that though it purported to exercise the power unders. 18, it did not, in fact, come to a. judgment as required bythe section. Its decision cannot be questioned on the ground that it was erroneous on the merits, or that it was reached without considering some aspects which ought to have been considered, unless the failure to consider them was of such a character as to amount to there being no exercise of judgment at all;

Allcroft v. Lord Bishop of London: Lighton v. Lord Bishop of London, ([1891] A.C. 666), relied on.
(2)that assuming that the cess clause in the deed dated 26-3-1915 was less advantageous to the ward than that in the Bokaro license, as the Court of Wards had applied its mind to the question and formed its own judgment on it, its decision is not open to question;
(3)that the Court of Wards was competent to enter into the transaction dated 23-11-1917 and extend the period of license so as to enure for a period beyond the date of the ward coming of age, as s. 18 of the Act which confers authority on the Court of Wards is general and unqualified in terms and there is no provision in the Act such as there is in s. 29(b) of the Guardians and Wards Act, 1890, that a lease by the Court of Wards was to enure for a period related to the minority of the ward;
(4)that assuming that the words in s. 18 that the act should be "for the benefit of the property and the advantage of the ward" should be read cumulatively and not disjunctively, the deed dated 23-11-1917 satisfies the requirements of the section inasmuch as the benefits which the transaction conferred on the estate in the form of minimum ground rent, salami and royalty must also enure to the advantage of the ward who will be the person who will receive this revenue;
(5)that the requirements as to sanction under s. 18 of the Act must be held to be satisfied if the transaction in all its essential particulars had been sanctioned by the Court of Wards, even though there were details to be worked out in furtherance of the sanction and the document as finally drafted had not been submitted again for its approval. A mere recital in the deed that the transaction was sanctioned is not conclusive and it must be shown that, as a matter of fact, sanction was given, and as the order of the Court of Wards dated 9-10-1917 contained the sanction to the proposal in
327
all its essential particulars it was sufficient compliance with the requirements of the section;
Gulabsingh v. Seth Gokuldas, (40 I.A. 117) and Ramkanai Singh Deb Darpashaha v. Mathewson, (42 I.A. 97), relied on.
and (6) that s. 18 only requires that the transaction should be entered into with the sanction of the Court of Wards and if the transaction subsequently turns out to be bad on the merits, either in part or in toto, it does not render the sanction originally given ineffective.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 191 & 192 of 1953.

Appeal from the judgment and decree dated the 27th October 1949 of the Patna High Court in Appeals from the Original Decrees Nos. 127 & 125 of 1943 arising out of the decrees dated the 30th day of April 1943 of the Court of Additional Subordinate Judge, Hazaribagh in Suits Nos. 28 & 82 of 1940 respectively.

M.C. Setalvad, Attorney-General for India, N. C. Chatterjee, S. Chaudhry, S. N. Mukherji and B. N. Ghosh, for the appellant.

Atul Chandra Gupta and Ganpat Rai, for respondents Nos. 1 &

12. Atul Chandra Gupta and I. N. Shroff, for respondents Nos. 2, 4, 5, 6 & 13.

Lal Narain Sinha, Bajrang Sahai and R. C. Prasad, for respondent No. 9.

Sanjib Chaudhry and R. R. Biswas, for respondent No. 10. Sanjib Chaudhry and Ganpat Rai, for respondent No. 1 1. Ganpat Rai, for respondents Nos. 3,7 & 8.

1956. April 10. The Judgment of the Court was delivered by VENKATARAMA AYYAR J.-These appeals raise questions as to the validity of a prospecting license granted on 26-3-1915 in favour of Messrs Bird and Co., by the Court of Wards as representing the Ram-

garh Estate and of two deeds dated 23-11-1917 and 1-6-1937 executed by the Court of Wards modifying the terms of the license dated 26-3-1915.

The Ramgarh Raj is an ancient principality situate in Bihar. It has three coal-fields, Bokaro Jharia, Bokaro Ramgarh and Karanpura. Of these, the Karanpura coal-fields are the largest being of the extent of 550 sq. miles, of which about 415 sq. miles belonged to the estate. On 26-11-1907 Raja Ram narain Singh, the proprietor of the estate, granted in favour of Messrs Anderson Wright & Co., a prospecting license in respect of the Bokaro Ramgarh coal-fields, referred to in these proceeding as the Bokaro license. He was also negotiating for a similar license in respect of the Karanpura coal-fields (vide Exhibit 155-b dated 1-12-1912), but before anything was concluded, he died on 26-1-1913 leaving him surviving his widow, Rikinath Kaur, and a minor son, Lakshminarain Singh. At the time of his death, the debts owing by the estate amounted to about Rs. 9 lakhs. On 20-5-1913 the Court of Wards took over the management of the estate, and its first concern was to relieve it from the pressure of creditors, and for that purpose, to arrange for a loan on easy terms. It was at this juncture that Messrs Bird and Co., made an application for a prospecting license for the Karanpura coal-fields, and in reply thereto, the manager of the Court of Wards informed them on 4-9-1913 that "the estate being involved and anxious to pay off the debts, one of the conditions of the lease would be an advance of about Rs. 8 to Rs. 11 lakhs including salami, etc., to the estate on the same terms as advanced by the Bokaro and Ramgarh Company". Then, there were negotiations extending over several months, a good deal of correspondence and personal discussions, and eventually on 29-7-1914 the terms were finally agreed upon, and on 26-3-1915 the deed of prospecting license was actually executed. Its main terms were as follows: It was to be in force for a period of six years. A sum of Rs. 1,00,000 was paid as salami. The licensees were to pay a minimum

