Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Major John Palmer Turton v. *The Secretary of State for India in Council, from the Chief Court of the Punjab; delivered July 16th*, 1874.

Present:

SIR JAMES W. COLVILE.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.
SIR LAWRENCE PEEL.

IN the present case the Appellant, Major Turton, brought his suit to recover a large sum of money from the Government, on the ground of an invasion by them of his rights as assignee of a very peculiar lease granted by the Rajah Sri Singh, the Rajah of Chamba, an independent or semi-independent prince in the Punjab, to one William McGuffin. It is set out at the commencement of the able and elaborate judgment of Mr. Justice Boulnois, and is as follows: "Know all men by these presents, "that I Sri Singh, Raja of Chamba, in the "Punjab, do hereby, in consideration of Rupees "1000 per annum to be paid yearly on or about the "1st day of January in each year, make over from "this date to the said William McGuffin on lease "for the unexpired term of ten years, viz., from "the 16th day of May 1865 until the 16th day "of May 1875, the good will, *i.e.*, to have and to "hold all the slate quarries within my territory "at any place within a distance of fifteen miles "from the station of Dalhousie that may now "exist or may hereafter exist or be discovered

" within the above-mentioned distance of the " station of Dalhousie. This agreement will not " include the slate quarry Government is in " possession of at or near the village of Sakrera." Whatever may be the nature of the rights this document conferred on Mr. McGuffin, which is a question their Lordships will deal with hereafter, it is clear that the rights conferred extended over a vast and unusual area, inasmuch as the distance described would include some 700 square miles. Mr. McGuffin assigned his rights under this lease from a date which it is now admitted must be taken to be February 1868. Intermediately the Government in 1866 acquired from the Rajah of Chamba a hill, or part of a hill, which is termed the Hill of Balun, for the purpose of constructing barracks upon it. These barracks were built between 1866 and the commencement of this litigation. In 1871 Major Turton instituted a suit for the purpose only of having a declaration of his right as assignee under this lease. His claim stated the alleged trespass on the part of the Government by taking stone for building purposes from this hill of Balun, and that, on hearing of the trespasses which were being committed by Defendants, Plaintiff applied to the executive engineer of Dalhousie, and claimed compensation in respect of the slate which had been quarried and used by the Defendants, and that Mr. W. McGuffin also made an application for compensation in respect of certain trespasses committed by Defendants antecedent to the assignment of the lease of the quarries to Plaintiff, but they were still continuing to take large quantities of valuable slate from the quarries belonging to the Plaintiff in Balun. Thereupon an injunction was granted, which enjoined the Respondents to refrain from doing the acts complained of with reference to the right under litigation in the suit, and also to keep true

accounts for the Court's inspection. That was dated on the 2nd May 1871. Then followed a local enquiry, wherein evidence was taken before the Commissioner, the dispute then being of this nature. It was broadly contended on the part of the Plaintiff, Major Turton, that the whole of the material used by the Government, considered geologically, was of the nature of slate, and that the taking any part of it was an infringement of his rights. The Commissioner's report returning the evidence taken before him ended with this conclusion: It said, "From the above it will be seen that the "quarrying of the stone in such way as Govern- "ment has quarried it must necessarily involve "the infringement of an exclusive right to "quarry slate in the same place, for the stone "quarried is shown to be 'slate.' Specimens of "the stones quarried have been sent in a sealed "box for the inspection of the Chief Court. "Those marked A. L. were first quarried, but "afterwards rejected. Those marked B. C. D. "E. were afterwards quarried and used in the "buildings. They are all, including those "marked A. and L., pronounced to be slate "stone." Upon the return of the commission, the Government advocate admitted that, on the evidence as taken before the Commissioner, it was proved that some of the material used in the building of the barracks at Balun was slate within the meaning of the grant, and that it had been procured from the quarries at Balun. Thereupon a declaratory decree was made which decided "that in conse- "quence of the arrangements made between "Major Turton and Mr. McGuffin on the 27th "August 1867, an assignment was effected to "Major Turton,"—then follows in the Record what must be a mistake, because it says "of the Sakrera quarry," what is meant being "the quarries other

