

*Privy Council Appeal No. 2 of 1926.*

*Patna Appeal No. 2 of 1925.*

Sri Rani Chattra Kumari Devi - - - - - *Appellant*

*v.*

W. W. Broucke - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 18TH OCTOBER, 1927.

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*Present at the Hearing :*

VISCOUNT DUNEDIN.

LORD SHAW.

LORD SINHA.

SIR LANCELOT SANDERSON.

[*Delivered by* LORD SINHA.]

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The question in this case turns on the construction of a lease dated the 22nd May, 1911, of 36 villages of the Ramnagar Raj in the province of Behar and Orissa, granted by the Rajah to a Mr. Broucke.

The material part of the lease is stated in the judgment of the Chief Justice of Patna as follows :—

“ I have let out 16 annas of the following 36 villages as per boundaries given below . . . at a consolidated annual Jama of Rs. 15,581-5-0, being the Malguzari, road and embankment cesses, dues of priests (Mahal Uprohiti) and expenses for obtaining acquittance receipts (Farag Karach), etc., in addition to 515 maunds of paddy specified below payable annually at a uniform rate under a Thika Patta, the term whereof is given below and on receipt of a Kabuliyat to Mr. W. J. Broucke.”

At the end of the document is a schedule giving a list of the 36 mauzas and stating in the case of each mauza the total annual “ jama ” and details of how it is made up. One instance will suffice. The first mauza is Thath Mitia. The particulars there-

under show first of all that the term is for 15 years from 1319 to 1333 F. Then follows a list of payments in respect of that mauza as follows :—

	Rs.	as.	p.
Malguzari .. .. .	673	2	0
Road cess .. .. .	40	8	0
Embankment cess .. .. .	10	2	0
Costs of acquittance .. .. .	24	4	0
Dasahara and Chait Nawmi Farmaish	12	0	0
Tika, Bheti, Guru Bheti .. .. .	5	0	0
Batchhapi, Jangla-isim-navisi .. .. .	7	0	0
Katiari .. .. .	4	0	0
Dewani Dastur .. .. .	24	14	0
Mahal Uprohiti .. .. .	5	0	0
<b>Total .. .. .</b>	<b>805</b>	<b>14</b>	<b>0</b>

Paddy 35 maunds.

The total of Rs. 805-14-0 thus arrived at is then treated as the *Jama Eksala* (annual rent), and is divided into four kists of Rs. 201-7-6 payable in Asin, Pous, Chait and Jeyth.

The word "malguzari," translated as *rent* in the High Court record, ordinarily means *revenue*, and is so rendered in Wilson's Glossary.

The Chief Justice of Patna was of opinion that the last eight items of the list above had been collected as *abwabs* from the raiyats long before the lease was executed and were regarded as having the sanction of custom, and he held (Foster, J., concurring) that on a proper construction of the lease Broucke undertook to pay them as *abwabs* under the different denominations as set out in the said schedule and as indicated in the body of the lease, and not as part of the *rent*, which the Chief Justice took to be the meaning of "malguzari" (the first item). In that view the High Court held that under Section 74 of the Bengal Tenancy Act, the lessor was not entitled to recover the amounts covered by the items 3 to 10 of the list, as being *abwabs* in addition to the rent payable under the lease.

Section 74 of the Bengal Tenancy Act, 1885, enacts that "all *impositions* upon *tenants* under the denomination of *abwab*, *mathat* or other like appellations in addition to the *actual rent* shall be illegal, and all stipulations and reservations for the payment of such shall be void."

That section has a long legislative history behind it from 1791 to 1885, which was referred to at the Bar, but to which it is unnecessary to refer further than to state that the object of the whole series of enactments from the Regulations of 1791 to Act VIII of 1885 was to prevent exactions from tenants beyond the rent specified in their patta, when there was one, and if there was no written engagement, beyond what was the rent actually payable, whether by verbal agreement or by virtue of custom.