ground rent of Rs. 8,000 per annum commencing from the second year of the license, and if the leases were actually taken by the licensees, this amount was to be adjusted towards royalties payable thereunder. The terms of the leases which were to be granted in pursuance of the license were firstly, the lessees were to pay a salami at Rs. 40 per bigha, the payment to commence either when railway facilities were 'available for transport of coal from the mouth of the pit or after a lapse of six years after the period of the license, that is to say, after 26-3-1927, whichever was earlier; secondly, royalty was to be paid on coal, dust and coke at rates specified therein, subject to a minimum of Rs. 5 per bigha payable after the first year of the lease; and thirdly, the lessees were to pay the cesses payable under the law by the occupier or tenant of the land. As consideration for the grant of the license, Messrs Bird and Co., were to advance Rs. 9 lakhs as loan to the estate. This amount was not to carry interest and was to be discharged by adjusting the royalties which would become payable under the leases. If no leases were taken and the license was abandoned, then the amount of the loan was to carry interest at 4 1/2 per cent per annum from that date and it had to be repaid in half-yearly instalments such that the entire debt would be discharged within a period of six years. A mortgage bond was executed on the same date as the prospecting license embodying these terms. The next phase of the transaction begins on 3-8-1915 with Messrs Bird and Co., applying to the Court of Wards for extension of the period of the license on the ground that as the result of war conditions, new and unexpected difficulties bad cropped up and that to achieve the purpose of the license, is was necessary to extend the period of six years fixed therefor. This proposal was subjected to close scrutiny, and there was prolonged correspondence between Messrs Bird and Co., and the Court of Wards on the expedi- ency of extending the period of license and on the terms on which such extension should be granted. Ultimately, on 23- 11-1917 the manager of the Court of Wards executed a deed modifying the terms of the deed dated 26-3-1915. Under this deed, the period of license was extended in the first instance from 6 to 12 years; that is to say, it would expire on 26-3-1927 instead of on 26-3-1921 as originally fixed. It was then provided that if within this extended period the licensee took a lease or leases of mines of the extent of at least 10,000 bighas, then the period of the license would be extended by a second term of 12 years; i.e., up to 26-3-1939. There was a further pro- vision that if before 26-3-1939 the licensees took leases of at least 20,000 bighas, the period of the license would be extended by another term of 12 years, i.e., up to 26-3-1951. While under the prospecting license dated 26-3-1915 a minimum ground rent of Rs. 8,000 was payable from the second year, under the deed dated 23-11-1917 a minimum ground rent of Rs. 50,000 per annum at Rs. 5 per bigha on the covenanted number of 10,000 bighas was payable from the seventh to the twelfth year. These are the salient features of the license as revised by the document dated 23-11-1917. Raja Lakshminarain Singh, the ward, became a major on 6-4- 1919, and died shortly thereafter on 10-4-1919 leaving him surviving a minor son, Raja Kamakshya Narain Singh, the main respondent in these appeals. The Court of Wards accordingly continued in management of the estate on behalf of the Raja until 10-8-1937, when he became a major. On 14-7-1920, the appellant Company was registered under the provisions of the Indian Companies Act, and it took over the interests of Messrs Bird & Co., under the license dated 26-3-1915 as modified by the deed of variation dated 23-11-1917. In pursuance of these deeds, the Company took six leases covering in all an area of 17,539 bighas on divers dates between 17-7-1922 and 17-7-1933. Under the terms of the deed dated 23-11-1917 the appellant would be entitled to extension of the licence from 26-3-1939 for the third period of 12 years only if it had taken lease of at least 20,000 bighas before 26-3-1939. Accordingly, it applied for and obtained three leases on 2-8-1937 covering an area of

2,461 bighas, thus making up along with the six leases mentioned above, the minimum area of 20,000 bighas.

There is one more deed to which reference must now be made. Clause 6 of the deed dated 23-11-1917 provides that the minimum royalty on areas in excess of 10,000 bighas taken on lease would not be payable till 26-3-1939. Thereafter, the appellant would under this clause become liable to pay a minimum royalty for an area in excess of 10,000 bighas. The appellant applied to modify this term by postponing the date of payment by a further period of 12 years. This proposal was accepted by the Court of Wards, and on 1-6-1937 a deed was executed providing in modification of clause 6, as it stood in the deed dated 23-11-1917, that the minimum royalty for the areas in excess of 10,000 bighas was not to become payable by the company until railway facilities for transport of the coal from the mouth of the pit were available or from 26-3-1951, whichever happened earlier. These are the three transactions, which form the subject matter of this litigation.

On 10-8-1937 the Raja became, as already stated, a major, and assumed management of the estate. On 9-3-1939 he sent a notice to the appellant repudiating the license dated 26-3- 1915 and the two deeds of variation dated 23-11-1917 and 1-6-1937 as not binding on him. The appellant in turn sent a notice on 14-5-1940 calling upon the Raja to execute a lease in respect of 250 bighas in accordance with the deeds dated 26-3-1915, 23-11-1917 and 1-6-1937, and followed it up by instituting on 8-6-1940 Title Suit No. 28 of 1940 in the court of the Subordinate Judge of Hazaribagh for compelling specific performance thereof. On 9-8-1940 the Raja filed Title Suit No. 82 of 1940 in the Sub-Court, Hazaribagh, and therein, he pleaded that the deed dated 26-3-1915 was void, because the Court of Wards had no power to grant a prospecting license and also because it had acted with gross negligence in granting the same; and that the deeds dated 23-11-1917 and 1-6-1937 were bad, because there was no sanction therefor as required by section 18 of the Bengal Court of Wards Act IX of 1879, hereinafter referred to as the Act, and also because they were not for the benefit of the estate. He accordingly prayed for a declaration that the three deeds aforesaid were void, and for possession of the properties comprised in the leases, with mesne profits, past and future.

Both these suits, which were really cross-actions involving the determination of the same points, were heard together by the Subordinate Judge of Hazaribagh, and by his judgment dated 30-4-1943 he held that the deeds dated 26-3-1915 and 23-11-1917 were intra vires the powers of the Court of Wards, that they were beneficial to the estate, and were therefore valid, and he accordingly upheld the six leases granted pursuant to those deeds. He, however, held that the deed dated 1-6-1937 was not valid, both because the Court of Wards had not sanctioned it and also because it was not for the benefit of the estate. In view of this finding, he held that the clause in the lease deeds dated 2-8-1937 based on the deed dated 1-6-1937 postponing the payment of minimum royalty was bad, but that the leases themselves were other- wise valid. As a result of these, findings, be granted a decree for specific' performance in Title Suit No. 28 of 1940 and in Title Suit No. 82 of 1940 he awarded reliefs consequential on the invalidity of the deed dated 1-6-1937. Against this judgment, the Raja preferred appeals to the High Court of Patna, F. A. No. 125 of 1943 against the decree in Title Suit No. 82 of 1940 and F.A. No. 127 of 1943 against that in Title Suit No. 28 of 1940. The company also filed cross-objections in F.A. No. 125 of 1943. The learned Judges agreed with the Subordinate Judge that the Court of Wards was competent to grant a prospecting license, but they were of opinion that it