than the Sakrera," because the Sakrera is clearly excepted out of the grant,—"sufficient to entitle "him to a declaratory decree of his right as "against the Secretary of State for India in the "quarry from the 4th of September 1867, on "which date he took possession. Also that on "the 8th February 1868 an assignment was "made to Major Turton by Mr. McGuffin, suffi-"cient to entitle him to a declaratory decree of "his right after that date to all the other quarries "within a radius of 15 miles of Dalhousie." About the same time both Mr. McGuffin and Major Turton brought suits claiming damages, Major Turton's claim being set out at page 43 of the Record. It is a claim for "payment of "Rupees 200,000 (or two lacs), or of such other "sum as upon investigation of the Defendant's "accounts may be found to be due to the "Plaintiff, being the value of sixteen lacs of "cubic feet of slate or thereabouts at 12 Rs. per "100 cubic feet quarried and appropriated by "the Defendants from the quarries situated in "the British territory adjoining Dalhousie, "known as the cantonment of Balun. The said "quarries have been declared by the Chief "Court of the Punjab to be the exclusive pro-"perty of the Plaintiff."

It appears, however, that neither party being altogether satisfied with the declaratory decree, there were cross applications to review it, and it was then agreed, under the compromise set out at page 42 of the Record, that the plaint or claim I have just read should be regarded as supplementary to and an amendment of the former plaint, so that the question of title and damages should be both tried together upon the seven issues that had been fixed on 19th December 1871.

It appears to their Lordships that that arrangement must be taken to have got rid of the effect of the declaratory decree as *res judicata* between

the parties, and to set the whole question between the parties free to be tried upon the issues. Now the questions which really were tried upon the issues very plainly appear in the judgment of Mr. Justice Boulnois, and it is perfectly clear that the contention of the Appellant up to yesterday was that the Government had no right to take any portion of this hill of Balun which fell within the term of "slate," considered geologically, for building purposes, and that their doing so was an invasion of his rights. On the other hand the Government insisted that the word "slate" as used in the lease must be taken in a restricted sense. The evidence turned very much upon what was to be treated as slate within the meaning of the lease. It was shown clearly that within the geological term of slate was included roofing slate of the best description, which was known by the native term of sêl; that there was also certain slate called slab-slate, and that that term either was confined to or that it included certain slates which were heavier than ordinary roofing slates, but which were still used by the natives as roofing slates, called châkka; and that there was also a considerable quantity of material which, though geologically considered was slate, would not laminate or split up into roofing slates or slabs, but was known as nila-pathar. These were the three great divisions; but upon the evidence it seems to be extremely uncertain how far one of those divisions might run into the other; that there may be stone with reference to which there may be considerable doubt as to the class to which it belongs. Major Turton, as has been said above, continued to insist that he was entitled to claim compensation for the whole of the slate of whatever description which was used. It is now however agreed that he has no right under the lease to claim the exclusive use of the

slate nila-pathar ; that the right to work that slate and to use it for building purposes must, notwithstanding the lease, be taken to remain in the Rajah of Chamba and those who claim title under him, including the Respondents, and that so far his suit would fail. It appeared to their Lordships at first that that would reduce the present contention within very narrow limits, but the truth is, that it rather shifts or changes the ground upon which Major Turton's claim is supported than necessarily diminishes its extent, because it is contended by Mr. Field that the evidence shows that the material chiefly used corresponded with certain specimens produced before the Court marked B. C. D. and E., and there is some evidence as to each of these, that they are slates capable of being split into slabs.

The learned Judge of the Court below, after going through the evidence and the circumstances very carefully, came to the conclusion that before the cession of Balun Mr. McGuffin's right in Chamba was only to quarry slab slate and roofing slate, and therefore excluded the blue clay slate which is now given up. He then considered whether the Government, in quarrying slab slate, or slate which, if got out more carefully, might be used as slab, had infringed the rights under this lease, and having considered the evidence and come to a conclusion upon it, he came to the conclusion that there had been no infringement of Major Turton's right which entitled him to damages, and dismissed the suit. The contention at the bar to-day is that he was wrong in that ; that he ought to have found upon the evidence that at least some material corresponding to those specimens B. C. D. and E. or to some of them had been used ; that the evidence shows that slate of that kind was capable of being converted into slabs ; and that, therefore, there should have been an enquiry as

to the quantity of material used by the Respondents capable of being classed as châkka slate, and as to the damages sustained by Major Turton by reason of that use.