There being a written engagement or lease in this case (the patta and kabooleat) the only question is whether the *actual*

rent payable by Broucke as tenant to the Rajah as his landlord is what that lease calls the "consolidated *annual jama*" of Rs. 15,581-5-0 *plus* 515 maunds of paddy, as the Subordinate Judge held, or only a portion thereof, as the High Court held.

Their Lordships are unable to endorse the view taken by the High Court.

Malguzari, which is the first of the items composing the total yearly jama for each village, cannot be rendered as *rent*, much less as *actual rent*; nor is there any evidence to show that the amount of the malguzari was the *actual rent*, as distinguished from *abwabs*, paid by the cultivating raiyats of the village. The only distinction apparent on the face of the lease is between *cash rent* and *produce rent*. So far as the former is concerned, it is impossible to take the first item as being actual rent and the rest as *abwabs* when they are all included in the total, which is expressly stated to be the annual rental payable in four equal kists, or instalments, specified in figures. It is also to be noticed that the execution-clause of the patta, signed by the Rajah, is as follows:—

"Executed this Jika-Patta for a term of 15 years in respect of 34 villages and of 17 years in respect of 2 villages in all 36 villages at an annual jama of Rs. 15,581-5-0 and 515 maunds of fine paddy to be realised from year to year."

Similarly the execution-clause of the kabuliat signed by Broucke is as follows:—

"Kabuliat given by me on jama rupees fifteen thousand and five hundred and eighty-one and five annas only."

Their Lordships agree with the Subordinate Judge that Broucke was bound under his engagement to pay the rent mentioned therein as the annual rental, and cannot evade this liability because the raiyats may not or do not pay him what they used to pay to the Rajah. The question as to what each raiyat was or is liable to pay as his *rent* is not before their Lordships, and they do not express any opinion upon it.

A large number of cases decided by the Calcutta and Patna High Courts were referred to in the judgments and cited at the Bar. Their Lordships do not consider it necessary to refer to them beyond expressing their agreement in the view that in each case it has to be ascertained whether the sum claimed is really part of the rent agreed upon to be paid as consideration for the lease.