had not applied its mind to certain important aspects of the transaction, that the interests of the ward bad suffered in consequence, and that the deed dated 26-3-1915 was therefore not valid. Dealing next with the deed dated 23-11-1917, they held that it was void, because the Court of Wards had not sanctioned it. They also held that it was not binding on the Raja, firstly because its terms were not beneficial to him, secondly because it had been obtained by Messrs Bird and Co., on false representation, and thirdly because Mr. MacGregor, the then manager of the Court of Wards, was acting in his own interests and adversely to those of the minor ward, and the Court of Wards had been misled by him into entering into the transaction. For these reasons, the learned Judges held that the deed dated 23-11- 1937 was void and inoperative as against the ward. Then, as regards the deed dated 1-6-1937, the learned Judges agreed with the Subordinate Judge that it was invalid on both the grounds given by him. In the result, in Title Suit No. 82 of 1940 a declaration was made that the deeds dated 26-3- 1915, 26-11-1917 and 1-6-1937 as well as the leases granted pursuant thereto were void and a decree passed in favour of the Raja for possession of the demised properties with mesne profits, past and future. Title Suit No. 28 of 1940 instituted by the appellant for specific performance and the cross-objections filed by it in F.A. No. 125 of 1943 were dismissed. Against this judgment, the present appeals have been preferred by the company, C.A. No. 191 of 1953 being directed against the decree in F.A. No. 127 of 1943 and C.A. No. 192 of 1953 against the decree in F.A. No. 125 of 1943. The first respondent in these appeals is the Raja of Ramgarh, the other respondents being transferees from him, and he will be referred to in this judgment as the respondent.

Though the questions that were agitated by the parties in the courts below ranged over a wide area, many of them have been abandoned in the argument before us, and the scope of the controversy in these appeals has been considerably narrowed down. Thus, the appellant does not challenge the correctness of the decision of the courts below that the deed dated 1-6-1937 is not binding on the estate. Mr. Atul Chandra Gupta, learned counsel for the Raja, has limited his attack on the deed dated 26-3-1915 to the ground that it was not for the benefit of the ward, because the clause therein relating to the payment of cess, or more compendiously, the cess clause was less advantageous to him than the corresponding clause in the Bokaro license, and the Court of Wards executed the deed in question without bestowing any thought to it. He attacked the deed dated 23-11-1917 on the following grounds: (1) The Court of Wards had no power to enter into a transaction, which had the effect of preventing the ward from dealing with his estate for over a period of 32 years after he attained majority, and which bound him to grant leases down to the year 1951 at the rates of salami and royalties fixed in the year 1915. (2) In granting the deed dated 23-11-1917, the Court of Wards considered only the benefit of Messrs Bird and Co., and not of the ward. (3) The deed is void, because no sanction had been given to it by the Court of Wards, as required by section 18 of the Act.

Before dealing with these contentions on their merits, it is necessary to consider the question which was discussed at the Bar as to the grounds on which the deeds dated 26-3-1915 and 23-11-1917 are open to attack in these proceedings. A transaction entered into by a guardian on behalf of a minor will be valid and binding on the latter, only if it is for proved necessity or benefit. When a transaction is entered into by a Court of Wards on behalf of the ward, is its validity to be judged on the same considerations, and is it open to the ward on attaining majority to challenge it on the ground that it was not beneficial to him? The Court of Wards is not in the same position as a

guardian of a minor. It is a statutory body, and its powers are those which are conferred on it by the statute, which creates it. Section 14 of the Act provides that the Court of Wards may, acting through its manager, do all such things requisite for the proper care and management of the property as the proprietor of such property might do, if not disqualified. Section 18 enacts that:

> "The Court may sanction the giving of leases or farms of the whole or part of any property under its charge, and may direct the mortgage or sale of any part of such property, and may 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".

It was in exercise of the power conferred by this section that the Court of Wards executed the two impugned deeds dated 26-3-1915 and 23-11-1917. Now,; what is the true scope of section 18? Is the exercise of the power conferred by that section conditioned on the act being in fact for the benefit of the ward, or is it sufficient that the Court of Wards judges it to be for the benefit of the property and the advantage of the ward?

The contention of Mr. Gupta for the respondent is that the words "as it may judge" do not signify that the judgment could be made without reasonable grounds therefor, that they should be construed as meaning "as it may on reasonable grounds judge", and that it is therefore open to the Court to consider whether the decision of the Court of Wards was a reasonable one to come to, and that if it came to the conclusion that it was not, then to hold that it fell out- side the ambit of the authority conferred by section 18. In support of this contention, be relied on certain ob- servations in Nakkuda Ali v-. M. F. De. S. Jayaratne(1). There, the Board was considering the meaning of the words "where the Controller has reasonable grounds to believe"

> occurring in a Regulation of Ceylon. In an application for certiorari to quash an order of the Controller made under this enactment, it was argued for him that the words of the Regulation left the matter to his subjective satisfaction, that his decision therefore was not liable to the questioned on the ground that, in fact, there existed no reasonable ground therefor; and the decision in Liversidge v.Sir John Anderson(2) was relied on as establishing that position. In negativing this contention, Lord Radcliffe observed that the words "where the Controller had reasonable grounds to believe" might mean either "where it is made out to his subjective satisfaction" or "where there are reasonable grounds on which be could believe", and that whether the words were (1) [1951] A.C. 66, 76.
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> (2) [1942] A.C. 206.

used in the one sense or the other in the enactment on question must depend upon the context. The question then is ultimately one of construction of the words of the particular statute.

Now, what do the words "as it may judge" in section 18 mean? Do they confer on the Court of Wards a power to be exercised if the act is, in its judgment, for the benefit of the property or the advantage of the ward, or do they confer a power to be exercised only if, in fact, the act is for the benefit of the

property or the advantage of the ward? In Liversidge v. Sir John Anderson(1), Lord Atkin who held that the words of Regulation 18-B of the Defence Regulations 1939 that "if the Secretary of State has reasonable cause to believe" meant "if, in fact, there was reasonable cause for the belief", discussed what words were susceptible of importing an objective standard as contrasted with subjective satisfaction, and observed:

> "It is surely incapable of dispute that the words "if A has X' constitute a condition the essence of which is the existence of X and the having of it by A. And the words do not mean and cannot mean 'if A thinks that he has'. 'If A has a broken ankle' does not mean and cannot mean 'if A thinks that be has a broken ankle'. 'If A has a right of way' does not mean and cannot mean 'if A thinks that he has a right of way'. 'Reasonable cause' for an action or a belief is just as much a positive fact capable of deter- mination by a third party as is a broken ankle or a legal right".

Examining the language of section 18 in the light of these observations, we are unable to construe the words "as it may judge most for the benefit of the property and the advantage of the ward" as equivalent to "as may be for the benefit of the property and the advantage of the ward" or "as might be judged to be most for the benefit of the property and the advantage of the ward". The statute confides in clear and unambiguous terms the authority to judge whether the act is beneficial to the estate, to the Court of Wards and not to any outside authority.

(1)[1942] A.C. 206.

