

Privy Council Appeal No. 27 of 1940

Patna Appeal No. 11 of 1939

Raja Shiva Prasad Singh - - - - - *Appellant*

v.

Tincouri Banerji and another - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 19TH FEBRUARY, 1942

Present at the Hearing :

LORD THANKERTON

SIR GEORGE RANKIN

SIR CHARLES CLAUSON

SIR MADHAVAN NAIR

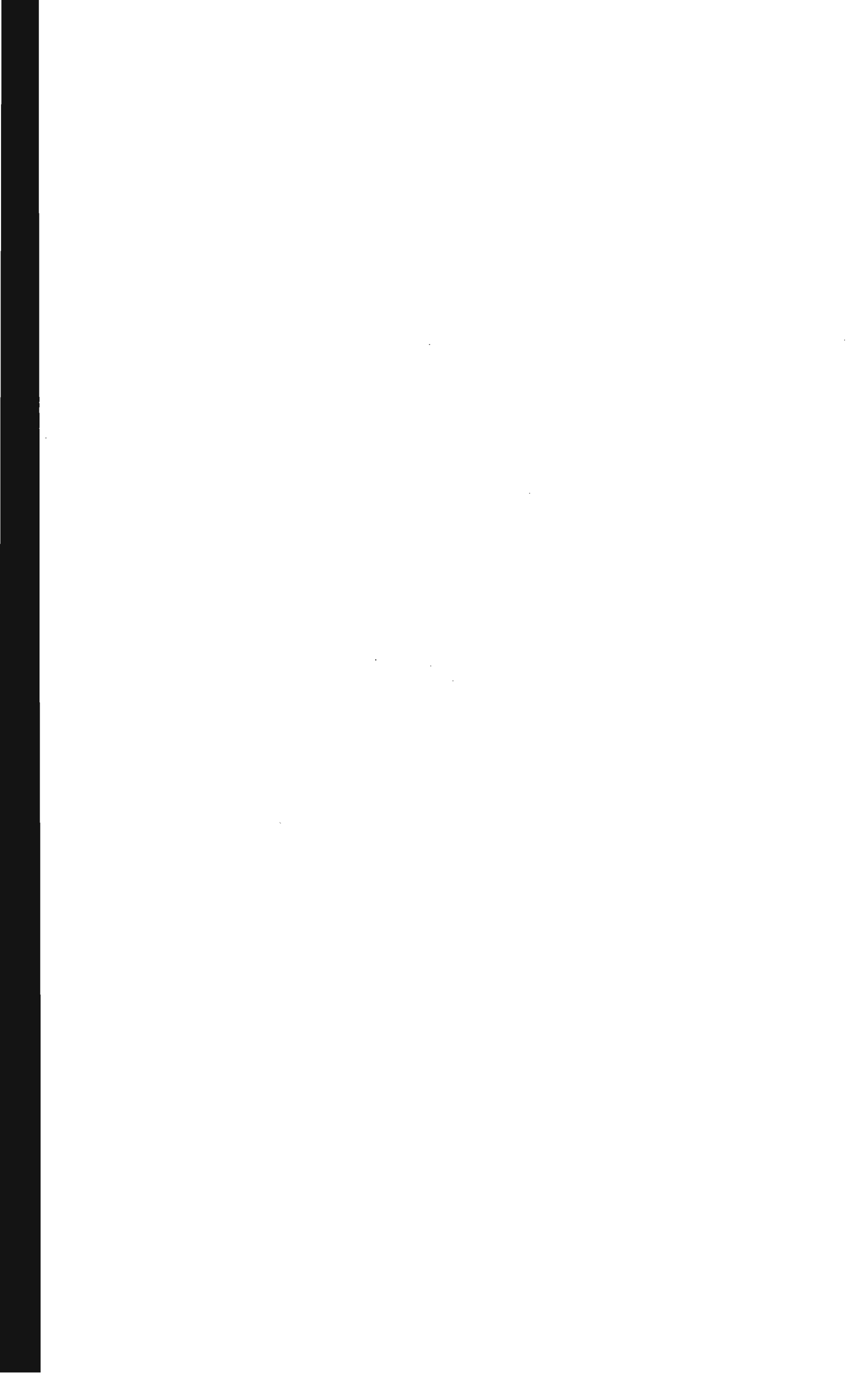
[*Delivered by* SIR CHARLES CLAUSON]

This is an appeal by the defendant in the suit against a decree of the High Court at Patna affirming (with a trifling amendment dealing with a matter of interest) a decree of the Subordinate Judge, of Dhanbad, and ordering the defendant to pay to the plaintiffs (with certain interest) a sum of Rs.2,83,550, representing the principal and interest remaining due on a promissory note of the 22nd February, 1934, after the defendant has been credited with certain sums paid on account of the note. The plaintiffs are the representatives of one Kedar, to whom the promissory note was given by the defendant.