In order to see whether this conclusion of the learned Judge of the Punjab can be impeached, it is desirable, their Lordships think, first to consider what really was the effect of the lease granted to Mr. McGuffin. I have read that document, and it will be observed that it does not purport to grant the soil over this vast extent of country; it does not even purport to grant all the slate which may be found under the soil, but it certainly does purport to convey the goodwill, that is "to have and to hold all the "slate quarries within my territory at any place "within a distance of 15 miles from the station "of Dalhousie that may now exist or may "hereafter exist or be discovered." The first question is, what is slate within the meaning of that document. It has been argued for the Respondents that it should be limited to sêl. Mr Field, giving up the case as to the blue clay slate, still contends that it includes all slate capable of lamination or being converted either into roofing tiles or slabs; but that at all events it includes whatever would fall under the native term of châkka as well as sêl; and that upon the evidence as to the materials used, it must be taken that some slate, of the latter description, has been used in the construction of the barracks. Their Lordships are not disposed to quarrel with his construction of the document so far as it extends to that kind of slab slate that is worked and used for commercial purposes, and certainly to slate which would fall within the native term of châkka. That construction is consistent with the judgment under appeal. But they have to observe that the grant is simply of quarries worked, or the right of quarrying for

that purpose; and that upon the evidence in this case it would appear that all that has been intentionally done in the way of quarrying has been on the part of Government to open quarries, which it is now admitted they had a clear right to do for the purpose of getting building material, the blue clay stone. Further, they must take it as conclusively found by the decree, and they see no reason to doubt the correctness of that finding, that the Government has never worked any quarry nor has any quarry been opened by them for the purpose of extracting therefrom either sêl or châkka; but whatever materials of that kind they may have used in the barracks in a manufactured shape they have brought from their own quarry, and upon the evidence it would seem that they had hardly come down to the strata at which they would reach materials that could be profitably worked as a quarry within the meaning of the lease. The witness Captain Blair, at page 101, says:—

"The slate stone that we have hitherto used for "the barracks would not split, and as we dig "down by degrees we are coming to splitting "slate."

Holding then, as their Lordships are inclined to do, that the effect of the grant was merely to grant the right of working the quarries of this kind, either the existing quarries or those which may afterwards be discovered, it appears to them that the right conferred upon the grantees was of this kind, that if any person should open a quarry for the purpose of working slate of that description it was open to them to come to the courts and restrain him, and if he went on after notice, of course he would be liable to damages; but they do not consider the lease as preventing any person from quarrying *bonâ fide* for the mere purpose of extracting building materials, as to which there may be,

and is in this particular case upon the evidence, very considerable doubt whether any of the materials extracted were capable of being converted into slabs. There is no evidence at all that any was actually converted into slabs. It is to be observed that as to the witnesses upon whom Mr. Field principally relied, one witness said that C might be split, another that B might be split, another that D, which was principally used, might be split, and yet, on the other hand, one witness treats the specimen of which another has spoken as capable of lamination as falling properly within the definition of blue clay stone. It may be granted that slate of the different qualities of B. C. D. and E. was used as building material in construction of the barracks. But these specimens certainly included blue clay slate, and the evidence fails to show conclusively which of the specimens contained the one or other.

Their Lordships, therefore, are of opinion that the learned judge was right in his conclusion, and that no case is made out on which the Appellant could claim compensation from the Government. Considering, however, the very peculiar nature of the case, and considering the fact that this suit may to a certain extent have been encouraged by the admission in the early stage of the proceeding on the part of the advocate for the Government, which admission no doubt was made with reference rather to the return of the Commissioner before the issue had assumed the form which it afterwards took, their Lordships are of opinion that they ought to follow the example of the learned Judge in the Court below as to costs, and to advise Her Majesty that the Appeal should be dismissed, and that the decree should be affirmed without the costs of the Appeal.

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