That being the true scope of the power conferred by section 18, what are the grounds on which the exercise of such a power could be impugned in a court of law? It can be attacked on the ground that the Court of Wards did not act bona fide and in the interests of the ward, and that its action amounted to a fraud on the power. It can also be attacked on the ground that the Court of Wards did not, in fact, apply its mind to the question whether the act was for the benefit of the property or the advantage of the ward, and that though it purported to exercise the power under section 18, it did not, in fact, come to a judgment as required by the section. But where it has applied its mind and given thought to the question whether the act is for the benefit of the property or the advantage of the ward and comes to an honest judgment in the matter, its decision is not liable to be questioned on the ground that it was erroneous on the merits, or that it was reached without con- sidering some aspects which ought to have been considered, unless the failure to consider them is of such a character as to amount to there being no exercise of judgment at all. The question as to the limits within which courts could interfere with the exercise of a power of the nature now in question was considered at some length in Allcroft v. Lord Bishop of London: Lighton v. Lord Bishop of London(1). There, the statute provided for certain action being taken "unless the Bishop shall be of opinion that proceedings shall not be taken". Acting under this section the Bishop of London decided not to take proceedings, and the correctness of this decision was challenged in an application for mandamus. It was held by the House of Lords that the Bishop having acted within his jurisdiction and exercised his judgment honestly, his decision was not liable to be questioned on the ground that it was erroneous or that be had not considered all the aspects of the matter. The following observations of Lord Bramwell may be quoted:

"Then it was said that there was something he (1) [1891] A.C. 666.

had considered which he ought not to have considered, and something he had not considered which he ought to have, and so he had not considered the whole circumstances and them only. It seems to me that this is equivalent to saying that his opinion can be reviewed. I am clearly of opinion it cannot be. If a man is to form an opinion, and his opinion is to govern, he must form it himself on such reasons and grounds as seem good to him".

And Lord Herschell observed:

> "It is impossible to read the bishop's statement without seeing that he has honestly considered what appeared to him to be all the circumstances bearing on the question whether the proceedings should be allowed to go on. That being so, it is not for your Lordships, on this application for a mandamus; to consider whether the bishop's reasons are good or bad; whether they ought or ought not to have led him to form the opinion he did".

Bearing these principles in mind, the question to be considered is whether the Raja has, the burden thereof being on him, established any grounds on which the deeds entered into by the Court of Wards on 26-3-1915 and 23-11-1917 could be held to be outside the power conferred on it under section 18. That leads us to a consideration of the four contentions on which Mr. Atul Chandra Gupta attacked the two deeds aforesaid as not binding on the estate. The first is directed against the deed dated 26-3-1915, the point of the attack being that the clause relating to the payment of cess in that deed is less advantageous to the ward than the corresponding clause in the Bokaro license dated 26-11-1907. To appreciate this contention, it must be stated that when Messrs Bird and Co., applied to the Court of Wards for a prospecting license, negotiations were carried on the under- standing that the Bokaro license granted by Raja Ramnarain Singh was to be the basis for the contract, subject to any variation on which the parties might agree, Pursuant to this understanding, there was a discussion of the terms of the license between the representatives of Messrs Bird and Co., and the officers of the Court of Wards on the 1st and 2nd April 1914. Exhibit 130(1) is a record of those discussions in the handwriting of the Deputy Commissioner, Mr. Lister. On 11-4-1914 Messrs Bird and Co. were informed that the Board had generally approved of the proposal, and there was a further communication to them on the 17th April 1914 that "formal sanction cannot be given until the terms are embodied in a formal document." On 12-5-1914 Messrs Bird and Co. sent a draft agreement for the approval of the Court of Wards, and on that, there was further correspondence and personal discussion, and ultimately, the Board gave its final sanction on 29-7-1914, and the deed which was executed by the manager on 26-3-1915 is in accordance with the draft as approved. This deed, however, differs from the Bokaro license in one respect. Schedule A to that license contains a draft of the mining lease to be granted in pursuance thereto, and one of the covenants contained therein is that the lessee "will also pay all Government and other cesses, taxes and other imposition which now are or may at any time hereafter during the continuance of this lease be assessed or imposed on the said lands." In the deed dated 26-3-1915 the corresponding clause runs as follows:

> "The lessee covenants to bear, pay and discharge all existing and future Government and other rates, cesses, taxes, assessments, duties, impositions, out goings and burdens whatsoever imposed or charged upon the demised premises..... which may be payable by the occupier or lessees thereof."

Thus, while under the Bokaro license the lessee had to pay all the cesses imposed on the land, under the deed dated 26- 3-1915 the lessees had to pay only the cesses payable by the occupier or lessee of the property.

Now, the contention of the respondent is that as it was the intention of both parties that Messrs Bird and Co. should have a license on the same terms as were contained in the Bokaro license unless otherwise agreed, and as Exhibit 130(1) shows that there was no special agreement with reference to this matter, the Court of Wards must be held not to have applied its mind to the cess clause when it agreed to its inclusion in its present form in the deed of 1915, and that as it related to a matter of substance going to the root of the transaction, the deed was in its entirety void. The basic notion on which this contention rests is that the cess clause in the deed dated 26-3-1915 is, as compared with that in the Bokaro license, distinctly disadvantageous to the ward. But this, however, is controverted by the appellant, which contends that the difference between the two deeds with reference to the cess clause is one of form rather than of substance. To appreciate this contention, it is necessary to refer to the provisions of the Bengal Cess Act IX of 1880. Under sections 80 and 81 of that Act, where there is a lease of a mine, the cess payable thereon is to be borne equally by the owner and the lessee. The Government, however, is entitled to realise the whole of it from either of them, in which case the person who pays the cess has a right to recover from the other his share of it. The cess clause of the 1915 license is in accordance with the rights of the parties as declared in section 81 of the Act. The contention of Mr. Gupta is that it was open to the parties to contract themselves out of their rights under section 8 1, and he relied on the decisions in Ashutosh Dhar v. Amir Mollah(1) and Mahanand Sahai v. Mussmat Sayedunissa Bibi(2) in support of this position. There, the question related to section 41 of the Act; but it is argued that the principle underlying those decisions is equally applicable to section 81 and that, in our opinion, is correct. The next step in the argument is that the cess clause in the Bokaro license embodies a contract modifying the rights declared by section 81 of the Act by throwing the liability for the cess wholly on the tenant; but that the clause in the 1915 deed restricts it to the obligation as declared in section 81 and has therein resulted in serious disadvantage to the proprietor. For the appellant, it is contended that the clause in the Bokaro license could (1) [1900] 3 Cal. L J. 337.