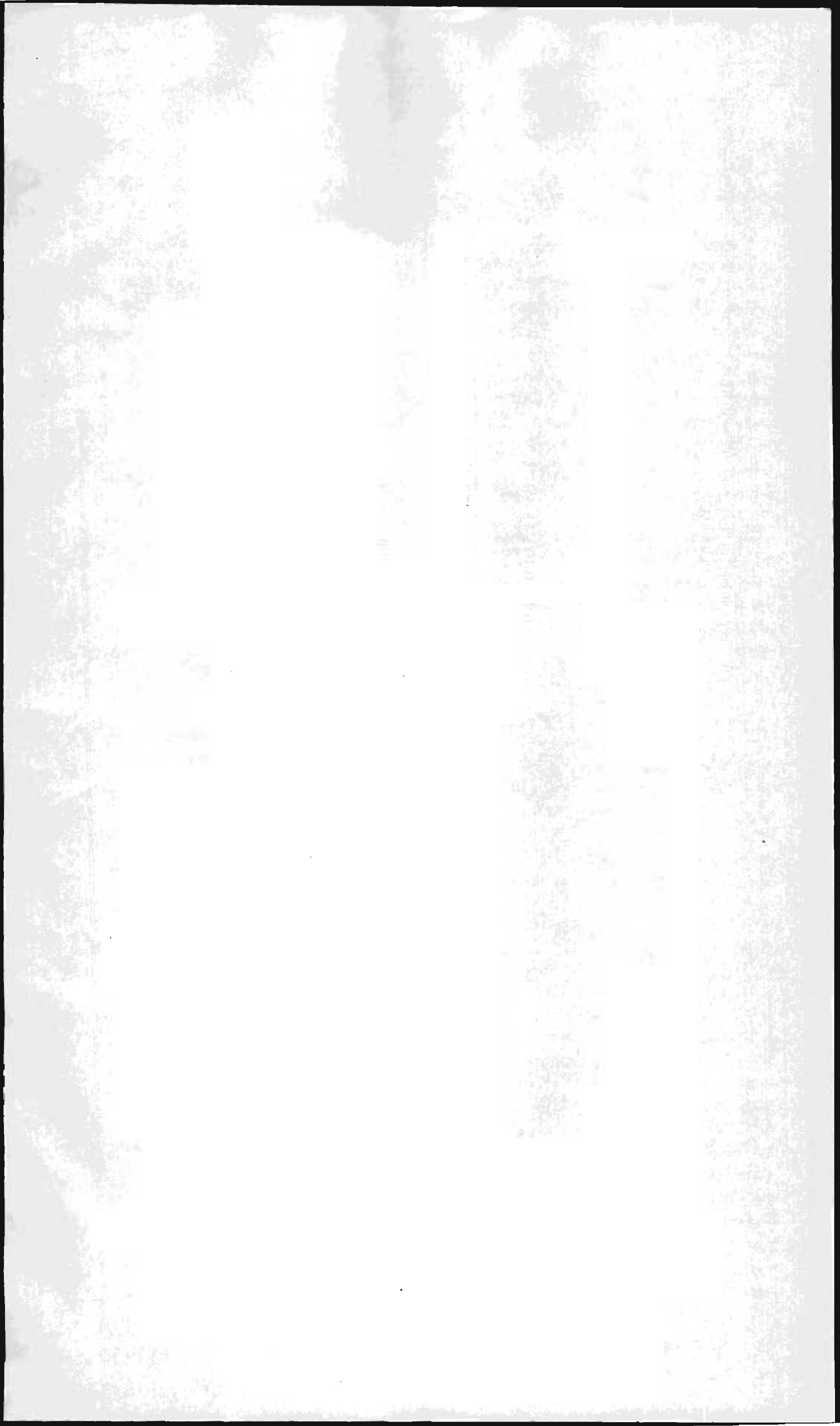
The case of *Tiluckdari Singh and others v. Chulhan Mahton*, decided by this Board and reported in L.R. 16 I.A. 152, was also referred to. In that case there was an old tenancy without any written contract. But the money claimed was described in the plaint itself as old usual *abwabs*, and the Zemindar's books of account produced in the case showed that on the face of those documents the payments made by the tenant were distinguished as (1) rent and (2) *abwabs*, *i.e.*, so much for rent, and so much for *abwabs*. The latter were claimed on the ground that they

were payable by custom and had been, in fact, paid for a long time without objection. It was held that long use or custom could not validate *abwabs* as an addition to the rent.

A somewhat novel argument was advanced on behalf of the respondent, viz., that the words *actual rent* in Section 74 of the Bengal Tenancy Act were equivalent to the *assul jama* of the old Regulations, and that any stipulation to pay a rent which, in fact, exceeded what was the *assul jama* would be illegal to the extent of such excess. This would raise an issue of fact as to what was the *assul jama* of the 36 villages—the subject-matter of the lease. No such issue was raised in the Courts of India, and, indeed, in no reported case does any such question appear ever to have been raised.

Their Lordships would moreover point out that the words *actual rent* in Section 74 cannot be taken to mean either a *fair and equitable rent* or rent at *customary* or *pergana* rates.

In their Lordships' opinion Broucke's *actual* rent under his lease is the sum of Rs. 15,581-5-0 in cash and 515 maunds of fine paddy, as found by the first Court, and their Lordships will, therefore, humbly advise His Majesty that the judgment of the High Court should be reversed and the judgment of the Subordinate Judge restored, with costs of this appeal and of both Courts in India.





In the Privy Council.

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SRI RANI CHATTRA KUMARI DEVI

v.

W. W. BROUCKE.

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DELIVERED BY LORD SINHA.

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