The circumstances attending the giving of the note may be stated quite shortly. Kedar had been the secretary of the defendant's predecessor in the family Raj; and on that predecessor's death he became the secretary of the defendant; but shortly afterwards left his service and became adviser to the defendant's predecessor's widows, whom it will be convenient to refer to as the Ranees. The Ranees, possibly (as is suggested) under Kedar's advice, proceeded to litigate certain claims against the defendant, and in the result obtained a decree against the defendant to pay to them a sum slightly in excess of Rs.20 lakhs. Upon the Ranees seeking execution of this decree, negotiations for a compromise ensued, in which Kedar acted as adviser to the Ranees. The negotiations resulted in a compromise, entered into in February, 1934, under which, in addition to certain sums which the defendant had already paid to the Ranees under the decree, he was to pay them a further sum, in full satisfaction, of Rs.18 lakhs. Of this 18 lakhs two lakhs were to be (and apparently in fact were) paid down in cash; the defendant was to pay to certain creditors of the Ranees, of whom Kedar was one, a sum of Rs.4,40,000, which included a sum of Rs.2,90,000 payable to Kedar; the balance of Rs.11,60,000 was to be paid by the defendant to the Ranees by various instalments. It was arranged that the Ranees' creditors thus to be paid by the defendant should be given promissory notes by the defendant to the amount of their respective debts, and that the Ranees should thereupon be absolved by them from liability for those debts. Accordingly the promissory note the subject matter of the suit was given by the defendant to Kedar. Kedar died shortly afterwards, and as the defendant, after he had made some payments on account, failed to pay any more, the plaintiffs as his representatives initiated the present suit for the balance unpaid.

It is said that in order to get the negotiations through the defendant made Kedar a present of Rs.60,000. For the present purpose it is obviously unnecessary to consider what rights would accrue to the Ranees by reason of the giving and receiving of this bribe. The defendant, perhaps not unnaturally, does not seek to get out of the compromise, and does not dispute that as between himself and the Ranees he is bound to carry it out. It was suggested in the Courts below, though (quite properly) Counsel before this Board found himself unable to put forward the suggestion to their Lordships, that the defendant was entitled to establish, if he could, that the Ranees, if they had been sued by Kedar, could have resisted the payment to him of the whole or part of the Rs.2,90,000, which, as part of the compromise, the plaintiff had bound himself to the Ranees to pay to Kedar. It is obvious that this was not a matter which could be raised by the defendant in answer to a demand by Kedar or his representatives for payment of a sum which as between himself and the Ranees he had agreed to pay to Kedar to their indemnity: and both Courts have so held. A number of other pleas of an equally irrelevant character were urged by the defendant in the Courts below, and, quite correctly, rejected by both Courts. Their Lordships, however, do not propose to deal with them in detail, as in the argument before this Board counsel (in their Lordships' opinion quite properly) felt himself unable to rely upon any of them, and ultimately based the appeal on the suggestion that Kedar had intervened in the litigation between the defendant and the Ranees as adviser to the Ranees for the purpose of making money for himself out of the litigation, and was on that ground disentitled as against the defendant to derive any advantage for himself. Their Lordships were referred by Counsel to the decision of this Board in *Chedambara Chetty v. Renga Krishna* (1 Ind. App. 241). In regard to that case their Lordships need do no more than express their agreement with the High Court that the facts bear no resemblance to those of the present case. Their Lordships certainly laid down no principle which could possibly avail the defendant in the present case. When it is once admitted, as the defendant in the present case has throughout admitted, that he does not seek to upset the compromise (as indeed he could not possibly do in the present suit, to which the Ranees are not parties), it must be taken as against him that the sum which he has by the compromise undertaken to pay, by virtue of the promissory note, to Kedar, is, as he has agreed with the Ranees, a sum for which he is liable to Kedar, and the impropriety of Kedar's conduct in regard to the litigation becomes, as between the defendant and Kedar or his representatives, completely irrelevant. Nor can the defendant's case be bettered by the fact that he paid to Kedar and Kedar accepted a bribe to facilitate the negotiations. While that circumstance may well give the Ranees certain rights, it cannot possibly operate to relieve the defendant in any measure from the obligation he has undertaken to the Ranees as well as to Kedar to discharge the burden which he has taken upon his own shoulders as part of the compromise.

Their Lordships will accordingly humbly advise His Majesty to dismiss the appeal. The appellant will pay the respondents' costs of the appeal.



In the Privy Council

RAJA SHIVA PRASAD SINGH

v.

TINCOURI BANERJI AND ANOTHER

DELIVERED BY SIR CHARLES CLAUSON

Printed by His Majesty's STATIONERY OFFICE PRESS,
DRURY LANE, W.C.2.

1942