(2) [1907] 12 C.W.N. 154.

not be construed as modifying the rights declared under section 81, because it merely provides for payment by the lessee of the entire cess, which must mean that they had to pay it in the first instance and then reimburse themselves from the proprietor, and that was how the clause was understood by the Court of Wards when it was in management. If that was the true scope of the cess clause in the Bokaro license, it cannot be said that the cess clause in the deed of 26-3-1915 differs in substance from it.

On the question as to the interpretation to be put on the cess clause in the Bokaro license, the principle applicable thereto was thus stated in Mahanand Sahai v. Mussmat Sayedunissa Bibi (1):

> "It is indisputable that when an exemption is claimed from statutory liability, the contract under which exemption is claimed, must be strictly construed against the claimant and it must appear from its terms, beyond the possibility of any dispute, that the parties intended to vary the liability as imposed by the statute. This rule is especially applicable where exemption is claimed from taxation imposed by the State".

It was accordingly held that no contract to the contrary could be spelt from the clause providing generally for payment of cess, and this view has been adopted in Balwantrao Naik v. Biswanath Missir(2) and Ramkumari Devi v. Hari Das(3). The contention of the appellant, therefore, that the cess clause in the Bokaro license cannot be construed as a clear expression of an intention on the part of the parties to contract themselves out of the statute is not without force. It is, however, unnecessary to decide this question, as assuming that the cess clause in the deed dated 26-3-1915 is less advantageous to the ward than that in the Bokaro license, the respondent has, before he can succeed on this contention, still to establish that the Court of Wards did not apply its mind to this matter. And what is the evidence which he has adduced to establish it? In the pleadings, he raised (1) [1907] 12 C W.N. 151. (2) A.I.R. 1945 Patna 417. (3) A.I.R. 1952 Patna 239.

no such question. At a late stage, however, he applied to amend the plaint so as to raise the contention that the deed dated 26-3-1915 was not in accordance with the Bokaro license, but that application was dismissed by the Subordinate Judge on 24-12-1942. It was contended for the appellant that the question now sought to be argued should not be allowed to be raised at this stage as it is purely one of fact, especially in view of the order dated 24-12- 1942 refusing amendment of the plaint. But it is unnecessary to say more on this objection, as we are satisfied on the evidence on record that the Court of Wards did apply its mind to the cess clause and did adopt it after giving thought to it. The clause in its present form appears in the draft prepared by Messrs Bird and Co. and sent to the Court of Wards for approval on 12-5-1914. Among the officers of the Court of Wards who examined the draft was Mr. Lister, the Deputy Commissioner, who took the lead- ing part in settling the terms of this transaction, and there is an alteration, though formal, in his hand in this very clause. It is also in evidence that the draft was sent for scrutiny to Sri Sarada Charan Mitra, a retired Judge of the Calcutta High Court, who was also the legal adviser of the Ramgarh Estate, and there is an endorsement of approval in his band. And finally, the Board gave sanction on 27-7- 1914 not only to the agreement but to the very draft which was sent by Messrs Bird and Co., with the cess clause, as it appears in the deed of 1915. It is idle in the face of all this to argue that the Court of Wards gave no thought to it. It should be observed that the stand which the respondent took with reference to the cess clause in the courts below was different from that taken in this Court. There, his contention was that the Court of Wards had acted with gross negligence in agreeing to a term so manifestly disadvantageous to the estate. In other words, the argument was not that the Court of Wards failed to apply its mind to the cess clause but that it failed to realise the full implications thereof, and that the minor had consequently suffered. That would have been a good ground of attack, if the Court of Wards was in the position of a guardian of the properties of the minor, but, as

already stated, that is not its true character. It is a statutory body with powers granted to it by section 18, and its action thereunder cannot be attacked on the ground that it bad erred or was mistaken in its conclusion. As we have held that the Court of Wards did apply its mind to the question and formed its own judgment on it, its decision is not open to question, and the attack on the deed dated 26-3-1915 must in consequence fail. Coming next to the deed dated 23-11-1917, it was attacked on three grounds. It was firstly contended that it was, on the very face of it, beyond the competence of the Court of Wards, and was therefore void. In support of this contention, Mr. Gupta argued that at the time of the transaction the ward had only about a year and four months to become a major, that by extending the period of the license from 6 to 36 years the agreement in question opera- ted to tie his hands and to prevent him from dealing with his estate for a period of 32 years after he became a major, that the coal mines of Karanpura were known to be very valuable and the transaction had the effect of binding the proprietor to grant leases down to 1951 and on the rates of salami and royalty fixed in 1907 in the Bokaro license and adopted in the deed of 1915 and that such a transaction was not within section 18. It was urged that section afforded protection to a transaction entered into by the Court of Wards only if it was of such a character that it was possible on the facts to take the view that it was for the benefit of the property or the advantage of the ward, but where such a possibility is ruled out as when the transaction was manifestly not for the benefit of the estate, as for example, a gift of the properties of the minor, then the section would have no application. The agreement dated 23-11-1917 was, it was contended, in substance a gift to Messrs Bird and Co., of a license for a period of 30 years, and that therefore section 18 could not be invoked in support of it.

tion was beyond the competence of the Court of Wards for any of the above reasons. It has to be remembered that the action now in question is that of a statutory body, and that its powers and limitations with reference thereto must be found within the four corners of the Act. Section 18 which confers authority on the Court of Wards to enter into the transaction is general and unqualified in its terms. There is no provision in the statute such as there is in section 29(b) of the Guardians and Wards Act (VIII of 1890) that a lease by the Court of Wards was to enure for a period related to the minority of the ward. Such a limitation cannot be read into section 18 for the obvious reason that the wards whose estates are to be administered under the Act, may, under section 6 of the Act, be females including majors declared incompetent to manage the properties or lunatics or persons who themselves apply that their estates might be taken over by the Court of Wards. Nor is there any substance in the contention that as the ward would shortly be attaining majority, no transaction should be entered into so as to tie his bands or prevent him from dealing with his estate after be becomes sui juris. The Court of Wards has not only the power but is under a duty to manage the estate, so long as it continues to be in its charge in the same manner as a prudent owner will manage his own estate, and the fact that the ward would be coming of age cannot operate to divest it of its powers and duties under the Act, though it might enter as an element in judging under section 18 whether the transaction should be entered into. We are also unable to see any force in the contention that the transaction of 1917 was incompetent because it bad the effect of binding the ward to grant leases up to 1951 at the rates of salami and royalty fixed in the deed dated 26-3- 1915. It is not in dispute that mining leases have to be and usually are for long terms, and the respondent concedes that the terms of the 1915 license providing for the grant of a lease for 999 years on the rates of salami and royalty fixed therein are not themselves open to attack. That being so, it is

difficult to see how it would make any substantial difference when the lease for 999 years runs from 1951 and not from 1921 as provided in the deed of 1915. It was argued for the respondent with reference to certain sub-leases granted by the appellant in 1922 and thereafter that the rates of salami and royalty fixed therein were much higher than those settled under the 1915 deed, and that the extension of the license period under the 1915 deed must have consequently resulted in prejudice to the ward. But then, those leases were mostly of open mines, and stand on a different footing from prospecting licenses, and even where there was a prospecting license, there was no payment of prospecting salami or advance of a loan without interest as under the deed dated 26-3-1915, and it appears that there was some prospecting by the appellant itself with reference to the areas covered by the license. There is accordingly no evidence on which it could be held that the terms settled in 1915 were disadvantageous to the estate. It must be observed in this connection that no contention was raised by the respondent in his pleadings that the transaction was bad for the reason that the rates of salami and royalty fixed therein were less than the current market rates. No issue was framed on that question, and no evidence was directed towards it, and there is nothing about it in the judgment of the trial court. The respondent did not take this point even in his grounds of appeal in the court below, and he raised it only in the course of his argument there. The appellant objects to this point being raised at this stage, as it is essentially one of fact on which evidence would have to be adduced and it had no opportunity to do so. This objection must, in our opinion, prevail. (Vide Connecticut Fire Insurance Co. v. Kavanagh(1) and M. E. Moolla Sons Ltd. v. Burjorjee(2)). The contention that the extension of the period of license was in the nature of a gift of a period of 30 (1) [1892] A.C. 473.

(2) [1932] L.R. 59 I.A. 161.

years, and was therefore outside the power of the Court of Wards is clearly untenable. Under the deed dated 23-11- 1917, Messrs Bird and Co. were, in consideration of the extension of the period granted under the deed dated 26-3- 1915, laid under certain obligations. They had to pay a minimum ground rent of Rs. 50,000 per annum from the seventh to the twelfth year, and successive extensions of the period were made to depend on their having taken leases of a minimum area of 10,000 bighas in each period, which of course meant payment of royalties with a minimum fixed. The deed dated 23-11-1917 created mutual rights and obligations and cannot be regarded as a deed of gift either in form or in substance. In the result, the deed of 1917 cannot be held to be incompetent on any of the grounds put forward by the respondent.

It is next contended for the respondent that the deed dated 23-11-1917 was bad, because in granting an extension of the period fixed in the deed dated 26-3-1915 the Court of Wards considered only the benefit of Messrs Bird and Co., and not that of the ward, and that therefore its act was not within the protection of section 18. The facts on which this contention is sought to be supported are these: When Messrs Bird and Co. applied on 3-8-1915 to the Court of Wards for extension of the period of the license, they gave as a reason therefor that the conditions created by war bad greatly upset their arrangements and calculations, that in consequence they were unable to raise or transport capital to India, that they had paid under the license salami of Rs. 1,00,000 and advanced a loan of Rs. 9 lakhs without interest, and that it was therefore just that the period of license should be extended so as to enable them to carry out their venture. In his note dated 13-8-1915 Mr. Lister, the Deputy

Commissioner, considered that this stand was "justifiable", and on 21-6-1916 he forwarded the proposal to the Commissioner observing that "extension. of the period could 'not equitably be refused". In sending this application on to the Board of Revenue on 26-6-1916, the Commissioner endorsed this opinion, and also added that the extension would be in the interests of the public and of the State. On these facts, it is argued that the Court of Wards had throughout been considering the proposal from the point of view of Messrs Bird and Co., and also from the point of view of the State, but that the interests of the minor ward did not as such figure directly and prominently in judging of the propriety of the transaction, and that however equitable it might be to show concessions to Messrs Bird and Co. in view of their previous services to the estate, that was not a ground on which the Court of Wards standing in the position of trustee to the ward could legally bind his estate, as it did by the deed dated 23-11-1917.

There would have been considerable force in this contention, if the facts had been as stated by the respondent; but they, however, were not so. The correspondence makes it abundantly clear that the Court of Wards was considering at all stages and in all its aspects the benefit of the estate as to whether there should be at all an extension, and if so, for what period and on what terms. In their application dated 3-8-1915, Messrs Bird and Co., apart from recounting their difficulties and the services they had done to the estate by advancing the loan, also stated that as the area covered by the license was very extensive consisting of about 415 sq. miles, it would require a much larger period of time than that fixed in the 1915 document to survey the area and work the mines in full, that if the license was to expire in 1921, they would have to work the best and the most profitable mines, leaving the other areas to be exploited under fresh licenses, and the return to the estate from them must be poor by reason of the unprofitable and un- economic character of the mines which had been left unopened, and that it was accordingly in the interests of the estate to have long term licenses on the same rates. Referring to this aspect, the Deputy Commissioner stated in his note dated 13-6-1916 that the experience gained in the Katras and Jharia coal mines pointed to the wisdom of granting long term license, so that the mines could be worked in the best interests of the proprietor and the lessee. On 21-6-1916 when he forwarded the proposal to the Commissioner, he stated:

> "We are convinced that the interests of the estate and of the public are equally involved in the exploitation of this field on broad principles. And we see no prospect of this being done except by a firm prepared to take long views and undertake the heavy preliminary burdens".

The Commissioner stated in his memorandum dated 26-6-1916 that he agreed "with the Deputy Commissioner and the manager that this is essential not only in the interests of the estate but also of the public". In view of this evidence, it is impossible to contend that in entering into the transaction dated 23-11-1917, the Court of Wards had failed to consider the interests of the estate.

In their application dated 3-8-1915, Messrs Bird and Co. also stated that if the period of the license was not extended, it would be impossible for them or for others, in view of the war conditions, to work the mines and that the license would have to be abandoned by them. In dealing with this aspect, the Commissioner observed in his note dated 26- 6-1916 as follows:

> "If they were to give up the agreement, the estate would not obtain such advantageous terms from others, both on account of the present conditions arising from the war and which will continue for some time after the war, and also owing to the fact that the Geological examination of the northern portion of the Coalfied has proved disappointing and not up to previous expectation".

This again shows that the Court of Wards did apply its mind to the question whether the extension was for the advantage of the estate. The value of a mine to an owner lies not in his abstract ownership thereof but in its being worked, so that coal and coke might be sold or royalties obtained. The estate itself was not in a position to work the mines, and it bad to get it done by others. If, therefore, there was a license in force for the prospecting and leasing of the mines, it would certainly be to the advantage of the estate to extend the life of that license on such terms as might be for the benefit of the estate and the lessee, and it was this aspect that was considered by the Commissioner in his note. It may be mentioned that there was some difference of opinion among the officers of the Court of Wards whether if the period of the license was to be extended from 6 to 12 years, the minimum royalty from the 7th to the 12th year should be fixed at Rs. 5 per bigha or Rs. 2-8-0 per bigha. In that connection, Mr. MacGregor, the manager, wrote a note in which he emphasised that they were dealing with the estate of a minor, that their position was that of trustees, that considerations based on equitable grounds or public interest and the like would be out of place, and that the minimum royalty should be fixed at Rs. 5 per bigba. Thus, the attention of the Board was pointedly drawn to the very aspects which the respondent contends ought to have been considered by it, and it decided on a consideration of all the materials to grant extension on the terms set out in the deed dated 23-11-1917. We are unable to see any ground on which its propriety could be challenged.

It was also contended by Mr. Gupta that section 18 required that the act should be for the benefit of the property and the advantage of the ward, that these conditions were cumulative and should both of them be satisfied and that even if the license dated 23-11-1917 was for the benefit of the property, it was not for the advantage of the ward, and that therefore it was not valid under section 18. The fallacy in this argument lies in thinking that the reference to property in section 18 is by way of antithesis to the ward. For this, however, there is no justification. If a transaction is for the benefit of the property, the person who would reap the advantages thereof must be the owner of the property. It is difficult to conceive of a transaction which is for the benefit of the property but not to the advantage of its owner. If the deed dated 23-11-1917 is for the benefit of the property by reason of the fact that it yields revenue in the form of minimum ground rent, salami and royalty, it must equally be to the advantage of the ward who will be the person who will receive this revenue. Assuming that both the parts of the clause in section 18 have to be read cumulatively and not disjunctively, even so, the deed dated 23-11-1917 satisfies the requirements of the section, and is consequently valid. In the result, we must hold that the deed is not open to attack on the ground that in entering into the transaction, the Court of Wards did not consider the interests of the ward.

The last ground of attack on the deed of 1917 is that it was not sanctioned by the Board as required by section 18 of the Act, and was therefore void. It will be remembered that the application of Messrs Bird and Co. for extension dated 3-8- 1915 was the subject of considerable correspondence

and discussions, and that on 26-6-1916 the Commissioner for- warded the proposal as finally settled for sanction to the Board of Revenue. On this, an order was passed by the Board on 3-7-1916 that it "accepts generally the recommendations of the Deputy Commissioner" and that "the draft deeds embodying the proposed terms should be submitted to it in order that they may be scrutinised by the Legal Remembrance". In communicating this order to Messrs Bird and Co., the manager. wrote to them on 12-7-1916 to send a draft of the agreement, and stated the terms on which it might be drafted. Messrs Bird and Co., then prepared a draft and sent it on for approval to the manager. It was then examined by the officers of the Court of Wards and by Sri Sarada Charan Mitra, and on 24-4-1917 the Commissioner sent it to the Board for sanction. By his letter dated 13-7-1917 the Secretary to the Board wrote to the Commis- sioner that "the agreement however is one of such importance that the Board agrees with the Additional Legal Remembrancer that it should be referred to the Solicitor to the Government of India before final acceptance and before it can be so referred, it is necessary to clear up the four points within the extract enclosed from a note recorded by the Additional Legal Remembrancer", and the note with the four points was enclosed.

Pausing here, the question is whether the letter dated 3-7- 1916 constitutes sanction as contemplated by section 18 of the Act. It is recited in the deed dated 23-11-1917 that the agreement was sanctioned by the letter dated 3-7-1916. Is that correct? It is argued for the appellant that section 18 does not prescribe any form in which sanction has to be given, and that further, the sanction to be given is to the transaction, not to the document embodying it and that the letter dated 3-7-1916 sanctioning generally the grant of extension is sufficient to satisfy the requirements of section 18, even though there may be details remaining to be worked out. The decision in Gulabsingh v. Seth Gokuldas(1) was relied on in support of this position. There, the Deputy Commissioner had sent to the Commissioner a proposal to borrow Rs. 1,00,000 from the plaintiff's firm, and on 28th January 1891 the Commissioner was informed by the secretariat that the Chief Commissioner had accepted the proposals for the liquidation of the debt. On the authority of this letter, the Court of Wards executed a mortgage on the 10th December 1891. In rejecting the contention that there was no proper sanction for the mortgage as required by section 18 of Act XVII of 1885, the Privy Council observed:

> " It was not in their Lordships' opinion necessary under section 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 is to be inferred from the letter of January 28, 1891, empowered the Court of Wards to mortgage the property under section 18 of Act XVII of 1885".

In Ramkanai Singh Deb Darpashaha v. Mathewson (2) the Commissioner had sanctioned a patni lease, but the lease deed which was actually executed had not been submitted to his approval. In holding (1) [1913] L.R. 40 I.A. 117.

(2) [1915] L.R. 42 I.A. 97.

that the sanction was sufficient, the Privy Council observed:

> "..... their Lordships are 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".

The position in law, therefore, is that the requirements as to sanction must be held to be satisfied if the transaction in all its essential particulars bad been sanctioned, even though there are details to be worked out in furtherance of the sanction and there is no further sanction given to the deed as finally settled. On these principles, there is much to be said in favour of the view contended for by the appellant that the communication dated 3-7-1916 is sufficient sanction for purposes of section 18. But such a conclusion would be inconsistent with the letter of the Secretary of the Board dated 13-7-1917 aforesaid. It was certainly open to the authorities to indicate the lines on which the document would have to be drafted and reserve the grant of sanction until they shall have had a full picture of the transaction, as might appear on the document. The Board might have, if that was their intention, sanctioned the transaction unconditionally by its letter dated 3-7- 1916, but it chose to make it conditional on the document being again approved by them. Under the circumstances, the letter dated 3-7-1916 cannot be construed as a final sanction of the transaction, notwithstanding that it was so recited in the deed dated 23-11-1917.

To continue the narration, in accordance with the note of the Secretary dated 13-7-1917, the draft deed was again taken up by Messrs Bird and Co., alterations were made therein, and the revised draft was submitted to the authorities for examination. They in their turn scrutinised the document, and sent it for the opinion of the Legal Department, and obtained its suggestions. And on 9-10-1917 the revised draft with the suggestions made in the Legal Department were returned by the Board to the authorities concerned "for information and such action as may be considered necessary". It should be noted that the Board did not again require the document to be sent to them for scrutiny, as they did by their letter dated 3-7-1916. In due course, the suggestions of the Legal Department which were four in number, were examined; three of them were formal in character, and were carried out. As regards the fourth, which related to the question of payment of the minimum royalty of Rs. 8,000 during the first year, it was found that under the agreement to which the parties had come, it was not payable during the first-year. The deed having been amended suitably to the suggestions made by the Law Department, it was executed as amended on 23-11- 1917.

The contention of the appellant is that the order of the Board dated 9-10-1917 is a sanction to the proposal in all its essential particulars, and that this is sufficient compliance with the requirements of section 18. The respondent contends that even on the letter dated 9-10-1917 there were four matters reserved to be considered before the deed could be engrossed, that it was only after these matters were settled that there would be a completed agreement, and that as no sanction bad been given to it after it had finally shaped itself, the requirements of section 18 bad not been satisfied. We are unable to uphold this contention. It is not disputed that three of the four matters were merely formal ones, and that with reference to the fourth, the suggestion of the Legal Department proceeded on a misapprehension of what had really been agreed to by the parties. Thus, all the

essential terms of the agreement must be held to have been sanctioned by the Board by its letter dated 9-10-1917, and it is of no consequence, as laid down in Gulabsingh v. Seth Gokuldas(1) and Ramkanai Singh Deb Darpashaha v. Mathewson(2) that the document as finally drafted had not been submitted again for its appro- (1) [1913] L.R. 40 I.A. 117.

(2) [1915] L.R. 42 I.A. 97.

val. We should accordingly construe the letter dated 9-10- 1917 as sufficient sanction under section 18. The learned Judges of the High Court were of the opinion that Rule 242 framed under section 70 of the Act required that the sanction should be recited in the deed, and they referred to the deed dated 26-3-1915 where that had been done. But Rule 242 applies only to leases, and is in terms inapplicable to the deed dated 23-11-1917 which is an agreement. And both sides have argued the case on the footing that the deed in question is governed by the last clause of section 18. We have no hesitation in holding that the Board directed by its letter dated 9-10-1917 the execution of the agreement dated 23-11-1917, and that it was validly executed under section 18. The result, therefore, is that the deed dated 23-11-1917 is not open to attack on any of the grounds urged by the respondent, and must be upheld.

One other contention of the respondent remains to be considered, and that arises on the statement of the appellant that it does not contest the finding of the High Court that the deed dated 1-6-1937 is void. It will be recalled that under the deeds dated 26-3-1915 and 23-11-1917 the licensees would be entitled to an extension of the period for 12 years from 26-3-1939 to 26-3-1951 provided that they had taken on lease a minimum area of 20,000 bighas, and that the appellant had, in fact, taken on lease only a total extent of 17,539 bighas under six leases during the years 1922 to 1933. It was also provided in those deeds that for the areas taken in excess of 10,000 bighas, the minimum royalty would become payable after 26-3-1939. The appellant applied to the Court of Wards sometime in 1934 for amendment of the deeds dated 26-3-1915 and 23-11-1917 so as to provide that the payment of minimum royalty was to commence from 26-3-1951, unless railway facilities were available earlier. This was sanctioned by the Board, and the deed dated 1-6-1937 incorporates this amendment in the deeds dated 26-3-1915 and 23-11-1917. As a condition of the grant of this concession, the Board required the appellant to take a lease of 2,461 bighas to make up the covenanted extent of 20,000 bighas. The appellant accordingly applied for three leases of the total extent of 2,461 bighas, and the Board gave sanction to the same on 15-7-1937, and on 2-8-1937, the lease deeds were actually executed. One of them, that relating to Mauza Saunda, contained, in accordance with the terms of the deed dated 1-6-1937, the following covenant:

> "Provided always that no minimum royalty shall be payable until the expiration of 36 years from the said 26th day of March 1915 or until railway facilities shall be available as aforesaid, whichever event shall first happen".

There is some dispute as to whether the other two leases contained similar covenants, but that is immaterial for the present discussion, because if the lease of Mauza Saunda is bad on account of the aforesaid clause as contended by the respondent, then the total area taken on lease will be less than the minimum 20,000 bighas, and the appellant will have no right to the benefit of the third

extension, and the suit for specific performance must fail.

Now, the contention of the respondent is that the leases dated 2-8-1937 are bad on two grounds. He firstly argues that as the deed dated 1-6-1937 has been held to be bad, the clause in the lease providing for the postponement of payment of minimum royalty based thereon must also be held to be bad-and that is conceded by the appellant-and that as a deed cannot be held to be partly good and partly bad, the whole of it must be held to be void. The fact that a clause in a deed is not binding on the ground that it is unauthorised cannot ipso facto render the whole deed void, unless it forms such an integral part of the transaction as to render it impossible to sever the good from the bad. That is not the position here. The effect of declaring the proviso void will leave the rest of the deed whole and intact. The leases without the proviso are perfectly valid, and indeed, they will be more advantageous to the ward. Secondly, it is contended that the sanction that was accorded by the Board was to the lease with the covenant which has been held to be void, and that the deed without that covenant has not been sanctioned. This contention again is clearly untenable. Section 18 only requires that the transaction should be entered into with the sanction of the Board. When that has been done, the force of the section is spent. Whether the transaction turns out to be good or bad on the merits can have no effect on the sanction, which had been granted before it was entered into. If the deed is bad on the merits, it will fail on that ground and not on the ground that by reason thereof, the sanction becomes ineffective. And the result is the same whether the deed is bad in part or in toto. The contention therefore that the lease deeds dated 2-8-1937 are inoperative must be rejected. The result is that the deeds dated 26-3-1915 and 23-11-1917 are valid but not the deed dated 1-6-1937, and that the leases granted to the appellant are valid, but the clause postponing the payment of minimum royalty in the lease deed or deeds of 2-8-1937 is inoperative.

The appeals must accordingly be allowed, the decrees of the court below set aside, and these of the trial court restored. In Civil Appeal No. 191 of 1953, the appellant will have its costs both here and in the courts below. In Civil Appeal No. 192 of 1953, the parties will bear their own costs throughout.

It must be mentioned that during the pendency of these appeals, by virtue of notifications issued under sub-section (1) of section 3 of the Bihar Land Reforms Act XXX of 1950, the Estate of Ramgarh became vested in the State of Bihar, which thereafter intervened in these appeals. At the bearing, the State filed a memo in the following terms:

> 'State of Bihar recognises and accepts as valid the leases granted to the appellant Company whether granted by the Court of Wards or the Raja under the license of 26th March 1915 (as extended by the supplementary documents of 1917 and 1937).

Nothing in this compromise shall preclude the State of Bihar in future from modifying the terms and conditions of the leases in accordance with law empowering the State Government to do so".

The respondent raised the contention that the State had no locus standi to intervene in these proceedings and at the stage of appeal, but in the view which we have taken of the rights of the parties, a discussion of this point is purely of academic interest. It is sufficient to direct that the above memorandum be filed and included as part of the record.

Appeals allowed.